

Critical Incident Entitlements and Conditions

Support Materials

Support materials Directive No. 3/08

CRITICAL INCIDENT ENTITLEMENTS AND CONDITIONS

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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. 3/08*** is to provide a specific industrial instrument which supports agencies in effectively managing their public service workforce under emergency response and disaster recovery conditions.

About this Document

This document aims to provide information to support the implementation and application of the ***Critical Incident Entitlements and Conditions Directive No. 3/08***.

The information contained is a guide only and does not have any regulatory status when determining disputes about interpretation of the directive.

This document, while specifically referring to Directive 3/08, does not refer to every section of the directive. The notes provided here relate only to those sections of the directive that are considered to be complex or open to interpretation, or sections that can be better explained with examples.

This document also outlines the key points of the ***Critical Incident Entitlements and Conditions Directive No. 3/08*** and how the Directive's provisions relate to sections of relevant existing directives – Domestic Travelling and Relieving Expenses, Hours and Overtime, Higher Duties, and Field Staff.

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When to use this Directive and Support Materials

The *Critical Incident Entitlements and Conditions Directive* No. 3/08 can only be applied:

- (a) when a disaster event (i.e. critical incident situation) is determined to exist by the Minister responsible for emergency services or by the Executive Director of Emergency Management Queensland;
OR
- (b) when a disaster event (i.e. critical incident situation) is declared under the *Disaster Management Act 2003*; the *Public Health Act 2005*; the *State Transport Act 1938*; or the *Public Safety Preservation Act 1986*;
OR
- (c) where, subject to the provisions of the directive, an agency has gained approval to apply the directive from the Director-General of the department responsible for industrial relations.

The approval process requires an agency submission or documentation to be provided to the Director-General responsible for industrial relations. This documentation includes:

- 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 (a) or (b) as outlined above occurs, the Directive is applied to essential employees engaged in any department or agency to which this Directive applies who are engaged on duties associated with the determined or declared disaster event.

Where disaster events are determined or declared through the Department of Emergency Services, this department (i.e. DES) will provide automatic notification of such determination or declaration to affected departments and agencies. To receive notifications from DES, agencies should contact the Principal Industrial Relations Officer on phone 3247 8103.

What's different about the *Critical Incident Entitlements and Conditions Directive* No. 3/08?

The *Critical Incident Entitlements and Conditions Directive* No. 3/08 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 which occurs when the agency responds to a declared emergency or disaster.

Furthermore, the directive provides an instrument for application when a critical incident impacting on the agency disrupts one or more of the agency’s critical business functions and the agency is forced to respond immediately to mitigate or minimise the impact (whether it be short or long term).

Application of the *Critical Incident Entitlements and Conditions Directive* No. 3/08 in such circumstances ensures that public service employees receive appropriate entitlements and conditions for performing work tasks and work loads which are critical for effective and efficient response, recovery and rehabilitation.

There are four (4) ministerial directives which are directly affected by the *Critical Incident Entitlements and Conditions Directive*:

- Domestic Travelling and Relieving Expenses
- Hours and Overtime;
- Higher Duties; and
- Field Staff.

Hours and Overtime Directive

The Hours and Overtime Directive prescribes the compensation for overtime worked by public service employees under “normal” day to day operations. The application of the *Critical Incident Entitlements and Conditions Directive* effects change within the general conditions and entitlements for overtime and salary limitations, identifies the triggers to apply the directive (by declaration or approval), and overrides the need for chief executives to seek exemption to pay overtime to employees in receipt of wages that exceed paypoint (4) of classification level AO5. Furthermore it provides an opportunity for employees and employers to negotiate the credit of time off in lieu for payment of overtime, subject to the operational necessity of the agency – refer to Table 1.

Table 1: Hours and Overtime

Conditions	Hours and Overtime Directive	Critical Incident Entitlements and Conditions Directive No. 3/08
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 	<ul style="list-style-type: none"> • Employees, <u>including field staff</u>, in receipt of wages that do not exceed paypoint (4) of Classification Level AO8 of the

	<p>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.</p>	<p>CRS or equivalent will be paid overtime in accordance with any overtime provisions in an applicable industrial award or certified agreement.</p> <ul style="list-style-type: none"> • 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.
<p>Compensation for Overtime</p>	<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. <p>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.</p>	<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 <u>there is no requirement</u> 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.
<p>Unused TOIL</p>	<ul style="list-style-type: none"> • Equivalent TOIL is credited to employees, <u>provided that unused TOIL</u> 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; 	<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 <u>each</u> event will be paid out as a lump sum at the rate of time and a-half calculated on

	<p>and</p> <ul style="list-style-type: none"> - 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 	<p>the employee's salary rate actually paid on the last day of the employee's engagement on the critical incident event.</p> <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>
<p>Recording compensation for overtime</p>	<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.

Field Staff Directive

Field staff positions are specifically designated as such in position descriptions. The chief executive or the chief executive's delegate identifies the positions to be designated as field staff positions, and must specify within the position description the ordinary weekly hours of the position.

In applying the *Critical Incident Entitlements and Conditions Directive* to designated field staff positions, such staff will be provided with the same entitlements and conditions as non-field staff employees who are subject to the provisions of the directive.

Table 2: Field Staff

Conditions	Field Staff Directive	Critical Incident Entitlements and Conditions Directive No. 3/08
Application	<p>This directive applies to –</p> <ul style="list-style-type: none"> • public service officers; • temporary employees engaged under section 113(2)(a) of the <i>Public Service Act 1996</i>; and • casual employees engaged under section 113(2)(b) of the <i>Public Service Act 1996</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 –</p> <ul style="list-style-type: none"> • general employees engaged under section 112 of the <i>Public Service Act 1996</i>. 	<p>This directive applies to –</p> <ul style="list-style-type: none"> • public service officers; • temporary employees engaged under section 113(2) of the <i>Public Service Act 1996</i>; and • general employees engaged under section 112(2) of the <i>Public Service Act 1996</i>.
Compensation/ Payment for overtime	<ul style="list-style-type: none"> • Equivalent TOIL is credited to employees (excluding casual employees) in receipt of wages not exceeding 	<ul style="list-style-type: none"> • Employees, <u>including field staff</u>, in receipt of wages that do not exceed paypoint (4) of Classification Level AO8 of the

	<p>paypoint (4) of Classification Level AO5 of the CRS.</p>	<p>CRS or equivalent will be paid overtime in accordance with any overtime provisions in an applicable industrial award or certified agreement.</p> <ul style="list-style-type: none"> • 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>	<ul style="list-style-type: none"> • Payment for accrued TOIL at ordinary rates may occur at the employee's election in the following circumstances: <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><i>Provided that payment is subject to both:</i></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 <u>each</u> 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>

Higher Duties Directive

The Higher Duties directive prescribes conditions for the payment of higher duties when a public service officer, or temporary employee engaged to perform essential work of a

type normally performed by a public service officer, assumes the duties and responsibilities of a higher classification level.

The application of the *Critical Incident Entitlements and Conditions Directive No. 3/08* effects changes within the general conditions of higher duties and coverage as shown in Table 3.

The Higher Duties directive prescribes a “minimum period” of time that an employee is required to perform higher duties before being eligible for payment at the higher level, whereas the *Critical Incident Entitlements and Conditions Directive* does not prescribe a “minimum period” before an employee is entitled to payment at the higher level.

Furthermore, while the Higher Duties Directive does not apply to general employees under section 112(2) (a) of the *Public Service Act - 1996*, these employees are covered under the *Critical Incident Entitlements and Conditions Directive No. 3/08*.

These changes recognise that critical incidents typically require swift agency response in staff deployment often resulting in employees being directed, at a moment’s notice, to assume the essential duties and responsibilities of a higher classification level for an indeterminate period of time. Refer in Table 3.

Table 3: Higher Duties

Conditions	Higher Duties Directive	Critical Incident Entitlements and Conditions Directive No. 3/08
“minimum period”	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 3 consecutive working days; - 3 cumulative working days; - 3 consecutive working weeks; or - 3 cumulative working weeks. 	<ul style="list-style-type: none"> • 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).

Application	<p>This directive applies to –</p> <ul style="list-style-type: none"> • public service officers; and • temporary employees under section 113(2) (a) of the <i>Public Service Act 1996</i>. <p>This directive does not apply to –</p> <ul style="list-style-type: none"> • general employees under section 112(2)(a) of the <i>Public Service Act 1996</i>; or • employees engaged on a casual basis under sections 112(2) (b) or 113(2) (b) of the <i>Public Service Act 1996</i>. 	<p>This directive applies to –</p> <ul style="list-style-type: none"> • public service officers; • temporary employees under section 113(2) of the <i>Public Service Act 1996</i>; and • general employees under section 112(2) of the <i>Public Service Act 1996</i>.
Salary Limitations	<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.

Domestic Travelling and Relieving Expenses

While the Domestic Travelling and Relieving Expenses Directive 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. 3/08 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. 3/08 also addresses the needs of local employees working under critical incident conditions by allowing them to receive the same entitlements and allowances prescribed in Directive No. 7/07, 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, 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.

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