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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
CA588/00	Project Installations Pty Ltd - Certified Agreement	31/10/00	CA450/96
CA589/00	Coastal Interior Linings (Aust) Pty Ltd - Certified Agreement	31/10/00	
CA590/00	Bennson Construction Pty Ltd - Certified Agreement	31/10/00	
CA592/00	All Site Concrete Cutting Pty Ltd - Certified Agreement	31/10/00	

E. EWALD
Industrial Registrar

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – repeal and new award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND the Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B821 of 2000)**

SECURITY INDUSTRY (CONTRACTORS) AWARD – STATE

COMMISSIONER FISHER

26 October 2000

REPEAL AND NEW AWARD

THIS matter coming on for hearing before the Commission at Brisbane on 28 August 2000, this Commission doth order that the said Award be repealed and doth award as follows as from the first day of November, 2000:—

SECURITY INDUSTRY (CONTRACTORS) AWARD – STATE

PART 1 – APPLICATION AND OPERATION**1.1 Title**

This Award shall be known as the Security Industry (Contractors) Award – State.

1.2 Arrangement

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Subject Matter

Clause No.

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1.3 Definitions

- 1.3.1 “Security Services” means the industries and/or industrial pursuits of gatekeeping, securing or watching, including the securing, watching, guarding and/or protecting of persons, premises and/or property, servicing (excluding technicians) and/or responding to alarms and providing escort services, and without limiting the generality of the foregoing, the recording and/or control of the entry and/or exit of persons, vehicles, and/or goods of any description, and the operation and/or monitoring of alarms and/or alarm control systems.
- 1.3.2 “Employer” means an employer providing, under fee or contract, any security services.
- 1.3.3 “Union” means Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.
- 1.3.4 “Casual Employee” means an employee who is engaged as such in accordance with clause 4.5.
- 1.3.5 “Probationary Employee” will mean an employee in the first three months of employment. For the purposes of this subclause, full-time, part-time or casual employment will count as service on the basis of three calendar months from the first engagement or the first day upon which the employee is engaged.
- 1.3.6 For the purpose of defining shifts the following shall have application:
- (a) “Day” means a period from midnight to midnight.
- (b) “Day Shift” (day work) means a shift of work performed between the hours of 5.30 a.m. and 6.30 p.m.
- (c) “Afternoon shift” means any shift finishing after 6.30 p.m. and at or before midnight.
- (d) “Night shift” means any shift finishing after midnight and at or before 8.00 a.m. or any shift commencing at or after midnight and before 5.30 a.m.
- (e) “Night shift (non-rotating)” means night work in which night shifts are worked which do not rotate or alternate with another shift so as to give employees at least one-third of their working time off night shift, in each roster cycle.
- 1.3.7 “Premises” means all classes of buildings, and their environs whether enclosed or not enclosed, or a designated area and, without restricting the generality of the foregoing, shall include buildings in the course of construction or demolition, construction works, showgrounds, sportsgrounds, racecourses, mines, tramways, railways and any other place where the service of employees covered by this Award may be provided.

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 November, 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 apply throughout the State of Queensland to all categories of employees and to their employers providing security services under fee or contract.

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 Benefits Not To Be Withdrawn

Nothing in this Award shall in itself be deemed or construed to reduce the wages of any employee employed at the date hereof or to withdraw benefits, concessions or privileges being received by such employee at such a date.

PART 2 – FLEXIBILITY**2.1 Incidental and Peripheral Tasks**

- 2.1.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee’s skills, competence and training.
- 2.1.2 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).
- 2.1.3 Any direction issued by an employer pursuant to subclauses 2.1.1 and 2.1.2 shall be consistent with the employer’s responsibilities to provide a safe and healthy working environment.

PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**3.1 Grievance Procedure**

In the event of any dispute arising between an employer and its employees in relation to this Award or as to the performance of any work for which rates of wages are prescribed in this Award, the work shall nevertheless be continued, and, if the matter in dispute cannot be settled by conference, it shall be referred to an Industrial Magistrate or to the Commission for the purpose of settling such dispute. The Commissioner or Industrial Magistrate may convene a conference of the representatives of the parties to the dispute and shall make all such suggestions as appear to be right and proper for bringing about the settlement of the dispute.

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 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.

4.2.3 Employees owe a duty of care to the employer for all uniforms, protective clothing and equipment supplied to the employee during the course of duty.

4.2.4 Where an employee is absent from work for a period of three working days without notification to the employer of illness or other reasonable excuse, such employee shall be considered to have terminated their employment without notice from the time such employee was absent from work.

4.2.5 At point of engagement an employee shall be notified in writing whether the employment is full-time, part-time or casual.

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:

Provided that the provisions of the aforementioned policy will not apply in circumstances where:–

- (a) A contract changes hands between contractors, to employees at a particular site who are engaged by the successful contractor; or

- (b) Alternative employment is found by the former contractor for employees not engaged by the successful contractor, either:-
- (i) with another employer (where the alternative employment is acceptable to the employee), or;
 - (ii) within the former contractors business,
- (c) Where subclause (b) (ii) hereof applies, employees:-
- (i) if re-deployment at their current level is unavailable, will accept reasonable internal re-deployment at any level, or;
 - (ii) proceed on untaken annual leave or long service leave while suitable alternative employment is being sought, or;
 - (iii) perform part-time duties up to 38 ordinary hours per week, or equivalent hours relevant to the employment status prior to the loss of the contract, and receive preferential treatment when full-time posts become available.

4.4 Part-time Employment

- 4.4.1 Rates of Pay – Part-time employees shall be paid at the rate of one-thirty-eighth of the weekly rate of wages prescribed by the appropriate classification per hour, with a minimum payment as for four hours on any day when work is performed and a minimum of sixteen hours per week. Such employees shall be further entitled to the weekly allowances applicable under clause 5.3 in their entirety and shall also be entitled to the uniform provisions provided for in clause 9.2.
- 4.4.2 Overtime – Part-time employees shall be entitled to overtime if they work in excess of eight hours in any one day or thirty-eight hours in any one week:
- Provided that where agreement is reached pursuant to clause 6.1 (Hours of Work), part-time employees shall be entitled to overtime if they work in excess of the ordinary hours prescribed in rosters which have been agreed pursuant to that clause.
- 4.4.3 Hours of Duty – The hours of duty of part-time employees shall be worked in accordance with a roster under the provisions of clause 6.2 (Rosters) of this Award.
- 4.4.4 Statutory Holidays –
- (a) Part-time employees shall be entitled to the holiday provisions of clause 7.1 of this Award.
 - (b) A part-time employee who is rostered to work on a day of the week on which a statutory holiday falls and who is not required to work on that day shall be paid for the hours which would otherwise have been worked on that day.
 - (c) Should a part-time employee be rostered regularly to work on the day on which Labour Day, Show Day and Easter Saturday fall and such statutory holidays occur during a period of the employee's annual leave, there shall be added to the employee's annual leave an extra day for each such day so occurring.
- 4.4.5 Annual Leave – Part-time employees shall be entitled to annual leave in accordance with clause 7.1 (Annual Leave) of this Award:
- Provided that "full pay" shall be calculated in the same proportion as the average number of hours worked per week during the employees year of employment bears to 38 hours per week.
- 4.4.6 Sick Leave – Where a part-time employee has accumulated an entitlement to sick leave in accordance with clause 7.2 (Sick Leave) of this Award, payment for sick leave shall be based upon the number of hours that the employee would otherwise have worked on the day or days when such leave is taken:
- Provided that no such employee shall be entitled to sick leave within each year of employment exceeding the proportion of 60.8 hours sick pay that the employee's average weekly working hours bears to 38 hours per week.
- 4.4.7 Bereavement Leave – In the case of a part-time employee entitled to Bereavement Leave as per clause 7.3 of the Award, payment for such shall be based upon the number of hours that the employee would otherwise have worked on the day or days when such leave is taken.
- 4.4.8 Termination - Termination of Service of a part-time employee shall be in accordance with clause 4.2:
- Provided that a "week's wage" shall be an amount equivalent to the proportion that the employee's average weekly working hours bears to 38 hours per week.
- 4.4.9 Engagement – Casuals currently on the books of each company shall be offered part-time employment in the first instance. New employees, that is employees not currently on the books as casuals, shall be employed as either full-time, part-time or casual employees at point of engagement.

4.5 Casual Employment

- 4.5.1 Casual employees shall not be employed for more than 32 ordinary hours in one week:
- 4.5.2 During the first week of employment, a casual may be given one briefing shift at the appropriate Award rate which shall not count towards the maximum ordinary hours. Such casual may work one briefing shift of eight hours and a further four consecutive eight hour shifts in the first week of employment and shall not be deemed to be a permanent employee:
- 4.5.3 For the purposes of relieving other employees on annual leave, a casual may work the ordinary rostered hours of the employee on annual leave.
- 4.5.4 Casual employees shall be engaged for a specific number of hours being not less than four hours for each engagement. The employer shall keep a record of all casual engagements and make it available for inspection to an Officer of the Union.

- 4.5.5 A casual employee shall be paid per hour of engagement, at the rate of one thirty-eighth of the weekly rate, prescribed for the appropriate classification plus 19% to be calculated to the next highest cent wherever a fraction of a cent results:
- 4.5.6 A casual employee shall be paid for each engagement, as for a minimum of four hours work - where the period of engagement does not exceed four hours.
- 4.5.7 Where the period of engagement exceeds four hours, but is less than eight hours, the specified hours of work shall be paid at ordinary rates. Any additional hours worked to that specified, shall be paid for at overtime rates.

4.6 Probationary Period

- 4.6.1 Probationary periods will not apply in respect of casual employees.
- 4.6.2 An employee may be engaged on probation for a period of up to three months duration. The probationary period will be specified in the contract of employment.
- 4.6.3 The employee will complete a first probationary review no later than mid-way through the defined probationary period. Following the conclusion of the first probationary review, the employer will provide the employee with feedback on their performance.
- 4.6.4 Where areas of unsatisfactory performance are identified, the employee will be made aware of these, the standards of satisfactory performance required and the dates by which they are required to be achieved.
- 4.6.5 The employer will complete a final probationary review by no later than two weeks before the end of the probationary period specified in the contract of employment and immediately inform the employee of the outcome of this review in the following terms –
- (a) where the employer has determined that the employee has satisfactorily completed their probation, their employment will continue and the employee will be given confirmation in writing; or
 - (b) where the employer, as a consequence of the probationary reviews, has determined that the employee has not satisfactorily met the employer's work performance requirements, the employee will be informed of the outcome of the final review and will be given one weeks' notice of termination of employment or payment in lieu of such notice.
- 4.6.6 Should either party find the probationary period is not progressing satisfactorily, the employment may be terminated with a weeks' notice or pay in lieu thereof by either party.

4.7 Mixed Functions

Where any person on any one day performs two or more classes of work for 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, the employee shall be paid at such highest rate for four hours.

PART 5 – WAGES AND WAGE RELATED MATTERS

5.1 Classifications and Wage Rates

5.1.1 Security Officer Level 1

A Security Officer Level 1 is an employee who performs work to the level of such employee's training.

Indicative of the tasks an employee may be required to perform at this level include –

- (a) Watch, guard or protect persons and/or premises and/or property.
- (b) Be stationed at an entrance and/or exit where principal duties will include –
 - (i) the control of movement of persons, vehicles, goods and/or property coming out of or going into premises or property (including vehicles carrying goods of any description) to ensure that the quantity and description of such goods is in accordance with the requirements of the relevant document; and
 - (ii) will include an area or door attendant or commissionaire in a commercial building.
- (c) Respond to basic fire/security alarms at the designated post which may include use of keypads or basic keyboard skills to acknowledge an alarm activation and the recording of inward and outward goods etc.
- (d) Use of electronic equipment such as handheld scanners, walk through metal detectors and simple Closed Circuit Television systems (CCTV) utilising basic keyboard skills.
- (e) Let in or let out security dogs from kennels housed within a secure compound.
- (f) Undertake crowd control duties at premises such as shopping centres, trade displays, sporting events, and other special events, etc.
- (g) Perform duties associated with a Level 2 position whilst being trained for promotion to that level.
- (h) Undertake traffic control duties.

5.1.2 Security Officer Level 2

A Security Officer Level 2 is an employee who performs work above and beyond the skills of an employee at Level 1, to the level of such employee's training.

Indicative of the tasks an employee may be required to perform at this level include –

- (a) Undertake securing, watching, guarding and/or protecting duties as directed including –
 - (i) responding to alarm signals;
 - (ii) attending and performing minor non technical servicing of Automatic Teller Machines; and
 - (iii) patrolling in a vehicle two or more separate client establishments or sites.
- (b) Monitor and respond to electronic intrusion, detection or access control equipment and lock and unlock entries and exits terminating at a visual display unit and/or computerised printout which may require use of keypads or basic keyboard skills.
- (c) Operate public weighbridges where appropriately licensed to do so.
- (d) Use of handheld scanners, walk through metal detectors and simple Closed Circuit Television systems (CCTV) utilising basic keyboard skills in connection with an airport.
- (e) Use and interpret screen images on baggage and x-ray equipment.
- (f) Southbank Officer (other than for special events) where employees are required to rotate through the control room.
- (g) Handle trained security dogs for the purpose of performing duties and possess documentary evidence of satisfactorily completing a recognised Dog Handlers Course.
- (h) An employee to be engaged and nominated in writing by the employer primarily for the purpose of relieving Level 1 positions at short notice and for whom a display roster is not required, and where less than 24 hours notice of shift changes may be given.
- (i) Perform duties associated with a Level 3 position whilst being trained for promotion to that level.
- (j) Perform the duties of a Security Officer Level 1.
- (k) Leave reserved – Understand and enforce Liquor Act Legislation and/or by-laws to undertake crowd control duties at licensed premises.

5.1.3 Security Officer Level 3

A Security Officer Level 3 is an employee who performs work above and beyond the skills of an employee at Level 2, to the level of such employee's training.

Indicative of the tasks an employee may be required to perform at this level include –

- (a) Monitor and operate integrated intelligent building management and security systems terminating at a visual display unit or computerised printout which requires data input from the Security Officer.
- (b) A Security Officer who, in the opinion of the employer has no previous relevant experience at this level and is undertaking the tasks of a Security Officer Level 4 whilst undergoing training and gaining experience during the first six months of employment as such.
- (c) A Southbank Officer who is authorised to act on by-laws.
- (d) Perform the duties of a Security Officer Level 1 and Security Officer Level 2.
- (e) An employee to be engaged and nominated in writing by the employer, primarily for the purpose of relieving Level 2 positions at short notice and for whom a display roster is not required, and where less than 24 hours notice of shift changes may be given.

5.1.4 Security Officer Level 4

A Security Officer Level 4 is an employee who performs work above and beyond the skills of an employee at Level 3, to the level of such employee's training.

Indicative of the tasks an employee may be required to perform at this level include –

- (a) Monitor, record, input information or react to signals and instruments related to electronic surveillance of any kind within a central station.
- (b) Operate a keyboard to alter the parameters within an integrated intelligent building management and/or security system.
- (c) Co-ordinate, monitor or record the activities of Security Officers utilising a verbal and/or computer based data communication system within a central station.
- (d) Perform the duties of Security Officers at Levels 1, 2 and 3.

5.1.5 Security Officer Level 5

A Security Officer Level 5 is an employee who performs work above and beyond the skills of an employee at Level 4, to the level of such employee's training and co-ordinates the work of Security Officers working in a team environment within a central station.

A person in receipt of the rate applying to this classification will not be entitled to a Leading Hand allowance as provided in this Award.

- 5.1.6 All employees – The minimum weekly wage payable to employees in the Southern Division (Eastern District) shall be as follows:–

<u>Classification Level</u>	<u>Wages Per Week From 20/3/2000</u>
	\$
Security Officer Level 1	439.20
Security Officer Level 2	456.30
Security Officer Level 3	468.00
Security Officer Level 4	479.80
Security Officer Level 5	502.90

<u>Classification Level</u>	<u>Wages Per Week From 20/3/2001</u>
	\$
Security Officer Level 1	452.70
Security Officer Level 2	470.00
Security Officer Level 3	482.10
Security Officer Level 4	494.20
Security Officer Level 5	518.00

Note: The above rates include safety net adjustments of \$8.00 per week and \$10.00 per week. They also include increases of 5% (effective 19 January, 1998), 4.5% (effective 19 January, 1999), 3% (effective 20 March, 2000) and 3% (effective 20 March, 2001).

The percentage based increases were as a result of special cases B1521 of 1994 and B1658 of 1999. The above rates are not to be adjusted for a period of two years as a result of safety net increases determined by the Queensland Industrial Relations Commission.

5.2 Payment of Wages

- 5.2.1 All monies owing to an employee shall be paid on the same day every week or every fortnight at the determination of the employer but shall not be paid on Saturdays, Sundays, or public holidays. Payment may, at the option of the employer, be paid in cash, cheque or by electronic funds transfer into a bank, building society or other financial institution nominated by the employee.
- 5.2.2 Except where otherwise agreed between the employer and the employees, wages paid in cash shall be paid in the employer's time and any employee who has not been paid shall be deemed to have been working until payment has been made.

5.3 Allowances

- 5.3.1 Where an employee is licensed, and required by the employer to carry a gun, licence fee, paid by the employee, shall be reimbursed by the employer upon production of a receipt, or alternatively paid an allowance of 90c per week.
- 5.3.2 Supply of Torches and Batteries – The employer shall either provide suitable torches and batteries as required (such items to remain the property of the employer) or alternatively, shall pay to the employee an allowance of \$5.62 per week to provide this equipment.
- 5.3.3 Leading Hand Allowance – An employee other than Security Guard (Control Room Operator) who is appointed as Leading Hand, or required to perform the duties of a Leading Hand, shall be paid the following allowance:

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

This allowance shall be deemed to be part of the weekly rate of wages for all purposes of the Award.

- 5.3.4 Shift Leader – A Security Guard (Control Room Operator) who is appointed as a Shift Leader or required to perform the duties of a Shift Leader and is required to direct other employees on that shift, shall be paid an allowance of \$18.33 per week. This allowance shall be deemed to be part of the weekly rate of wages for all purposes of the Award.
- 5.3.5 Broken Shift – Employees working a broken shift will, in addition to all other entitlements, be paid an allowance of \$8.49 per week for each such shift worked. A casual employee will be paid this allowance where such casual employee has two engagements on any one day.

For the purpose of this subclause, a "broken shift" is defined as a shift where the second period of duty commences between one and three hours after the actual finishing time of the first period of duty.

- 5.3.6 Operator/Searcher – An Operator/Searcher at an airport who is directed by the employer to work at a terminal other than the terminal to which such employee is rostered, will be paid an allowance equivalent to 25% of the ordinary hourly rate of pay.
- 5.3.7 First Aid Allowance – Where an employee is required to possess and utilise the following qualifications, such employee shall receive the following allowance:

Senior First Aid	\$7.00 per week
Senior First Aid & Defibrillation Certificate	\$10.00 per week

- 5.3.8 Dog Handling – An employee required to own, maintain and use a dog in the course of their duties shall be fully reimbursed by the employer for all expenses or paid an allowance of \$50.00 per week in lieu thereof.
- 5.3.9 Mobile Phone Allowance – Where an employee is required to possess a mobile phone by their employer, the employer shall reimburse such employee access fee and work related calls or pay to the employee an allowance of \$30.00 per week in lieu thereof.

5.3.10 Civil Construction Disability Allowance – Employees engaged as traffic controllers in, or in connection with, civil construction sites shall be paid an allowance of \$17.30 per week which shall be treated as part of the ordinary weekly wage for the purposes of this Award.

5.4 Occupational Superannuation

5.4.1 The superannuation provisions for all eligible 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) Australian Retirement Fund; or
- (b) Sunsuper; or
- (c) In relation to any particular employer, any other Scheme or Fund to which that employer was already making Superannuation contributions on behalf of that employers employees covered by this Award as at 1st July, 1989, and which is approved under the *Occupational Superannuation Standards Act 1987*:

Provided that only those Established Schemes or Funds to which an employer party to this Award was already actually physically making genuine contributions on behalf of the employees covered by this Award as at 1st July, 1989, shall be recognised under this subclause. The making of contributions subsequent to 1st July, 1989, but on a retrospective basis, in respect of any period up to and including 1st July, 1989, shall not under any circumstances, bring a Scheme or Fund within the meaning of this subclause:

Provided that in the event of any dispute over whether any Scheme or Fund complies with the requirements of this subclause, the onus of proof shall be with the employer.

5.4.4 “Eligible employee” means a full-time, part-time or casual employee who has completed one calendar month’s service with an employer. On completion of the above qualifying period, Superannuation contributions shall be made in accordance with this clause retrospective to the commencement of that period

5.5 Divisions and Districts

In addition to the rates of wages set out in this Award for the Southern Division, Eastern District the following amounts shall be paid to employees to whom this Award applies employed in the Divisions and Districts referred to hereunder:–

	<u>Per Week</u>
	\$
Northern Division, Eastern District.....	1.05
Northern Division, Western District	3.25
Mackay Division.....	0.90
Southern Division, Western District	1.05

The Divisions and Districts shall be those as defined by the Queensland Industrial Relations Commission from time to time.

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

6.1 Hours of Work

6.1.1 The ordinary hours of work of employees shall not exceed 38 hours per week or:–

- (a) 76 hours in any period of two weeks; or
- (b) 114 hours in any period of three weeks; or
- (c) 152 hours in any period of four weeks.

6.1.2 The ordinary hours shall be worked on not more than five days per week Monday to Sunday, with two consecutive days off per week, with a maximum of 8 hours per day.

6.1.3 Employees may by agreement with the employer and with the agreement of the Industrial Organisation, work rosters which prescribe more than 8 ordinary hours per day and averaged numbers of days off.

6.1.4 The ordinary hours of work for shift workers other than employees engaged solely on day shift, shall be worked continuously in accordance with a roster determined by mutual agreement between the employer and the employees involved, and with the agreement of the Union.

6.1.5 The ordinary working hours of employees on a day shift shall be worked continuously between the hours of 5.30 a.m. and 6.30 p.m.

6.1.6 Operator/Searchers may work a broken shift at airport terminals with not more than one break:

Provided that the second period of duty shall commence not less than three hours after the actual finishing time of the first period of duty.

6.1.7 Notwithstanding any other provisions of this Award, employees may be paid at ordinary rates of pay whilst being trained, provided that such training as conducted whilst the employee is not performing duties at their normal workplace.

6.2 Rosters

- 6.2.1 A roster showing ordinary weekly hours to be worked by an employee shall be exhibited in a conspicuous place, easily accessible to all employees.
- 6.2.2 Where an employee is not required to report on commencement or completion of duty at the usual place of business of the employer, a copy of the roster shall be made available to that employee.
- 6.2.3 Unless the applicable roster is changed by mutual agreement with the employee or employees concerned, or in emergent circumstances, one week's notice of a proposed change of rostered hours shall be given to the employee concerned, in writing, where possible.
- 6.2.4 Employees may swap rostered shifts by agreement with no penalty to the employer, subject to the approval of the employer.

6.3 Overtime

- 6.3.1 Except as hereinafter provided, all time worked in excess of the ordinary daily hours of work prescribed by this Award, or outside of an employee's usual commencing and ceasing times, shall be deemed to be overtime and shall be paid at the rate of time and a-half for the first three hours and double time thereafter.
- 6.3.2 Where more than one shift per day is worked, overtime shall be paid for at the rate of not less than double time.
- 6.3.3 Overtime shall be paid in blocks of fifteen minutes.
- 6.3.4 Where there is a requirement that a Security Officer coming onto a shift at a post or station has to be briefed by an employee on the previous shift, such briefing will be carried out at no extra cost to the employer if the briefing time does not exceed 15 minutes. If the briefing time exceeds 15 minutes, overtime shall be paid.
- 6.3.5 Where overtime is worked before the commencement and after the completion of the ordinary hours of work, all overtime shall be added and, if in excess of three hours, shall be paid at the rate of double time.
- 6.3.6 All overtime worked by an employee on Sunday work on a rostered day off shall be paid for at the rate of double time with a minimum payment as for two hours work:

Provided this minimum shall not apply in respect to overtime worked at the conclusion of an ordinary shift, nor in respect of overtime which is continuous with overtime commenced on the previous day.

- 6.3.7 If, on instruction of the employer, an employee continues or resumes work without having had ten consecutive hours off duty, such employee shall be paid at the rate of double time until released from duty for such a period, and shall then be entitled to be absent until such employee has had eight consecutive hours off duty without loss of pay or ordinary working time occurring during such absence. Where an employee changes an ordinary shift according to an agreed roster, such employee shall have a minimum of eight consecutive hours off duty:

Provided that an eight hour break may be substituted for a ten hour break where the employee so agrees and the duration of the shifts being worked by the employee allow such a substitution, consistent with the employers obligation to provide a safe system of work.

6.4 Call Back

- 6.4.1 Any employee who, after leaving their place of employment (whether notified before or after leaving such place of employment) is required to attend the employer's premises for any reason other than carrying out rostered duties shall be paid a minimum of two hours pay at the appropriate overtime rate for each such attendance from home to home.
- 6.4.2 This clause shall not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

6.5 Meal Breaks

- 6.5.1 An employee shall be allowed a meal break of not more than one hour and not less than thirty minutes. Where a one hour meal break is allowed no deduction of pay shall be made for 30 minutes.
- 6.5.2 The meal break shall be allowed between three and one-half hours work and not later than six hours after commencing work.
- 6.5.3 Where the employer requires the employee to remain on the job during the meal break, the employee shall be paid for 30 minutes.
- 6.5.4 If such a meal period or any part thereof is worked, then unless a broken meal allowance of \$7.50 is paid, it shall be deemed to be overtime and shall be paid for at the rate of double time, and double time shall be paid for all ordinary time until the employee finishes work or is allowed a meal break of not less than thirty minutes for which no deduction of pay shall be made.
- 6.5.5 Shift workers shall be allowed a break of not less than thirty minutes for the purposes of a crib, such time to be counted as time worked. The crib time shall be commenced as near as practicable to the middle of the shift and, in any event, shall be commenced not earlier than three and a-half hours after the commencement of the shift and not later than five hours after such commencement. An employee shall not be required to work more than six hours without a break for crib.
- 6.5.6 (a) Where more than one hours overtime is worked, as hereinafter described, and the employee was not notified the day before, the employer shall supply the employee with an adequate meal or pay an amount of \$7.50 in lieu thereof.
- (b) Where essential overtime is worked on a daily basis such meal allowance shall not be payable during such daily rostered hours of work, but shall be payable upon the commencement of any additional overtime.
- (c) Where four or more overtime hours are worked, an employee shall be allowed a crib break of 30 minutes for the first four hours and a further 30 minutes for any further four hours or part thereof for which no deduction shall be made.

6.5.7 Where an employee had been given notice to work overtime and that employee has provided customary meals and the overtime is not required to be worked, the employee shall be paid an allowance of \$7.50 for each meal so provided.

6.5.8 Notwithstanding all the foregoing provisions of this clause, the Union may approve, in writing, of such other arrangements, in respect of meal breaks and crib times, as may be mutually agreed upon between the relevant parties.

6.6 Rest Pauses

6.6.1 A weekly employee shall be entitled to a rest pause of 10 minutes duration in the employer's time in the first and second half of such employee's daily work. No deduction of pay shall be made for each rest pause so taken.

6.6.2 A casual employee engaged for a period of not more than 4 hours shall be entitled to a rest pause of 10 minutes duration in the employer's time; a casual employee who is engaged for a period of more than 4 hours, but not exceeding 8 hours, shall be entitled to a rest pause of 10 minutes duration in the employer's time in the first and second half of their engagement.

6.6.3 Rest pauses shall be taken at such times as will not interfere with continuity of work where continuity is necessary.

6.7 Shift Work

6.7.1 An employee rostered to work on a shift shall be paid, in addition to the ordinary hourly rate of pay, the following shift allowance:

Day Shift.....	Nil
Afternoon shift.....	15%
Night Shift (Rotating with Day or Afternoon Shifts)	15%
Permanent Night Work (Non-Rotating Night Shifts)	20%

6.7.2 Shift allowances shall not apply to shift work performed on:-

- (a) week-ends where extra payment applies pursuant to clause 6.8 (Week-end Penalty Rates); or
- (b) statutory holidays where extra payment applies pursuant to clause 7.6 (Statutory Holidays).

6.8 Weekend Penalty Rates

All ordinary time worked by permanent employees, between midnight Friday and midnight Saturday, shall be paid for at the rate of time and a-half. All time worked between midnight Saturday and midnight Sunday shall be paid for at the rate of double time. Casuals working on weekends shall be paid at an hourly rate the same as a permanent employee of the same classification in the same location.

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 employment be entitled to annual holiday on full pay as follows:-

- (a) If employed throughout such year of employment on permanent night work (non-rotating) over a period of 7 days per week, or if employed on shift work where more than one shift per day is worked over a period of seven days, not less than five weeks;
- (b) If employed other than on work described above, not less than 4 weeks.

Such annual holiday shall be exclusive of any statutory holiday which may occur during the period of that annual holiday and shall be paid for by the employer in advance –

- (i) In the case of any and every employee in receipt immediately prior to that holiday of ordinary pay at a rate in excess of prescribed ordinary rate of wages, at that excess rate; and
- (ii) 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 such employee, that employee's pay, calculated in accordance with subclause 7.1.2, for the holiday period prescribed above and also the employee's ordinary pay for any statutory holiday occurring during such prescribed period.

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 to that employee, an amount equal to one ninth of such employee's pay for the period of employment if that employee is an employee to whom provision (a) above applies, and one-twelfth of that employee's pay for the period of employment if such employee is an employee to whom provision (b) above applies, calculated in accordance with subclause 7.1.2 hereof.

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 leave.

7.1.2 Calculation of Annual Holiday Pay – In respect to annual holiday entitlements to which this clause applies, annual holiday pay (including any proportionate payments) shall be calculated as follows:-

- (a) Shift Workers – Subject to provision (c) hereof, the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or holiday shifts.
- (b) Supervisory Employees – Subject to provision (c) hereof, supervisory allowances and other payments of a like nature, payable for ordinary time worked, shall be included in the wages to be paid to employees during annual leave.

- (c) All Employees – Subject to the provisions of provision (d) 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 this Award for the annual leave period (excluding shift premiums and weekend penalty rates);
 - (ii) Supervisory allowance or payments of a like nature;
 - (iii) In the case of shift workers, a further amount calculated at the rate of 17.5% of the amounts referred to in paragraphs (i) and (ii) of this provision;
 - (iv) In the case of all other employees, a further amount calculated at the rate of 17.5% of the amounts referred to in paragraphs (i) and (ii) of this provision.
- (d) The provisions of provision (c) hereof shall not apply to the following:–
- (i) Any period or periods of annual holidays exceeding:
 - (A) five weeks per annum in the case of employees employed on work where the provisions of paragraph (a) of subclause 7.1.1 hereof apply;
 - (B) four weeks per annum in any other case.
 - (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.

7.2 Sick Leave

- 7.2.1 Every employee, other than a casual employee, shall be entitled to not less than 60.8 hours sick leave for each completed year of employment with an employer.

As regards any period of employment of less than one year with an employer, an employee shall be entitled to 7.6 hours sick leave for each 6.5 week's of employment.

- 7.2.2 Subject to the provisions of subclauses 7.2.1 and 7.2.3, every employee, absent from work through illness, shall, 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, become entitled to payment in full for all time such employee is so absent from work:

Provided the employee shall inform the employer of such employee's inability to attend for duty prior to the commencement of the shift, and as far as possible, state the nature of the injury and the estimated duration of absence:

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

Notwithstanding any other provision of this clause, where an employee fails to notify the employer of their inability to attend for duty either at the commencement of the shift or 1/2 hour before the commencement of the shift, no payment shall be made to the employee unless the employee produces a medical certificate or other proof satisfactory to the employer.

NOTE: An employee's entitlement to sick leave in accordance with subclause 7.2.1 shall not be reduced as a consequence of the operation of this paragraph.

- 7.2.3 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.

- 7.2.4 (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 without pay granted by the employer;
- (ii) The employee having been dismissed or stood down by the employer, or the employee having terminated their employment with the employer for any period not exceeding three months:

Provided that the employee shall have been re-employed by the 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 in Australia of a wife, husband, father, mother, brother, sister, child or step-child, be entitled on notice of 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.

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 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 (other than casual 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 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 employee's ordinary starting and ceasing times for the day of the week on which such holiday falls shall be paid for at double the rate prescribed for such time when worked outside such ordinary starting and ceasing times on an ordinary working day.

Casual employees shall be paid when working on a statutory holiday at an hourly rate of two and one-half times the ordinary hourly rate applicable to a permanent employee of the same classification in the same location, with a minimum engagement of four hours.

7.6.2 Holidays on Rostered Days Off – Should any of the statutory holidays mentioned in subclause 7.6.1 fall on a day on which an employee is rostered off duty, such employee shall, in lieu of such holiday, be entitled to either the payment of an extra day's pay or an alternative day off or the addition of an extra day to the employee's annual leave entitlement.

7.6.3 Any and every employee who, having been dismissed or stood down by the employer during the month of December in any year, shall be re-employed by the employer at any time before the end of the month of January in the next succeeding year, shall, if that employee shall have been employed by that employer for a continuous period of two weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by the employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely, Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of dismissal or standing down to and including the date of re-employment as aforesaid.

7.6.4 Where an employee is rostered to work on any of the aforesaid holidays such employee may, by mutual agreement, elect to be paid at the rate of time and a-half for work performed on that holiday and have one extra day added to that employee's annual leave. Any employee who wishes to have this extra day added to annual leave shall advise the employer in writing not less than 21 days before the aforesaid holidays.

Any employee absent from work on unauthorised leave without pay before and after a public holiday shall not be entitled to be paid for such public holiday.

7.7 TUTA Leave

7.7.1 Upon written application by an employee, or the Union on behalf of the employee, to an employer and giving to the employer at least two (2) months notice, such employee shall be granted up to five (5) working days leave (non-cumulative) on ordinary pay, each calendar year, to attend courses and/or seminars conducted by the Australian Trade Union Training Authority (TUTA) or specific training courses conducted by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees, approved and accredited by TUTA.

For the purposes of this clause, ordinary pay shall mean at the ordinary weekly rate paid to the employee exclusive of any disability allowances and in the case of a casual employee, shall mean the ordinary hourly rate.

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

- (a) An employee must have at least twelve (12) months service with an employer prior to such leave being granted.
- (b) This clause shall not apply to an employer with less than five employees, including casuals, bound by this Award.
- (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:–

- Where the employer employs between 1 and 50 employees: 1
- Where the employer employs between 50 and 100 employees: 2
- Where the employer employs over 100 employees: 3

- (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 (2). This shall not prevent an employer from agreeing to release additional employees.
- (e) In any one calendar year –
- (i) the maximum number of employees of any one employer entitled to attend TUTA accredited courses shall be four (4); and
 - (ii) the maximum number of days for which an employer will be required to make payment to employees for TUTA Leave shall be ten (10).
- (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 Procedure 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, industrial 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 to attend TUTA courses will not incur additional payment if such course coincides with an employee's rostered day off.
- (j) 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 Commitment to Training and Careers

The parties commit themselves to continuing and upgrading the training provided to employees.

It is agreed that the parties will co-operate in ensuring that it be maintained and improved.

This training will form the basis of an enhanced career structure in the industry.

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

9.1 Locomotion

9.1.1 All means of locomotion requested by the employer shall be provided and maintained by the employer or, in the alternative, where the employee uses their own car on the employer's business, such employee shall be paid a minimum allowance at the rate prescribed hereunder:

- (a) For motor vehicles up to 1.5L – A standing Charge Allowance of \$125.39 per week plus a weekly amount calculated at the rate of 14.64 cents per kilometre for the actual distance travelled by the vehicle each week in connection with the employee's employment;
- (b) For motor vehicles over 1.5L and up to 2.5L – A standing Charge Allowance of \$135.28 per week plus a weekly amount calculated at the rate of 19.01c per kilometre for the actual distance travelled by the vehicle each week in connection with the employee's employment;
- (c) For motor vehicles over 2.5L – A standing charge Allowance of \$164.98 per week plus a weekly amount calculated at the rate of 25.68 cents per kilometre for the actual distance travelled by the vehicle each week in connection with the employee's employment;

Provided that when an employee is required to use their own car for part of a week only, such employee shall be paid on a mileage basis as follows:

	<u>Per Kilometre</u>
Vehicles up to 1.5L:	29.45c
Vehicles over 1.5L and up to 2.5L:	31.32c
Vehicles over 2.5L:	35.92c

In all instances, "actual kilometres travelled by the vehicle" in connection with the employee's employment shall mean to include that travelling to and from their place of residence for the purpose thereof.

- 9.1.2 No employee shall suffer a reduction in weekly car allowance which was paid to that employee prior to the advent of this clause.
- 9.1.3 The minimum weekly allowances prescribed by subclause 9.1.1 hereof shall be paid during statutory holidays, annual leave, sick leave, and long service leave, except where such leave is paid on termination.
- 9.1.4 Notwithstanding anything herein contained, the employer and employee may make any other arrangements as to car or car allowances not less favourable to the employee.
- 9.1.5 (a) An employee, apart from a Security Guard (Mobile) who, by agreement with the employer uses their own vehicle on the employer's business and is paid the minimum allowances at the rate prescribed by subclause 9.1.1 hereof, shall, in circumstances where the use of a company vehicle is not appropriate be given at least one days written notice to terminate such agreement, or shall be paid the appropriate standing charge allowance for a period of one day.

- (b) In all other circumstances, and in all circumstances of Security Guard (Mobile) at least four weeks written notice of the employer’s intention to terminate or alter such agreement shall be given or in lieu thereof the employee shall be paid the appropriate standing charge allowance for a period of four weeks.
- (c) Provided that this subclause shall not operate in the case of termination of employment.

9.2 Uniforms

9.2.1 Where employees are required by the employer to wear a uniform, a uniform issue consisting of two pairs of trousers, five shirts, a cap, and/or tie, shall be provided upon commencing employment:

Provided that after three months employment, replacement of such uniforms when necessary shall be the responsibility of the employer or an allowance of \$1.35 per week paid in lieu of such replacement.

9.2.2 Provided that new casuals who are employed subsequent to 2 August, 1989, shall be subject to a once only deduction of \$30.00 from their pay as a deposit on their uniforms. This deposit shall be fully refundable upon termination provided that all uniform items are returned in a reasonable condition having due regard to normal wear and tear.

9.3 Work in Rain

9.3.1 When an employee is required to work in the rain and by doing so gets their clothes wet, such employee shall be paid at the rate of double time for all work performed until the employee is able to change into dry clothing or finishes work:

9.3.2 This clause shall not apply where the employee has been supplied with adequate rain proof clothing or where the employee is paid an allowance of \$1.35 per week for permanent employees, or 67 cents per week for casuals, in lieu of such supply.

9.4 Attending Court

9.4.1 If an employee is required outside ordinary working hours to attend in connection with duties at a Court of Justice such employee shall be paid reasonable travelling time, fares and ordinary rate of wages for the time of Court attendance.

9.4.2 An employee required to attend Jury Service shall receive from the employer by way of recompense any loss in wages incurred by such employee during the period of Jury Service. Attending Court as a Juror shall be deemed to be continuous employment with the employer.

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 ready by the employees.

10.2 Time and Wages Records

The employer shall keep and have available a complete record of all 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 Union duly authorised under the *Industrial Relations Act 1999*.

Dated this sixth day of November, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 1 November 2000
Repeal and New Award – Security Industry (Contractors) Award – State
Released: 6 November 2000

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal against decision of industrial magistrate

Anthony John Hawkins AND Allan Adam Jones (No. C31 of 2000)

PRESIDENT HALL

8 November 2000

DECISION

The record which has been transmitted to the Court in this matter is less than satisfactory. In particular, the complaint is not on the record. However, it appears from the transcript and is common ground that Allan Adam Jones was charged with an offence under s. 482 of the *WorkCover Queensland Act 1996*. The offence was said to have been committed between 30 April and 5 July 1997. It further appears from the transcript that, after amendment, there was only one particular, ie. “that . . . the defendant engaged in a calling as a baker and general assistant to Julie Kennedy without advising WorkCover of his return to work.”. The Industrial Magistrate dismissed the complaint at the close of the complainant’s case. The complainant, a delegate of WorkCover Queensland, now appeals.

Some complaint is made that the Industrial Magistrate misapprehended the question that had to be decided where a “no case to answer” submission is made at the close of a complainant’s case. The correct test is, of course, set out in the joint judgment of the members of the High Court in *May v O’Sullivan* (1955) 92 CLR 654 at 658:–

“When, at the close of the case for the prosecution, a submission is made that there is ‘no case to answer’, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted but whether on the evidence as it stands he *could* lawfully be convicted.” [The emphasis is in the text]

There is nothing in the law of Queensland requiring a different approach in this State, see *Short v Davey, ex parte Short* [1980] QdR 412. Although the Industrial Magistrate cited neither authority, His Worship fully and accurately articulated the test. With respect to the appellant real difficulty on the appeal is not the test to be applied on a “no case to answer” submission nor whether His Worship erred in applying the correct test to the facts of the case. The difficulty is in determining the interpretation to be placed upon the sections creating the offence.

Before going to the language of the relevant provisions of the *WorkCover Queensland Act 1996*, it is useful to elaborate on the particulars by noting that at the close of the complainant’s case a reasonable person could have found that –

- (i) at the material time the defendant was in receipt of benefits under the *WorkCover Queensland Act 1996*;
- (ii) prior to receiving benefits under the *WorkCover Queensland Act 1996* the appellant had followed the trade of a baker;
- (iii) the offence, if any, took place at the Rock n Roll Bakery at 500 Logan Road, Greenslopes;
- (iv) at all material times the defendant’s *de facto* spouse Julie Kennedy was the Assistant Manager of the Rock n Roll Bakery;
- (v) all work performed by the defendant on the premises of the Rock n Roll Bakery was performed when Julie Kennedy was also on the premises.

The relevant provisions are to be found within Chapter 8 Part 2 of the *WorkCover Queensland Act 1996*. The heading to Part 2, which by s. 14(1) of the *Acts Interpretation Act 1954* is part of the Act, is “Fraud and False and Misleading Statements”. Section 402, headed “Offences Involving Fraud” (Once again the heading is part of the Act, s. 14(1) *Acts Interpretation Act 1954*) is in the following terms:–

“**482(1) [Obligation]** A person must not in any way defraud or attempt to defraud WorkCover or a self-insurer.

Maximum penalty – 400 penalty units or 18 months imprisonment.

482(2) [Recurrent conduct] If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.”.

Section 483 then treats as fraud that which has traditionally been treated as fraud *viz* the making of statements known to be false in a material way. Section 484, which is critical here, goes very much further. Section 484, provides:–

“**SECTION 484 PARTICULAR ACTS TAKEN TO BE FRAUD**

484(1) [Engagement in calling] This section applies if a person –

- (a) lodges an application for compensation; and
- (b) without reasonable excuse, engages in any calling without informing WorkCover or the self-insurer in the way stated under section 163²⁰⁹ of the person’s engagement in a calling.

209 Section 163 (Worker must notify return to work or engagement in a calling)

484(2) [Payment of compensation] If compensation is paid by WorkCover or the self-insurer under the application to the person or anyone else –

- (a) after the start of the engagement in the calling; and
- (b) before WorkCover or the self-insurer is informed in the way stated under section 163 of the engagement in the calling;

the person is taken to have defrauded WorkCover or the self-insurer of the payments under section 482.²¹⁰

210 Section 482 (Offences involving fraud)

484(3) [Attempt] If payments to which subsection (2) applies are not made, the person is taken to have attempted to defraud WorkCover or the self-insurer under section 482.”.

I reject the submission that by s. 484 it is an offence to resume work whilst in receipt of compensation payments under the Act. The essence of the offence is the failure to disclose. And one may understand why the failure to disclose has been made an offence. Knowledge that the recipient on benefits is performing work would understandably prompt WorkCover Queensland to reconsider whether the payment of benefits should be continued, reduced in quantum or brought to an end. The purpose of s. 484 is to require the recipient of benefits to disclose information about what the recipient is capable of doing from time to time in order that WorkCover Queensland may assess its continuing liability to him. The object of the provision is material to its construction.

The noun “calling” used at each of s. 484(1)(b) and (2)(b) is defined at Schedule 2 of the Act to mean “any activity ordinarily giving rise to the receipt of remuneration or reward including self-employment or the performance of an occupation, trade, profession, or carrying on of a business, whether or not the person performing the activity received remuneration.”.

Counsel for the defendant presses the argument that “self-employment or the performance of an occupation, trade, profession, or carrying on of a business” are, by that definition, included within the noun “activity” and are not included within the phrase “any activity ordinarily giving rise to the receipt of remuneration or reward”, i.e. that proof that a recipient of benefits is engaged in the performance of a trade is not proof that the recipient is engaged in a calling because the further question whether the performance of the trade would ordinarily give rise to the receipt of remuneration or reward remains to be answered. Given that all of the activities “included” i.e., self-employment, the performance of an occupation, trade or profession, and the carrying on of a business ordinarily give rise to the receipt of remuneration or reward and are, ordinarily, engaged in for that very reason, the submission is only intelligible if one assumes that a “gloss” is to be placed upon the noun “activity”. And so indeed it is. The submission, which seems to have been

adopted by the Industrial Magistrate, is that one is to look beyond that activity in the sense of the "actions and tasks involved" and to the context and circumstances within which that activity takes place.". Relevantly, His Worship observed:-

"Now, if the activity referred to in the definition of 'calling' meant the doing of acts or tasks associated with some aspects of carrying out a trade or occupation, then on the evidence here it probably would establish that Mr Jones has in some form acted as a baker.

But I do consider that that is the test which must be applied. The defendant for example could carry out that activity, that task of making, rolling and baking, whilst he was engaged in some home baking, making a batch of pies at home or something of that nature. He is clearly using the skills of a baker in doing that but, disregarding any other aspect of fraud under the Workers' Compensation legislation, he would not ordinarily be paid for it and he could not really be said to be engaged in a calling in that case.

So that it is not simply a question of looking at what acts or tasks were done associated with a particular trade or occupation.

When one looks at the definition of 'calling' in the whole context of that definition, it is and has regard to the other possibilities that are raised there - that is, the performance of an occupation, the performance of a trade, the performance of a profession, the carrying on of a business.

When the words 'an activity ordinarily giving rise to the receipt of remuneration or reward' are looked at in the same context as those phrases, it clearly refers to an activity which is not only the actions and tasks involved but the context and the circumstances within which that activity takes place.

In particular one would have to have regard to whether the actions were done whilst engaged in effect as an employee, albeit on a casual basis, or whether the defendant was simply a volunteer assisting in some way his *de facto*."

With respect to the Industrial Magistrate, I consider that approach gives insufficient weight to the purpose of s. 484.

It cannot be disputed that in characterising an activity one must look at the whole of the circumstances including the context in which the activity is engaged in. In my view s. 484 does not require a chef in receipt of workers' compensation benefits to inform WorkCover Queensland every time he cooks himself an evening meal. I should have thought that having regard to the purpose of the work, its duration and the location at which it occurred, a reasonable man would have characterised the activity as domestic rather than as performance of a trade or occupation, and would have concluded that it was an activity which does not ordinarily give rise to the receipt of remuneration or reward. On the other hand, if a person in receipt of workers' compensation benefits were to set about and complete the task of painting his house without informing WorkCover Queensland, I should have thought that there was a *prima facie* breach of s. 484. There is nothing in the definition of "calling" to require "activity" to be defined by reference to the person for whose benefit the activity is engaged in. In the same way, it is not a full and complete answer to a complaint that the defendant had engaged in a calling whilst in receipt of benefits without informing WorkCover Queensland, to note that he was rendering assistance to his *de facto* spouse. The circumstance that the defendant was rendering assistance to his *de facto* spouse is of course relevant. If the evidence were that the defendant had done no more than bring in a delivery of milk, hold a tray of cakes whilst his spouse was attending to an oven or wipe a bench to assist his spouse's early departure, one might properly dismiss the complaint. But the circumstance that work is by way of assistance to a spouse is not decisive.

It may be conceded, that the complainant's case was a weak one. The investigation had not been carried out by WorkCover Queensland. The defendant held an insurance policy securing his income. The relevant interview had been conducted by an investigator engaged by the insurer. The investigator had no concern with whether the defendant had breached the *WorkCover Queensland Act 1996* or was entitled to benefits under that Act. His concern was with whether the defendant was entitled to claim under the insurance policy. Yet it was the record of that interview upon which the complainant was required to rely. The relevant passage was as follows:-

"I admit that information I provided in my previous statement made earlier this day may be considered misleading. I did in fact attend the Rock and Roll Bakery 500 Logan Road Greenslopes as a baker and general assistant to my de facto Julie Kennedy. I commenced initially helping out there in May 1997 helping do the pastry in-between my medical appointments. Since October 1997 my hours at the bakery increased to a level that I usually work Monday, Wednesday, Thursday and Friday commencing between 10am and 11.30am and finish working usually depending on the day between 6pm and 8pm. Julie and I work the pastry until enough is done for the morning shift."

It must be acknowledged that the passage is not a verbatim account of that which the defendant said. It is the insurer's agent's summary of that which the defendant said. However, the defendant was given the opportunity to read the passage after it had been reduced to writing. The defendant then signed the passage. A reasonable person could draw the inference that the defendant had adopted the language. A reasonable person could also construe the passage as to an admission that the defendant had filled in his time between medical appointments by attending at the bakery to assist his wife by performing the trade of a baker and the occupation of a general assistant in a bakery. Innocent interpretations of the passage are also plainly open. That does not make the complainant's case so equivocal that the complaint should be dismissed at the close of the complainant's evidence, compare *Attorney-General's reference (No. 1 of 1983)* [1983] 2 BR 410.

Additionally to the passage above there was the *viva voce* evidence of the insurer's agent about what the defendant had said to him:-

"Yes, in the pro forma section in relation to incapacity period - at that time - since May 1997 but at that time only working in between medical appointments and assisting his de facto with the pastries, making, rolling and cooking the pastries. Making? - - Comma, rolling and cooking the pastries."

Counsel for the defendant seeks to found on that passage to advance an argument that the evidence does not sustain the particularised complaint. There might be some argument that a baker who devotes his talents to making pastries over a period of time continues to perform the trade of a baker in the same way that a solicitor who confines her activities to her firm's conveyancing section does not cease to be a solicitor and become a mere conveyancer. In any event, if there be the problem, the proper course is to amend the particulars to conform to the evidence rather than to dismiss the complaint. The real significance of the passage is, once again, the suggestion that the defendant, whilst having no obligation to do so, was rendering quite substantial assistance to his spouse.

In my view a reasonable man *could* find the defendant guilty. The complaint should not have been dismissed. There is no reason the matter should not be returned to the same Industrial Magistrate.

Although the matter has not been argued, it seems to me that conformably with the decision of Williams, President on the *Workplace Relations Act 1997*, *Thomas v Paterson* (1998) 159 QGIG 11 s. 341(2) should be read as conferring the right of appeal from a prosecution under the *WorkCover Queensland Act 1996*. In reliance on the same decision I am prepared to treat s. 248(1)(e) as grant of authority to remit the matter to the Industrial Magistrate. Given that the *Workplace Relations Act 1997* and the *Industrial Relations Act 1999* are relevantly in the same terms, it is unnecessary to determine the Act pursuant to which the appeal should have been brought.

I allow the appeal. I set aside the decision of the Industrial Magistrate dismissing the complaint and awarding costs to the defendant. I remit the matter to the Industrial Magistrate at Beenleigh in order that the matter might be heard and determined according to law. I order the defendant to pay the appellant his costs of and incidental to the appeal assessed as those costs would be assessed if this were a Supreme Court matter.

Dated this eighth day of November, 2000.

D.R. HALL, President.

Appearances:-

Mr J.D. Farrell of counsel for the appellant.

Mr A.N. Skioen of counsel instructed by Ryan and Bosscher for the defendant.

Released: 8 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 276 – amend or void a contract

BD & HA Steele Pty Ltd AND Austcover Pty Ltd (No. B1154 of 2000)

COMMISSIONER THOMPSON

3 November 2000

DECISION

An application was made by BD & HA Steele Pty Ltd pursuant to s. 276 of the *Industrial Relations Act 1999* (the Act) to amend or void a contract of service between Austcover Pty Ltd and BD & HA Steele Pty Ltd.

At an initial hearing before Commissioner Fisher on 30 August 2000, the parties, by consent, decided that a preliminary hearing, to determine an issue of jurisdiction as to whether specifically the Commission has the power under s. 276 of the Act to hear the application, should occur.

Following the assignment of the case from Commissioner Fisher to myself, a preliminary hearing to determine the jurisdiction was held on 25 October 2000.

RESPONDENT

The respondent, represented by Mr John Merrell of Counsel, in opening submissions, indicated that he would question whether the Commission, under s. 276 of the Act, has the power to grant the order sought by the applicant for the reasons relied upon in the application.

Mr Merrell submitted that s. 276 does not confer upon the Commission a power to make the order sought by the applicant for what is essentially a breach of contract argument.

Background

In 1999, the applicant, BD & HA Steele Pty Ltd, and the respondent, Austcover Pty Ltd, entered into a written contract for services whereby the applicant would act as a consultant company.

The consultancy arrangements in accordance with clause 4.1 of the contract required the applicant to perform a number of services to assist the respondent in expanding business in the areas of general insurance, life insurance, financial planning and financial broking.

It was submitted that the legal relationship between the applicant and the respondent was one of principal and contractor and not one of employer and employee.

The applicant, for providing services, was paid a fee, and that fee in general terms was paid for introducing new business to the respondent company.

The contract, at clause 13.1, allowed for either party to terminate the engagement by giving no less than three (3) months notice of termination in writing and this was relied upon by the respondent on 28 April 2000 when a written notice of termination was given to the applicant.

Jurisdiction

Mr Merrell submitted that the application to amend the contract of services between the applicant and the respondent was not because the contract was unfair, but because of an allegation that the respondent had breached an implied term within that contract.

The Commission does not have the power or discretion to amend or void (wholly or partly) a contract because of the breach of a term (expressed or implied) of a contract. The wording of s. 276 is clear that the Commission's discretion can only be enlivened when the contract is found to be unfair.

Historically, from a legislative position, the power of the Commission to amend (vary) or void contracts through s. 123(A) of the *Industrial Conciliation and Arbitration Act 1961 - 1983*, s. 39 or s. 40 of the *Industrial Relations Act 1990*, and s. 290 of the *Workplace Relations Act 1997* indicates that the power conferred upon the Commission to amend or void a contract cannot be enlivened because of a breach of contract.

It was contended that in legislative historical terms, the Queensland Parliament never intended the Commission would have the power to vary or amend contracts in a way that the applicant seeks, and that is demonstrated from the first legislative reference to varying or voiding contracts in 1961 under the *Industrial Conciliation and Arbitration Act of 1961* and to when the issue was next subject to legislative change in 1983 under the *Industrial Conciliation and Arbitration Act 1961 - 1983*.

Mr Merrell quoted from a second reading speech in relation to the 1983 legislative changes in which the Hon. C.A. Wharton, Leader of the House, although acknowledged by Mr Merrell not the Minister responsible for Industrial Relations made the following comments:-

“The Bill also provides some new beneficial legislation for employees. The Minister for Employment and Labour Relations has been concerned for some time that employees who enter into dubious contracts of employment have no redress in industrial tribunals if exploitation occurs. These contracts operate in areas of employment which are award free.

Jurisdiction will now be conferred on a State Industrial Commission to review contracts that are unfair, harsh, unconscionable, or against public interest in circumstances where the work is not covered by an award. Contracts of employment designed to avoid the provisions of an award will also be open to 'scrutiny'.

The Industrial Commission will be given a power to declare void in whole or part any contract of this kind which offends against fairness."

It was submitted that it was clear from the reasons given in the Minister's comments that there was not the intention to provide power to review a contract because it had been breached, but in effect only to deal with the terms and conditions of the contract itself and whether it is unfair as defined in the legislation.

In this next issue addressed by Mr Merrell was the *Minter -v- Queensland Teachers' Union of Employees* (1994) 146 QGIG 189 at 196 per Bloomfield, C in which the Commissioner referred to the section in the Act in the following manner:

"Section 39 does not empower the Commission to deal with a breach of a contractual term. The Commission is only empowered to deal with a contract, arrangement, collateral arrangement or any term or condition thereof which is unfair or harsh or unconscionable (etc) insofar as the claimed variation relates to the manner of performance of the work or the remuneration for the work. As earlier stated the application relates only to the second ground.

On face value it appears that the application, and indeed the whole of the conduct of the case, has been directed towards a claimed breach of contract on the part of the respondent which the Commission is now being asked to rectify some years after it was completed. This is perhaps not surprising when one considers what the applicant was trying to do. Mr Commissioner Ashwood expressed it succinctly as follows:-

'... the respondent (in that case) submitted that Mr Minter was not trying to enforce his contract but that he was endeavouring to change the terms of his contract to ensure it reflected the agreement that had been reached.' (140 QGIG 313 at 315).

Given that this is what is being sought I determine that I do have jurisdiction to hear, and decide, the application."

Mr Merrell, in reference to the *Workplace Relations Act 1997*, drew attention to s. 290(1) and quoted the following reference to that Act:-

"The Commission may amend or declare void, wholly or partly, a contract if it considers the contract (ii) is a contract for services that is designed to or does avoid the provisions of an industrial instrument and (b) the contracts conditions are harsh, unconscionable, or unfair."

He submitted that the reference was to the contract conditions in s.290(1)(b), yet again, was another example where the Commission did not have the power to review a contract because of an alleged breach of the contract.

In terms of the current Act, the 1998 Industrial Relations Taskforce Report that preceded the making of the *Industrial Relations Act 1999* and upon that the subsequent enactment of s. 276 of the Act gives no intention that a breach of contract was in the minds of the Taskforce's members as giving the Commission discretion to amend or void a contract because of a breach of the said contract.

In relation to the application, Mr Merrell noted that whilst there was not specific mention of s. 276 (7), and that because the applicant in his view was not an employee but rather a contractor, then the relevant paragraphs for consideration in respect of unfair contract would be:-

- (a) is harsh, unconscionable or unfair; or
- (b) is against public interest.

In the matter of *Reich -v- Client Server Professionals of Australia Pty Ltd* (Administrator appointed) (2000) NSW IRC 143 (15 August 2000), Mr Merrell indicated that matter had initially gone before a single Justice of the Commission in the first instance who rejected the application by holding that s. 106 of the New South Wales Act did not confer upon the Commission a power to amend a contract or employment where it is alleged the employer breached the contract, or breached a term of the contract.

The question before the Justice in the first instance was could the conduct of an employer breaching a term of a contract mean that the contract was unfair within the meaning of s. 106 of the Act, and therefore allow for the power to amend the contract to remedy the breach?

That question was answered in the negative by Justice Maidment in the first instance, however upon appeal to the Full Bench of the New South Wales Commission there was a decision where three (3) of the Justices of the New South Wales Commission (Wright J, Walton J and Hungerford J) held that the conduct of an employer in breaching the term of the employment contract could render the contract unfair, and therefore render the contract amendable to relief under s. 106 of the New South Wales Act.

The other two (2) Justices (Glynn J and Schmidts J) of the five (5) person bench in a minority decision held the view that s. 106 did not confer a power on the New South Wales Commission to amend a contract on the basis of its unfair conduct.

Summary

In summation, Mr Merrell indicated that the clear wording of s. 276 of the Act did not provide for the Commission to exercise its power in review a breach of the contract.

APPLICANT

In representing the applicant, Mr Matthew Brady, stated that the thrust of the applicant's submissions would be that the Commission should follow the majority decision of the *Reich* case in New South Wales, and that even if the Commission was to accept the minority view from that matter, then it was his view that the application could still proceed.

Background

In January 1998, Mr Blair Steele entered into a consultancy agreement with Austcover Pty Ltd and was engaged to introduce insurance business to the respondent and to assist with the development and the support of the respondent's business.

It was alleged that in September 1999, the applicant was compelled by the respondent to incorporate prior to a further contract being entered into by the parties.

The applicant provided consultancy services to the respondent company and remuneration was by way of commission payments.

On 28 April 2000, the Managing Director of the respondent wrote to Mr Steele in the following terms:—

“Further to our discussions and the terms of our contract, we confirm we are giving written notice of termination 90 days in advance.”.

Mr Brady indicated that after the notification was provided to the applicant, there was a request for the applicant to cease work immediately. The applicant then received payment, from the respondent, for commission for work performed prior to the contract being terminated, and the applicant had received no monies in payment for commissions lost through not being allowed to work out the period of notice.

The applicant had brought the application on the basis that the contract was unfair in that it did not make express provisions for the payment of monies in lieu of notice.

If the matter was to proceed after the jurisdiction argument, the applicant would be seeking orders pursuant to s. 276 of the Act that the written contract be varied to include an express term providing that the parties agree to payment of monies in lieu of notice and that an order pursuant to s. 276(5) for payment of the sum of \$15,154 representing the commission income which the applicant would have earned had he been permitted to work out his period of notice.

Jurisdiction

In submissions, Mr Brady stated it was the applicant’s contention that the contract entered into by the parties was unfair within the meaning of the Act and it would be appropriate for the Commission to amend the contract in addition to granting relief under s. 276(5) of the Act for an order for payment of monies to the applicant.

The respondent’s submissions that this Commission does not have jurisdiction, in the applicant’s view, is flawed, and in fact the Commission does clearly have jurisdiction under s. 276 of the Act on the basis that:

- (a) *Bass -v- Truder & Ors* (1990) 38 IR 172 has been expressly overruled by both the New South Wales Court of Appeal and a Full Bench of the New South Wales Industrial Relations Commission and is no longer good law;
- (b) the mere fact that the applicant may also have an action outside the Industrial Relations Commission (for example in breach of contract) does not itself deprive the Commission of jurisdiction to determine the matter under s. 276 and the existence of other remedies does limit the wide language of s. 276;
- (c) the fact that terms of a particular contract or arrangement may permit an unfair, harsh and/or unconscionable dealing by one party with the other party can lead to the conclusion that the contract or arrangement is unfair, harsh and/or unconscionable within the meaning of s. 276;
- (d) “unfairness” within the meaning of s. 276 may arise either from the terms of the contract itself, from the surrounding circumstances and/or from the manner of performance or operation of the contract and, in determining whether “unfairness” has been established, regard may be had not only to the terms of the contract or arrangement but also the manner in which the contract or arrangement had ultimately worked out and operates between the parties; and
- (e) the necessary jurisdictional requirements to hear and determine a matter under s. 276 exist once it has been established there is a contract or arrangement which falls within the definition of s. 276(1) and the applicant does not fall within the exclusionary powers of s. 276(6).

The respondent has relied upon legislation in New South Wales, and it is contended by the applicant, that the Queensland and New South Wales provisions are very similar and, in the absence of case law in this issue in Queensland, then it is necessary for the Commission to give consideration to the New South Wales cases.

In respect of the unfairness in the contract, Mr Brady made reference to *Walker -v- Industrial Court of New South Wales* (1999) 29 NSWLR 83 at 133, Kirby, P (as he was then) said:—

“Whatever doubts may have existed earlier, it is now beyond argument that the ‘unfairness’ referred to in s. 88F(1)(b) IAA [the predecessor of s. 106 *Industrial Relations Act 1996*] can arise, not only from positive provisions of the contract or arrangement which offend fairness in the relevant sense, but also from the failure, on the part of the contract or arrangement, to provide in a way that such fairness requires.”.

In determining whether “unfairness” had been established, his Honour commented at page 133 that “regard may be had not merely to the terms of the contract or arrangement as originally negotiated, but also to the manner in which the contract or arrangement has ultimately worked out and operates as between the parties to it.”.

Mr Brady indicated that the three (3) majority Judges in the *Reich* decision agreed and said the following at paragraph 24:

“... it seems to us, in finding a contract (contract or arrangement, or any related condition or collateral arrangement) to be unfair, that may be supported because it became an unfair contract due to the conduct of a party at the time of the termination of the contract which enabled a finding that a contract which could or did so operate was relevantly unfair. It would then be open to declare the contract void or to make an order varying its terms in an appropriate way . . .”.

Finally in support of the jurisdictional argument, Mr Brady drew reference to a matter *Beahan -v- Bush Boake Allen* (1999) 47 NSWLR 648 at 685 that:—

“What emerges from the . . . authorities, we think, is now settled view that s. 176 (as with the previous s. 88F of the 1941 Act and s. 275 of the 1991 Act) is directed to an impugned contract of employment, whether existing or terminated, as to the fairness of its express or implied terms. Such unfairness will depend upon the facts of each particular case by focusing attention on the contractual relationship between a particular employer and employee and where the unfairness may arise from the terms of the contract itself, the surrounding circumstances and/or the manner of performance or operation of the contract.”.

Summary

In the matter before the Commission, the applicant states unequivocally that the unfairness of the contract arose from the failure of the contract to specify a requirement that payment in lieu of notice be made and the failure of the written contract to specify how the payment in lieu of notice was to be calculated.

There is nothing in the provisions of s. 276 of the Act which would suggest that the legislature has expressly, or by necessary implication, excluded the jurisdiction of this Commission in respect of the claims which could also be brought in another jurisdiction. It is therefore, in the view of the applicant, proper for the Commission to exercise its jurisdiction in this application.

DECISION

In the determination of this matter, there was a requirement to consider argument from the respondent that, under s. 276 of the Act, the Commission did not have the power to amend or void the contract between Austcover Pty Ltd and BD & HA Steele Pty Ltd for what was essentially an implied breach of contract rather than an unfair contract. Therefore, it was submitted that the Commission in effect lacked jurisdiction for the application to proceed further.

In opposing argument from the applicant, it was put that the contract between the parties was unfair due to the failure of the contract to provide an adequate provision in respect of termination arrangements and, as such, clearly the Commission did have the jurisdiction to further progress this matter.

From the inception of the *Industrial Conciliation and Arbitration Act of 1961*, and all subsequent industrial legislation enacted in Queensland since then, the Commission has had the power, in varying degrees, to determine the matters in relation to contract for services and in respect of s. 276 of the current it would appear to provide the broadest of powers available to the Commission to date.

The absence of Queensland case law, in respect of the Commissions powers to amend or void contracts as set out in s. 276, has meant that reliance has been placed by the parties on jurisdictional findings in other places and in particular the New South Wales jurisdiction.

Of the matters raised in these proceedings, the cases of *Walker -v- Industrial Court of New South Wales*, *Beahan -v- Bush Boake Allen*, and *Reich -v- Client Server Professionals of Australia Pty Ltd*, and the findings in respect of those matters, have encouraged my view that the applicant should have recourse to the Commission to further pursue the application.

Therefore, I reject the position of the respondent that, in accordance with s. 276 of the Act, the Commission does not have the jurisdictional power to proceed with the application. As such, future hearing dates will be advised to the parties in due course.

J.M. THOMPSON, Commissioner.

Appearances:-
 Mr M. Brady, of Counsel, instructed by Mr J. Dwyer of Reidy & Tonkin, for the Applicant.
 Mr J. Merrell, of Counsel, instructed by Mr T. McKenzie of Redchip Lawyers, for the Respondent.

Released: 3 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

**Victor Borghero of the Department of Employment, Training and Industrial Relations
 AND Quinton Stevenson (No. W120 of 2000)**

COMMISSIONER ASBURY

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 20 October 2000, this Commission, after having decided that Rutta Teklezgy was underpaid wages by Quinton Stevenson, in accordance with the provisions of the *Contract Cleaning Industry Award – State*, doth order as follows:-

1. That Quinton Stevenson pay to Rutta Teklezgy the amount of one thousand two hundred and forty-nine dollars and forty-two cents (\$1,249.42) in respect of unpaid wages for the period between 12 November 1999 and 24 November 1999.
2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days from the date of the release of this Order.

Dated this sixth day of November, 2000.

By the Commission,
 [L.S.] E. EWALD,
 Industrial Registrar.

Operative Date: 20 October 2000
 Order – Unpaid wages
 Released: 6 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

**Victor Borghero of the Department of Employment, Training and Industrial Relations
 AND AWMD Manufacturing Pty Ltd (No. W121 of 2000)**

COMMISSIONER ASBURY

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 20 October 2000, this Commission, after having decided that Ross Graeme Frater was underpaid wages by AWMD Manufacturing Pty Ltd, in accordance with the provisions of the *Engineering Award – State*, doth order as follows:–

- 1. That AWMD Manufacturing Pty Ltd pay to Ross Graeme Frater the amount of ninety-one dollars and sixty cents (\$91.60) in respect of unpaid wages for the period between 31 August 1999 and 8 September 1999.
- 2. That the amount set out in paragraph 1 of this Order is to be paid within twenty-two (22) days from the date of the release of this Order.

Dated this sixth day of November, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 20 October 2000
Order – Unpaid wages
Released: 6 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

Dru Elliot Powell AND Lorien Investments Pty Ltd (No. W129 of 2000)

COMMISSIONER BECHLY

2 November 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 21 August 2000 and 4 October 2000, this Commission doth order as follows:–

- 1. That Lorien Investments Pty Ltd pay to Jayne Elizabeth French a gross payment of \$1,868.00 within twenty-two days from the date of release of this Order.
- 2. The Respondent to be responsible for the deduction of PAYE tax from the amount in paragraph 1.

Dated this second day of November, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 21 August 2000.
Order – Unpaid Wages
Released: 6 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

Dru Elliot Powell AND Lorien Investments Pty Ltd (No. W130 of 2000)

COMMISSIONER BECHLY

2 November 2000

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 21 August 2000 and 4 October 2000, this Commission doth order as follows:–

- 1. That Lorien Investments Pty Ltd pay to Elise Petrea Stapleton a gross payment of \$651.73 within twenty-two days from the date of release of this Order.
- 2. The Respondent to be responsible for the deduction of PAYE tax from the amount in paragraph 1.

Dated this second day of November, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 21 August 2000.
Order – Unpaid Wages
Released: 6 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees (No. B1385 of 2000)**

DENTAL TECHNICIANS AWARD - STATE

COMMISSIONER SWAN

31 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2000, this Commission doth order that the said Award be amended as follows as from the thirty-first day of October, 2000:–

By numbering the existing paragraphs of clause 3 (Holidays) as subclauses (1), (2), (3), (4) and (5) respectively, and inserting a new subclause (6) as follows:–

“(6) Employees other than casuals who do not work Monday to Friday of each week:

In the case of employees who do not work Monday to Friday of each week they shall be entitled to public holidays as follows:–

- (a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave.
- (b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day’s leave.
- (d) Where Christmas Day falls on a Saturday and the public holiday is observed on another day, an employee required to work on Christmas Day shall be paid at the rate of double time.
- (e) Nothing in this clause confers a right to any employee to payment for the public holiday as well as a substituted day in lieu of a public holiday.”.

Dated this thirty-first day of October 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 31 October 2000
Amendment – new clause
Released: 8 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment

**Federated Engine Drivers’ and Firemens’ Association of Australasia Queensland Branch, Union of Employees AND
Local Government Association of Queensland Inc and Another (No. B816 of 2000)**

LOCAL GOVERNMENT EMPLOYEES’ (EXCLUDING BRISBANE CITY COUNCIL) AWARD – STATE

COMMISSIONER BLOOMFIELD

24 October 2000

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 30 June and 24 October 2000, this Commission doth order that the said Award be amended as follows as from the first day of November, 2000:–

1. By deleting subclause (5) “Shift Allowances” of clause 4.2 (Shift Work) and inserting the following in lieu thereof:–

“(5)(a) *Shift Allowances* – In addition to the wage rates prescribed by this Award, shift workers shall be paid the afternoon and night shift allowances set out hereunder for each afternoon or night shift worked.

(i) **Afternoon Shift Allowance**

The percentage allowance to be 11% or \$9.70 per shift (whichever is the greater) effective as and from 1 November 2000.
The percentage allowance is to be 12% or \$9.70 per shift (whichever is the greater) effective as from 1 May 2001.
The percentage allowance is to be 12.5% or \$9.70 per shift (whichever is the greater) effective as and from 1 November 2001.

(ii) **Night Shift Allowance**

The percentage allowance to be 12.5% or \$9.70 per shift (whichever is the greater) effective as and from 1 November 2000.
The percentage allowance to be 14% or \$9.70 per shift (whichever is the greater) effective as and from 1 May 2001.
The percentage allowance to be 15% or \$9.70 per shift (whichever is the greater) effective as and from 1 November 2001.

(b) It is a condition of this Award that no employee is disadvantaged as a result of this change from a flat rate shift allowance to a percentage shift allowance.

(c) Shift Allowance(s) shall not apply to shift work performed on a Saturday or Sunday. All ordinary time worked by shift workers between midnight Friday and midnight Saturday shall be paid for at the rate of time and a-half for the first three hours and double time thereafter and between midnight Saturday and midnight Sunday shall be paid for at the rate of double time.

(d) For the purposes of this subclause the percentage which is quoted shall be the amount which is payable for each shift in addition to the employee’s ordinary time wage rate.”.

2. By deleting clause 5.2 (Statutory Holidays) and inserting the following in lieu thereof:-

“5.2 Statutory Holidays

(1) 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.

(2) All employees covered by this Award shall be entitled to be paid a full day's wages 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 at one and a-half times the ordinary rate prescribed for such work with a minimum of work four hours.

(3) 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 a minimum of four hours.

(4) 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.

(5) All time worked on any of the aforesaid holidays outside the ordinary starting and ceasing times 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.

(6)(a) Any and every employee who, having been dismissed or stood down by his or her employer during the month of December in any year, shall be re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall have been employed by that employer for a continuous period of two weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by his or her employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of his or her dismissal or standing down to and including the date of his or her re-employment as aforesaid.

(b) Where works are closed down at the Easter period, payment shall be made for the following holidays at ordinary rates to employees who have been employed for a period of not less than three months:-

Good Friday; and
Easter Monday:

Provided that the qualification of three months' prior employment above provided shall not apply to deprive an employee of payment for Good Friday and Easter Monday where the period between Christmas and Easter is less than three months, if such employee has been continuously engaged between Christmas and Easter and is re-engaged on re-opening the works after Easter. Temporary breaks through wet weather shall not be deemed to break the continuity of employment.

(7) When the ordinary work cycle provides for a rostered day off and a statutory holiday falls on that day, the rostered day off shall be moved to a day mutually agreed between the employer and the employees concerned.

(8) *Substitution of Holidays* – Where there is agreement between the majority of employees concerned and the Local Authority and subject to statutory limitations, other ordinary working days may be substituted for the statutory holidays specified in this clause:

Provided that, where an employee is subsequently required to work on such substituted day, the employee shall be paid the rate applicable for the holiday that has been substituted.

(9) In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and the employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

(10) *Employees whose ordinary hours include work on a Saturday or Sunday* – Provided that in the case of employees who do not ordinarily work Monday to Friday of each week i.e. whose ordinary hours include work on a Saturday or Sunday such employees shall be entitled to public holidays as follows:-

(a) A full-time employee shall be entitled to either payment for each of the public holidays or a substituted day's leave.

(b) A part-time employee shall be entitled to either payment for the public holidays as provided for in this clause or a substituted day's leave provided that the part-time employee would have been ordinarily rostered to work on that day had it not been a public holiday.

(c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holidays or a substituted day's leave.

(d) Where Christmas day falls on a Saturday or a Sunday and the public holiday is observed on another day an employee required to work on Christmas day (i.e. 25 December) shall be paid at the rate of double time if it is a Saturday and double time and a-half if it is a Sunday.

(e) Nothing in this clause confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.”

Dated this twenty-fourth day of October, 2000.

By the Commission,
[L.S.] E. EDWARD,
Industrial Registrar.

Operative Date: 1 November 2000
Amendment – Statutory holidays and shift allowances
Released: 8 November 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (No. B1384 of 2000)

MEDICAL IMAGING AND RADIATION THERAPY INDUSTRY EMPLOYEES (PRIVATE SECTOR) AWARD – STATE

COMMISSIONER SWAN

31 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2000, this Commission doth order that the said Award be amended as follows as from the thirty-first day of October, 2000:–

By inserting a new subclause 7.7.10 of clause 7.7 (Statutory Holidays) as follows:–

“7.7.10 Employees other than casuals who do not work Monday to Friday of each week:–

In the case of employees who do not work Monday to Friday of each week they shall be entitled to public holidays as follows:–

- (a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave.
(b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.
(c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day’s leave.
(d) Where Christmas Day falls on a Saturday or Sunday and the public holiday is observed on another day an employee required to work on Christmas Day shall be paid at the rate of double time in the case of work performed on a Saturday and double time and a-half in the case of work performed on a Sunday.
(e) Nothing in this clause confers a right to any employee to payment for the public holiday as well as a substituted day in lieu of a public holiday.”.

Dated this thirty-first day of October 2000.

By the Commission, [L.S.] E. EWALD, Industrial Registrar.

Operative Date: 31 October 2000
Amendment – new clause
Released: 8 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (No. B1352 of 2000)

MISCELLANEOUS WORKERS’ AWARD – STATE

COMMISSIONER EDWARDS

6 November 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October and 6 November 2000, this Commission doth order that the said Award be amended as follows as from the first day of December, 2000:–

By inserting a new placitum (iv) in paragraph (b) of clause 5.1.1 (Classifications) as follows:–

“(iv) ‘Bill Posters’ includes employees engaged for the purpose of advertising material installation and/or posting.”.

Dated this sixth day of November, 2000.

By the Commission, [L.S.] E. EWALD, Industrial Registrar.

Operative Date: 1 December 2000
Amendment – Classification
Released: 8 November 2000

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees AND Queensland Medical Laboratories and Another (No. B1381 of 2000)

PATHOLOGY (PRIVATE PRACTICES) AWARD – STATE

COMMISSIONER SWAN

31 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2000, this Commission doth order that the said Award be amended as follows as from the thirty-first day of October, 2000:–

By numbering the existing paragraphs of clause 7.6 (Statutory Holidays) as subclauses (1), (2), (3), (4), (5) and (6) respectively, and inserting a new subclause (7) as follows:–

“(7) Employees other than casuals who do not work Monday to Friday of each week:

In the case of employees who do not work Monday to Friday of each week they shall be entitled to public holidays as follows:–

- (a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave.
(b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.
(c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day’s leave.
(d) Where Christmas Day falls on a Saturday or Sunday and the public holiday is observed on another day an employee required to work on Christmas Day shall be paid at the rate of double time in the case of work performed on a Saturday and double time and one half in the case of work performed on a Sunday.
(e) Nothing in this clause confers a right to any employee to payment for the public holiday as well as a substituted day in lieu of a public holiday.”.

Dated this thirty-first day of October 2000.

By the Commission, [L.S.] E. EWALD, Industrial Registrar.

Operative Date: 31 October 2000
Amendment – new clause
Released: 7 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment

Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland AND Printing Industry Association of Australia and Others (No. B913 of 2000)

PRINTING INDUSTRY AWARD – STATE

COMMISSIONER BROWN

30 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 30 October 2000, this Commission doth order that the said Award be amended as follows as from the first day of November, 2000:–

By deleting clause 3.14 (Shift Work Allowance) and inserting the following in lieu thereof:–

“3.14 Shift Allowance

- (1) In addition to the rates of pay prescribed by clause 3.8 of this Award, employees whilst engaged on afternoon or nightshift, as defined in clause 4.3(1) of this Award, shall be paid an additional penalty rate for each such shift as follows:–
(a) Afternoon Shift (from 1/11/2000) 11% (or \$9.70 whichever is the greater)
Night Shift (from 1/11/2000) 12.5% (or \$9.70 whichever is the greater)
(b) Afternoon Shift (from 1/5/2001) 12% (or \$9.70 whichever is the greater)
Night Shift (from 1/5/2001) 14% (or \$9.70 whichever is the greater)
(c) Afternoon Shift (from 1/11/2001) 12.5% (or \$9.70 whichever is the greater)
Night Shift (from 1/11/2001) 15% (or \$9.70 whichever is the greater)

- (2) For the purposes of this clause the percentage which is quoted shall be the amount which is payable for each shift in addition to the employee's ordinary time wage rate.
- (3) The shift allowances prescribed in this clause shall not apply in addition to rates payable for work performed on a Saturday, a Sunday or on a public holiday nor when an employee may be working overtime."

Dated this thirteenth day of October, 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 1 November 2000
Amendment – Shift Allowance
Released: 6 November 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees (No. B1368 of 2000)**

**TOURISM INDUSTRY - ZOOLOGICAL GARDENS AWARD -
SOUTH-EASTERN DIVISION**

COMMISSIONER SWAN

31 October 2000

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2000, this Commission doth order that the said Award be amended as follows as from the thirty-first day of October, 2000:–

By deleting subclause 6.12.5 of clause 6.12 (Statutory Holidays) and inserting a new subclause 6.12.5 as follows:–

“6.12.5 Employees other than casuals who do not work Monday to Friday of each week:

In the case of employees who do not work Monday to Friday of each week they shall be entitled to public holidays as follows:–

- (a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave.
- (b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.
- (d) Where Christmas Day falls on a Saturday and the public holiday is observed on another day, an employee required to work on Christmas Day shall be paid at the rate of time and three-quarters in the case of work performed on a Saturday and double time in the case of work performed on a Sunday.
- (e) Nothing in this clause confers a right to any employee to payment for the public holiday as well as a substituted day in lieu of a public holiday.
- (f) That casual workers who are employed on prescribed holidays should be paid at the relevant holiday rate (but exclusive of any augmentation of the casual loading).”.

Dated this thirty-first day of October 2000.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 31 October 2000
Amendment – new clause
Released: 8 November 2000