# Cost of Living Adjustment (COLA) Payment

## Purpose

This document has been prepared to assist agencies and their payroll providers in implementing and responding to questions regarding the Cost of Living Adjustment (COLA) payment which forms part of relevant agreements. This document should be read in conjunction with the provisions of the relevant agreement

## Preamble

In each year of the agreement, if annual inflation (Brisbane Consumer Price Index, all groups, March quarter annual percentage change from the March quarter of the previous year, as published by the Australian Bureau of Statistics) exceeds the wage increase under the agreement for the relevant agreement year, a Cost of Living Adjustment (COLA) payment will be paid to eligible employees in accordance with the model COLA clause approved and announced by government on 11 October 2022, and within the following parameters:

- at the end of the relevant agreement year;
- equal to the difference between annual inflation and the wage increase for the relevant agreement year, capped at 3 percentage points (3%);
- with reference to base wages earned under the agreement during the relevant agreement year, excluding allowances or additional payments; and
- as a one-off lump sum not forming part of base salary and taxed according to the applicable law.

The COLA payment recognises particular economic pressures on employees and provides for an adjustment in addition to base wage increases.

New agreements receive a higher headline wage amount of 4% up front in years 1 and 2 of the agreement, 3% in the final year and provide a mechanism that allows for COLA payments in recognition of the impact of current uncertain and challenging economic conditions. For this reason, it is important to use the CPI figure for the relevant period and perform a subsequent adjustment.

This document is intended to be read in conjunction with the COLA clause in relevant agreements, as well as the effect of terms document provided to support consultation processes. This document includes a glossary, and visual aides to support employee understanding.

# The terms of the clause

### 1. Who is an eligible employee?

An employee is an eligible employee if they were employed under a relevant agreement during a relevant agreement year where the employee remains employed under that agreement) on the calculation date for the associated COLA payment.

- Information regarding circumstances where an employee would have been eligible but they were no longer employed under that agreement at the calculation date is provided at question 2 below.
- Additional criteria apply for casual employees, these are provided at question 7 below.
- Visual aides to support understanding of eligibility criteria can be found at Appendices A and B.

### 2. What happens where an employee would have been eligible but they were no longer employed under the relevant agreement at the calculation date?

If an employee was employed under the relevant agreement during a relevant agreement year, but they are no longer employed under that agreement at the calculation date, they will still be eligible to receive a COLA payment for the period worked under the agreement provided they remain a Queensland Government employee at that calculation date. The term 'government employee' for the purposes of the COLA payment is not limited to government employees under Certified Agreements, and will include government employees engaged under other instruments (e.g. Senior Officers employed under the *Public Service Act 2008*).

Where this occurs, the employee is responsible for providing details confirming they remain employed as a Queensland Government employee as at that calculation date to receive the payment. This is because the relevant payroll team will only have oversight of those employees who remain employed under the agreement as at the calculation date, and will require evidence to show the employee was still a Queensland government employee on the calculation date.

The COLA payment for these employees will occur within the period specified in each agreement following the provision of information confirming the former employee remains employed as a Queensland government employee at the calculation date to the agency (refer to question 24 for further detail). Employees should be encouraged to do this as soon as possible to ensure they can be paid promptly.

> *Example:* an employee works for the first 3 months under the relevant Agreement, during a relevant agreement year, then takes up employment with a different department. They remain employed with the new department as at the relevant calculation date under this Agreement. Provided the employee provides the required notice and details of their current employer (as specified above) which confirms that they are a Queensland government employee as at the calculation date, they will be an eligible employee for that particular COLA Payment.

### 3. How is the COLA paid?

The COLA payment clause effectively provides a 'top-up payment' to eligible employees if the annual Brisbane Consumer Price Index (CPI) figure is greater than the wage increase provided under the relevant agreement, for each of the three years of the agreement. The 'top-up payment' is calculated as the difference between the wage increase percentage under the agreement and the CPI percentage, capped at 3 percentage points (3%), applied to the individual employee's base wages for that agreement year (as if the agreement wage increase was not applied for that year).

Visual aides to support understanding of the COLA payment can be found at Appendices C and D.

### 4. What forms part of base wages for the purposes of the COLA payment?

An employee's base wages for the purposes of calculating a COLA payment means the salary actually payable to the particular employee for the period they were employed under the relevant agreement. It includes higher duties performed by the employee under this agreement, and casual loading where applicable. The COLA payment will be pro-rata based on things like part-time and casual employment, periods of leave on half-pay, leave without pay. Base wages for the purposes of the COLA payment will include:

- higher duties under the agreement;
- all periods of paid leave under the agreement;
- trainer/supervisor/coordinator classifications specified in the BEMS Award; and
- the casual loading for casual employees.

For the purposes of clarity, base wages will not include the following examples noting that this list is not exhaustive and should be read in such a way as to capture all allowances or additional payments howsoever described:

- disability allowances;
- special rates;
- all-purpose allowances;
- overtime payments;
- shift penalties;
- weekend penalties;
- public holiday penalties;
- aggregated penalties or allowances;
- any payments of accrued leave where the leave is not taken;
- any payments for Time Off in Lieu (TOIL) where the TOIL is not taken;
- TOIL payouts;
- AQF allowance;
- general allowances (first aid, locality, motor vehicle, uniform);
- attraction and retention payments or allowances however titled;
- leave cash-outs (including recreation and long service);
- income protection payments;
- salary sacrifice refunds;
- overpayments;
- Professional Development allowances;
- rural and remote incentive allowances and/or payments;
- management allowances (including Clinical Managers Allowance and Medical Managers Allowance);
- allowances and payments associated with particular work and/or work patterns;
- leave loading;
- one-off payments including incentive payments;
- reimbursement of expenses;
- Commonwealth parental leave pay;
- make-up pay;
- study assistance and research scheme payments;
- COLA payments from previous periods; and

- above award payments.

## 5. What CPI figure is being used to determine the COLA payment?

The figure used for CPI is the Brisbane Consumer Price Index (all groups, March quarter annual percentage change from the March quarter of the previous year), for the March that falls within the relevant *agreement year*, as published by the Australian Bureau of Statistics. It is immaterial whether an employee's work location is outside of Brisbane for the purposes of the COLA payment or CPI figure.

For reference, the ABS generally publishes this figure in April. Treasury will advise agencies of the CPI relevant to COLA considerations upon its release in each year.

## 6. Who is a Queensland government employee?

A Queensland government employee for the purposes of the COLA payment means a person employed in:

- a department or part of a department; or
- a public service office or part of a public service office; or
- an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or
- a part of an entity mentioned above; or
- another entity, or part of another entity, declared under a regulation to be a government entity; or
- a registry or other administrative office of a court of the State of any jurisdiction; or
- the Parliamentary service; or
- the Governor's official residence and its associated administrative unit; or
- the police service.

To remove any doubt a government employee does not include an employee in:

- Local Government; or
- a Government Owned Corporation unless a regulation declares it to be a government entity; or
- the Executive Council; or
- the Legislative Assembly; or
- a court of the State or any jurisdiction; or
- a school council or a university; or
- a co-operative under the Co-operatives National Law (Queensland) for primary producers that is not in receipt of moneys of, or financial assistance from the State; or
- a commercialised statutory entity; or
- another entity, or part of another entity, declared under a regulation not to be a government entity.

The COLA payment provision in agreements refers to a Government entity within the meaning of the *Public Service Act 2008* (Qld) (PS Act) as in force at 1 October 2022. This is to fix and provide certainty about the list of entities that are included in the event that the PS Act is amended or repealed during the life of the agreement.

The term 'government employee' for the purposes of the COLA payment is not limited to government employees employed under Certified Agreements, and will include government employees engaged under other instruments (e.g. Senior Officers employed under the Public Service Act 2008, Health Executive Service and Senior Health Service employees under the Hospital and Health Boards Act 2011).

# Arrangements for part-time and casual employees

### 7. Are casual employees eligible for the COLA payment?

Casual employees employed under the relevant agreement, will be an eligible employee provided they have performed work under the relevant agreement, within the 12 week payroll period immediately prior to the calculation date.

Refer to question 9 for arrangements where a casual employee employed under the relevant agreement has notperformed work under the relevant agreement prior to the 12 week payroll period immediately prior to the calculation date,

Where this occurs, it is the employee's responsibility to provide the required information to the relevant agency (refer to question 2 for details, as well as the visual aide provided at Appendix B.)

### 8. How are employee movements between casual employment and other employment types (e.g. permanent, temporary) treated?

The COLA payment is calculated with reference to an employee's base wages under the relevant agreement during the relevant agreement year, which will reflect their pro-rata earnings as both a temporary and a casual employee where they move between these employment types under the particular agreement.

### 9. What happens where a casual employee has not worked in the 12 week payroll period immediately prior to the calculation date?

Eligible casual employees who have performed work under the relevant Agreement during the relevant year must have worked either under the relevant Agreement or as a Queensland Government employee within the preceding 12 week payroll period prior to the calculation date in order to be eligible for the COLA payment.

The employee needs to have performed work, not merely have been available to accept work.

The exception to this will be where a casual employee has not worked in the 12 week payroll period immediately prior to the calculation date as they were on approved unpaid parental leave. In such circumstances, the approved unpaid parental leave will not exclude a casual employee who would otherwise be eligible for the COLA payment. It is important to be aware however that the unpaid nature of the leave will reduce the employee's base wages for the purposes of calculating the COLA payment.

### 10. What happens if an employee didn't actually work on the calculation date?

An eligible employee has to be employed under the relevant agreement on the calculation date, or to be employed as a Queensland Government employee on the calculation date. Employees don't have to perform work on the calculation date to be eligible to receive their COLA payment.

For example, if a part-time employee doesn't work on Mondays and the calculation date for the agreement falls on a Monday, the employee will still receive the payment if they are employed under the agreement.

If a full-time employee is on any type of approved leave (including approved leave without pay), they will automatically receive the payment, as long as the employee remains employed under the agreement on the calculation date.

A casual employee who is not rostered on a shift on the calculation date will receive the payment, provided the other eligibility requirements specific to casual employees are met on the calculation date (refer to question 7 for further detail).

### 11. What are the arrangements for employees working part-time?

The COLA payment is calculated with reference to an employee's base wages under the relevant agreement during the agreement year. As a consequence, the COLA payment will reflect pro-rata base wages earned by part time employees over that agreement year, including any increases or decreases to hours worked over that year.

### 12. What are the arrangements for employees working concurrently (i.e. in one position under one agreement, and another position under another agreement)?

As the COLA payment will be determined based on the employee's base wages earned under the relevant agreement during the agreement year, it will not consider wages earned under other agreements. However, where both agreements that the employee is working under provide for a COLA payment, the employee may be eligible for two COLA payments paid with reference to the earnings under each relevant agreement in each of the relevant agreement years.

### 13. What are the arrangements for employees in aggregate employment arrangements (i.e. in two positions under the same agreement)?

The COLA payment will be determined with reference to the employee's base wages earned under the relevant agreement during the agreement year. Where the employee has worked in two different positions under the relevant Agreement during the course of the year, their COLA payment will be calculated with reference to their base wages in each position under the relevant Agreement.

### 14. Is casual loading included as part of base wages?

To ensure equitable treatment of employees engaged on a casual basis, base wages for the purposes of calculating the COLA will include earnings attributable to casual loading.

## Leave

### 15. Does all paid leave count towards the base wages?

All periods of paid leave will form part of base wages for the purposes of calculating the COLA payment unless otherwise excluded within the clause itself (refer to question 4 of this FAQ for further detail or below.)

### 16. Do leave loading payments count towards the base wages?

Leave loading payments are not considered base wages for the purposes of the COLA calculation.

### 17. What are the arrangements for employees on leave without pay?

Where an employee is employed under a relevant agreement during the agreement year but is on leave without pay at the calculation date, they will remain eligible for a COLA payment. Additional requirements apply to casual employees, as outlined at question 7.

The COLA payment is calculated with reference to an eligible employee's base wages actually payable under the agreement taking into consideration periods of approved paid and unpaid leave. Where an eligible employee has been on leave without pay this will reduce the base wages payable under the relevant agreement, and by extension the COLA payment.

### 18. What about payouts for additional time?

Payouts for additional time do not form part of base wages for the purposes of calculating an employee's COLA payment.

### 19. How would leave cash out payments paid in the relevant year affect the COLA payment?

Leave cash out payments, including the payout of recreation leave or long service leave, do not form part of an employee's base wages under an agreement for the purposes of calculating the COLA payment.

### 20. How would COLA be paid to an employee who is taking paid and unpaid parental leave?

The COLA payment is calculated with reference to an employee's base wages payable under the agreement, taking into consideration periods of paid and unpaid leave, including periods of paid and unpaid parental leave. Where an employee has been on leave without pay this will reduce the base wages payable under the relevant agreement, and by extension the COLA payment.

## Employee movements

### 21. Are higher duties considered as part of base wages?

Higher duties forms part of base wages for the purposes of calculating the COLA payment this will include all circumstances where an employee has been on higher duties under that Agreement during the course of the Agreement year.

### 22. How do we treat terminated employees and rehired employees?

If an employee was employed under the relevant agreement during a relevant agreement year, but they are no longer employed under that agreement at the calculation date, they will still be eligible to receive a COLA payment for the period worked under the agreement provided they are a Queensland Government employee as at the calculation date. Given the COLA payment is calculated with reference to an employee's base wages actually payable under the agreement it will take into consideration any breaks in service.

However, the employee must provide details confirming they are employed as Queensland Government employee as at the calculation date to their former agency to receive the payment. This is because the former agency does not know where the person was employed after ceasing to be employed under this agreement and require evidence to show the employee was still a Queensland government employee on the calculation date. Further information regarding the notice requirements for employees no longer employed under the relevant agreement as at the calculation date can be found at question 24.

### 23. How do we treat employees who have been terminated or resigned mid-way through an agreement year and are not employed as a Queensland Government employee as at the calculation date?

Former employees who are not employed as a Queensland Government employee as at the calculation date will not be eligible for a COLA payment for any work completed within the relevant agreement year.

### 24. What information do people no longer employed under the relevant agreement need to provide when they are notifying their former agency they remain employed as a Queensland Government employee as at the relevant calculation date?

Agency payroll providers will provide details of the information required to claim a COLA payment where an employee has left the agreement. This will include but not be limited to: the employee ID number(s) used by the former employee when working under the agreement, the details of their current Government employer and updated contact details or banking information as appropriate.

It is recommended that the employee be encouraged to provide notice as soon as possible to ensure payment can be made promptly.

### 25. Does an employee receive a COLA payment with respect to work performed on secondment?

Where an employee was employed under the relevant agreement during the course of the agreement year, but is on secondment on the relevant calculation date, they will receive a COLA payment with reference to the base wages payable under that particular Agreement. The employee will need to provide notice to the relevant agency for the purposes of a COLA payment where they are not employed under the relevant Agreement at the relevant calculated date (refer questions 2 and 23 for further details).

> *Example:* an employee worked under the Department of Education Certified Agreement from 1 September 2022 until 1 December 2022 where they went on secondment to the Department of Premier and Cabinet. They provide the required notice to the Department of Education. They will receive a COLA payment with reference to their base wages for the period 1 September 2022 until 1 December 2022 under the Department of Education Certified Agreement.

### 26. How does the COLA apply if a work arrangement is in place for an employee to perform duties for, but not in, an agency with a different agreement?

An employee's COLA payment will be calculated with reference to the base wages earned during the course of the relevant agreement year for the relevant agreement they were employed under on the calculation date for that agreement.

### 27. Is the COLA payable to a person who was employed under a relevant agreement, but was engaged as a Queensland government employee under an instrument other than a Certified Agreement on the relevant calculation date for that agreement?

If an employee was employed under the relevant agreement during a relevant agreement year, but they are no longer employed under that agreement at the calculation date, they will still be eligible to receive a COLA payment for the period worked under the agreement provided they remain a Queensland government employee at that calculation date.

The term ‘government employee’ for the purposes of the COLA payment is not limited to government employees under Certified Agreements, and will include government employees engaged under other instruments (e.g. Senior Officers employed under the *Public Service Act 2008*, Health Executive Service and Senior Health Service employees under the *Hospital and Health Boards Act 2011*).

Where this occurs, the employee is responsible for providing details confirming they remain employed as a Queensland Government employee as at that calculation date to receive the payment. This is because the relevant payroll team will only have oversight of those employees who remain employed under the agreement as at the calculation date, and will require evidence to show the employee was still a Queensland government employee on the calculation date.

The COLA payment for these employees will occur within the period specified in each agreement following the provision of information confirming the former employee remains employed as a Queensland government employee at the calculation date to the agency (refer to question 24 for further detail). Employees should be encouraged to do this as soon as possible to ensure they can be paid promptly.

# Other payments

### 28. How would salary sacrifice arrangements be treated?

Where an employee’s take home (net) pay is reduced through salary sacrifice arrangements, this will not affect their base wages for the purposes of calculating the COLA payment.

### 29. What about employees receiving workers compensation payments (receiving a percentage of Normal Weekly earnings)?

Employees receiving workers’ compensation payments will be eligible for a COLA payment calculated based on the percentage of their normal weekly earnings payable under legislation.

### 30. What about employees receiving income protection payments?

An employee’s base wages reflects the periods they worked or were on paid leave during the agreement year and the earnings attributable to this work/employment entitlement. As such, income protection payments do not form part of base wages for the purposes of calculating the COLA payment.

# Other issues

**31. Is the COLA taxable?**

Each COLA payment will be taxed and superannuable according to the relevant law.

**32. Is the COLA superannuable?**

Each COLA payment will be taxed and superannuable according to the relevant law.

**33. Can employees have their COLA paid in instalments?**

No, the COLA will be made as a one-off lump sum payment available in each year of a relevant Agreement where the CPI figure exceeds the wage increase provided under the relevant agreement to a cap of 3 percentage points.

**34. What are the arrangements for employees who would have been eligible to receive a COLA Payment for work during an agreement year under a certified agreement, but for moving to a role outside of that agreement prior to its certification (providing they remain employed as a Queensland Government employee at the relevant calculation date)?**

The determinative terms in considering this issue are the definitions outlined in the COLA clause itself (including the terms: *calculation date* and *agreement year* and *Queensland Government employee*). It is acknowledged that circumstances may arise where an employee was employed under a nominally expired agreement and subsequently, they left the entity prior to certification of the replacement agreement. The Government recognises the need to support employee mobility across the sector and has made a policy decision that such an employee would remain eligible for a COLA payment where they are a Queensland Government employee at the calculation date for the relevant agreement. In such circumstances it is the responsibility of that employee to provide the required information to the relevant payroll.

> *Example:* A Nurse Grade 5 employee worked under the *Nurses and Midwives (Queensland Health and Department of Education) Certified Agreement 2018* (the 'former Agreement') after it had nominally expired, from 1 April 2022 until 1 October 2022, at which time the relevant replacement agreement had not been certified. The employee was then permanently appointed to a Health Practitioner role under the *Health Practitioner and Dental Officers (Queensland Health) Certified Agreement 2019.* Given the employee remained employed as a Queensland Government employee at the relevant calculation date for the replacement Nurses agreement, they would remain eligible for a COLA payment under the replacement Nurses Agreement and they should provide notice confirming their eligibility for this payment.

These unique arrangements for the COLA payment, provided in support of mobility across the sector, are distinct from the requirements outlined in the *Industrial Relations Act 2016* insofar as it relates to the application of terms and conditions of an industrial instrument. As such, when calculating an employee's COLA payment in this instance, no adjustment will be made to their base wages to account for any Public Sector Wages Policy increase in that particular agreement year.

**35. What happens where an employee makes a historical claim for a COLA payment?**

As outlined above, employees who were employed under the relevant agreement during the relevant agreement year but where no longer employed under that agreement at the calculation date will remain eligible for a COLA payment provided they were a Queensland government employee at that date. Such an employee is responsible for providing appropriate notice that they remain employed as a Queensland government employee at that date (refer questions 2 and 24). Such employees should be encouraged to provide notice as soon as possible.

In the event that such an employee makes a historical claim for a COLA payment, the agency's requirement to make this payment will be informed by statutory requirements. Where further advice is necessary, it is recommended that Agencies contact the Office of Industrial Relations as appropriate.

# Glossary

**agreement year –** means one of the three 12-month periods from the date an increase to base wages is payable until the date immediately prior to the date the subsequent increase to base wages is payable in the following year that includes a *calculation date*.

**base wages –** for an *eligible employee*, means the salary actually payable to the particular employee in the relevant *agreement year* for work and periods of paid leave covered by this Agreement and includes higher duties performed by the employee under this Agreement and includes the casual loading where applicable. It does not include any other allowances or additional payments howsoever described (such as: disability allowances or special rates, all-purpose allowances, overtime payments, shift penalties, weekend penalties, public holiday penalties, aggregated penalties or allowances, any payments of accrued leave where the leave is not taken; any payments for TOIL where the TOIL is not taken, COLA payments from previous periods, etc).

**calculation date –** means, either:

- The date at the end of the first agreement year (COLA Payment Year 1); or
- The date at the end of the second agreement year (COLA Payment Year 2); or
- The date at the end of the third agreement year (COLA Payment Year 3).

**COLA payment percentage –** see section 3.2

**CPI –** means the Brisbane Consumer Price Index (all groups, March quarter annual percentage change from the March quarter of the previous year), for the March that falls within the relevant *agreement year*, as published by the Australian Bureau of Statistics. Treasury will advise agencies of the CPI relevant to COLA considerations upon its release in each year.

**eligible employee –** refer to question 1 above.

**Queensland government employee –** means a person employed in a government entity, as defined in section 24 of the *Public Service Act 2008* (Qld) as in force at 1 October 2022, and the entities specified at sections 24(2)(c), 24(2)(d) and 24(2)(h) of the Act: the parliamentary service, the Governor's official residence and its associated administrative unit, and the police service.

**wage increase under the Agreement –** means the wage increase of either 4%, 4% or 3%, as specified in a relevant Agreement, that occurs at the commencement of an *agreement year*.

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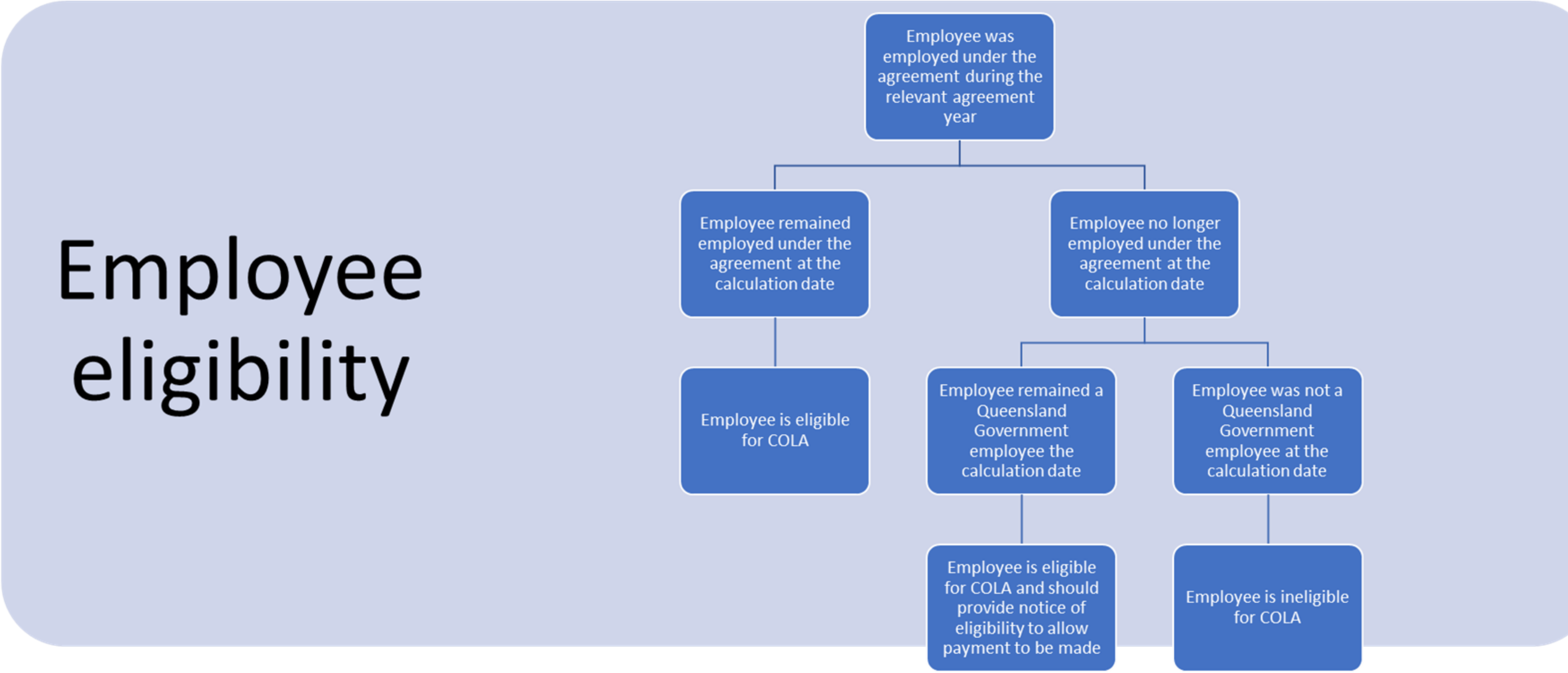
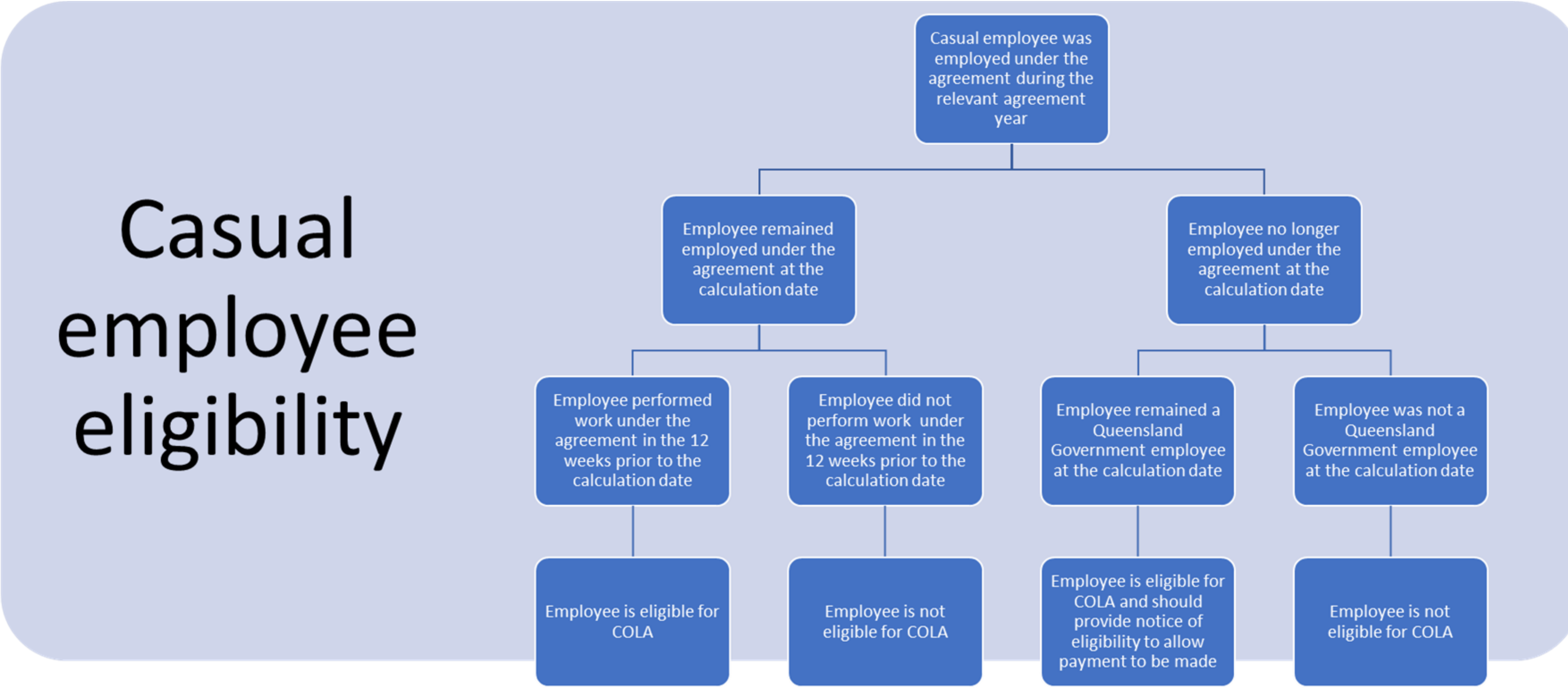
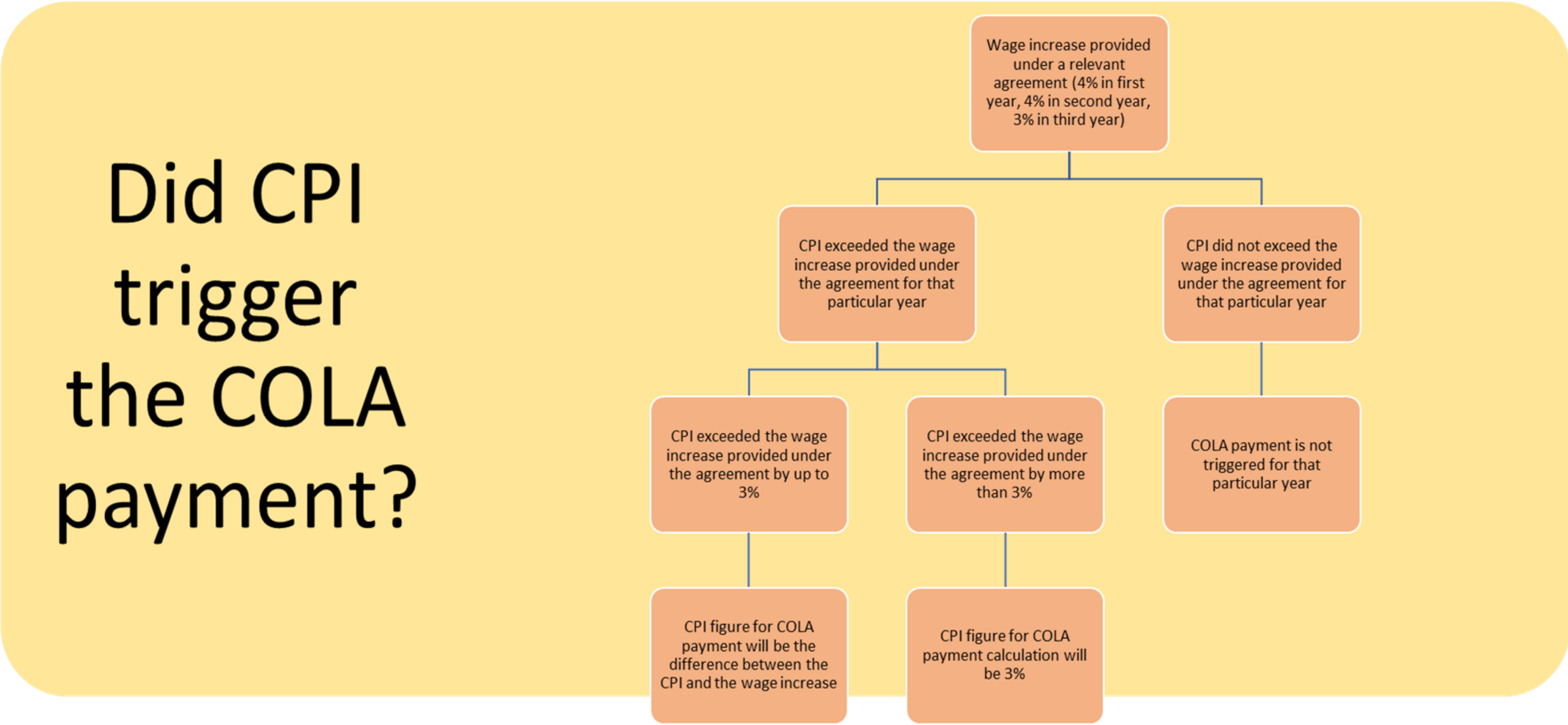
## Appendix A: COLA Employee eligibility (employees other than casuals)



## Appendix B: COLA eligibility (casual employees)



# Appendix C: CPI component of COLA payments



## Appendix D: COLA calculation

WHAT ARE THE KEY COMPONENTS OF THE CLAUSE

1. **COLA percentage:** The calculation of the difference between CPI and the wage increase provided under the Agreement capped at 3%

2. **Base wages over the year adjusted to account for the benefits of PSWP:** The base salary legally payable to the employee (from the date of the PSWP wage increase until the calculation date) adjusted to account for the wage increase provided under the agreement for that year.

3 Multiply the **COLA percentage** by the **adjusted base wages**