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No. 4

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*  
*Industrial Court Rules 1997*

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA560/99	Limestone Quarry and Processing David Mitchell (NSW) Pty Ltd - Certified Agreement	8/12/99	
CA643/99	Hymix Industries Pty Ltd Maintenance Employees – Certified Agreement 1999	19/1/00	
CA119/00	Autress Freyssinet Pty Ltd – Certified Agreement	20/4/00	CA244/97
CA19/00	Q Link Performance Linked Reward Scheme - Certified Agreement	4/5/00	
CA20/00	Queensland Rail, Infrastructure Projects and Plant Ballast Cleaning and Formation - Certified Agreement 1999	4/5/00	
CA168/00	QR Enterprise Agreement - Certified Agreement 2000	4/5/00	CA543/98
CA598/99	Pacific Coast Trucking - Certified Agreement	8/5/00	
CA173/00	Vox Distribution Centre - Certified Agreement	11/5/00	CA269/99
CA174/00	Bess Concrete Pty Ltd - Certified Agreement	11/5/00	CA282/97
CA175/00	Sunshine Scaffolding Pty Ltd - Certified Agreement	11/5/00	CA80/99
CA176/00	Elliott & Taylor Reinforcing Pty Ltd - Certified Agreement	11/5/00	CA322/95
CA177/00	Monlaw Pty Ltd T/A RMH Reinforcing - Certified Agreement	11/5/00	CA83/97
CA178/00	B & B Steel Fixing (Qld) Pty Ltd t/a B & B Steelfixers – Certified Agreement	11/5/00	CA194/97
CA179/00	Renglade Pty Ltd T/A Ward Fixing - Certified Agreement	11/5/00	CA140/97
CA183/00	Henry Walker Eltin Contracting Pty Ltd - Certified Agreement 1999	11/5/00	

E. EWALD  
Industrial Registrar

## INDUSTRIAL COURT OF QUEENSLAND

*WorkCover Queensland Act 1996 – s. 509 – appeal against decision of industrial magistrate***Stephen Edward Bella AND WorkCover Queensland (No. C8 of 2000)****Anthony Stephen Bella AND WorkCover Queensland (No. C9 of 2000)**

PRESIDENT HALL

17 May 2000

## DECISION

This is an appeal from the decision of an industrial magistrate. Neither before the industrial magistrate nor on appeal were the facts in dispute.

The appellants are brothers. At all material times each of them was employed by Peter Champion Pty Ltd as trustee for the Champion Family Trust. Their employer was engaged as a contractor at the Coppabella mine. Whilst working at the mine the brothers resided at Oben Park Station. The appellants' father is a proprietor of the station. Both appellants, I should add, have a principal place of residence nearer to the coast, Stephen in Sarina and Anthony in Mackay.

On 25 May 1999 each of the appellants, who had worked the same shift, finished work at 5 p.m. They elected to return to their temporary residence by motorbike. Stephen was the driver and Anthony was the pillion passenger. They travelled down a road at the mine before turning left on to the Peak Downs Highway. They travelled some distance along the highway before turning on to a dirt road which led to a gate about 15-20 metres off the highway. Access to Oben Park Station was had by that gate. To gain access to the dwelling within which the brothers resided, it is necessary to open a further gate. It is necessary to open a further gate because, as is perhaps not uncommon on rural properties, the dwelling is surrounded by a house yard and a fence. The fence is approximately 15 metres from the house (line drawn at a right angle to house). The gate granting access to the house yard is approximately 1.4 kilometres from the gate by which access is had from Peak Downs Highway to the station. Whilst travelling that distance the motorbike came into collision with a horse. (At a point approximately 400 metres from the gate granting access from Peak Downs Highway.)

Each of the appellants lodged a claim for compensation under the *WorkCover Queensland Act 1996*. Each claim was rejected. Each of the appellants sought a statutory review of the rejection of his claim. In both cases the statutory review officer confirmed the decision to reject the claim. Both appellants availed themselves of the right at s. 498 of the *WorkCover Queensland Act 1996* to appeal to the industrial magistrate. Both appeals were unsuccessful. Each of the appellants has now appealed to this court pursuant to s. 509 of the *WorkCover Queensland Act 1996*. To aid understanding of the short but quite difficult point which arises on the appeal it is necessary to set forth substantially the whole of s. 37 of the *WorkCover Queensland Act 1996*. (Neither appellant had any prospect of bringing himself within the primary definition of "injury" at s. 34 because the employment was not a significant contributing factor to the injury. However, by s. 34(2), where s. 37 may be invoked, the employment need not be a significant contributing factor to the injury.) Relevantly, s. 37 provides:-

"(1) An injury to a worker is also taken to arise out of, or in the course of, the worker's employment if the event happens while the worker –  
(a) is on the journey between the worker's home and place of employment;

...

(3) For subsection (1), the journey –  
(a) must be by the shortest convenient route; and  
(b) for a journey from or to a workers home and starts or ends at the boundary of the land on which the home is situated.

(4) In this section –  
"home", of a worker, means the workers usual place of residence, and includes a place where the worker –  
(a) temporarily resides before starting a journey mentioned in this section; or  
(b) intended to temporarily reside after ending a journey mentioned in this section." (Emphasis added)

The point at issue, both before the industrial magistrate and on the appeal, was whether the boundary of the land on which the appellants' temporary home was situated was the house yard or the boundary of Oben Park Station. After careful review of the authorities the industrial magistrate preferred the latter view. It was His Worship's opinion that certainty might be given to s. 37 only if the "boundary" of the land upon which a worker's home is situated was taken to mean the real property description of the land upon which the worker's home was situated.

Section 37(1) was not itself helpful. However the section uses the noun "home" rather than the nouns "house, unit, flat or dwelling". The section fixes the termini of the journey as the place of employment and the "boundary of the land" rather than the "house, unit, flat or dwelling". That is some indication that the relevant journey does not commence (or start) at the door of the "house, unit, flat or dwelling" in which the worker resides, and that the boundary of the house, unit, flat or dwelling and the land on which it is built need not coincide.

In the circumstances of uncertainty and in reliance on s. 14(B)(1)(a) and (3)(e) of the *Acts Interpretation Act 1954* I have considered the explanatory notes to the *WorkCover Bill 1996* (The Minister's second reading speech is uninformative). The relevant passage in the explanatory notes is as follows:-

"Clause 37 replaces section 91(2)(b) of the *Workers Compensation Act 1990*. It outlines further circumstances when an injury is taken to have arisen out of, or in the course of, the worker's employment. The clause has been changed:

- to clarify where a journey commences and ends i.e. at the boundary of the property on which the worker's home is situated. This change is designed to remove the possibly fraudulent journey claims that arise on a worker's property e.g. getting into the car, falling down the front stairs or tripping in the front yard.
- to specify that a journey must be by the shortest convenient route.
- to remove previously superfluous provisions which would be work related and as such covered by the previous clause i.e. receipt of wages, place of pick up.
- according to current drafting practice."

As a matter of first impression, the use of the noun "property" rather than the noun "home" suggests that the industrial magistrate was right, particularly when it is borne in mind that one change was the substitution of "home" for "place of abode" and another was confining "journey" to journey which "starts or ends at the boundary of the land on which the home is situated". However, on reflection, it is apparent from the reference to "worker's property" in the second sentence at the first dot point that "property" is not being used in quite that sense. In very many cases a worker will have no proprietary interest in his home. There is nothing in either the explanatory notes or the section itself to indicate an intention to exclude from the benefits of the journey provisions a tenant who holds under a licence, a resident in a caravan park or a lodger in a boarding house. Indeed, s. 37(4) is a clear indication of an intention to regulate journeys by such workers.

It is convenient to commence with the decision of the full court of the Supreme Court of New South Wales in *Bowden v Murdoch's Limited* (1951) 51 SR (NSW) 423. The case concerned a worker who resided in a self-contained unit on the upper floor of a block of 25 flats. Access to the unit was obtained by a door, passageway and staircase used by the worker in common with the occupants of the other flats in the building. Whilst ascending the staircase on the way from his flat to his work the worker fell and injured himself. The relevant journey provision of the *Workers Compensation Act, 1926-1948* (NSW) referred to a daily or other periodic journey "between the worker's place of abode and place of employment". At 427-428 Street CJ, with whom Maxwell and Owen JJ concurred, observed:-

"To some extent the question 'What is a man's place of abode?' must always be a question of fact and degree, the answer being plain and easy in many cases. But though an infinite variety of circumstances may arise for consideration in practice, the true meaning and interpretation of the words 'place of abode' is a question of law. I do not think, however, that it is possible to lay down a definition in short form which would be completely apt to cover all cases. As was pointed out by Grove J. in *Wakefield Local Board v. Lee*, 'Except in mathematics, it is difficult to frame exhaustive definitions of words; they must be construed with reference to the subject matter to which they are applied.' Again, in *R. v. Hall, Abbot C.J.*, in discussing the meaning of the word 'householder', said: 'Now the meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, or even in popular use, as in the subject or occasion, on which they are used, and the object that is intended to be attained.; In the present case I think it is clear that the Legislature had in mind the necessity for protecting a worker when he was on his journey, that is to say, when he was a traveller or wayfarer. In the most usual circumstances his journey, for this purpose, would commence when he first emerged into a place or way used by members of the community at large as a thoroughfare, whether as of right or not, for the purpose of moving from place to place; but I am not suggesting that this definition is all-inclusive, and that it would be sufficient for the determination of cases which might arise on other and different facts. But it is obvious that all the Courts that have been called upon to consider the meaning and effect of the language used in s. 7 (1) (b) and (c) have always had in mind this general concept that a man does not become a traveller till he emerges from the premises which are his place of abode. In one sense, of course, it may be said that in the present case his place of abode was Flat No. 8, but where a man and his family live in a communal building where a number of separate tenants are housed in premises under one roof, then I do not think that it is apt to say that for the purpose of s. 7 his place of abode is limited to the flat occupied by him. To adopt the language of *Perdriau J.* In *Fleury's* case, I think that the applicant's journey commences when he leaves the 'home building or its precincts,' and, with all respect, I find myself in complete agreement with the judgment of *Moffitt J.* in *Thornleigh v. Sydney Waterfront Watchmen's Association* and for the reasons expressed by his Honour."

Understandably, each of the appellants submits that the track to the access gate to Oben Park Station and the dwelling house is just such an informal thoroughfare as is referred to by his Honour. (It should perhaps be added that the sketch of the station which was put in as an exhibit before the industrial magistrate lends some factual support to that submission.) Certainly the reference to "thoroughfare, whether as of right or not" was critical to the decision in *Bowden's* case. The earlier authorities took a narrower view.

In *Williams v Ducon Condensor Limited* (1949) 23 WCR (NSW) 122 at 125-126 Judge Rainbow observed:-

"In my opinion the words 'place of abode' should be considered to mean and include the house or premises, the curtilage, messuage, and appurtenance if that be the correct conveyancing description of the whole of the land and boundaries of the home here in the father's possession where the applicant resided . . . the worker must receive injury ie, physiological harm must occur, in the space between the two points I have indicated, namely, between the boundary of the home premises and the boundary of the employer's premises."

In that case, I should add, the applicant for compensation failed. In returning home from her place of employment she lost control of her bicycle as it passed over an uneven surface outside the front gate of her house. In consequence of the loss of control she fell within the driveway of her home (not the public footpath) and injured herself. In *Fleury v Select Cake Service* (1950) 24 WCR (NSW) 15 at 17 Judge Perdriau followed the decision of Judge Rainbow in *Williams v Ducon Condensor Limited*, *ibid*.

*Bowden v Murdochs Limited* (1951) 51 SR (NSW) 423 was followed by the then Workers Compensation Board of Victoria in *Stephenson v Country Roads Board* (1948) WCD (VIC) 131. The facts of the case were somewhat similar to the present matter. A worker returning to his dwelling house from his place of employment broke his leg when he fell over the outer fence surrounding the property upon which his dwelling house was erected. The dwelling house though situated on the property so fenced was separated from the rest of the property by fences and outbuildings which enclosed the dwelling house, gardens, fruit trees, paths and the yard. The question before the court was whether the worker had received the injury whilst travelling between his place of employment and his place of residence. It was held that he had. At 132 to 133 the Board observed:-

"The place of residence is a conceptual unit formed of the infinitely various items which may be said to constitute a place of residence or the place where a person lives. The unit is in some way cut off or separated in space from its surroundings. In the case of the ordinary suburban residence the boundary fences of the block on which the residence and outbuildings are erected are the obvious physical limits separating the residence from its immediate surroundings. The conceptual unit of such a place of residence includes the house, the outbuildings, the lawn, gardens and yard enclosed by the boundary fences.

On the other hand, where the place of residence is situated on a large station or estate which may cover many acres or even square miles and there is no obvious physical boundary separating or cutting off what we have described as the conceptual unity of residence from the surrounding property, there would ordinarily be little difficulty in determining in any particular case and with reasonable accuracy where the imaginary boundaries of the 'unit of residence' actually were. The existence of lawns, parks, gardens, outbuildings or ornamental trees in the vicinity of the dwelling would be matters proper to take into consideration and would guide one determining the actual limits."

It may be conceded that in *Vickers v Jarrett Industries* (1977) 15 SASR 525 the Full Court of the Supreme Court of South Australia, in adopting the boundary test, shifted the boundary so as to include within the journey the distance between the front door and the front gate. If the decision were adopted here it would greatly aid the appellants because it would shift the boundary from the fence of the house yard to the door of the dwelling. However, the circumstance (previously referred to) that the noun used is "home" rather than "house, unit, flat or dwelling" and the use of language "the boundary of the land on which the home is situated", which suggests that the land may be larger in area rather than co-terminus with the home, weigh against adoption of the South Australian re-definition of boundary in this state. I note the criticism made by Bray CJ of the distinction between highway risk and home risk, viz -

"The distinction between highway risk and home risk referred to by Street CJ in *Bowden's* case is not, with respect, when analysed a safe criterion. While accepting in a general way that some such distinction may have been in the mind of parliament, some risks are common to both situations and unaffected by the peculiar features of either. A man may trip and fall on the footpath without any other traffic being involved. It is not clear to me why such a fall just outside the front gate should be compensable while one just inside it is not."

Here, as it is apparent from the explanatory note previously cited, the mischief at which the amendment was aimed was the possibility of fraudulent journey claims such as "getting into the car, falling down the front stairs, or tripping in the front yard".

I have been referred to the decision of Moynihan, President in *Leggett v The Workers Compensation Board of Queensland* (1988) 81 WCR 164. I do not find the decision helpful. In that case the unsuccessful applicant for compensation showered, ate breakfast and at approximately 5.15 am walked down the internal stairs of his residence with the intention of entering his motor car and driving to work. He noticed that the left hand back tyre of his sedan was flat. In the course of removing the spare tyre which was lying flat in the boot, he suffered a back injury. He failed for two reasons. He was wholly within his place of abode, as the phrase then was, rather than travelling between that place and the place of his employment. Additionally, he was preparing to depart upon his journey rather than upon his journey. It was a pellucidly clear case and of no assistance here.

The submission that adopting the real property description as the boundary will enhance certainty in the administration of the law, is, I think, overly optimistic. Granted that on the "boundary" approach case by case analysis will be required, reliance on the real property description will give rise to other problems. Mr Morgan for the appellants puts the example of settlements such as Sanctuary Cove. Is a tenant of one of the residential dwellings driving through the common space on his way home from work on a protected journey? Would the answer be different if the title of the common space and the title to the residences were held by different, albeit related, corporations? In the latter case, does it make any difference whether in passing through the common space, the person is relying upon consent or enjoying an easement?

Section 37, or more accurately those parts of s. 37 of present relevance, is not beneficial legislation. It is designed to exclude a range of claims because of the possibility that fraudulent claims might be made. However, the *WorkCover Queensland Act 1996* should I think be regarded as beneficial legislation, compare *Wilson v Wilson's Tyre Works* (1960) 104 CLR and *Bird v The Commonwealth* (1988) 165 CLR 1. It seems to me that if the "boundary" approach is adopted and the definition of boundary in *Bowden v Murdoch's Limited* (1951) 51 SR (NSW) 423 is adopted, s. 37 would strike at the mischief at which it was aimed without striking down other (possibly innocent) claims. I reject the submission that on such a construction the changes of 1996 achieve nothing. It was not settled that *Bowden v Murdoch's Limited*, *ibid* governed the construction of the *Workers Compensation Act 1990*. It was arguable that *Vickers v Jarrett Industries Pty Ltd* (1977) 15 SASR 525 applied.

Each of the appeals is allowed. I order the respondent pay the costs of each appellant taxed as costs are taxed in the Supreme Court of Queensland.

Dated this seventeenth day of May, 2000.

D.R. HALL, President.

*Appearances:-*

Mr T. Morgan instructed by Bill Cooper and Associates, Solicitors, for the appellant.

Released: 17 May 2000

Mr P. Rashleigh instructed by WorkCover Queensland for the respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 74 – application for reinstatement*

**Patrice Maree Gason AND Café Chino (No. B1470 of 1999)**

COMMISSIONER BLADES

10 May 2000

Dismissal – Casual employment – Reduced hours – Secondary job at "opposition" café – Given permission by respondent to accept other position – Applicant not given opportunity to stay with respondent – Question of fidelity/good faith – Reference to case history – Reinstatement not practicable – Compensation awarded – Costs application to be dealt with separately.

DECISION

The applicant commenced work at Café Chino situated in Sunshine Plaza, Maroochydore in about November 1996 when the business was owned by her parents. They sold the business to Robert John Cain and Eleanore Olene Cain on or about 21 January 1999. She was dismissed on 8 October, 1999.

Although Mr Cain attended the hearing and questioned the only witness Ms Gason, putting to her some alternative suggestions to her evidence upon which she duly commented, he called no evidence himself. I detected from the tone of the questioning some conflict between Mr Cain and Ms Gason's father/parents, the former owners of the business.

Ms Gason bears the onus of proof that the dismissal was harsh unjust or unreasonable on the balance of probabilities.

I am satisfied that when Mr and Mrs Cain took over the business, Ms Gason worked about 23½ hours per week. She attained 21 years of age on 16 July, 1999 and because of the additional wage cost to her employer and some previous errors with underpayment, her hours were reduced to about 21 hours per week as from about August 1999. The reduced hours were not enough so she decided to get a second job. She heard that another coffee shop, Readers Café, was opening in Sunshine Plaza so she applied for a position. She was told by Reader's Café that because they could not offer extended hours, they had no difficulty with her maintaining her job at Café Chino and that they would be able to work her hours around her existing roster.

Café Chino is situated on the first level and outside K Mart in Sunshine Plaza and Reader's Café is situated at the opposite end of the Plaza, upstairs and some 500 – 600 metres distance.

Ms Gason did not initially seek permission to apply for the second position because she was led to believe by Mr Cain that Reader's was not really competition, being situated so far away. I am satisfied that she gleaned this information from some general conversations she had with Mr and Mrs Cain who expressed more concern with coffee shops opening around the river walk part of Sunshine Plaza.

I am satisfied that at the end of September 1999, she was given a job at Reader's Café. Within a day or so, and about 4 October, 1999 she advised Mr and Mrs Cain that she had been offered this second job at Reader's, starting Saturday 9 October, and she asked if this was going to be a problem. She was told "no". Some of this conversation was contested in cross-examination but no evidence was led to dispute what Ms Gason said and I accept her evidence.

It was accepted that about 5 October, a Real Estate Agent rang Mr Cain checking on her employment status with Café Chino because she had applied to upgrade her rental accommodation. Her employment with Café Chino was confirmed. On the Thursday of that week, she informed Mrs Cain that she was required to attend Reader's Café for training. Mrs Cain made no comment.

On Friday 8 October as she was about to leave work, Mr Cain approached her and said that they felt that she could not be loyal to them if she was working for somebody else. She queried whether she was being fired and Mr Cain replied "yes", upon which he handed to her a cheque for her last weeks pay. There was some dispute about what occurred but Ms Gason's evidence was the only evidence given and I accept it. I am satisfied that no

opportunity was given to her to make an election to work only for Café Chino or face dismissal. Up until that time, her employers had appeared to have consented to her employment at the other coffee shop.

There were no issues about capacity or performance, the employment at the other coffee shop was the only reason for the dismissal and Mr Cain has claimed that Ms Gason did not show good faith. Ms Gason in her evidence, described her duties as waitress and in her application as "short order cook, making coffees, serving customers, some waitressing, using cash register". Her "Time and Wages Record" reflects she was paid as a "Food Attendant".

Learned Counsel relied on *Blyth Chemicals Limited v. Bushnell* (1933) 49 C.L.R. 66 and cited the following passages from the judgment of Starke and Evatt JJs:

*"The mere apprehension that an employee will act in a manner incompatible with the due and faithful performance of his duty affords no grounds for dismissing him: ...",*

and from the judgment of Dixon and McTiernan JJs:

*"Conduct which in respect of important matters is incompatible with the fulfilment of an employee's duty, or involves an opposition, or conflict between his interest and his duty to his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee, is a ground of dismissal."*

Whether certain conduct amounts to a breach of fidelity or good faith seems to be a question of degree, taking into consideration all of the relevant circumstances, including particularly, the type of employment. In *Hivac Ltd v. Park Royal Scientific Instruments Ltd* 1946 Ch. 169 Lord Greene M.R. referred to the practical difficulty in any given case of finding exactly how far that vague duty of fidelity extends. He recognised that the duty may extend very much further in the case of one class of employee than it does in others. He said:

*"For instance, when you are dealing, as we are dealing here, with mere manual workers whose job is to work 5½ days for their employer at a specific type of work and stop their work when the hour strikes, the obligation of fidelity may be one the operation of which will have a comparatively limited scope. The law would, I think, be jealous of attempting to impose on a manual worker restrictions the real effect of which would be to prevent him utilising his spare time. He is paid for 5½ days in the week. The rest of the week is his own, and to impose upon a man, in relation to the rest of the week, some kind of obligation which really would unreasonably tie his hands and prevent him adding to his weekly money during that time would, I think, be very undesirable."*

In the case that was being dealt with, the relevant employees were five manual, though highly skilled workmen who worked on Sundays for a rival company manufacturing hearing aids. In finding that the company had made out a case of a breach of the employees' obligation of good faith, it was pointed out that the actions of the employees were deliberate and secret and where, because of the secrecy that was maintained, it meant that the employees must have known that what they were doing was wrong.

In another case *Nova Plastics Ltd v. Froggatt* (1982) IRLR 146 Mr Froggatt was an odd job man and was dismissed after the company's managing director discovered that some former employees were working for a rival business and that Mr Froggatt was also going there, presumably to do work for that rival company. *Hivac* was relied upon. The Employment Appeal Tribunal held that the Industrial Tribunal was entitled to conclude that the nature of the work which Mr Froggatt did for the rival company was not something which was contributing very seriously to any competition and that he was not therefore in breach of trust or failing in his duty in law to his employer because he happened to work for a competitor in his spare time.

Ms Gason was not secretive about this employment. She told Mr and Mrs Cain immediately and asked permission. Mr and Mrs Cain did not seem apprehensive about the employment and they left it until the Friday of that week before deciding to dismiss her. The nature of her employment was not something which could be classified as highly skilled. Her proposed employment at Reader's did not interfere with her performance of her duties at Café Chino and Mr Cain did not see fit to raise with her any sort of ultimatum which might restrict her working only for his business. There was no suggestion she was in possession of some unique ingredients or recipes or other trade secrets, for example or matters of a confidential nature.

Mr Cain made some suggestions that he had lost business to Reader's Café, business that may have come from friendships of Ms Gason. However, this business was lost after the dismissal took effect and there was no reason for Mr Cain to believe or suspect Ms Gason's employment would have caused him any loss of business. Such a belief in any event falls within the prohibition in *Blyth Chemicals Limited v. Bushnell* set out earlier.

He also made complaint about a sign placed in the vicinity of his coffee shop and which advertises Reader's. However, there is no evidence at all as to when the sign was placed in that position and it is not evidence which leads me to reject the applicant's evidence that Mr and Mrs Cain expressed no concerns about competition.

In all of the circumstances and upon the whole of the evidence, I am satisfied that the dismissal was harsh, unjust or unreasonable.

There was a suggestion in submissions by Mr Cain that the applicant's continuity of service was broken because she took a week off shortly before her dismissal and also, that because she was a casual, she had not been employed by his business for a period of at least one year. Section 71(3) of the *Industrial Relations Act 1999* provides that absence on unpaid leave approved by the employer does not break the continuity of service and the only inference that I can come to is that the absence for the one week was with his consent. Section 69 provides for the continuity of service of an employee where there has been a transfer of a calling from one employer to another, as there was in this case. I am of the view that the applicant was not a "short term casual" and was therefore not excluded from the operation of Chapter 3, Part 2 (Unfair dismissals).

The applicant did not seek reinstatement and it would be impracticable in these circumstances. Whilst she had held employment for a lengthy period of time, it was of a casual nature and her employment did not require more than some initial training. The nature of the employment suggests to me that re-employment within a reasonably short period of time was achievable.

An award of compensation should be to compensate the employee for the loss caused by the dismissal so that she is placed in as near a position to that she would have been in had the dismissal not been affected. A significant factor in assessing compensation has to be the likely period which will elapse before the applicant can obtain equivalent or suitable employment. Ms Gason is still unemployed but in my view, a period of four months should have been ample opportunity for her to find suitable alternative employment in a similar field.

I am satisfied that she did in fact work for Reader's Café until 26 January 2000. When she was dismissed from Café Chino, Reader's Café gave her additional hours but they varied considerably from 16, to 10 to 20 to 5. After the busy period in January ceased, her hours were considerably reduced and as it interfered with her attendance at Centre Link at an early time of the day, she resigned. She earned \$2,311.82 from her employment with Reader's and another \$300 cash in hand from employment at another coffee shop. Those payments should be taken into account. At the time of her dismissal from Café Chino, she was working 21-22 hours per week.

I accept that Ms Gason's average hours were 22 per week with Café Chino. I adopt as a method of calculation of the compensation that suggested by Ms Callaghan by adding the hours at Café Chino to the anticipated and promised hours of 10 per week at Reader's. The result is multiplied by her hourly rate of \$12.59 for a period of 16 weeks and from that figure is deducted her earnings at Reader's and the cash in hand she received. The result comes to an amount of \$3,834.26.

I order that Robert John Cain and Eleanore Olene Cain pay the sum of \$3,834.26 to the applicant. I order that an amount of \$1,917.13 be paid within 30 days and the balance within 60 days from the date of this decision.

An application for costs was foreshadowed. Written directions in that regard will issue.

The Commission orders accordingly.

B.J. BLADES, Commissioner.

*Appearances:-*

Ms B. Callaghan, instructed by Mr M. Devine of Boyce Garrick Lawyers, for the applicant.  
Mr R. Cain, for the respondent.

Released: 10 May 2000

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#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application to make, amend or repeal award.

#### **The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers AND The Australia Workers' Union of Employees, Queensland and Others (No. B1998 of 1998)**

#### **ENGINEERING AWARD – STATE**

COMMISSIONER FISHER

16 May 2000

Application for amendment – Background – Payment of Wages – Shift Work – Casual Employment – Tool Allowance – Travelling Time – Weekend Penalty Rates – Meal Breaks and Allowances – Deferred Date of Operation – Further hearing to be scheduled – Appendix B – Draft Amendment to be provided in 14 days.

#### DECISION

The Queensland Chamber of Commerce and Industry (QCCI) filed an application on 18 December 1998 seeking to amend the Engineering Award – State in a number of respects. After the initial hearing the matter was adjourned into conference to allow the parties the opportunity to maximise the level of agreement. Most of the conferences were held between the parties directly with the Commission's involvement being generally limited to hearing reports from the parties about the progress made in negotiations.

A substantial level of agreement was able to be achieved between the QCCI and the Automotive, Metals, Engineer, Printing and Kindred Industries, Industrial Union of Employees, Queensland (AMEPKU). The QCCI believed it had also reached substantial agreements with the Electrical Trades Union of Employees Australia, Queensland Branch (ETU) and were thus surprised when on 27 January 2000 that Union raised a number of "other concerns". Many of these remain unresolved. For its part, the ETU advised that at no stage had it indicated agreement, indeed, the application had little attraction.

The Crown had also attended the conferences yet on the first day of hearing it signalled that further consultation was required on the issue of camp allowance.

While the QCCI had hoped to bring a substantially agreed, albeit amended, application back to the Commission, it is fair to say that the items requiring arbitration are greater than initially anticipated by the applicant. The application is supported by Australian Industry Group, Industrial Organisation of Employers (Queensland) (AIG) and the Motor Trades Association of Queensland Industrial Organisation of Employers (MTAQ). The AMEPKU opposed items 6 (Weekend Penalty Rates), 10 (Sick Leave) and 11 subclause (4) of Appendix B. It either supported or did not object to the remaining items. The ETU also opposed these items as well as item 4 (Tool Allowance) and some aspects of a number of other items which will be detailed as the decision progresses. The Australian Workers' Union of Employees, Queensland (AWU) supported the ETU's position.

On the first day of hearing the ETU and the AWU made submissions seeking to have the application adjourned pending the outcome of the award review process under s. 130 of the *Industrial Relations Act 1999* (the Act). The Commission decided to adjourn proceedings to await the outcome of a conference concerning the award review process before Commissioner Edwards later that day and any other imminent proceedings. On resuming proceedings the following week, the Commission informed the parties that it had decided to proceed to hear and determine the application (The decision is reported at p. 23 of the transcript). Further dates of hearing were then scheduled.

#### **BACKGROUND TO THE APPLICATION**

This application has its genesis in the 1989 Structural Efficiency Principles ([1989] 132 QGIG 1199). The Award and its seven predecessor awards which were amalgamated into one award have been restructured to a certain extent but award rationalisation has been pursued in favour of some of the more detailed elements of restructuring. The QCCI now seeks to have those elements addressed.

In addition, the application seeks to address certain issues which were raised in the decision of the Full Bench of this Commission on the 38 hour week ([1989] 132 QGIG 1394). The two issues flowing from that decision, which are raised in the application, are Weekend Penalty Rates and Sick Leave.

In its submissions, the QCCI further explained that its original application was designed to:-

- simplify/clarify difficulties in interpretation or in practical application;
- create more flexibility to meet operational requirements;
- delete obsolete provisions;
- amend provisions which are discriminatory, unfair or inequitable;
- bring award provisions closer into line with the Metal Engineering and Associated Industries Award 1988 Part I (the Federal Metal Industry Award).

With respect to the latter, the QCCI wished to make the State Award generally consistent with the Federal Award, to: ensure that the costs to the employer were not greater under the former; ease administration; and assist in the preservation of employers and employees in the State industrial relations system.

Various attempts have been made over the last ten years to restructure this Award. However, for particular reasons, the emphasis has been on amalgamation and rationalisation of the seven predecessor awards. Genuine attempts to apply the structural efficiency principle have faltered.

When awards are about to undergo a review under s. 130 of the Act, it is timely to ensure the Award has been restructured under past Principles of this Commission. Given the historical relationship between this Award (and certain of its predecessors) with the Federal Metal Industry Award, it is also appropriate to ensure that the awards are consistent as far as practicable.

Against this background each item is dealt with according to its specific merits.

### **THE AMENDED APPLICATION**

Eleven amendments to the Award are sought by the amended application. They shall be dealt with sequentially.

#### **1. Payment of Wages – subclause (2) of clause 2.8 (Payment of Wages)**

This item seeks to rewrite the existing wording and add a new provision for wages to be paid on a four weekly or monthly basis.

All parties agree to the re-drafting of paragraphs (a) and (b) of subclause (2) of clause 2.8. The ETU opposes the proposed new amendment in paragraph (c) for four weekly or monthly payments.

The QCCI submitted the provision is a facilitative one, consistent with the provision in the Federal Metal Industry Award and appropriate given the classification structure that now encompasses employees who may be considered as managerial.

The opposition raised by the ETU primarily rests on the perceived difficulty of members managing their finances if four weekly or monthly payments were introduced. Concern was also expressed that employees may be coerced into accepting less frequent pay periods.

Given the provision is a facilitative one, which is encouraged both by the Act and the 1989 Structural Efficiency Principles, the Commission is disposed to grant this item. Further support for the decision is drawn from the Federal Metal Industry Award. This item would bring the payment of wages clause reasonably into line with that Award. Should the ETU's fears regarding coercion be realised then the grievance procedures of the Award can be accessed.

#### **2. Definition of Shift Work – subclause (4) of clause 3.2 (Definitions)**

This item seeks to amend the definition of shift work to clarify that such work relates to ordinary hours performed contiguous relays. The QCCI sought to overcome confusion in workplaces.

No objection was raised to the amendment by the other parties with the exception of the Crown which raised a concern identified by some agencies. No alternative proposition was put forward by the Crown.

In the circumstances the Commission approves the amendment.

#### **3. Casual Employment – subclause (3) of clause 3.4 (Wages)**

This item seeks to amend the definition of a casual employee and to clarify the payments made.

At present the Award provides that a "casual employee shall mean an employee engaged as such for less than one week". The application proposes to alter this to "a casual employee is to be engaged by the hour". The rationale for this aspect of the amendment is to bring the definition into line with decisions which clarify that the phrase "less than one week" is to be interpreted as meaning "less than the ordinary hours of a full time employee."

The Crown expressed concern that the proposed amendment could lead to casuals being employed indefinitely at the expense of permanent employment. This is also possible, although not desirable, with the present provision. The proposed amendment removes any uncertainty or confusion. It is also consistent with the Federal Metal Industry Award. Accordingly, it is approved.

The Federal Award makes provision for a 20% casual loading. This was included in the initial application by the QCCI, but during negotiations was reduced to the standard rate of 19% in return for changes to overtime meal/crib breaks. An application to increase the casual loading is presently before the Commission and the Unions have flagged their intentions to have any increase in the loading apply to this Award.

The application also seeks to provide altered wording for the calculation of hourly rates for ordinary time worked by a casual and to specify the reason a loading is paid. No substantive rationale for the change was put forward.

The proposed amendment was opposed by the ETU unless reference was made to the loading constituting part of the all purpose rate. This is consistent with the Federal Metal Industry Award, however, the opposition was not supported by argument.

In the absence of competing arguments, the Commission has decided the provision should simply clarify the existing subclause by specifying that a casual employee working ordinary time is to be paid an hourly rate calculated by dividing the relevant weekly rate by 38 plus a casual loading of 19%.

#### **4. Tool Allowance – subclause (39) of clause 3.5 (Allowances)**

This item seeks to alter the rate of the allowance, to bring into line with the Federal Metal Industry Award and to make the allowance all purpose.

This item was supported by AIG, MTAQ and the AMEPKU. It was opposed by the Crown, the ETU and the AWU.

The QCCI provided as Exhibit 6, calculations showing the effect of a \$12.60 per week all purpose allowance as sought. It endeavoured to demonstrate that most tradespeople would benefit from the change to an all purpose allowance, albeit that the rate of the allowance was less than currently provided by the Award. Based on its calculations, the QCCI also submitted that the change to an all purpose allowance would marginally increase costs for employers. However, in its view, this disadvantage was outweighed by the prospect of bringing the allowance into line with the Federal Metal Industry Award and the simplified administration in having the allowance paid for all purposes.

The calculations of the QCCI assumed that employees worked an average of four hours overtime per week, and as a result with the other calculations, would not be disadvantaged by a change to a lower rate but to an all purpose allowance. The Crown, and the ETU in particular, took issue with the assumption of overtime being worked. The Crown submitted that overtime was not a regular feature of work for employees of public sector agencies. Accordingly, such employees stood to be significantly disadvantaged by the proposed amendment.

The ETU referred to the effect of the proposed amendment on casual employees who do not receive the benefit of various forms of leave. Reference was also made to the situation that a number of enterprise agreements have the Engineering Award – State as the parent Award. It was suggested that employees who are bound by those agreements have an expectation their takehome pay would be safeguarded during the life of the agreement and may have voted differently had they been aware of the proposed changes to Tool Allowance.

Both the Crown and the AWU took the Commission to a history of Tool Allowance. Tool Allowance was first inserted into the Electrical Engineering Award – State in 1955 and has been varied on a number of occasions since then. The last variation occurred on 31 January 1996 to the present rate of \$16.20 per week.

Over the years, attempts have been made (including by the AMEPKU and the ETU) to have the Tool Allowance paid for all purposes. The Commission has consistently refused such applications on the grounds the allowance represents a reimbursement of expenses incurred.

During the hearing the ETU proposed that the allowance be retained at \$16.20 per week, that reference to it being paid for all purposes be omitted and that paragraph (c) relating to the provision of certain tools by the employer also be omitted. Ultimately, the QCCI indicated it would be prepared to retain the existing allowance provided the allowance was expressed as being payable “at the rate of”. This would allow the presently weekly allowance to be divisible resulting in a daily rate.

Given the history of Tool Allowance in this jurisdiction and the potential disadvantage to certain groups of employees, were the allowance to be changed to an all purpose rate as sought by the QCCI, the Commission does not intend to alter the basis on which the allowance is currently paid, ie a reimbursement of expenses, nor its rate. The Commission does however see merit in the allowance being able to be divisible to provide more appropriate payments to part time and casual employees. Accordingly, the phrase “at the rate of” is approved for inclusion in the subclause.

In light of the decision to retain the existing rate the proposed paragraphs (b) and (c) of the subclause would appear to be unnecessary. No objection was made with respect to paragraph (d). It is consistent with the Federal Metal Industry Award and is approved.

The QCCI makes a valid point that it is becoming increasingly difficult to assess the worth of a basket of tools given the change in the nature of the industry. That the allowance has not altered for more than four years also raises questions about the need for timely reviews of allowances which constitute a reimbursement of expenses. The parties are encouraged to turn their minds to a more effective way of dealing with these matters.

#### **5. Travelling Time and Board – clause 3.9**

The application seeks to substantially amend the current Award provisions by removing outdated or obsolete provisions and substantially simplifying the clause. The proposed amendments remove the concept of “country work” and “suburban work”, while still retaining provision for payment of travelling time, camp allowance and overnight allowance. These provisions are redrafted more simply and draw on but do not totally reflect the Federal Metal Industry Award clauses.

The clause is supported by the AMEPKU but opposed in part by the ETU.

The ETU’s opposition stems from the use of the terms “excess” and “reasonable excess” in connection with travel time for distant work. The ETU submitted that confusion exists with the present award provisions and although the proposed amendments assist in reducing the confusion, problems could arise over the interpretation of what constitutes reasonable excess travelling time.

The Federal Metal Industry Award refers to travelling time while necessarily travelling between localities. The ETU’s submission concerning possible confusion over the interpretation of “reasonable excess” travelling time is accepted. The words “reasonable excess” are to be deleted from the first paragraph of subclause (1).

The application seeks to increase the overnight accommodation allowance from \$37.80 per day to \$40 per day where suitable board and sleeping accommodation is not provided by the employer. This is not opposed by any of the parties. It is approved.

The ETU also took issue with the term “reasonable” in connection with expenses and “reasonable excess” in connection with costs in the paragraph relating to the payment of expenses where suitable board and sleeping accommodation is not supplied. Again the basis of the ETU’s concern related to potential misinterpretation of what might be reasonable.

The submission concerning “excess costs” is accepted. However, the inclusion of the word “reasonable” in terms of the employee substantiating expenses is appropriate as it provides a protection for the employer as well as informing the employee that unnecessary or unacceptable expenses will not be reimbursed.

This paragraph also includes a provision suggesting that what is reasonable and suitable should be clarified in advance of the travel. The Commission expressed some concern during the hearing over the proposed wording and suggested it be re-worded to make the concepts clearer. Although the parties are at liberty to enhance the wording, the proviso should be written in terms consistent with the following wording:-

“Provided that where the employer does not supply suitable board and sleeping accommodation the employer shall pay such reasonable expenses as can be substantiated by the employee which exceed the daily allowance taking into account the locality involved. Whenever practicable, the matters of suitable accommodation and reasonable expenses are to be agreed before the travel occurs.”.

#### Employees in Camps

The application seeks to have the Award reflect the Camp Allowance General Ruling of \$13.80 per day ([1997] 154 QGIG 680). The clause will be expressed in terms of “at the rate of \$96.60 per week of seven days.”. This will allow the rate to be divisible to provide a daily rate of \$13.80. Given the amendment is mechanical only, it is approved.

#### Payment for Excess Travelling Time

The ETU’s submission that the word “excess” should be deleted is supported as the subclause relates both to suburban and distant work.

Paragraph (b) of subclause (2) reduces the maximum amount of travelling time from 12 hours to eight hours in any 24 hour period. There does not appear to be any justification for this. The 12 hour maximum is consistent with the Federal Metal Industry Award. This aspect of the claim is refused.

The remaining aspects of this subclause as well as subclauses (3) and (4) are not opposed. They are granted.

#### **6. Weekend Penalty Rates – subclause (2)(a) of clause 4.2 (Hours of Work)**

There are two aspects to this item. The first seeks to reduce the penalty rates for ordinary time worked on a weekend from: overtime rates to time and one-quarter on Saturday and to time and one-half on a Sunday. The second relates to the spread of hours. This matter shall be dealt with first. An extension to the spread of hours by agreement is sought. It is opposed by the ETU on the basis of a lack of need.

The change is a facilitative one and reflects a provision found in the Federal Metal Industry Award. Although the ETU may not see the amendment as necessary in light of the working patterns of their members; the amendment is granted on the grounds of flexibility, consistency and that it is facilitative.

The other item related to the change to penalty rates. The QCCI drew support for its position largely from decisions of the Commission dealing with the 38 hour week application for the Mechanical Engineering Award – State, and others, and the Engineering Award – State.

In the initial decision ([1989] 132 QGIG 1394 at 1404), the Full Bench decided to vary the Awards to permit the working of five out of seven days with “appropriate rates for weekend work”. Those “appropriate rates” were subsequently determined as being the existing overtime rates. In commenting on rates for weekend work the Full Bench said in its first decision:–

“However, we consider that community attitudes have changed and are continuing to do so and that therefore, in the public interest, this item cannot be ignored as far as the future is concerned.” (p. 1404).

In its later decision, the Bench commented:–

“In adopting existing overtime rates we should not be taken as approving indefinitely the payment of such overtime rates when five out of seven days are worked, since this is an issue on which changing attitudes are evolving. We suggest it is an issue, which at some time in the future, may be appropriate for consideration at a hearing at which more specific and lengthy submissions are made on that specific subject than were made before us. It is also a matter appropriate for consideration under the Structural Efficiency Exercise.” (Decision in transcript 9 March 2000 p. 452).

The issue of appropriate penalty rates for weekend work was also considered by Ledlie, CC in later 38 hour week matters. In this regard, he said:–

“It is also put in the submission that the proposal for the draft variations permitting ordinary work to be performed on any five of the seven days of the week should be adopted, but without the provisions of the earlier Full Bench decision in B164 of 1989 to the extent that for work on Saturday and Sunday it called for appropriate weekend overtime rate to be applicable. It becomes evident from the further exhibit tendered in these proceedings, Exhibit 5, which was a further statement made in transcript on 9 March 1990, by the Full Bench dealing with matter B164 of 1989 that they did not see that requirement as being other than an interim approach to the question.

I think that the parties should be aware that in that given set of circumstances there was considerable pressure for the release of orders that would enable the long negotiated 38 hour per week to come into effect in the face of uncertainty in that area. The other possibility was that without that being given attention ordinary time may well have been seen as the appropriate rate for such work.

I think that the Full Bench in those circumstances gave the parties an interim decision upon which they could work pending the finalisation of matters in the period ahead. I would have thought it would be quite unsafe for any party to take the view that that was intended to represent a running finding by the Full Bench on an appropriate standard of such work. In this matter I think it quite inappropriate to delete those provisions in respect of these two sections. Rather, I adopt it but with that qualification.”

Given that this application is made, in part, under structural efficiency principles, the QCCI considered it opportune to pursue the issue of appropriate penalty rates for weekend work. The QCCI believed that the Full Bench decisions and the decision of Ledlie, CC, signalled that the rates now provided in the Award were not set in concrete and were open to reconsideration.

The QCCI, like other parties, also took the Commission to various Full Bench decisions dealing with the issue of weekend penalty rates. Reference was made to the decision of Bougoure, C, and Swan, C in the Miscellaneous Workers’ Award – State Government where two basic elements for determining the basis for payment of penalty rates were given as compensation to the employee and deterrence to the employer ([1991] 137 QGIG 299 at 301).

In this matter the QCCI argued that employers should not be deterred from working employees on weekends, either on a regular or short term basis. Letters from a number of member Companies were presented to show support for the application as well as an intention to access the provision if granted.

The Crown and all Unions strongly opposed this item. Again, reliance was placed on the decisions of various Full Benches of this Commission in particular to draw support for their position. For example, the Commission was referred to the decision of Bougoure, C and Swan, C in the Miscellaneous Workers Award – State Government (*supra*) where the following comments were made:–

“A factor which will generally impact on the element of deterrence is how essential or necessary it is that work be regularly performed in ordinary time on a Sunday in pursuing efficiency and productivity in the particular industry concerned. It would seem to us that some distinction should be made between regular, as distinct from an occasional necessity to work on a Sunday.”

and later,

“If Sunday work is unnecessary then it can be argued that the factor of deterrence should be fully operative. If essential work on a Sunday is only occasional, then there is also less justification to disregard overtime rates.”

In reviewing the various decisions relating to weekend penalty rates by this Commission, the Crown provided the following general principles which it said arose out of those decisions, including:–

- each case has to be determined upon its own particular merits and circumstances;
- each industry has to be assessed on its own particular circumstances;
- the predominance of the elements of compensation to the employee and deterrence to the employer may vary from case to case; and
- the decision in one case is not to be taken to automatically apply to another.

This is a reasonable assessment of the principles.

The Unions drew a distinction between manufacturing industry to which the Engineering Award – State applies and the hospitality industry, where the majority of decisions dealing with a reduction in weekend penalty rates applied. The Unions argued the hospitality industry operates on a seven day a week basis whereas, the same requirement does not apply to the majority of the manufacturing sector. In this area, Monday to Friday remains the predominant work pattern.

This argument holds significant weight. In those cases where penalty rates were reduced for weekend work, the evidence established that the industry or industry sector operated on a seven day a week basis. Accordingly the element of deterrence to the employer was given less weight. Bearing in mind that this Award is common rule with widespread application significant evidence would need to be brought to demonstrate that working patterns in the workplaces covered by the Engineering Award – State were undergoing substantial change. Although it is probably true that some employees bound by the Engineering Award – State regularly work ordinary time on weekends and it is probably also true that a number of employers would want to introduce ordinary time work on weekends, a more general movement towards a seven day week industry has not been established. Accordingly, and consistent with Full Bench decisions of this Commission, I have not been persuaded to depart from the weekend penalty rates which are presently provided by the Award.

In reaching this decision, I am cognisant of the Full Bench decision and the decision of Ledlie, CC, for the 38 hour week in the Engineering Award and related awards. Clearly those decisions give a strong signal that overtime rates for weekend work may come under scrutiny. However, as later decisions from this Commission show, particular factors need to be established before the Commission is persuaded to depart from prevailing award rates. These factors are not present in this matter.

Although the penalty rates aspect of the application is refused, I remain concerned that the Unions are resistant to any proposed changes to weekend penalty rates in enterprise bargaining negotiations relying on the existing award rates as an immutable safety net. This may well be a philosophical position of the Unions, however at a time when the AMEPKU in particular is vigorously pursuing a campaign to save and promote jobs in the manufacturing sector, a more flexible approach to the issue of weekend penalty rates in enterprise bargaining negotiations may give greater credibility to their laudable objective.

#### **7. Shift Work – clause 4.3 (Shift Work)**

This item seeks to facilitate the working of 10 hour shifts by agreement. This is consistent with the situation for day workers who, by mutual agreement, can increase their ordinary hours to 10 hours a day. A consequential amendment is made to the definition of a shift in subclause (7). Other amendments are proposed to reflect that shift work is a pattern of working.

The amendments are not opposed.

They appear to meet the objectives of restructuring. The provision to enable 10 ordinary hours to be worked in a shift is facilitative. The consequential amendments are sound. This item is granted.

#### **8. Overtime – clause 4.4**

This item seeks to provide for the working of reasonable overtime, to prevent the practice of “one in, all in” with regards to working overtime and to alter the payment from multiples of 15 minutes to six minutes. The first two amendments would bring the State Award into line with the Federal Metal Industry Award. The change to the multiples for the calculation of overtime, is in the view of the QCCI, a more logical approach.

The ETU raised a difficulty with the first of the proposed amendments. After some discussion, the ETU indicated it would not oppose the provision if it was in the following terms:--

“(b) An employer may require any employee to work reasonable overtime at overtime rates and the employee shall work such reasonable overtime as required.”.

The QCCI was prepared to agree to the addition of the words “such reasonable” to its proposed amendment.

The addition of these words, although departing from the Federal Metal Industry Award, provide further clarification. It is a reasonable provision and is approved.

The provision relating to the prevention of the “one in, all in” practice is also consistent with the Federal Metal Industry Award. It is not opposed. It is granted.

Both the Crown and the ETU raised objections to the change in multiples for the calculation of overtime. The Crown submitted that one of the grounds for the application was to generally align the Engineering Award – State with the Federal Metal Industry Award. This particular amendment was not found in the latter Award but in another Federal Award, viz, the Vehicle Industry Repair Services and Retail Award 1983. As the proposed amendment did not accord with the ground of aligning the two awards and no other particular rationale had been proffered in support, the Crown opposed the amendment.

This view was also supported by the ETU.

The Crown also objected to the amendment on the grounds of the implications for several public agencies as it is inconsistent with the configuration of their payroll systems. Additionally costs would be incurred in the reconfiguration.

The amendment to the change of the multiples for the payment of overtime is not consistent with the provisions of the Federal Metal Industry Award. Given this was one of the stated objectives of the applications accepted by the Commission the granting of the claim would not meet this ground. There would not seem to be any other substantive basis for the claim. For these reasons it is refused.

#### **9. Meal Breaks and Meal Allowances – clauses 4.5 and 4.6**

The intent of this item is to eliminate areas where problems of interpretation have arisen, to provide flexibility and to reflect state standards. With these matters, the QCCI said it acknowledged the position of the AMEPKU, that the Engineering Award – State applied to mixed industries. A condition which might apply to all workers in those mixed industries should be generally consistent. Accordingly, the QCCI moved from its position to one where consistency with the Federal Metal Industry Award was sought.

The item is not opposed.

For all of the above, this item is granted. No amendment has been sought to clause 4.5(1)(b) which provides for a 30 minute crib break for shift workers during shifts of eight hours. Given the Commission has approved the working of 10 hour shifts by mutual agreement, and provision for 12 hour shifts subject to meeting ACTU policy, have existed in the Award for some time, it may be prudent to amend this provision. For example, the provision could read:-

“Shift workers, shall be allowed 30 minutes for crib during each shift of at least 8 hours . . .”.

#### **10. Item 10 Sick Leave – clause 5.4**

This item seeks to change the sick leave entitlement from eight ordinary days to 60.8 hours sick leave for each completed year of service. The amendment is sought to bring the entitlement into line with other State awards and the Federal Metal Industry Award.

The QCCI advised that the Mechanical Engineering Award – State (one of the seven Awards amalgamated to form the Engineering Award – State) was the first award of this Commission to be arbitrated for the 38 hour week (127 QGIG 1394). At that time detailed submissions were not put to the Full Bench on the matter of sick leave. The QCCI says this was not done, believing it would be dealt with as a consequential variation. Agreement was unable to be achieved between the parties on the issue of sick leave so the Full Bench was asked to consider the matter. The Full Bench acceded to the proposal of the (now) AMEPKU which now appears in the Engineering Award and commented on its general consistency with the Federal Metal Industry Award.

The QCCI submitted that employers party to the Engineering Award – State have been disadvantaged given that it (and some of its predecessor awards) was the first to be arbitrated for the 38 hour week. Without consequential changes to the sick leave provisions employers were not able to either minimise or neutralise costs.

The Unions oppose any changes to sick leave entitlement. The major submissions in opposition were led by the AMEPKU which put three arguments against the proposed amendment. First, the AMEPKU contended that no case had been established for the amendment. Second, the Union took the Commission to the Full Bench decision in the 38 hour week case which stated:-

“If there is a situation that needs to be remedied it is available to any party aggrieved thereby to seek to have the matter reviewed by the Full Bench either upon a reconsideration or alternatively a separate application.”.

The Union submitted the QCCI had not identified any situation which needs to be remedied. Finally, the Union argued the QCCI had not brought any evidence to indicate that employees are fully utilising their existing Award entitlement to sick leave each year and therefore nothing to demonstrate that the claim for the extra 3.2 hours per year per employee added any significant cost to industry. The Union claimed the QCCI’s claim fell into the realm of negative cost cutting.

In addition to supporting these arguments the AWU drew the Commission’s attention to s. 10(2)(a) of the *Industrial Relations Act 1999* which provides:

“(2) An employee is entitled to –

(a) at least 8 days sick leave on full pay for each completed year of employment with an employer . . .”

The Union argued that this provision meant that employees working in excess of 7.6 hours per day should have their entitlement calculated by multiplying the number of hours worked per day by eight.

The Commission is persuaded to grant the QCCI’s application regarding sick leave. Although detailed argument for the amendment has not been put in terms envisaged by the Full Bench in 1990, it is the case that another Full Bench of this Commission heard such argument and provided extensive reasons supporting a change from accumulation based on days to accumulation based on hours ([1990] 134 QGIQ 55 at 56 – 58). The reasoning provided then is equally relevant today.

Earlier in this decision reference was made to the acknowledgment made by the QCCI of the position of the AMEPKU that the Engineering Award – State is a mixed industries award. Accordingly that Union had sought commonality in meal break provisions amongst Awards which might apply in industries where Engineering Award – State also applies. On grounds of consistency of entitlements to employees generally then the sick leave entitlement provision ought to be amended to reflect the entitlement of most other workers. It is really only an accident of history that employees covered by the Engineering Award – State have received more beneficial sick leave entitlements than employees under State Awards generally. Now that the Award is undergoing restructuring, it is appropriate the sick leave provisions be brought into line with state standards.

In terms of the AWU’s submissions regarding the entitlement conferred by the Act, I consider that s. 10(2) should be read in conjunction with s. 9(2) regarding working time. In my view, s. 10(2) does not act to increase the sick leave entitlement for workers who work in excess of 8 hours per day. In any event, s. 10(5) provides that an entitlement or additional entitlement is not conferred for employment commencing prior to the Act.

This item is granted. The amendment does not effect sick leave accrued up and until the date of operation for the amendments made to the Award by this decision.

#### **11. Deletion of Appendices B to H and insertion of a new Schedule 1.**

This item is self explanatory. It continues the rationalisation process. The new Schedule 1 provides for a comparison of the classifications or job titles provided under the awards amalgamated into the Engineering Award – State, and the broadbanded wage levels now found in the Engineering Award. Despite the existence of the broadbanded wage levels and the promotion of them, advertisements are still called for specific task based positions and some traineeships/apprenticeships still retain the older job titles because they are more easily understood.

Consequential renumbering of the other schedules is also provided for.

Except for one matter which shall be addressed shortly, this item is agreed and is granted.

The matter which is opposed by the AMEPKU is the deletion of clause 4 (Shift Work) from Appendix B, which provides in part that “any time worked in excess of such ordinary working hours, afternoon and night shift workers shall be paid for as overtime at the rate of double time on their afternoon or night shift rate.”.

The concern of the QCCI is that in certain limited circumstances the provision has been interpreted to mean that penalties are compounded. This is contrary to standard industrial principles.

The Union opposed this aspect of the claim on the basis that it was a long standing provision of the Award and no case had been made out for its deletion.

This item was specifically argued before Nutter, C in Case No. B1542 of 1994 ([1995] 150 QGIG 1486). Essentially, both the QCCI and the AMEPKU rely on arguments put in that matter to justify their current positions.

In his decision Nutter, C detailed the arguments put. In his conclusions the following points were made:--

- The history of the clause indicates it was not an error in drafting but intended to reflect a previous entitlement which appeared in the Award;
- The Commission had previously decided to leave the matter to the parties for consideration during the award modernisation process;
- That process should be allowed to continue although progress to date had slowed; and
- The Commission may arbitrate where the parties were unable to reach agreement.

Ultimately, the Commission declined to arbitrate the matter at that point preferring the parties continue to negotiate it.

The Commission's reluctance to arbitrate the matter would appear to stem from a belief that the award modernisation process would involve "give and take" over a number of conditions. The provision in question seems to be one which may have fallen into the category of a possible tradeoff in return for an improvement in another area. There is no real argument that the notion of penalties compounding is not an acceptable industrial practice.

The other factor which militates in favour of the deletion of the provision is that in the process of rationalisation of provisions during an amalgamation of awards, it is difficult to sustain the retention of a provision which has such limited application. Moreover, as the provision does not touch on ordinary time earnings it does not fall into the realm of negative cost cutting.

For these reasons the provision will be deleted. However, because the provision is of long standing and there may be disadvantage caused to some employees, I am prepared to hear further from the QCCI and especially the Union as to how the matter should be approached. For example, despite the lead in time which is provided for the operation of the amendments arising out of this decision, it may be of assistance to provide for some phasing out of the subclause. Alternatively, a "grandfather" provision might be appropriate. For such consideration to be given the Union would need to provide the Commission with information about the possible extent of the application of the subclause, eg. the estimated number of employers or employees affected and the impact on the earnings of employees.

#### **DATE OF OPERATION**

The QCCI has requested a deferred operative date to allow for appropriate notification to be given to employers. In the circumstances the date of operation for all the amendments arising out of this decision shall be 11 September 2000. A hearing date shall be scheduled prior to that date, on the request of the AMEPKU, to deal with the issue of clause 4 (Shift Work) of Appendix B.

The QCCI is directed to provide a draft amendment reflecting the terms of this decision to the Industrial Registrar's Office within 14 days of the date of release of this decision.

Order accordingly.

G.K. FISHER, Commissioner.

*Appearances –*

Mr S. Pawlowski of the Queensland Chamber of Commerce and Industry Limited, Organisation of Employers.

Ms N. Taylor (of Livingstones Australia) on behalf of Pauls Limited and Dairy Farmers.

Mr J. Kimber for the Crown.

Mr R. Beer for the Local Government Association of Queensland.

Mr C. Mason for the Australian Industry Group.

Mr. R. Cullen for the Australian Sugar Milling Association, Queensland, Union of Employers.

Ms R. Quilty for the Electrical Contractors Association of Queensland.

Mr T. Kowalski for the Motor Trades Association of Queensland, Union of Employers.

Ms T. Scrine for the Retailers Association of Queensland Limited, Union of Employers.

Mr B. Swan, Mr D. Darcy and Mr R. McColm for The Australian Workers' Union of Employees, Queensland.

Mr J. Barrett and Mr N. Frost for the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.

Mr D. Dawes and Mr A. Doodney for the Electrical Trades Union of Australia, Queensland Branch.

Released: 16 May 2000

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#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 125 – application to amend award*

**Queensland Council of Unions AND Various Employers (No. B1425 of 1999)**

FAMILY LEAVE AWARD

VICE PRESIDENT LINNANE

COMMISSIONERS FISHER AND BROWN

16 May 2000

DECISION

On 7 March 2000, the Full Bench released the decision concerning the application by the Queensland Council of Unions to amend the Family Leave Award.

On considering the extensive amendments to be made to the Award, the Full Bench considers it would be more convenient for all parties and users of the Award to rescind the existing Award and issue a new Family Leave Award including the amendments granted by our decision. By doing so, the

Commission is acting pursuant to s. 125(2)(a) of the *Industrial Relations Act 1999*. The issuing of a new Award will also ensure the objectives in s. 126 of the Act are met.

The date of operation for the new Award is the same date awarded by us in our earlier decision for the various amendments.

Order accordingly.

Dated this sixteenth day of May, 2000.

D.M. LINNANE, Vice President.  
G.K. FISHER, Commissioner.  
D.K. BROWN, Commissioner.

Mr R.A. Cullen for the Australian Sugar Milling Association, Queensland, Union of Employers.  
Mr M. Guymer for Queensland Rail.  
Ms K. Brown for the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers.  
Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.  
Mr G. Muir of Employer Services on behalf of the Private Hospitals Association of Queensland, the Royal Queensland Bowls' Association and the Child Care Industry Association of Queensland.

*Appearances:-*  
Ms K. Ruttiman and Mr D. Dawes for the Queensland Council of Unions.  
Mr C. Simpson for The Australian Workers' Union of Employees, Queensland.  
Mr S. Ross for the Queensland Nurses' Union of Employees.  
Mr L. Gillespie for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.  
Mr C. Mason for the Australian Industry Group, Industrial Organisation of Employers (Queensland).  
Mr G. Power for Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.  
Ms F. Bucknall, for the State of Queensland.  
Mr A. Rowe for the Queensland Hotels Association, Union of Employers.  
Ms K. Russell of Livingstones Australia on behalf of the Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers.

Released: 16 May 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application to make, amend and repeal award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch  
Union of Employees AND Serco Gardener Merchant Pty Ltd and Others  
(Nos. B1181 of 1999 and B1364 of 1999)**

**GROUND STAFF AWARD – SOUTH EASTERN DIVISION**

**GREENKEEPING INDUSTRY AWARD – STATE**

COMMISSIONER FISHER

16 May 2000

SUPPLEMENTARY DECISION

On 1 February 2000, the Commission released a decision directing the parties to confer on the drafting of a new Award entitled the Ground Staff – Defence Force Contractors– Interim Award – State.

In that decision the applicant was required to notify of the progress of the matter within 30 days and to draft a new Award in the event that agreement was reached. The Commission has subsequently received the draft Award from the applicant together with correspondence indicating the parties have reached agreement.

The Commission hereby grants the making of the new Award with the amended title of Ground Staff – Defence Force Contractors – Interim Award – Southern Division with an operative date of 29 May 2000.

Order accordingly.

G.K. FISHER, Commissioner.

Ms K. Delange for The Registered and Licensed Clubs Association of Queensland, Union of Employers.  
Mr G. Muir and Mr M. Patti (of Employer Services) on behalf of the Royal Queensland Bowls Association.  
Mr S. Pawlowski (of the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers) on behalf of Brisbane Catholic Education, Queensland Catholic Education Commission.  
Mr R. Egan (of Jones Ross) on behalf of the Presbyterian and Methodist Schools Association.  
Ms N. Taylor (of Livingstones Australia) on behalf of Queensland Nursery Industries Association.

*Appearances –*

Mr J. Martin of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.  
Mr R. McColm for The Australian Workers' Union of Employees, Queensland.  
Mr T. Townsend on behalf of Serco Gardener Merchant Pty Ltd.

Released: 16 May 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application to make, amend and repeal award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,  
Union of Employees AND Serco Gardener Merchant Pty Ltd AND Others (No. B1364 of 1999)**

**GROUND STAFF – DEFENCE FORCE CONTRACTORS – INTERIM AWARD – SOUTHERN DIVISION**

COMMISSIONER FISHER

NEW AWARD

16 May 2000

THESE matters coming on for hearing before the Commission on 20 October, 17 and 26 November, and 6 December 1999, this Commission doth Award as follows from the twenty-ninth day of May, 2000.

**GROUND STAFF – DEFENCE FORCE CONTRACTORS – INTERIM AWARD – SOUTHERN DIVISION**

**PART 1 APPLICATION AND OPERATION**

**1.1 Title**

This Award shall be known as the Ground Staff – Defence Force Contractors– Interim Award – Southern Division.

**1.2 Arrangement**

Subject Matter	Clause No.
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**PART 1 – APPLICATION AND OPERATION**

Title .....	1.1
Arrangement .....	1.2
Definitions.....	1.3
Commencement Date.....	1.4
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Subject Matter

Clause No.

**PART 10 – AWARD COMPLIANCE AND UNION RELATED MATTERS**

Availability of Award .....	10.1
Time and Wages Records .....	10.2

**1.3 Definitions**

- 1.3.1 “Permanent employee” shall mean an employee engaged by the week.
- 1.3.2 “Casual employee” shall mean an employee who is employed by the hour and who works less than 40 hours per week.
- 1.3.3 “Part-Time employee” shall mean a weekly employee who is engaged in work on pre-determined days of the week for a regular number of hours, being at least 12 hours but no more than 32 hours per week.
- 1.3.4 “Industrial Organisation” shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.
- 1.3.5 “South-Eastern Division” shall mean the district within the following boundaries:-

Commencing at Point Danger, and bounded thence by the southern boundary of the State westerly to 151 degrees of east longitude; thence by that meridian of longitude bearing true north to 24 degrees 30 minutes of south latitude; thence by that parallel of latitude bearing true east to the sea-coast; and thence by the sea-coast southerly to the point of commencement, and all islands comprised in any State or Federal Electorate in the South-Eastern Division of Queensland.

**1.4 Commencement Date**

This Award shall take effect and have the force of law throughout the State of Queensland as from the first day of February, 2000. And this Commission doth further order that any of the parties are to be at liberty to apply to this Commission as they may be advised.

**1.5 Coverage**

This Award shall have application to employees who are engaged for the purpose of maintaining grounds and other external properties employed by contractors providing such services to the Department of Defence on a contract or fee for service basis, within the South-Eastern Division.

**1.6 Parties Bound**

This Award shall be legally binding upon the employees described in clause 1.5, their employers and the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

**1.7 Pre-existing Conditions**

Nothing in this Award shall act to reduce the wages and conditions of employees currently being paid or observed as at the date of the making of this Award.

**PART 2 – FLEXIBILITY****PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION****3.1 Consultation**

- 3.1.1 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industry covered by this Award and to enhance the career opportunities and job security of employees in the industry.
- 3.1.2 At each plant or enterprise, an employer, the employees and their relevant Industrial Organisation commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or Industrial Organisation for consideration consistent with the objectives of subclause 3.1.1 herein shall be processed through that consultative mechanism and procedures.

**3.2 Grievance and Dispute Settling Procedure**

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedure shall apply to a single employee or to any number of employees.

- (a) In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate foreperson/supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances.
- (b) If the grievance or dispute is not resolved under subclause (a) hereof, the employee or the employee’s representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee’s representative.
- (c) If the grievance or dispute is still unresolved after discussions listed in paragraph (b) hereof, the matter shall, in the case of a member of an Industrial Organisation of Employees, be reported to the State Secretary of the relevant Organisation of Employees and the relevant Senior Management of the employer or the employer’s nominated Industrial Representative. An employee who is not a member of an Industrial Organisation of Employees may report the grievance or dispute to Senior Management or the nominated Industrial Representative. This should occur as soon as it is evident that discussions under paragraph (b) hereof will not result in resolution of the dispute.

- (d) If, after discussion between the parties, or their nominees mentioned in paragraph (c), the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given in pursuance of the *Industrial Relations Act 1999*.
- (e) Whilst all of the above procedure is being followed normal work shall continue except in a case of a genuine safety issue.
- (f) The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- (g) All parties shall give due consideration to matters raised or any suggestion or recommendation made by an Industrial Commissioner with a view to the prompt settlement of the dispute.
- (h) Any Order of the Queensland Industrial Relations Commission (subject to the parties right of appeal under the Act) will be final and binding on all parties to the dispute.
- (i) Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute pursuant to the *Industrial Relations Act 1999*.

#### **PART 4 – EMPLOYER AND EMPLOYEE DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

##### **4.1 Anti-Discrimination**

- 4.1.1 It is the intention of the parties to this Award to achieve the principal object of the *Industrial Relations Act 1999* by helping to prevent and eliminate discrimination on the basis of sex, marital status, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity, and association with, or in relation to, a person identified on the basis of the above attributes.
- 4.1.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties to the Award must make every endeavour to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.1.3 Nothing in this clause is to be taken to affect:–
  - (a) any different treatment (or treatment having different effects) which is specifically exempted under the *Anti-Discrimination Act 1991*;
  - (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission.

##### **4.2 Contract of Employment**

###### **4.2.1 Notice By Employee**

To terminate the contract of employment a full-time or part-time employee must give at least one week's notice or forfeit a week's pay in lieu.

###### **4.2.2 Notice By Employer**

To terminate the contract of employment an employer must give a full-time or part-time employee the following notice or payment of the equivalent in lieu –

- (a) if the employee's continuous service is:
  - (i) not more than one year: .....1 week; and
  - (ii) more than one year but not more than three years: .....2 weeks; and
  - (iii) more than three years but not more than five years: .....3 weeks; and
  - (iv) more than five years: .....4 weeks.
- (b) The period of notice is to be increased by one week if the employee –
  - (i) is over 45 years of age; and
  - (ii) has completed at least two years continuous service with the employer.
- (c) Such notice shall not be required in cases of dishonesty, drunkenness, insubordination or gross misconduct when any employee shall be subject to instant dismissal and entitled to their wage and all holiday pay due to that employee up to the time of such dismissal.
- (d) Annual leave shall not be used to provide the notice prescribed in paragraphs (a) and (b) hereof of this clause.

##### **4.3 Redundancy**

The employer shall observe the terms and conditions of policy of Termination of Employment, Introduction of Changes, Redundancy contained in the decision of the Full Bench of the Commission dated 16 June 1987, and published in 125 QGIG 1119-1121, as amended by 125 QGIG 1377 and 126 QGIG 188.

##### **4.4 Incidental and Peripheral Tasks**

- 4.4.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.

- 4.4.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).
- 4.4.3 Any direction issued by an employer pursuant to subclause 4.4.1 and 4.4.2 above shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### 4.5 Mixed Functions

Where any person on any one day performs two or more classes of work to which a differential rate fixed by any Award or Industrial Agreement is applicable, such person, if employed for more than four hours on the class or classes of work carrying a higher rate, shall be paid in respect of the whole time during which the employee works on that day at the same rate, which shall be at the highest rate fixed by such Award or Industrial Agreement in respect of any of such classes of work, and if employed for four hours or less on the class or classes of work carrying a higher rate, shall be paid at such highest rate for four hours.

#### 4.6 Part-Time Employment

- 4.6.1 A part-time employee shall have a minimum engagement of four hours.
- Except as hereinafter provided, all conditions provided for permanent full-time employees shall apply to part-time employees.
- 4.6.2 Part-time employees shall be paid an hourly rate equal to one-thirty-eighth of the weekly rate.
- 4.6.3 The spread of hours of part-time employees shall be the same as that applicable to a full-time weekly employee in the section of the establishment in which they are employed. The number of ordinary hours shall not on any day exceed the number of ordinary hours of weekly employees in the section in which the employee is employed, without payment of overtime.
- 4.6.4 Part-time employees shall be entitled to receive *pro rata* entitlements to annual leave, sick leave, bereavement leave and long service leave in accordance with the provisions of this Award.
- 4.6.5 Where a part-time employee would have been rostered to work on a day of the week on which a public holiday occurs and the employee is not required to work on the holiday, then the employee shall be paid for the ordinary hours such employee would have worked on that day had it not been a public holiday.

#### 4.7 Casual Employment

Employees engaged on a casual basis shall be paid 19% per hour in addition to the appropriate rate prescribed for the class of work which they are performing.

The minimum period of engagement of casual employees shall be not less than two hours.

### PART 5 – WAGES AND WAGE RELATED MATTERS

#### 5.1 Classifications and Wage Rates

- 5.1.1 Ground Staff - Level 1 (Relativity to Trade Equivalent - 82%).
- Minor (non trade) maintenance or repair to equipment and driving of equipment other than where a medium rigid licence is required.
- 5.1.2 Ground Staff - Level 2 (Relativity to Trade Equivalent - 87.4%).
- Employees at this level would, in addition to the work performed at Level 1, perform duties associated with spraying of poisons where a certificate is required.
- 5.1.3 Ground Staff - Level 3 (Relativity to Trade Equivalent - 92.4%).
- Employees at this level would, in addition to the work performed at Levels 1 and 2, be required for the majority of the shift, to operate a heavy vehicle requiring a medium rigid licence.
- 5.1.4 Ground Staff - Level 4 (Tradesperson)
- Employees at this level would be employed as a trade qualified employee, possess relevant trade or equivalent qualifications and use such qualifications in the course of their duties.
- 5.1.5 The minimum rates payable under this Award shall be as follows:

<u>Classification</u>	Per Week \$
Ground Staff Level 1	402.10
Ground Staff Level 2	424.60
Ground Staff Level 3	445.50
Ground Staff Level 4	477.20

## 5.2 Allowances

### 5.2.1 Leading Hand Allowance

In addition to the rates of pay prescribed by this Award, employees required to be in charge of other employees shall receive the following allowances:

<u>In Charge Of:</u>	Per Week
	\$
Up to 15 Employees	9.99
More Than 15 Employees	14.98

## 5.3 Payment of Wages

5.3.1 Wages shall, at the option of the employer, be paid either in cash, by direct deposit or by electronic funds transfer into a financial institution nominated by the employee either weekly or fortnightly.

5.3.2 If paid in cash, wages shall be paid at a specified time during working hours and any employee who is not paid within five minutes of the time specified, shall be deemed to be working during the time such employee is kept waiting.

## 5.4 Occupational Superannuation

5.4.1 The superannuation provisions for all employees covered by this Award will be in accordance with the Declaration of General Ruling handed down by the Full Bench of the Queensland Industrial Relations Commission and contained in the Queensland Government Industrial Gazette of 28 March 1987, Vol CXXIV No 55.

5.4.2 For each employee, the employer will contribute a sum in accordance with the provision of the Superannuation Guarantee Charge. This sum is to be paid to an approved superannuation scheme, retrospective to the date of the employee's appointment.

5.4.3 Contributions will be made into one of the following Funds –

- (a) ARF;
- (b) Sunsuper; or
- (c) Serco Superannuation Fund

## PART 6 – HOURS OF WORK, BREAKS, OVERTIME, SHIFTWORK, WEEKEND WORK

### 6.1 Hours of Work

6.1.1 (a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:–

- (i) 38 hours within a work cycle not exceeding seven consecutive days; or
- (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
- (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
- (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or
- (v) The ordinary hours of work prescribed may be worked on up to any five consecutive days in the week, Monday to Friday inclusive between 6.00am and 6.00pm:

Provided that by agreement between the employer and employee, the spread of hours may be varied between 5.00 am and 5.00 pm or 7.00 am and 7.00 pm.

6.1.2 Except as hereinafter prescribed, all employees shall be entitled to two consecutive days off each week which shall comprise any period of 48 consecutive hours:

6.1.3 Ordinary working hours of employees are to be worked in accordance with a roster, a copy of the roster shall be exhibited in a conspicuous place easily accessible to all employees. Rostered starting times shall not be altered, except in agreed emergencies, without seven day's prior notice. Except in the case of emergencies where such notice has not been given, all hours worked outside of the roster, until this provision has been complied with, shall be deemed overtime and paid accordingly:

Provided that the roster may be altered at any time by mutual consent.

6.1.4 The ordinary hours of work prescribed herein shall not exceed ten on any day:

Provided that where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees directly involved.

### Implementation of 38 Hour Week

6.1.5 The 38 hour week shall be implemented on one of the following bases, most suitable to the particular business, after consultation with, and giving reasonable consideration to the wishes of the employees directly involved:–

- (a) by employees working less than eight ordinary hours each day; or

- (b) by employees working less than eight ordinary hours on one or more days each work cycle; or
- (c) by fixing one or more work days on which all employees will be off during a particular work cycle; or
- (d) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.

- 6.1.6 Subject to the provisions of subclause 6.1.4, employees may agree that the ordinary hours of work are to exceed eight on any day, thus enabling more than one work day to be taken off during a particular work cycle.
- 6.1.7 Notwithstanding any other provision in this clause, where the arrangements of ordinary hours of work provides for a rostered day off, the employer and the majority of employees directly involved, may agree to accrue up to a maximum of ten rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within twelve calendar months from the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.
- 6.1.8 Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in the business directly involved.

### **38 Hour Week - Procedures for Enterprise Level Discussions**

- 6.1.9 The employer and all employees directly involved in each establishment shall consult over the most appropriate means of implementing and working a 38 hour week.
- 6.1.10 The objective of such consultation shall be to reach agreement on the method of implementing and working the 38 hour week in accordance with clause 4.2 (Implementation of 38 Hour Week).
- 6.1.11 The outcome of such consultation shall be recorded in writing.
- 6.1.12 In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their relevant industrial organisation or employer organisation.
- 6.1.13 Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer shall have the right to make the final determination as to the method by which the 38 hour week is implemented or worked from time to time.
- 6.1.14 After implementation of the 38 hour week, upon giving 7 days notice or such shorter period as may be mutually agreed upon, the method of working the 38 hour week may be altered, from time to time, following negotiations between the employer and employees directly involved, utilising the foregoing provisions of this clause, including subclause (6.1.5) hereof.

### **6.2 Overtime**

- 6.2.1 All time worked in excess of eight hours in any one day or in excess of thirty-eight hours in any one week or outside the spread of ordinary working hours shall be deemed to be overtime.
- 6.2.2 Overtime shall be paid for at the rate of time and a-half for the first three hours on any one day and at the rate of double time thereafter:  
Provided that all overtime worked on Sundays shall be paid for at the rate of double time.
- 6.2.3 All overtime worked on a Saturday or on a Sunday shall be subject to a minimum payment as for two hours work upon each occasion that an employee is required to attend for duty:  
Provided that such minimum payment shall not be applicable where overtime is worked continuously with ordinary working hours on a Saturday.
- 6.2.4 Where an employee is recalled from home to work overtime, the employee shall be paid for such time so worked at the rate of double time, with a minimum payment as for three hours' work in respect of each such recall.
- 6.2.5 In the compilation of overtime payments, any part of a-half of an hour that is worked on any one day shall be paid for as a full half of an hour.
- 6.2.6 Notwithstanding the preceding subclauses where there is written agreement between the employee and the employer paid time off may be taken in lieu of overtime. Such time off shall be at the equivalent of the number of hours of ordinary pay that the employee would have received for such overtime.  
Accumulated time shall be taken at a time mutually agreed between the employee and the employer, with twelve months of such accumulation. Time off in lieu of overtime shall be banked to a maximum of 40 hours at any one time:  
Provided that where there is written agreement between the industrial organisation and the employer such time may be banked in excess of 12 months or 40 hours.  
Any accrued time that is outstanding after twelve months (where there is not written agreement between the industrial organisation and the employer) or at the time of termination, for any reason, by either party, shall be paid out, at the appropriate rate.

### **6.3 Meal Breaks**

- 6.3.1 When an employee is employed for at least six hours, such employee shall be entitled to a meal break of not less than half an hour or more than one hour, to be agreed upon between the employer and the majority of employees and to be taken between the fourth and sixth hours.  
If the meal period is worked, it shall be deemed to be overtime and paid for the rate of double time and such double time payment shall continue until such time as the employee finishes work or is allowed a half-hour meal break for which no deduction of pay shall be made.

- 6.3.2 Employees who are required to continue working for more than one and half hours beyond their ordinary finishing time shall be entitled to take a thirty minute paid meal break and shall be provided with an adequate meal by the employer or paid an allowance of \$7.50 in lieu thereof:

Provided that where an employee has provided a meal because of receipt of notice to work overtime and such overtime is not worked such employee shall be paid \$7.50 for any meal so provided.

#### 6.4 Rest Pauses

- 6.4.1 (a) Weekly Employees:

Weekly employees shall receive one rest pause of twenty minutes which shall be taken at such a time as to divide the working day into three approximately equal periods of work, where practicable.

- (b) Casual Employees:

Casual employees who work a minimum of four consecutive ordinary hours but less than eight consecutive ordinary hours on any one day shall receive rest pause of ten minutes' duration. Employees who work a minimum of eight consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of ten minutes' duration in the first half and the second half of the period worked.

- 6.4.2 Rest pauses shall be taken in the employer's time.

- 6.4.3 Rest pauses shall be taken at times to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity is necessary.

### PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

#### 7.1 Annual Leave

- 7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of their employment be entitled to an annual holiday on full pay of four weeks.

Such annual holiday shall be exclusive of any statutory holiday which may occur during the period of that annual holiday and (subject to subclause 7.1.2 hereof) shall be paid for by the employer in advance –

In the case of any and every employee in receipt immediately prior to that holiday of ordinary pay at a rate in excess of the ordinary rate payable under this Award, at that excess rate; and

In every other case, at the ordinary rate payable to the employee concerned immediately prior to that holiday under this Award.

If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the holiday to the employee from the date of the termination of the employment and shall forthwith pay to the employee, in addition to all other amounts due to the employee, such employee's pay, calculated in accordance with subclause 7.1.2 hereof, for four weeks and also the employee's ordinary hours pay for any statutory holiday occurring during such period of four weeks.

If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due an amount equal to one-twelfth of such employee's pay for the period of employment calculated in accordance with subclause 7.1.2 hereof.

The aforementioned annual leave entitlements, or any part thereof, shall not be deemed to be, or nominated as, notice for the purpose of termination of service.

Except as hereinbefore provided, it shall not be lawful for the employer to give, or for any employee to receive, payment in lieu of annual holidays.

- 7.1.2 Calculation of Annual Holiday Pay: Annual Holiday pay (including any proportionate payments) shall be calculated as follows:

- (a) Leading Hands, etc. – Subject to provision (b) hereof, leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual holidays.
- (b) All Employees – Subject to the provision (c) hereof, in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
- (i) The employee's ordinary wage rate as prescribed by the Award for the period of the annual holiday (excluding weekend penalty rates);
  - (ii) Leading hand allowances or amounts of a like nature;
  - (iii) A further amount calculated at the rate of seventeen and one-half per centum of the amounts referred to in paragraphs (i) and (ii) of this provision.
- (c) The provisions of provision (b) hereof shall not apply to the following:
- (i) Any period or periods of annual holidays exceeding four weeks;
  - (ii) Employers (and their employees) who are already paying (or receiving) an annual holiday bonus, loading or other annual holiday payment which is not less favourable to employees.

- 7.1.3 Annual holidays shall be taken where practicable within six months of becoming due. If it is not practicable to take such holidays within the six months period, other arrangements may be made between the employer and the employee. Such other arrangements may lead to accumulation for a period not exceeding two years.

Provided that by agreement in writing between the employer and the employee, the accumulation period may be exceeded.

## 7.2 Sick Leave

7.2.1 Every employee (other than a casual employee) shall be entitled to not less than eight days sick leave for each completed year of employment with an employer.

Moreover, as respects any completed period of employment of less than one year with an employer after that date, an employee shall become entitled to one day's sick leave for each six weeks of such period.

7.2.2 Every employee (other than a casual employee) absent from work through illness on the production of a certificate from a duly qualified medical practitioner specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the employer and subject to the employer being promptly notified of such illness and of the approximate period aforesaid shall become entitled to payment in full for all time such employee is so absent from work:

Provided that it shall not be necessary for an employee to produce such a certificate if the absence from work on account of illness does not exceed two days.

7.2.3 Where an employee has a proven record of recurring absences on sick leave the employer may, if it is considered appropriate to take such action, inform such employee that in the event of future absences a certificate will be required from a duly qualified medical practitioner in respect of each period of sick leave taken for a period of six (6) months thereafter.

7.2.4 Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than thirteen weeks' absence from work through illness in any one year.

7.2.5 (a) The continuity of employment of an employee with an employer for sick leave accumulation purposes shall be deemed to be not broken by any of the following:

(i) Absence from work on leave granted by the employer; and

(ii) The employee having been dismissed or stood down by the employer, or the employee having terminated employment with the employer, for any period not exceeding three months:

Provided that employee shall have been re-employed by that employer.

(b) The period during which the employment of the employee with the employer shall have been interrupted or determined in any of the circumstances mentioned in paragraph (a) hereof shall not be taken into account in calculating the period of employment of the employee with the employer.

## 7.3 Bereavement Leave

An employee shall on the death within Australia of a wife, husband, mother, father, mother-in-law, father-in-law, brother, sister, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days of work. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

An employee shall be entitled to a maximum of two day's leave, without loss of pay, on each occasion and on the production of satisfactory evidence of the death outside of Australia of an employee's wife, husband, father or mother, and where such employee travels outside of Australia to attend the funeral.

For the purposes of this clause, the words "wife" and "husband" shall include a person who lives with the employee as a *de facto* wife or husband.

## 7.4 Long Service Leave

All employees covered by this Award shall be entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of the *Industrial Relations Act 1999*.

## 7.5 Family Leave

Employees the subject of this Award shall be entitled to Family Leave in accordance with the provision of Chapter 2 Part 2 of the *Industrial Relations Act 1999*.

## 7.6 Statutory Holidays

7.6.1 Subject to the provisions of subclause 7.6.2 of this clause, all work done by any employee on Good Friday, Christmas Day, the twenty-fifth day of April (Anzac Day), the first day of January, the twenty-sixth day of January, Easter Saturday (the day after Good Friday), Easter Monday, the Birthday of the Sovereign, and Boxing Day, or any day appointed under the Holidays Act 1983, to be kept in place of any such holiday, shall be paid for at the rate of double time and a-half with a minimum of four hours.

All employees covered by this Award shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day such employee shall be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary rate prescribed for such work with a minimum of four hours.

All work done by employees in a district specified from time to time by the Minister by notification published in the *Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district shall be paid for at the rate of double time and a-half with minimum of four hours:

Provided that all time worked on any of the aforesaid holidays outside the ordinary starting and ceasing times prescribed by this Award for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

For the purposes of this provision, where the rate of wages is a weekly rate, "double time and a-half" shall mean one and one-half day's wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

- 7.6.2 An employee may, by mutual arrangement with their employer, agree to work on any statutory holiday at ordinary rates, provided that an extra day shall then be added to the employee's annual leave in respect of each such statutory holiday worked at ordinary rates.

### 7.7 TUTA Leave

- 7.7.1 (a) Upon written application by a Union Delegate or duly elected or appointed Union representative, or the Union on behalf of such employee, to an employer and giving to the employer at least one month's notice, such employee shall be granted up to five working days leave (non-cumulative), each calendar year, to attend courses and/or seminars conducted or approved by the Australian Trade Union Training Authority (TUTA).

- (b) Each employee on TUTA Leave in accordance with this clause shall be paid all ordinary time earnings which such employee would have been paid had the employee not be absent on such TUTA Leave.

For the purposes of this clause, ordinary time earnings shall mean at the ordinary weekly rate paid to the employee exclusive of any disability allowances or penalty payment.

- 7.7.2 The granting of TUTA Leave shall be subject to the following conditions:-

- (a) an employee must have at least twelve months service with an employer prior to such leave being granted.
- (b) This clause shall not apply to an employer where less than 38 hours are worked by employees per week.
- (c) The maximum number of employees of one and the same employer attending a TUTA course or seminar at the same time will be as follows:-

No. of Ordinary Hours Worked by Employees of the Employer Per Week	No. of Ordinary Hours Leave Per Calendar Year
380 - 1,140 Hours	38
1,141 - 1,900 Hours	76
1,901 - 3,800 Hours	114
Over 3,800 Hours	152

- (d) Where an employer has more than one place of employment in Queensland then the maximum number of employees entitled to attend a course at the same time shall be two.
- (e) Notwithstanding paragraphs (b), (c) and (d) above, nothing in this clause shall prevent an employer from agreeing to release an employee or additional employees for TUTA Leave.
- (f) The taking of TUTA leave shall be arranged so as to minimise any adverse affect on the employer's operation. Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular employee at a particular time (including where the employer may have previously advised of its ability to release such employee) the Union will not unnecessarily press its request for the release of that employee at that time. If the matter is not amicably resolved, it shall be processed in accordance with the Grievance Procedures contained in this Award.
- (g) The scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations, industry efficiency and workplace issues within the employer's operations.
- (h) In granting such paid leave the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee.
- (i) Leave granted shall not incur any additional payment to the extend that the course attended coincides with any other period of paid leave pursuant to this Award.
- (j) Leave granted to attend TUTA courses will not incur additional payment if such course coincides with an employee's day or days off.
- (k) The taking of TUTA leave will not affect other leave granted to employees under this Award, nor shall it adversely affect the employee's service for the calculation of leave entitlements.

## PART 8 – TRAINING AND RELATED MATTERS

### 8.1 Training

- 8.1.1 Following consultation with employees, an employer may, as is appropriate, develop a training program consistent with:

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise; and
- (c) the need to develop vocational skills relevant to the enterprise and the industry and will be, where appropriate, provided through courses conducted by accredited educational institutions and providers.

8.1.2 A training program developed in accordance with subclause 8.1.1 above will have objectives consistent with:-

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employee with career opportunities through appropriate training; and
- (c) meeting the needs of an enterprise and/or the industry.

8.1.3

- (a) Where it is agreed between the employer and an employee that training in accordance with the program developed pursuant to subclause 8.1.1 herein should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay.

In addition any costs, including the standard fees for prescribed courses and prescribed textbooks incurred in connection with the undertaking of such training shall be reimbursed by the employer upon production of evidence of expenditure:

Provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress.

- (b) Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work may be reimbursed by the employer.
- (c) The parties to this Award agree that the operation and effectiveness of this clause may be reviewed before the Industrial Relations Commission not later than twelve (12) months from the date of insertion.

## **PART 9 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

### **9.1 Changing Rooms**

A suitable changing room shall be provided by the employer. Such changing room shall be kept free of working materials.

### **9.2 Work in Rain**

When an employee is required to work in the rain and by so doing gets their clothes wet, such employee shall be paid double rates for all work so performed. Such payment shall continue until such time as the employee finishes work or is able to change into dry clothing:

Provided that this subclause shall not apply where the employee has been supplied with adequate rainproof clothing.

### **9.3 Protective Clothing**

9.3.1 For the purposes of 9.2 adequate rainproof clothing shall mean oilskins, gum boots and sou-wester.

Employees who are required to distribute fertiliser or who are engaged upon poisonous spraying shall, upon request be supplied with gloves, overalls, goggles and a double respirator at the employer's expense or, by mutual agreement, be paid an allowance of \$1.54 per week in lieu thereof:

Provided that, upon request, all employees shall be supplied with one pair of gum boots free of cost.

Employees required to drive tractors or operate other machinery producing similar levels of noise shall, upon request, be supplied, at the employer's expense, with ear muffs or other suitable protective gear mutually agreed upon.

9.3.2 The employer shall provide a canopy to protect employees from the sun whenever employees are engaged upon driving tractors drawing gang-mowers.

9.3.3 Where a special type of footwear is required, an employee shall, after three months' service with such employer, be provided with such footwear. Replacement of such footwear will be on the basis of fair wear and tear and such footwear shall remain the property of the employer.

### **9.4 Drinking Water**

The employer shall ensure that wherever practicable cool drinking water is readily available to employees.

### **9.5 First Aid**

A first aid cabinet shall be available for employees in case of accident. Such first aid cabinet shall be kept and maintained in accordance with the provisions of the *Workplace Health and Safety Act 1995* and Regulations relating to such first aid cabinets.

### **9.6 Use of Own Vehicle**

Where an employee is required to use their own motor vehicle on employer's business, the employee shall be paid such allowance as shall properly compensate for the use of such vehicle as may be mutually agreed upon between the employer and the employee.

## **PART 10 – AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **10.1 Availability of Award**

A true copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by employees.

**10.2 Time and Wages Records**

The employer shall keep and have available a complete record of employees subject to this Award who are for the time being in the employer's employment or who were in employment at any time during the period of twelve months immediately preceding, showing their designation, rates of wages and times of starting and ceasing work.

Such record shall be open to inspection during working hours by an Officer of the Industrial Organisation duly authorised under the *Industrial Relations Act 1999*.

By the Commission,  
[L.S.] P. SCOTT-HOLLAND,  
Acting Industrial Registrar.

Operative Date: 29 May 2000  
New Award – Ground Staff etc  
Released: 16 May 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – application to amend

**State Training Council AND Queensland Master Builders Association  
Industrial Organisation of Employers and Others (No. B574 of 2000)**

**ORDER – APPRENTICES’ AND TRAINEES’ WAGES AND CONDITIONS  
(EXCLUDING CERTAIN QUEENSLAND GOVERNMENT ENTITIES)**

PRESIDENT HALL  
COMMISSIONERS FISHER AND BROWN

5 May 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 5 May 2000, this Commission doth Order that the said Order be amended as follows as from the fifth day of May, 2000:–

In Schedule 4 “Building and Construction and Civil Construction Industries”–

(a) by deleting clause 2.1.1 and inserting the following in lieu thereof:–

“2.1.1 *Training Packages*

- *Building and Construction Services Training Package; and*
- *Off Site Construction Training Package.*

The wage progression arrangements for apprenticeships based on qualifications contained in the above Training Packages are still to be determined by the parties.

- *General Construction Training Package.*

The wage progression arrangements for apprenticeships based on the following callings and qualifications contained in the General Construction training package shall be as provided in clause 2 of Schedule 1 of this Order.

<i>Apprenticeship Calling</i>	<b>Qualification/Certificate of Completion Title</b>
Tiling (Wall and Floor)	Certificate III in General Construction (Wall and Floor Tiling)
Plastering (Fibrous)	Certificate III in General Construction (Wall and Ceiling Lining)
Plastering (Solid)	Certificate III in General Construction (Solid Plastering)
Painting and Decorating	Certificate III in General Construction (Painting and Decorating)
Bricklaying	Certificate III in General Construction (Bricklaying/Blocklaying)
Carpentry	Certificate III in General Construction (Carpentry – Framework/Formwork/Finishing)”.

(b) by inserting a new clause 2.3 as follows:–

“2.3 *Specific Conditions – General Construction Training Package*

In addition to the provisions prescribed by this Order the following specific conditions shall apply to apprentices undertaking a qualification from the General Construction Training Package. Where the specific conditions are inconsistent with conditions prescribed elsewhere in this Order, the specific conditions shall prevail.

2.3.1 *New Adult Apprentices*

- (a) Where an adult person enters into a Training Agreement, such person shall receive no less than an amount equivalent to the *Queensland Minimum Wage* as varied from time to time:

Provided that part-time adult apprentices shall not be paid less than the *pro rata* of an amount equivalent to the *Queensland Minimum Wage*.

(b) Provided further these provisions shall not apply to apprentices who become an adult during the term of the apprenticeship.

2.3.2 Provision of the Tools of Trade – General Construction Training Package

The provision of tools of trade for eligible apprentices will be subject to the Order of 19 June 1998 ‘Supply of Tools to Apprentices’, (159 QGIG 60).

Supply of tools under this provision shall in all other respects be consistent with previous Orders and Decisions of the Queensland Industrial Relations Commission and where stages nominated in these Orders and Decisions are to be equated to the levels nominated in these Orders and Decisions.

This will not prevent an employer supplying a part-time and/or school-based apprentice with a ‘starter kit’ containing basic tools which will allow the apprentice to carry out elementary tasks as required.

The ‘starters kit’ will remain the property of the employer but may be used to supplement the yearly supply of tools available to the apprentice when they become due.”.

Dated this fifth day of May, 2000.

By the Commission,  
[L.S.] P. SCOTT-HOLLAND,  
Acting Industrial Registrar.

Operative Date: 5 May 2000  
Amendment – Apprentices’ and Trainees’ Wages’ and Conditions’ (Excluding Certain  
Queensland Government Entities)  
Released: 16 May 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend

**The Australian Workers’ Union of Employees, Queensland AND  
Brisbane City Council (No. B342 of 2000)**

**BRISBANE CITY COUNCIL – CONSTRUCTION, MAINTENANCE AND GENERAL AWARD**

COMMISSIONER FISHER

4 May 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 4 May 2000, this Commission doth order that the said Award be amended as follows as from the fourth day of May, 2000:–

- 1. By deleting Grades 4, 5, 6 and 7 from clause 3.3 (Classification Standards) and inserting the following in lieu thereof:–

**“OPERATIONAL SERVICES EMPLOYEE – GRADE FOUR – Relativity to Grade Five – 97.5%**

General Features of the Role

An employee appointed to this grade is expected to undertake a range of activities and commensurate responsibilities, within a team environment, that requires skills that build on the competencies developed in Grade Three.

An employee at this grade may be required to provide limited supervision, to drive and operate specific vehicles or plant, if required by the business needs as reflected in the Workplace Statement.

Examples of typical vehicles associated with roles at this grade are as follows:–

- 2 axle rigid vehicle or any other rigid vehicle exceeding 4.5 tonne G.V.M. and up to 13.9 tonne G.V.M., inclusive (unless by special permit or registration such vehicle may be up to 15 tonne G.V.M.).

**OPERATIONAL SERVICES EMPLOYEE – GRADE FIVE – Relativity – 100%**

General features of the Role

An employee appointed to this grade is expected to undertake a range of activities and commensurate responsibilities, within a team environment, that requires skills that build on the competencies developed in the Grade Four.

An employee at this grade may be required to provide supervision to a work team, to drive and operates specific vehicles or plant, if required by the business needs as reflected in the Workplace Statement.

Examples of typical vehicles associated with roles at this grade are as follows:–

- (i) Rigid vehicles with up to 4 or more axles and a G.V.M. greater than 13.9 tonne G.V.M., and up to 22.4 tonne G.V.M. inclusive;
- (ii) Articulated vehicle with more than three axles, and a G.C.M. of 22.4 tonne or less;
- (iii) Euclid; and
- (iv) Rigid vehicle with trailer up to a G.C.M. of 22.4 tonne.

**OPERATIONAL SERVICES EMPLOYEE – GRADE SIX – Relativity to Grade Five – 105%**

## General Features of the Role

An employee appointed to this grade is expected to undertake a range of activities and commensurate responsibilities, within a team environment, that requires skills that build on the competencies developed in Grade Five.

An employee at this grade may be required to drive and operate specific vehicles or plant if required by the business needs, as reflected in the Workplace Statement.

Examples of typical vehicles associated with roles at this grade are as follows:–

- (i) Rigid/articulated vehicles with 3 axles or more with a G.V.M. greater than 22.4 tonne; and
- (ii) Rigid/articulated vehicles and heavy trailer combination with 3 or more axles and a G.C.M. up to 32 tonne.

**OPERATIONAL SERVICES EMPLOYEE – GRADE SEVEN – Relativity to Grade Five – 110%**

## General Features of the Role

An employee appointed to this grade is expected to undertake a range of activities and commensurate responsibilities, within a team environment, that requires skills that building on the competencies developed in Grade Six.

Examples of typical vehicles associated with roles at this grade are as follows:–

Articulated or rigid vehicles with a G.C.M. greater than 32 tonne including dual rear axle vehicles towing the following:–

- (i) Tag Trailers;
- (ii) Dog Trailers;
- (iii) Pig Trailers; and
- (iv) Semi Trailers.”.

2. By deleting subclauses (3) and (4) of clause 3.9 (Excess Travelling Time and Fares Etc – Allowances) and inserting the following in lieu thereof:–

“(3) In any case where an employee is directed by the employer to use their own vehicle to travel to or from a worksite to commence duty, the employee shall be paid 65 cents per kilometre for the actual distance to the worksite measured from the General Post Office, Brisbane.

In any case where an employee is directed by the employer to use their own vehicle to travel during ordinary working hours from worksite to worksite, they shall be paid 65 cents per kilometre for the actual distance necessarily travelled.

‘Worksite’ – For the purpose of this clause shall mean any worksite of a temporary nature that does not afford the usual accepted standards of permanent facilities and amenities.”.

3. By inserting a new subclause (14) to clause 4.2 (Overtime) as follows:

“(14) Rest Period after Performing Overtime Duty – Employees who work so much overtime:–

- (i) Between the termination of their ordinary work on one day or shift, and the commencement of their ordinary work on the next day or shift that they have not at least ten consecutive hours off duty between these times;
- (ii) Sundays and public holidays, not being ordinary working days without having had ten consecutive hours off duty in the fifteen hours preceding their ordinary commencing time on their next ordinary day or shift;

Provided further that this provision shall not apply to an employee required to work overtime which commences within the period of ten hours immediately preceding the ordinary commencing time on Monday or next ordinary working day after a public holiday and where the period of overtime worked is less than five hours.

Shall subject to this subclause, be released after completion of such overtime until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during absence. If on the instructions of the employer such an employee resumes or continues work without having had such ten (10) consecutive hours off duty, they shall be paid double rates until they are released from such duty for such period and they shall then be entitled to be absent until they have had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of this subclause shall apply in the case of shift workers who rotate from one shift to another as if eight (8) hours were substituted for ten (10) hours when overtime is worked:–

- (i) For the purpose of changing shift rosters;
- (ii) Where a shift workers does not report for duty; and
- (iii) Where a shift is worked by arrangement between the employees themselves.”.

Dated this fourth day of May, 2000.

By the Commission,  
[L.S.] P. SCOTT-HOLLAND,  
Acting Industrial Registrar.

Operative Date: 4 May 2000  
Amendment – Classification Structure; Allowances; Rest Periods  
Released: 16 May 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 473.  
Industrial Organisations Regulation 1997 – s. 16*

*(No. U9 of 2000)*

**NOTICE OF APPLICATION FOR CHANGE OF NAME  
OF AN INDUSTRIAL ORGANISATION**

NOTICE is hereby given that application has been made to change the name of Electrical Contractors' Association of Queensland, Union of Employers to read National Electrical and Communications Association Queensland, Industrial Organisation of Employers.

Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such change in name must be lodged with me within thirty-five days from the date of publication of this Notice.

Dated this eleventh day of May, 2000.

P Scott-Holland  
Acting Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – section 474  
Industrial Organisations Regulation 1997 – section 16*

*(No. U8 of 2000)*

**NOTICE OF APPLICATION FOR ALTERATION OF ELIGIBILITY  
RULE OF AN INDUSTRIAL ORGANISATION**

NOTICE is hereby given that an application has been made to register an alteration to the Eligibility Rules of **Electrical Contractors' Association of Queensland, Union of Employers**. Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such registration must be lodged with me within thirty-five days from the date of publication of this Notice.

Dated this eleventh day of May 2000.

P Scott-Holland  
Acting Industrial Registrar.