

CRITICAL INCIDENT ENTITLEMENTS AND CONDITIONS Support Materials¹ - Directive No. 06/16

About the Directive

Existing industrial instruments provide for public service employees' entitlements in the facilitation of "normal" day to day operations.

The intent of the *Critical Incident Entitlements and Conditions Directive No. 06/16* is to provide a specific industrial instrument which supports agencies in effectively managing their public service workforce under emergency response and disaster recovery conditions.

What is the purpose of the Critical Incident Entitlements and Conditions Directive No. 06/16?

The *Critical Incident Entitlements and Conditions Directive No. 06/16* recognises the exceptional circumstances under which some public service employees are either deployed to work, and/or the exceptional workload of some public service employees that occurs when the agency responds to a declared emergency or disaster. Application of the *Critical Incident Entitlements and Conditions Directive No. 06/16* in such circumstances ensures that public service employees receive appropriate entitlements and conditions for performing work tasks and workloads that are critical for effective and efficient response, recovery and rehabilitation.

There are four (4) ministerial directives which are directly affected by *Critical Incident Entitlements and Conditions Directive No. 06/16*:

- Domestic Travelling and Relieving Expenses No. 09/11;
- Hours, Overtime and Excess Travel No. 07/16;
- Higher Duties No. 04/11; and
- Field Staff No. 09/16

Information about how the directives are affected is in appendix A.

¹ This document aims to provide information to support the application of the Critical Incident Entitlements and Conditions Directive No. 06/16. The information is a guide only and does not have any regulatory status when determining disputes about interpretation of the directive.

When to use the Directive and Support Materials?

The directive can be applied in limited circumstances, they are:

- when a critical incident is determined by the Minister responsible for Police, Fire and Emergency Services or the Commissioner for Queensland Fire and Emergency Services (QFES), or declared under a relevant Act;
- as approved by the Director-General responsible for industrial relations; or
- when the QFES declares an emergency situation.

The authority to approve application of the directive by the Director-General responsible for industrial relations has been delegated to the Deputy-Director General, Office of Industrial Relations (DDG OIR). The approval process requires the following documentation:

- details of the critical incident including how it would/does adversely disrupt the agency's high priority business function/s;
- details of those identified critical business functions likely to be disrupted by the critical incident; and
- details on groups of employees who would typically be categorised as essential under these circumstances – taking into account that employees whose support to the “essential” or frontline employees might also be categorised as essential.

Where disaster events are determined or declared through the QFES, the QFES will provide automatic notification of such determination or declaration to affected departments and agencies. To receive notifications, agencies should contact the State Disaster Coordination Centre Watch Desk on 3635 2387.

APPENDIX A

Domestic Travelling and Relieving Expenses Directive

While the Domestic Travelling and Relieving Expenses Directive No. 09/11 prescribes the compensation for expenses incurred when an employee is required to travel to perform duties away from the employee's usual place of work, it does not specifically address the exceptional "accommodation" issues that may occur within a critical incident.

For example, the damage caused by a cyclone may result in loss or lack of accommodation which is at least consistent with the 3 star rating used in RACQ accommodation directories, which is regarded to be the minimum standard of accommodation as per the Domestic Travelling and Relieving Expenses Directive. Therefore, those who are deployed to these conditions are likely to have no choice other than to utilise accommodation below the 3 star rating.

In this situation, the application of *Critical Incident Entitlements and Conditions Directive No. 06/16* will mandate the payment of an additional hardship allowance of \$47.05 per night to compensate those employees.

Applying the *Critical Incident Entitlements and Conditions Directive No. 06/16* also addresses the needs of local employees working under critical incident conditions by allowing them to receive the same entitlements and allowances prescribed in the Domestic Travelling and Relieving Expenses Directive No. 09/11, if meals and accommodation are required due to either:

- having been directed to work under those conditions, and then because of occurrences beyond their control (such as road closures, potentially unsafe weather conditions or similar) they are unable to return to their place of residence;

OR

- having been directed to attend work throughout the critical incident, travelling to and from their place of residence would cause an unacceptable level of risk for the employee.

Similarly, local employees would also be entitled to the additional hardship allowance of \$47.05 per night if the only accommodation standard provided or available to them did not meet the minimum 3 star rating.

Table 1: Hours and Overtime Directive

Conditions	Hours, Overtime and Excess Travel Directive No. 07/16	Critical Incident Entitlements and Conditions Directive No. 06/16
Payment of Overtime	<ul style="list-style-type: none"> This directive prescribes that employees (excluding field staff) in receipt of wages that do not exceed paypoint (4) of Classification Level AO5 of the CRS, and all casual employees, shall be paid overtime in accordance with any overtime provisions in an applicable industrial award or industrial agreement or certified agreement. 	<ul style="list-style-type: none"> Employees, including field staff, in receipt of wages that do not exceed paypoint (4) of Classification Level AO8 of the CRS or equivalent will be paid overtime in accordance with any overtime provisions in an applicable industrial award or certified agreement. Overtime is calculated for the period between the completion of ordinary hours of work and cessation of duty at the employee's headquarters. Overtime payments will be based on the salary the employee is receiving during the critical incident.
Compensation for Overtime	<ul style="list-style-type: none"> Equivalent TOIL is credited to employees (excluding casual employees) in receipt of wages in excess of paypoint (4) of Classification Level AO5 of the CRS, except where the Director-General of the department responsible for industrial relations excludes certain classes of employees in exceptional circumstances. Applications to exclude employees from the overtime salary limit are to be supported by persuasive evidence and will be considered on a case-by-case basis. 	<ul style="list-style-type: none"> Employees in receipt of wages not exceeding paypoint (4) of Classification Level AO8 of the CRS, or equivalent may negotiate with the agency to be credited with equivalent TOIL, prior to working overtime. However, this is subject to operational requirements of the agency. Subject to the provisions of this directive there is no requirement for the CEO of an agency to apply for an overtime salary limit exclusion to pay overtime to employees in excess of paypoint (4) of Classification Level AO5 of the CRS but not exceeding paypoint (4) of Classification Level AO8 of the CRS, or equivalent.
Unused TOIL	<ul style="list-style-type: none"> Equivalent TOIL is credited to employees, provided that unused TOIL will be paid out after 12 months from each date of accrual where: <ul style="list-style-type: none"> an employee has taken reasonable steps to avoid excessive TOIL balances; and the employee has been refused an application to take such leave. For EACH instance of TOIL, a pay out is made ONLY after 12 months has lapsed since the TOIL was originally credited. This applies only to employees in receipt of wages in excess of paypoint (4) of Classification level AO5 of the CRS, or equivalent, but not exceeding paypoint (4) of Classification level AO6 of the CRS, or equivalent. Unused TOIL for Classification levels AO7 & AO8 or equivalent will lapse if not taken within 12 months from each date of accrual. 	<ul style="list-style-type: none"> If after 6 months from the end date of application of this directive, employees have not accessed all their TOIL credited for the critical incident event, then all unused TOIL credited for each event will be paid out as a lump sum at the rate of time and a-half calculated on the employee's salary rate actually paid on the last day of the employee's engagement on the critical incident event. <p>Note: The employee's unused TOIL balance is derived from a time for time accrual of actual overtime hours performed, irrespective that a higher compounding factor, e.g. time and a-half, may have been applied at time of actual accrual in accordance with TOIL definition at clause 5.12 of the Directive.</p>
Recording Compensation For Overtime	<ul style="list-style-type: none"> As per organisational arrangements 	<ul style="list-style-type: none"> Agencies must record overtime payments/TOIL accrued for overtime worked under critical incident events. Overtime payments/TOIL accrued will be recorded against each application of the directive where more than one critical incident occurs per financial year period i.e. 1 July to 30 June. Records for each application of the directive will show all overtime payments/TOIL credited throughout the duration of the critical incident.

Table 2: Field Staff Directive

Conditions	Field Staff Directive No. 09/16	Critical Incident Entitlements and Conditions Directive No. 06/16
<p>Application</p>	<p>This directive applies to:</p> <ul style="list-style-type: none"> • public service officers; • temporary employees engaged under section 148(2)(a) of the <i>Public Service Act 2008</i>; and • casual employees engaged under section 148(2)(b) of the <i>Public Service Act 2008</i> but only for the purposes of determining hours of duty and weekend penalties prescribed at Part A of the Schedule. <p>This directive does not apply to general employees engaged under section 147 of the <i>Public Service Act 2008</i>.</p>	<p>This directive applies to:</p> <ul style="list-style-type: none"> • public service officers; • temporary employees engaged under section 148(2) of the <i>Public Service Act 2008</i>; and • general employees engaged under section 147(2) of the <i>Public Service Act 2008</i>.
<p>Compensation/ Payment for Overtime</p>	<p>Equivalent TOIL is credited to employees (excluding casual employees) in receipt of wages not exceeding paypoint (4) of Classification Level AO5 of the CRS.</p>	<ul style="list-style-type: none"> • Employees, including field staff, in receipt of wages that do not exceed paypoint (4) of Classification Level AO8 of the CRS or equivalent will be paid overtime in accordance with any overtime provisions in an applicable industrial award or certified agreement. • Employees, including field staff, in receipt of wages not exceeding paypoint (4) of Classification Level AO8 of the CRS, or equivalent, may negotiate with the agency to be credited with equivalent TOIL, prior to working overtime. However, this is subject to operational necessity of the agency.
<p>Unused TOIL</p>	<p>Payment for accrued TOIL at ordinary rates may occur at the employee's election in the following circumstances:</p> <ul style="list-style-type: none"> • for accrued TOIL in excess of 228 hours; or • where accrued TOIL is not utilised within twelve months of its date of accrual. <p>Provided that payment is subject to both:</p> <ul style="list-style-type: none"> • an employee having taken reasonable steps to avoid excessive TOIL balances; and • the employee having been refused an application to take such leave. 	<ul style="list-style-type: none"> • If after 6 months from the end date of application of this directive, employees have not accessed all their TOIL credited for the critical incident event, then all unused TOIL credited for each event, will be paid out as a lump sum at the rate of time and a-half calculated on the employee's salary rate actually paid on the last day of the employee's engagement on the critical incident event. • Note: The employee's unused TOIL balance is derived from a time for time accrual of actual overtime hours performed, irrespective that a higher compounding factor, e.g. time and a-half, may have been applied at time of actual accrual in accordance with TOIL definition in the Directive.

Table 3: Higher Duties Directive

Conditions	Higher Duties Directive No. 04/11	Critical Incident Entitlements and Conditions Directive No. 06/16
<p>“Minimum Period”</p>	<p>Dependant upon whether the duties and responsibilities of the higher classification position is assumed by one or more employees, at a relevant percentage of > or < than 75% of the full duties and responsibilities of the “higher classification level”, the “minimum period” is prescribed as either:</p> <ul style="list-style-type: none"> • 3 consecutive working days; • 3 cumulative working days; • 3 consecutive working weeks; or • 3 cumulative working weeks. 	<p>No “minimum period” of relief is required for employees directed to assume the duties and responsibilities of an essential position at a “higher classification level” (not exceeding paypoint (4) of Classification Level AO8 of the CRS).</p>
<p>Application</p>	<p>This directive applies to:</p> <ul style="list-style-type: none"> • public service officers; and • temporary employees under section 148(2) (a) of the <i>Public Service Act 2008</i>. <p>This directive does not apply to:</p> <ul style="list-style-type: none"> • general employees under section 147(2)(a) of the <i>Public Service Act 2008</i>; or • employees engaged on a casual basis under sections 147(2)(b) or 148(2)(b) of the <i>Public Service Act 2008</i>. 	<p>This directive applies to:</p> <ul style="list-style-type: none"> • public service officers; • temporary employees under section 148(2) of the <i>Public Service Act 2008</i>; and • general employees under section 147(2) of the <i>Public Service Act 2008</i>.
<p>Salary Limitations</p>	<ul style="list-style-type: none"> • Not specified 	<ul style="list-style-type: none"> • Higher duties performed at a classification level not exceeding paypoint (4) of Classification Level AO8 of the CRS, or equivalent.