

# Minister for Industrial Relations Directive: Higher Duties

## 1. Purpose:

To prescribe conditions for the payment of a higher duties amount when an employee subject to this directive assumes the duties and responsibilities of a higher classification level.

## 2. Effective date: 30 September 2024

## 3. Legislative authority:

3.1 Section 223 of the *Public Sector Act 2022* (PS Act).

3.2 Section 228 of the PS Act outlines the relationship between a directive and an Act or subordinate legislation, including how to deal with inconsistencies.

3.3 Section 229 of the PS Act outlines the relationship between a directive and industrial instrument, including how to deal with inconsistencies.

## 4. Application:

4.1 This directive applies to industrial instrument employees (i.e. employees who are covered by an award, certified agreement or arbitration determination) who are:

(a) public service employees; or

(b) employees within the following callings and/or departments covered by the identified Award:

(i) Rangers and Wildlife Officers to whom the *Parks and Wildlife Employees Award – State 2016* applies;

(ii) Staff members (as defined in the Award) to whom the *Queensland Police Service Employees Award – State 2016* applies;

(iii) Forepersons to whom the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016* applies; or

(iv) General employees engaged under s149 of the PS Act to whom the *General Employees (Queensland Government Departments) and Other Employees Award – State 2015* applies except for employees engaged within the forestry stream;

(c) or public sector employees employed under the establishing legislation<sup>1</sup> of the following entities:

(i) Queensland Building Construction Commission;

(ii) Queensland Building Construction Commission Employing Office;

(iii) Residential Tenancies Authority;

<sup>1</sup> For example, the establishing legislation of the Queensland Building and Construction Employing Office is the *Queensland Building and Construction Commission Act 1991*.

- (iv) Residential Tenancies Employing Office;
- (v) Trade and Investment Queensland; or
- (vi) Office of the Queensland Integrity Commissioner.

4.2 This directive does not apply to:

- (a) general employees other than those mentioned in clause 4.1(b); or
- (b) casual employees.

## 5. Recruitment and selection directive

This directive must be applied in conjunction with the Public Sector Commissioner Directive relating to recruitment and selection.

## 6. Higher duties across awards

- 6.1 This directive applies to employees performing higher duties under an award other than their substantive award, provided that the directive applies to the relevant callings in both awards.
- 6.2 Where an employee is performing higher duties across awards, the period of higher duties will count towards the increment in the employee's "lower classification level".
- 6.3 Where an employee is performing work across awards at the same level, the period of work at the same level will count towards the increment in the employee's substantive position.

## 7. Definitions

Except where otherwise defined, terms in this directive are consistent with their meanings in the *Industrial Relations Act 2016* and/or the *Public Sector Act 2022*.

### 7.1 "minimum period":

- where an employee is directed to assume the duties and responsibilities of a position at a "higher classification level" and where the "relevant percentage" is 75% or higher, "minimum period" means more than 3 consecutive working days;
- where an employee is directed to assume the duties and responsibilities of a position at a "higher classification level" and where the "relevant percentage" is less than 75%, "minimum period" means 3 consecutive weeks;
- where an employee is directed to assume the duties and responsibilities of a "higher classification level" **part-time** and where the "relevant percentage" is 75% or higher, "minimum period" means more than 3 cumulative working days during the relieving period;
- where an employee is directed to assume the duties and responsibilities of a "higher classification level" **part-time** and where the "relevant percentage" is less than 75%, "minimum period" means 3 cumulative weeks during the relieving period;
- the "minimum period" is not affected by leave taken during the relieving period.

7.2 "**higher classification level**" for the purpose of this directive, means a classification level which has a higher maximum salary than the maximum salary of the classification level actually held by the employee. This includes a higher maximum salary under a section 155 contract under the PS Act, except where that contract requires specialised skills and the relieving employee does not possess those skills.

7.3 "**lower classification level**" for the purpose of this directive, means a lower classification level which has a lower maximum salary than the maximum salary of the classification level the employee is relieving at.

- 7.4 **“relevant percentage”** means the percentage that, in the opinion of the chief executive, represents the extent to which the employee has assumed the full duties and responsibilities of the “higher classification level”.
- 7.5 **“relieving period”** means the period in which an employee or employees have been directed to assume the duties and responsibilities of a higher classification level.

## **8. Entitlements**

- 8.1 An employee who is directed to assume, for any applicable “minimum period”, the duties and responsibilities of a “higher classification level” –
- of an employee who is on leave (leave does not include accrued time off, time off in lieu or a rostered day off, unless it is continuous with other approved leave); or
  - of an employee who has been directed to perform other duties (including training, or work overseas or interstate); or
  - of a position which is vacant;
- is to be paid a higher duties amount as provided in this directive.
- 8.2 This directive applies to fixed term temporary employees only if they are directed to perform higher duties during the temporary period of employment.
- 8.3 Where an industrial instrument applying to an employee provides a more beneficial entitlement than provided for in this directive, then the employee shall receive the entitlement as provided for in that industrial instrument.

## **9. Amount payable**

- 9.1 The higher duties amount payable consists of the "relevant percentage" of the difference between the employee's substantive salary level and paypoint and the first paypoint of the “higher classification level” in which the employee will be relieving. For example, if the “relevant percentage” is deemed to be 100%, the employee will receive 100% of the difference between their substantive salary and paypoint and the first paypoint of the “higher classification level”.
- 9.2 However, if the conditions in clause 10 occur, then the higher paypoint as indicated in clause 10 forms the basis of calculating the higher duties amount.

## **10. Salary exceeds minimum or employee qualifies for higher paypoint**

- 10.1 Where the substantive salary of the employee exceeds the first paypoint of the "higher classification level", the higher duties amount payable is to be based on the paypoint that is closest to but higher than the employee's salary at their substantive level and paypoint before relieving in the higher position.
- 10.2 Where the employee has qualified for a higher paypoint of the “higher classification level”, the higher duties amount payable is to be based on the paypoint that the employee has qualified for.

## **11. Payment of higher duties amount during recreation leave, long service leave and paid parental leave**

An employee who takes recreation leave, long service leave or paid parental leave during a relieving period is entitled to be paid for the full period of such leave at the higher duties amount being paid to the employee immediately before the employee takes the leave. This will be the case even where the relieving period ceases on the last day of duty prior to the leave commencing, or at any point during the leave period.

## **12. Payment of higher duties amount during all other forms of paid leave.**

12.1 Subject to clause 12.2, an employee who takes any form of paid leave during a relieving period is to be paid the higher duties amount, for example:

- sick leave;
- carer's leave;
- bereavement leave;
- compassionate leave;
- domestic and family violence leave;
- leave to sit examinations, or for authorised absences of less than 1 working day to attend lectures, to attend or participate in a course of study approved under the Ministerial Directive relating to Study and Examination Leave or any directive issued to replace it;
- court attendance or jury service leave;
- industrial relations education leave; and
- paid special leave.

12.2 Payment of the higher duties amount on a form of leave identified in clause 12.1 (other than leave types in clause 11) will cease when the relieving period ceases.

### **Examples**

An employee who is a substantive AO4 is approved to relieve in an AO5 position from 1 September to 1 November. The employee takes a period of sick leave from 15 October to 15 November. The employee is entitled to be paid the higher duties amount (AO5) from 15 October to 1 November and will revert to the employee's substantive rate (AO4) from 2 November to 15 November.

An employee who is a substantive AO4 is approved to relieve in an AO5 position from 1 September to 1 November. The employee takes sick leave on 2 November immediately following the period of higher duties. The employee is to be paid the sick leave at the employee's substantive rate of pay (AO4).

## **13. Payment of increments during relieving period**

13.1 An employee is to move to the next paypoint within the "higher classification level" where –

- the employee has met the performance objectives of the "higher classification level"; and
- the employee has been relieving continuously in the "higher classification level" for 12 months;

### **OR**

- the employee has been relieving non-continuously in the "higher classification level" for a period which aggregates in total a period of 12 months within the preceding 24 calendar month period.

13.2 An employee is to continue moving to the next paypoint(s) within the "higher classification level" where a previous paypoint as provided for in clause 13.1 has been received during relieving periods for a period of 12 months within the preceding 24 month period.

13.3 Where an employee has moved to the next paypoint within a "higher classification level" and the relieving period ceases, the employee will maintain that paypoint if the break in relieving has been less than 24 months and the employee re-commences relieving at the same "higher classification level" or another level which is lower than that level but higher than the employee's substantive level.

### **Example 1**

An employee who is a substantive level AO4 relieves in an AO6 position for a period of 12 months and progresses to the second paypoint. After 5 months on the second paypoint, the employee ceases relieving and returns to their substantive AO4 position for a period of 9 months. The employee

then commences relieving in an AO6 position. The employee is to be paid at the second paypoint of the AO6 scale.

Continuing this example, where the relieving in the AO6 position continues for a further period of 7 months, the employee is to move to the third paypoint of the AO6 scale.

### **Example 2**

An employee who is a substantive level AO3 relieves in an AO5 position for a period of 12 months and progresses to the second paypoint. After 3 months on the second paypoint, the employee ceases relieving and returns to their substantive AO3 position for a period of 5 months. The employee then commences relieving in an AO4 position. The employee is to be paid at the second paypoint of the AO4 scale.

Continuing this example, where the relieving in the AO4 position continues for a further period of 9 months, the employee is to move to the third paypoint of the AO4 scale.

- 13.4 All **paid** leave taken during periods of relieving in the “higher classification level” is recognised as service at the higher level for increment purposes.
- 13.5 All unpaid leave taken during periods of relieving in the “higher classification level” is recognised as service at the higher level for increment purposes, subject to the provisions in the Ministerial Directive relating to Leave without Salary Credited as Service.
- 13.6 Employees who are directed to assume the duties and responsibilities of a “higher classification level” **part-time** shall be entitled to increments in accordance with the relevant industrial instrument under which the duties and responsibilities are being performed.
- 13.7 The “relevant percentage” has no effect on the entitlement to increments during the relieving period.
- 13.8 Where the relevant industrial instrument provides for increments on other than a 12 monthly basis, the 12 month timeframe referred to in clauses 13.1 and 13.2 is to be substituted with the period stated in the industrial instrument for incremental progression.

## **14. Recognition of higher duties upon permanent employment**

- 14.1 Relieving period/s are to be recognised as service for the purpose of determining the paypoint and increment date of an employee who is subsequently permanently employed at a “higher classification level” where the following conditions are satisfied:
  - (a) the relieving was at the same or at a higher level to the classification level to which the employee has been permanently employed; and
  - (b) the employee has met the performance objectives of the “higher classification level” at which the employee relieved.
- 14.2 The relieving period/s which are to be recognised as service for the purpose of determining the paypoint and increment date of an employee who is subsequently permanently employed at a “higher classification level” are the greater of:
  - (a) all continuous relieving service immediately preceding the permanent employment;

**OR**

  - (b) non-continuous relieving service for a period which aggregates in total a period of 12 months or more within the immediately preceding 24 calendar months.
- 14.3 Notwithstanding clause 14.2, where an employee has qualified for a higher paypoint of the “higher classification level” through previous relieving in accordance with clause 13, the employee shall be permanently employed at that higher paypoint, provided that the employee has relieved at that “higher classification level” within the 12 months immediately preceding the permanent employment.

## **15. Public holiday**

- 15.1 For public holidays falling within the relieving period, the higher duties amount is to be paid unless the public holiday falls during leave without pay.

- 15.2 The higher duties amount is to be paid for public holidays that fall during paid leave within the relieving period.
- 15.3 Where an employee takes long service leave or recreation leave immediately following a relieving period and a public holiday falls within the period of leave or immediately prior to accessing the period of leave, the higher duties amount is paid for the public holiday and the period of leave.

**16. Termination of services during relieving period**

- 16.1 Where an employee is within a relieving period on the last day of employment and has accrued long service leave, recreation leave and/or leave loading that is to be paid out on termination, payment is to include the higher duties amount the employee receives immediately before termination.
- 16.2 Where an employee is entitled to payment for public holidays which fall within the period of accrued recreation leave and/or long service leave paid out on termination, payment for public holidays is to include the higher duties amount the employee receives immediately before termination.