

ATTORNEY-GENERAL AND MINISTER FOR INDUSTRIAL RELATIONS

- 1. TITLE:** **Higher Duties**
- 2. 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.
- 3. LEGISLATIVE PROVISIONS:** Section 54(1) of the *Public Service Act 2008* and section 686 of the *Industrial Relations Act 1999*.
- 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 awards which prescribe the application of this directive.

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. STANDARD:** The conditions and entitlements prescribed in the Schedule apply.
- 6. EFFECTIVE DATE:** This directive is to operate from **31 January 2011**
- 7. VARIATION:** This directive can be varied by –
 - the industrial relations Minister; or
 - legislation.
- 8. INCONSISTENCY:** Sections 51 and 52 of the *Public Service Act 2008* and sections 686 and 687 of the *Industrial Relations Act 1999* apply if there is a conflict with provisions of an act, regulation or industrial instrument.
- 9. SUPERSEDES:** Directive 2/05: “*Higher Duties*”
- 10. PREVIOUS REFERENCES:** Directive 11/01: “*Higher Duties*”
Directives 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
- 11. SEE ALSO:** 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*”

SCHEDULE

HIGHER DUTIES

1. Higher duties for 12 months or more

1.1 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.

2. Higher duties across awards

2.1 This directive applies to employees performing higher duties under an award other than their substantive award, provided that both awards prescribe the application of this directive.

2.2 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”.

2.3 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.

3. Definitions

3.1 “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.

3.2 “**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.

3.3 “**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.

3.4 “**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”.

3.5 “**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.

4. Entitlements

4.1 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 rostered day off unless it is contiguous 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 schedule.

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

4.3 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.

5. Amount payable

5.1 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".

5.2 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 8.1; or
- the employee qualifies for a higher paypoint of the "higher classification level" through previous relieving in accordance with clause 8;

then the higher paypoint applies (see clause 6).

6. Salary exceeds minimum or employee qualifies for higher paypoint

6.1 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.

6.2 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.

7. Payment of higher duties amount during leave

7.1 Where an employee has relieved for less than 12 months, payment for leave is at the employee's substantive rate of pay, except as provided for in clauses 7.5 and 7.6

7.2 The higher duties amount is to be paid for leave taken by the employee during the relieving period if the employee has assumed the higher duties and responsibilities for the immediately preceding 12 months.

7.3 If the relieving period ceases during a period of leave, the employee is only to be paid the higher duties amount until the date the relieving period ceases, except where the employee takes paid parental leave (see clause 7.7).

7.4 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.

7.5 The higher duties amount is to be paid during the relieving period if leave on full salary is granted:

- to sit for 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.

7.6 The higher duties amount is to be paid during the relieving period if the employee is required for court attendance or jury service.

7.7 The higher duties amount is to be paid for the whole of any period the employee takes paid parental leave if the leave commences either during the relieving period or the next ordinary working day after the relieving period ends.

8. Payment of increments during relieving period

8.1 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.

8.2 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 8.1 has been received for a period of 12 months within the preceding 24 month period.

8.3 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 12 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.

8.4 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.

8.5 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".

8.6 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. For example, the Queensland Public Service Award – State 2003 prescribes increment movement for part-time employment after 12 months service and 1,200 hours in a classification level.

8.7 The "relevant percentage" has no effect on the entitlement to increments during the relieving period.

9. Recognition of higher duties upon appointment

9.1 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.

9.2 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.

9.3 Notwithstanding clause 9.2, where an employee has qualified for a higher paypoint of the "higher classification level" through previous relieving in accordance with clause 8, 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.

10. Public holiday

10.1 For public holidays falling at the beginning or end of a relieving period, no higher duties amount is to be paid for the public holiday.

10.2 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.

10.3 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. (*Industrial Relations Act 1999*, sections 11(3) and 43(5), annual leave and long service leave are exclusive of a public holiday that falls during the leave).

11. Termination of services whilst on higher duties

11.1 Where an employee is acting in a higher position on the last day of employment and has accrued recreation leave and/or leave loading that is to be paid out on termination, payment is at the ordinary rate of pay the employee receives immediately before termination (i.e. the higher duties rate) in accordance with section 14(5) of the *Industrial Relations Act 1999*.

11.2 Where an employee is acting in a higher position on the last day of employment and has accrued long service leave that is to be paid out on termination, payment is at the employee's substantive rate of pay except where higher duties served has been continuous for a period of twelve months or more immediately preceding termination, in which case the long service leave payment shall be calculated at the higher duties rate.