

## DIRECTIVE 03/18

Supersedes: 18/16

### Minister for Industrial Relations Directive: Higher Duties

#### 1. Purpose:

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

#### 2. Effective date: 11 May 2018

#### 3. Legislative authority:

Section 54(1) of the *Public Service Act 2008*.

Sections 51 and 52 of the *Public Service Act 2008* and section 941 of the *Industrial Relations Act 2016* apply if there is a conflict with an act, regulation or industrial instrument.

#### 4. Application:

This directive applies to:

- public service officers;
- temporary employees under section 148(2)(a) of the *Public Service Act 2008*; and
- general employees, including temporary general employees, under section 147(2)(a) of the *Public Service Act 2008*, who are engaged under the following awards:
  - *General Employees (Queensland Government Departments) and Other Employees Award – State 2015*, excluding employees engaged within the forestry stream;
  - *Parks and Wildlife Employees Award - State 2016*; and
  - only to the extent it covers employees engaged within the forepersons stream, the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016*.

This directive **does not apply** to –

- employees engaged on a casual basis under sections 147(2)(b) or 148(2)(b) of the *Public Service Act 2008*.

#### 5. Previous References:

- Directive 11/01, 4/11, 18/16: “Higher Duties”;
- Directive 2/01, 18/99, 14/97: “Higher Duties Allowance”
- Sections 63 and 69 of the *Public Service Management and Employment Regulation 1988* as in force on 24 February 1995.
- Determination No. 13
- DEVETIR letter of 6 December 1993
- Administrative Instruction No. 1 | 32

## 6. Related information:

- Directives: “*Recruitment and Selection*”, “*Study and Examination Leave*”, “*Early Retirement, Redundancy and Retrenchment*”, “*Recreation Leave*”, “*Long Service Leave*”, “*Paid Parental Leave*” and “*Court Attendance and Jury Service*”

## DIRECTIVE

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### 7. Higher duties for 12 months or more

- 7.1 The Public Service Commission Directive: *Recruitment and Selection* is to be complied with where an employee is directed to assume the duties and responsibilities of a “higher classification level” for 12 months or more.

### 8. Higher duties across awards

- 8.1 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.
- 8.2 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”.
- 8.3 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.

### 9. Definitions

#### 9.1 “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.

- 9.2 “**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 122 contract under the *Public Service Act 2008*, except where that contract requires specialised skills and the relieving employee does not possess those skills.

- 9.3 “**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.

- 9.4 **“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”.
- 9.5 **“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.

## 10. Entitlements

10.1 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.

10.2 This directive applies to temporary employees only if they are directed to perform higher duties during the temporary period of employment.

10.3 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.

## 11. Amount payable

11.1 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”.

11.2 However, if –

- the employee’s substantive salary already exceeds the first paypoint of the “higher classification level”; or
- the employee qualifies for a higher paypoint of the “higher classification level” during the relieving period in accordance with clause 15.1; or
- the employee qualifies for a higher paypoint of the “higher classification level” through previous relieving in accordance with clause 15;

then the higher paypoint applies (see clause 12).

## 12. Salary exceeds minimum or employee qualifies for higher paypoint

12.1 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 his or her substantive level and paypoint before relieving in the higher position.

12.2 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.

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

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

**14. Payment of higher duties amount during other identified forms of leave referenced in the *Industrial Relations Act 2016*, study and examination leave and court attendance leave.**

14.1 Subject to clause 14.2, an employee on higher duties who takes any of the following forms of paid leave is to be paid the higher duties amount:

- 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: "Study and Examination Leave" or any directive issued to replace it;
- court attendance or jury service leave.

14.2 Payment for higher duties on a form of leave identified in clause 14.1 will cease when the higher duties arrangement 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).

**15. Payment of higher duties amount during all other forms of leave**

15.1 This section applies to all other forms of paid leave not otherwise identified in clauses 13 or 14 above, including paid special leave.

15.2 For the purposes of section 15.1, special leave means a form of special leave under the *Special Leave Directive*, other than a form of leave identified in clause 14.1 above.

15.3 Subject to clause 15.5, an employee on higher duties who takes leave is to be paid the higher duties amount if the employee has been on higher duties for the immediately preceding 12 months.

15.4 An employee on higher duties who takes leave is to be paid at the employee's substantive rate of pay if the employee has not been on higher duties for the immediately preceding 12 months.

15.5 Where the employee has continuously relieved in positions at different “higher classification levels” for 12 months immediately before taking the leave, the employee is to be paid at the rate of the classification and paypoint of the lowest “higher classification level” in which he or she has relieved in the immediately preceding 12 months.

**Example**

If an employee relieves in an AO4 position for 4 months or more immediately followed by an AO5 position for 8 months, the employee is paid at the AO4 rate as he or she has worked in at least an AO4 position for the 12 months immediately preceding the leave.

**16. Payment of increments during relieving period**

16.1 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.

16.2 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 16.1 has been received for a period of 12 months within the preceding 24 month period.

16.3 Where an employee has moved to the next paypoint within a “higher classification level” and the relieving 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 his/her 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 his/her 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.

16.4 All **paid** leave taken during periods of relieving in the “higher classification level” is recognised as service at the higher level for increment purposes even if the leave is paid at the substantive level.

16.5 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 “Leave without Salary Credited as Service”.

16.6 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 award under which the duties and responsibilities are being performed.

16.7 The “relevant percentage” has no effect on the entitlement to increments during the relieving period.

## **17. Recognition of higher duties upon appointment**

17.1 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 appointed to a “higher classification level” where the following conditions are satisfied:

- the relieving was at the same or at a higher level to the classification level to which the employee has been appointed; and
- the employee has met the performance objectives of the “higher classification level” at which the employee relieved.

17.2 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 appointed to a “higher classification level” are the greater of:

- all continuous relieving service immediately preceding appointment;

### **OR**

- 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.

17.3 Notwithstanding clause 17.2, where an employee has qualified for a higher paypoint of the “higher classification level” through previous relieving in accordance with clause 15, the employee shall be appointed at that higher paypoint, provided that the employee has relieved at that “higher classification level” within the 12 months immediately preceding appointment.

## **18. Public holiday**

18.1 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.

18.2 The higher duties amount is to be paid for public holidays that fall during paid leave within the relieving period, irrespective of whether the higher duties amount is paid for the leave itself.

18.3 Where an employee takes long service leave or recreation leave immediately following a period of higher duties and a public holiday falls within the period of leave or immediately prior to accessing the period of leave, the public holiday and the period of leave is to be paid at the higher duties rate.

## **19. Termination of services whilst on higher duties**

19.1 Where an employee is acting in a higher position 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 at the higher duties rate of pay the employee receives immediately before termination.

19.2 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 at the higher duties rate of pay the employee receives immediately before termination.