



# The Queensland Government Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086

Annual Subscription \$358.62 (GST inclusive)

ISSN 0155-9362

Vol. 170

FRIDAY, 14 June, 2002

No. 8

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999*  
*Industrial Relations (Tribunals) Rules 2000*

NOTICE

The following Agreements have been certified by the Commission:—

No/s	Title	Date certified	Cancelling
CA167/02	Energex - Gas Operations - Certified Agreement 2002	22/5/02	CA222/99
CA234/02	Pre Press Redundancy Agreement - Quest Community Newspapers	23/5/02	
CA211/02	John Dawson Electrical Pty Ltd Certified Agreement - 2001/2002	27/5/02	
CA212/02	Crown Electrical Pty Ltd Certified Agreement - 2001/2002	27/5/02	
CA213/02	Troyberg Pty Ltd - T/A Mulcahy Systems Certified Agreement - 2001/2002	27/5/02	
CA214/02	Avtel Pty Ltd Certified Agreement - 2001/2002	27/5/02	CA404/99
CA226/02	Kalyan Gardens Aged Care Certified Agreement 2002	27/5/02	
CA236/02	Gatton Shire Council Certified Agreement No. 3, 2001	27/5/02	CA535/99
CA208/02	Arthur Yates & Co Limited Warehousing and Distribution – Wacol Certified Agreement 2002	28/5/02	CA529/00
CA221/02	Sigma (North Queensland) Certified Agreement 2002	28/5/02	CA24/00
CA237/02	St. Vincent's Private Hospital Toowoomba - Certified Agreement 2002	28/5/02	CA269/01
CA240/02	N Q Resource Recovery Plant Operators' Certified Agreement	28/5/02	
CA219/02	Churches of Christ in Queensland - Churches of Christ Care, Care Directors Certified Agreement 2002	29/5/02	
CA244/02	Bowen Shire Council - Certified Agreement 2001	29/5/02	CA80/00
CA242/02	QR, Infrastructure Services, Ballast Cleaning and Formation Certified Agreement, 2002	30/5/02	CA564/01
CA245/02	Port of Brisbane Motorway (Package 2: Hemmant Tingalpa Road) Project Certified Agreement 2001	30/5/02	

No/s	Title	Date certified	Cancelling
CA248/02	George Weston Foods Limited, Biscuit and Cake Division Queensland Enterprise Bargaining - Certified Agreement 2002-2004	3/6/02	CA375/00

The following Agreements have been amended by the Commission:-

No/s	Title	Date Amended
CA221/00	Trident Construction Resources Pty Ltd - Certified Agreement	22/2/02
CA682/00	Maroochy Shire Council - Certified Agreement	16/5/02
CA338/01	Mackay Sugar Co-operative Enterprise - Certified Agreement 2001	30/5/02

E. EWALD  
Industrial Registrar

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 125 – making, amending and repealing awards

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,  
Union of Employees AND Arthur Gorrie Correctional Centre AND  
Australasian Correctional Management Pty Ltd (Nos. B156 of 2000 and B847 of 2001)**

**ARTHUR GORRIE CORRECTIONAL CENTRE  
(CUSTODIAL CORRECTIONAL OFFICERS) AWARD – STATE**

COMMISSIONER THOMPSON

18 March 2002

NEW AWARD

THIS matter coming on for hearing before the Commission at Brisbane on 18 March 2002, this Commission Awards as follows as from 18 March 2002:

**ARTHUR GORRIE CORRECTIONAL CENTRE  
(CUSTODIAL CORRECTIONAL OFFICERS) AWARD – STATE 2002**

**ARRANGEMENT OF AWARD**

**PART 1 – APPLICATION AND OPERATION**

**1.1 Title**

This Award will be known as the Arthur Gorrie Correctional Centre (Custodial Correctional Officers) Award – State 2002.

**1.2 Arrangement**

Subject Matter	Clause No.
----------------	------------

**PART 1 – APPLICATION AND OPERATION**

Title .....	1.1
Arrangement .....	1.2
Award coverage .....	1.3
Operation and duration .....	1.4
Definitions.....	1.5
Parties bound.....	1.6
Award posting.....	1.7

**PART 2 – FLEXIBILITY**

Enterprise flexibility .....	2.1
------------------------------	-----

**PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

Grievance and dispute settling procedure.....	3.1
Disciplinary procedures.....	3.2

**PART 4 – EMPLOYER AND EMPLOYEES’ DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

Contract of employment .....	4.1
Anti-discrimination.....	4.2
Termination of employment .....	4.3
Introduction of changes .....	4.4
Redundancy.....	4.5
Transmission of business – Continuity of service.....	4.6
Incidental and peripheral tasks; Staffing levels.....	4.7

Cooperation and commitment to productivity improvement .....	4.8
Outside employment .....	4.9

## PART 5 – WAGES AND WAGE RELATED MATTERS

Covered positions and wages .....	5.1
Weekend work, shift allowance, annual leave loading and public holidays .....	5.2
Occupational superannuation .....	5.3

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

Hours of work .....	6.1
Overtime .....	6.2

## PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

Annual leave .....	7.1
Public holidays .....	7.2
Sick leave .....	7.3
Bereavement leave .....	7.4
Long service leave .....	7.5
Family leave .....	7.6
Special leave .....	7.7
Military leave .....	7.8

## PART 8 – TRANSFERS TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

Travelling time and expenses .....	8.1
------------------------------------	-----

## PART 9 – TRAINING AND RELATED MATTERS

Commitment to training and careers .....	9.1
------------------------------------------	-----

## PART 10 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

Uniforms .....	10.1
Occupational health and safety standards/NCSA 5 star safety programme .....	10.2
Workplace health and safety .....	10.3

## PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble	
Right of entry .....	11.1
Time and wages record .....	11.2
Union encouragement .....	11.3
Union recognition and membership .....	11.4
Trade union training leave .....	11.5

## APPENDIX A

Australasian Correctional Management Pty Ltd – Position Description and Selection Criteria

## APPENDIX B

Australasian Correctional Management Pty Ltd – Position Description and Selection Criteria

**1.3 Award coverage**

This Award will be binding on the employer, the employees covered under clause 1.5 below, and the Union in connection with or incidental to the provision of correctional management services at the Arthur Gorrie Correctional Centre.

**1.4 Operation and duration**

This Award must take effect and have the force of law from 18 March 2002.

**1.5 Definitions**

1.5.1 “Casual Employee” must mean an employee other than a part-time employee as defined herein, who is engaged as such and is paid on an hourly basis and must be employed for not more than 84 hours in a 14-day roster cycle.

1.5.2 “Part-time employee” must mean an employee other than a casual employee as defined herein, who is engaged to work regular hours each week to suit the need as per operational requirement and whose ordinary daily working hours are worked continuously inclusive or exclusive of meal times according to operational requirements:

Provided that the four weekly total of such hours must always be less than the ordinary four weekly working hours of a full time employee.

1.5.3 “Permanent full-time employee” must mean an employee who is not a casual, part-time or temporary employee as described herein, who is engaged for full time employment without conditions being placed upon the tenure of the employment.

- 1.5.4 “Temporary full-time employee” must mean an employee who is not a permanent full-time employee as described herein, who is engaged subject to certain terms and conditions that relate to a period of tenure.
- 1.5.5 “Pre-service correctional officer” must mean an employee who meets the qualifications of the employer and the Queensland Department of Corrective Services for employment as a correctional officer who is directly employed by the employer during a period of pre-service training in custodial practices and procedures as approved by Queensland Department of Corrective Services.
- 1.5.6 “Correctional officer – security” must mean an employee who has fulfilled the training requirements set down for pre-service correctional officers and whose duties must be limited to those specified in the generic position and person specification set out in Appendix A.
- 1.5.7 “Correctional officer – unit” must mean an employee who has fulfilled the training requirements set down for pre-service correctional officers and specialist case management training, and who have attained a level 3 certificate, and whose duties must include those specified in the generic position and person specification as set out in Appendix B. In the case of employees who, upon engagement, hold acceptable qualifications or have suitable experience, the requirement to firstly serve as a correctional officer – security may be waived at the discretion of the employer.
- 1.5.8 “Probationary period” means a period not exceeding three (3) months, and which applies to all recruitment and promotion. One performance assessment will be conducted during the probationary period. Employees who consistently do not meet the employer’s performance criteria will be dismissed or demoted as the case may be.
- 1.5.9 “Company” means the employer.
- 1.5.10 “Union” means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (ALHMWU).
- 1.5.11 “The Act” means the *Industrial Relations Act 1999* as amended or replaced from time to time.

## **1.6 Parties bound**

This Award is legally binding upon the employees as prescribed by clause 1.5 and their employers, and Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees, and its members.

## **1.7 Award posting**

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

## **PART 2 – FLEXIBILITY**

### **2.1 Enterprise flexibility**

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in terms of this Award may provide an appropriate mechanism for consideration of matters relevant to clause 2.1. Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employees in any enterprise is contingent upon the agreement being submitted to the Commission in accordance with the requirements of the Act and is to have no force or effect until approval is given.

## **PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **3.1 Grievance and dispute settling procedure**

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

- 3.1.1 In the event of an employee having a grievance or dispute the employee may in the first instance attempt to resolve the matter with the immediate supervisor, who must respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee’s representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee’s representative.
- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions listed in clause 3.1.2, the matter may, in the case of a member of an industrial organisation of employees, be reported to the relevant officer of that organisation of employees and the senior management of the employer or the employer’s nominated industrial representative. an employee who is not a member of an industrial organisation of employees may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given in accordance with the relevant Industrial Relations legislation applicable from time to time.
- 3.1.6 Whilst all of the above procedure is being followed, normal work may continue except in the case of a genuine safety issue.

- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 All parties will give due consideration to matters raised or any suggestion or recommendation made by an Industrial Commissioner with a view to the prompt settlement of the dispute.
- 3.1.9 Any Order of the Queensland Industrial Relations Commission (subject to the parties right of appeal under the Act) will be final and binding on all parties to the dispute.
- 1.0.0 Discussions at any stage of the procedure must not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it is open to any party to give notification of the dispute in accordance with the relevant industrial relations legislation applicable from time to time.

### 3.2 Disciplinary procedures

#### 3.2.1 *Counselling and warning procedures*

The following counselling and warning procedure will apply to all employees covered by this Award:

- (a) Where an employee through actions, short of misconduct, dishonesty, insubordination or being under the influence of liquor or a drug is guilty of an infraction as to work practices, procedures, attendance or misbehaviour of lesser degrees, the employer may, on the first such occasion, counsel and warn the employee verbally.

A record of the matter should be noted.

- (b) If it is again necessary for the employer to counsel or warn the employee for a further infraction, the employer will consider the period lapsing since the employee was last counselled, warned and the conduct of the employee over that period and may either issue a further verbal warning or issue a warning in writing.

The written warning should advise the employee that the infraction is considered in the context of a continuance of unacceptable behaviour and has been noted as such on the employee's employment record.

- (c) Where it is necessary, after having issued an employee with a written warning, to again address a continuance of unacceptable behaviour the employer is to make the employee aware that a continuance of such actions and/or behaviour that warrant further cautions and warnings may result in the employer giving due and just consideration to the termination of the employee's services.

- (d) Nothing in this procedure limits the employer's rights under this Award or at common law.

Depending on the seriousness of the situation the employer reserves the right to effect summary dismissal or such other lesser action as the employer deems appropriate.

- (e) Employees are to be advised that they have a right to be represented, during counselling or at any stage of these procedures, by a Union official before any such interview takes place.

#### 3.2.2 *Counselling*

In conjunction with the issue of written cautions and warnings, the employee so involved must be counselled by management and may be required to undertake further training and /or re-training.

In particular cases management may consider it necessary to utilise some other agency to address the matter of counselling or training and in these instances the employee is to co-operate in line with this procedure.

#### 3.2.3 *General*

In relation to the provisions of both clause 3.1 and clause 3.2 (Grievance and dispute settlement procedures) it is stated that they are not to be the subject of any frivolous or vexatious actions or complaints by either the employee, the employer or representatives of those parties.

Where it is practicable a grievance by an employee, and any warning by the employer, should be advised to the other party in the presence of a third person and if possible such third person should be asked to attest to being in attendance by signifying in writing that the alleged complaint was so notified. This can be executed by the third party signing any raised written notice on the matter as a witness.

#### 3.2.4 *Disciplinary penalties*

- (a) Subject to clause 3.2.1, it is agreed that the company may suspend an employee for any period of up to fourteen days, with or without pay by mutual agreement, for serious breaches of conduct by adhering to the following procedure:

(i) a decision by the general manager, based upon the balance of probabilities.

(ii) a written advice to the employee;

- (b) It is agreed that an employee can be suspended indefinitely, without pay, in circumstances where criminal charges are laid, by written notification from the police, for an indictable offence:

Provided that, at the discretion of the employer, the employee cannot be suitably redeployed to gainful employment within the centre.

- (c) Subject to clause 3.2.1 an employee may be demoted to a lower classification where, at the discretion of the general manager, such demotion is necessary to ensure the efficient and effective operation of the employer's business.

**PART 4 – EMPLOYER AND EMPLOYEES’ DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS****4.1 Contract of employment**

4.1.1 Employees covered by this Award must be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time;
- (b) part-time (as defined); or
- (c) casual (as defined).

**4.2 Anti-discrimination**

4.2.1 It is the intention of the parties to this Award to prevent and eliminate discrimination as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

4.2.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in this Award, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.2.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.2.4 Nothing in clause 4.2 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*; or
- (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 Queensland.

**4.3 Termination of employment****4.3.1 Statement of employment**

The employer must, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

**4.3.2 Termination by employer**

- (a) In order to terminate the employment of an employee the employer must give the following notice:

Period of Continuous Service	Period of Notice
not more than 1 year.....	1 week
more than 1 year, but not more than 3 years.....	2 weeks
more than 3 years, but not more than 5 years .....	3 weeks
more than 5 years .....	4 weeks

- (b) In addition to the notice in clause 4.3.2(a), employees over 45 years of age at the time of giving of notice and with not less than two years' continuous service, is entitled to an additional week's notice.

- (c) Payment in lieu of notice must be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (d) In calculating any payment in lieu of notice the ordinary time rate of pay for the employee concerned must be used.

- (e) The period of notice in clause 4.3.2(a) does not apply in the case of dismissal for misconduct or other grounds that justified instant dismissal, or in the case of casual, or seasonal employees, or to employees on daily hire, or employees engaged for a specific period of time or for a specific task or tasks.

**4.3.3 Notice of termination by employee**

One week's of notice must be given of the termination of service, or one week's wage forfeited in lieu thereof:

Provided that the notice cannot be counted as annual leave or sick leave or part thereof.

#### 4.3.4 *Time off during notice period*

During the period of notice of termination given by the employer, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off will be taken at times that are convenient to the employee after consultation with the employer.

### 4.4 **Introduction of changes**

#### 4.4.1 *Employer's duty to notify*

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their Union or Unions.
- (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employers workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where this Award makes provision for alteration of any of the matters referred to herein an alteration is deemed not to have significant effect.

#### 4.4.2 *Employer's duty to discuss change*

- (a) The employer must discuss with the employees affected and their Union or Unions, among other things, the introduction of the changes referred to, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 4.4.1.
- (c) For the purpose of such discussion, the employer must provide in writing to the employees concerned and their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer is not required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

### 4.5 **Redundancy**

#### 4.5.1 *Discussions before terminations*

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer must hold discussions with the employees directly affected and where relevant, their Union or Unions.
- (b) The discussions must take place as soon as it is practicable after the employer has made a definite decision which will invoke clause 4.5.1, and must cover, among other things, the reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate the adverse effects of any terminations of the employees concerned.
- (c) For the purpose of the discussion the employer must, as soon as practicable, provide in writing to the employees concerned and their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer is not required to disclose confidential information, the disclosure of which would be inimical to its interests.

#### 4.5.2 *Transfer to lower paid duties*

Where an employee is transferred to other duties for reasons set out in clause 4.5.1, the employee is entitled to the same period of notice of transfer the employee would have been entitled to if the employee's employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

#### 4.5.3 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.5.1, the employee must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee may, at the request of the employer, be required to produce proof of attendance at an interview or the employee may not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.5.4 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.5.1 the employer must notify Centrelink thereof as soon as possible giving relevant information including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

#### 4.5.5 *Severance pay*

In addition to the period of notice prescribed for ordinary termination in clause 4.4.2, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.5.1 is entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay
1 year or less.....	nil
1 year and up to the completion of 2 years.....	4 weeks' pay
2 years and up to the completion of 3 years.....	6 weeks' pay
3 years and up to the completion of 4 years.....	7 weeks' pay
4 years and over.....	8 weeks' pay

“Weeks’ Pay” means the ordinary time rate of pay for the employee concerned.

#### 4.5.6 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.5.1 may terminate such employment during the period of notice, and, if so, is entitled to the same benefits and payments under clause 4.5.5 had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee is not entitled to payment in lieu of notice.

#### 4.5.7 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

#### 4.5.8 *Employees with less than one year’s service*

Clause 4.5 does not apply to employees with less than one year’s continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.5.9 *Employees exempted*

Clause 4.5 does not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee;
- (b) to employees engaged for a specific period of time or for a specified task or tasks; or
- (c) to casual employees.

#### 4.5.10 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription varied on the basis of the employer’s incapacity to pay.

### 4.6 **Transmission of business – Continuity of service**

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act as amended from time to time.

### 4.7 **Incidental and peripheral tasks; Staffing levels**

4.7.1 The employer may direct an employee to carry out such duties as are reasonably within the limits of the employee’s skill, competence and training.

4.7.2 The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).

4.7.3 Any direction issued by the employer pursuant to clauses 4.7.1 and 4.7.2 must be consistent with the employer’s responsibilities to provide a safe and healthy working environment.

### 4.8 **Cooperation and commitment to productivity improvement**

#### 4.8.1 *Consultative and facilitative provisions*

- (a) The parties are committed to maintaining a Joint Consultative Committee to represent all employees. These consultative processes will allow employees to participate in the determination of local workplace and employment conditions which directly affect them. Agreement will be between the majority of employees affected and the general manager. The following conditions will apply:
  - (i) conditions may be negotiated between management and employees who are directly affected by such proposals or between management and the Union;
  - (ii) facilitated provisions may be implemented only by agreement;
  - (iii) in determining the outcome of facilitated provisions, neither party will unreasonably withhold agreement;
  - (iv) agreement is defined as obtaining the consent of greater than 50 per cent of employees directly affected;
  - (v) all employees affected must be consulted and have the opportunity to be represented by the Union;
  - (vi) any agreement reached must be documented and must incorporate a review period;

(vii) where the agreement relates to changes to standard working hour arrangements as set out in this Award, the Union is to be notified in writing at least one week in advance of agreement being sought from employees; and

(viii) membership of the Joint Consultative Committee which will meet bi-monthly will consist of representatives of the Union, centre management and employees covered by this Award.

4.8.2 *Issues to be addressed by the Joint Consultative Committee may include :*

- (a) arrangements for taking meal breaks;
- (b) development of standards for medical testing of employees; and
- (c) any issues relating to the workplace.

4.8.3 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industry covered by this Award. Participation in productivity improvements would involve, assisting in the development and implementation of management systems for facility accreditation to the prescribed Australian (AS/NZS:ISO:9002;1994) Standards and the relevant American Correctional Association (ACA) Standards.

4.8.4 *Code of conduct*

It is a requirement of all employees to adhere to the company's code of conduct as amended from time to time.

4.8.5 *Productivity improvements/targets*

- (a) Reduction in absenteeism

The parties agree to target a reduction in absenteeism as part of the co-operative relations process over the period of this Award. The Joint Consultative Committee is to monitor progress toward this objective at each meeting.

- (b) The employer will reserve the right to reclassify, as clerical positions, some positions within the centre which are currently classified under this Award. Without restricting the scope of changes in classifications, where the employer believes some changes are necessary in certain areas, which will lead to improved productivity and efficiency, the employer will look at the civilianisation of all and/or any correctional position through a consultative process with the Union.

**4.9 Outside employment**

4.9.1 The company is committed to ensuring the safety and health of employees at work. To that end, and in the interest of eliminating conflicts of interest the company seeks to impose restrictions on the practice of external employment.

Employment with the company is the primary form of employment of the employee and the employee may not engage in external employment within the correctional industry, or within the security industry unless written permission has first been gained from the general manager.

**PART 5 – WAGES AND WAGE RELATED MATTERS**

**5.1 Covered positions and wages**

5.1.1 The classifications, positions and wages of employees covered by this Award are as set out hereunder:

Classification/Position	Annual Salary \$	Hourly Rates \$
Pre-service officer	19,596.80	8.9728
Correctional officer – security Level 1 (12 calendar months, or 2184 hrs service in the case of casuals)	33,749.80	15.4532
Level 2 Correctional officer – unit (Certificate 3 qualified)	38,104.70	17.4472
Level 1 (12 calendar months)	42,459.40	19.4411
Level 2	45,208.60	20.6999

Progression from correctional officer – security to correctional officer – unit is merit based and dependent upon a vacancy being available.

The above salaries are to be increased on 1 January 2003 by 5% to reflect a buyout of the 38 hour week.

5.1.2 *Method of payment – salaries*

Salaries must be paid fortnightly and may at the discretion of the employer be paid by electronic funds transfer. The employee payslips are to show the cumulative annual leave entitlement.

5.1.3 *Salary reviews*

Salaries must be reviewed in accordance with safety net, or like decisions of the Queensland Industrial Relations Commission.

5.1.4 *Performance of higher duties*

- (a) A permanent correctional officer – security may be called upon to perform work at the level of correctional officer unit without holding a Certificate 3 qualification for the purposes of training and development:

Provided that the employee has previously worked an aggregate of 5 days at such higher level they must be paid at the rate prescribed for correctional officer unit Level 1 for the period involved in such higher duties.

- (b) A casual correctional officer may, at the discretion of the general manager, be required to perform unit duties from time to time:

Provided that the employee has previously worked an aggregate of 5 days at such higher level they must be paid at the rate prescribed for correctional officer unit Level 1, plus casual loading, for the period involved in such higher duties.

#### 5.1.5 *Income insurance*

- (a) The company must provide income insurance for all employees covered under this Award. Such insurance to provide sick and/or injured employees with income, after a qualifying period, in the absence of paid sick leave. The provision of benefits must be administered by an agreed provider in accordance with the terms and conditions of the policy document. The employer will not enter into disputes between individual employees and the insurance provider.
- (b) It will be necessary to review the provision of this privilege in the event that the premium rate exceeds 1.17% of gross salaries for correctional staff. Where such a circumstance arises, the employer will terminate the income insurance scheme, unless there is an undertaking by employees to fund the excess premiums on an equitable basis across the pool of beneficiaries.
- (c) In the event the income insurance provider discontinues the payment of benefits to either an individual or to the scheme as a whole the company will not be liable to make good any shortfall in monies not paid under the scheme.
- (d) Notwithstanding any provision made in the insurance provider's claims administration process, it is agreed that employees will make themselves available for independent medical review, at such times and places as the employer deems fit, for the purpose of establishing their entitlement to ongoing benefits under this scheme.

#### 5.1.6 *Arrangements for underpaid salary/wages*

Where, by an act or omission on behalf of the company, an employee is underpaid salary/wages, then the following special payment arrangements will apply:

- (a) Where the net amount of underpayment exceeds an amount equal to or greater than 25% of the net entitlement, a special payment will be made the same day:  
Provided the payroll office is notified between the hours of 9.00 a.m. and 4.00 p.m. on a working day.
- (b) When the amount of underpayment is less than that described in clause 5.1.6, then the payment must be made not later than 2.00 p.m. on the working day following the inquiry.

#### 5.1.7 *Recovery of overpaid salary/wages*

For whatever reasons that overpayment of salary/wages may occur the parties agree that the recovery of such overpaid monies must occur as follows:

The employee must be notified in writing with details of the overpayment as soon as it has been identified. Recovery must proceed immediately at the next available pay period upon an election by the employee for one of the following options:

- (a) full restitution by personal payment or recovery from the next available pay; and
- (b) payment of a fixed amount per pay period as mutually agreed between the parties.

### 5.2 **Weekend work, shift allowance, annual leave loading and public holidays**

As a result of using the average pay system, weekend penalties, shift allowances, public holiday penalties and annual leave loading are not shown separately but form part of the overall pay rates. The rates of pay for the classification of Level 1 also include a component on the basis of 2 hours overtime per week as part of the ordinary rate of pay.

### 5.3 **Superannuation**

#### 5.3.1 *Occupational superannuation:*

For employees covered under this Award, superannuation contributions must be paid by the employer into an approved superannuation fund in accordance with the *Superannuation Guarantee (Administration) Act*.

- 5.3.2 (a) *Application* – In addition to the rates of pay prescribed by this Award, eligible employees, as defined, are entitled to occupational superannuation benefits, subject to the provisions of clause 5.3.
- (b) *Regular payment* – The employer must pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the Approved Fund Trust Deed.
- (c) *Minimum level of earnings* – No employer is required to pay superannuation contributions on behalf of any eligible employee whether full-time, part-time, casual, adult or junior in respect of any week during which the employees' ordinary time earnings, as defined, do not exceed 35% of \$309.00 (or such other sum as is determined from time to time in proceedings relating to the state wage or safety net adjustments).
- (d) *Absences from work* – Contributions must continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer is required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on Workers' Compensation. In the case of Workers' Compensation, the employer must contribute in accordance with clause 5.3.2(a) whenever the employee is receiving by way of Workers' Compensation, an amount of money no less than the award rate of pay.
- (e) *Other contributions* – Nothing in clause 5.3 precludes an employee from making contributions to a fund in accordance with clause 5.3 thereof.

### 5.3.3 Definitions

- (a) "Approved fund" means a fund approved for the purposes of this Award by the Industrial Relations Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by this Award. Such approved fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions must then be made in accordance with clause 5.3.2 effective from the commencement of that qualifying period.
- (c) "Fund" means a superannuation fund as defined in the *Occupational Superannuation Standards Act 1987* and satisfying the superannuation fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by Regulations made under that Act. In the case of a newly established fund, the term must include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.
- (d) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading, weekend penalties, skill allowances and supervisory allowances where applicable. The term includes any over award payment as well as casual rates received for ordinary hours of work. Ordinary time earnings does not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

### 5.3.4 For the purposes of this Award, an approved fund is:

- (a) Any named fund as is agreed to between the relevant employer/union(s) parties to this Award and as recorded in an approved Industrial Agreement.
- (b) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an industrial tribunal whether State or Federal jurisdiction and already had practical application to the majority of award employees of that employer.
- (c) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any fund nominated by the employer and approved by the Brethren.
- (d) Any fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a Fund cited in this Award would be in conflict with the conscientious beliefs of that employee in terms of section 115 of the Act.
- (e) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.3.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contribution.
- (f) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.3, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause 5.3.2 up to and including the date of that determination.
- (g) In the event of any dispute over whether any fund complies with the requirements of the clause, the onus of proof rests upon the employer.
- (h) The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.
  - (i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
  - (ii) A person must not coerce someone else to make an agreement.
  - (iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of s. 371 and s. 373 (time and wage records) of the *Industrial Relations Act 1999*.
  - (iv) Any dispute arising out of this process will be handled in accordance with the Disputes Resolution Procedure as contained in this Award.

### 5.3.5 Fund selection

- (a) No employer is required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in provisions (d), (e), (f) and (g) of clause 5.3.4, must be determined by a majority decision of employees.
- (b) Employees to whom these provisions who are members of an established fund covered by clause 5.3.4(g) have the right by majority decision to choose to have the contributions specified in clause 5.3.2 paid into a fund as provided for elsewhere in clause 5.3.4 in lieu of the established fund to which clause 5.3.4(g) has application.
- (c) The initial selection of a fund recognised in clause 5.3.4 does not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.
- (d) Where this provision has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund is not be available until a period of 3 years has elapsed after that utilisation of this provision.

### 5.3.6 Enrolment

- (a) Each employer to whom clause 5.3 applies, must, as soon as practicable, as to both current and future eligible employees:

- (i) Notify each employee of the employee's entitlement to occupational superannuation.
  - (ii) Consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.3.4.
  - (iii) Take all reasonable steps to ensure that upon the determination of an appropriate fund, each eligible employee receives, completes, signs and returns the necessary application forms provided by the employer, to enable that employee to become a member of the fund; and
  - (iv) Submit all completed application forms and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.3.7 must:
- (i) complete and sign the necessary application forms to enable that employee to become a member of that Fund; and
  - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 5.3.2.
- (c) Where an employer has complied with the requirements of clause 5.3.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employee of that form, then that employer must:
- (i) Advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.3.
  - (ii) In the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form is received by the employer.
  - (iii) In the event that an eligible employee fails to return a completed and signed application form within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form is a pre-requisite to the payment of any occupational superannuation contributions.
  - (iv) At the same time as advising the eligible employee pursuant to clause 5.3.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the secretary of an industrial union of employees whose registered callings incorporate the classification of the eligible employee a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.3.7(c)(i) and 5.3.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form in accordance with clause 5.3.7(a)(iii) the employer is obliged to make contributions as from the date of operation of clause 5.3 or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form within such period of 28 days the provisions of clause 5.3.7(c) applies.

#### 5.3.7 *Unpaid contributions*

Subject to section 393 of the Act and to clause 5.3.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.3.2 in respect of any eligible employee such employer is liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.3.4, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.3.8 excepting that resort to this provision does not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

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

#### **6.1 Hours of work**

- 6.1.1 Ordinary hours of work for employees on an 84 hour per fortnight roster, including paid meal breaks, must not exceed twelve (12) hours in any twenty-two (22) hour period or 252 hours in any six week period.
- 6.1.2 Ordinary hours of work for all employees (except those covered by clause 6.1.1) including paid meal breaks, must not exceed twelve hours in any twenty-two (22) hour period or 240 hours in any six week period.
- 6.1.3 Ordinary hours must be worked in accordance with a roster established by the employer in consultation with the representatives of the employees. Roster variations and changes of duty may be approved by the correctional manager, with no less than 72 hours notice being given by the party initiating the roster variation or change of duty.

#### 6.1.4 *Post-shift briefing*

Every employee must remain on duty at the conclusion of their shift to provide a briefing to their relief officer. Remuneration for such briefing has been calculated into the annual salaries set out in clause 5.1.1.

#### 6.1.5 *Recording of attendance*

- (a) Every employee must, at the commencement and conclusion of their work, record their attendance by swiping an employee identification card through the bar code reader, installed for such purpose. The employer reserves the right not to pay employees who do not record their attendance, until they have provided suitable written evidence of their attendance at work. Subsequent payment to be provided in the next available pay.

- (b) It will be the responsibility of the employee to maintain the identification card in good working order and advise the pay office of any user problems that may require a replacement card being issued.

#### 6.1.6 *Shift changes*

At the sole discretion of the employer, some shift changes may be permitted subject to the following conditions:

- (a) full-time employees must not exchange shifts with casual employees, or employees not qualified to carry out the relevant duties;
- (b) no shift change will be effected where such a change causes an employee to work in excess of 84 ordinary hours in a pay fortnight.

#### 6.1.7 *Job sharing*

With the approval of the employer two employees may undertake to share a full-time job as part-time employees:

Provided that neither employee may be rostered to work fewer than four ordinary hours during any rostered shift:

Provided further that should either employee leave the employ of the employer the remaining employee must agree to work full rostered shifts until a replacement job share employee can be found. In the event that the remaining employee is unable to work full rostered shifts this will be grounds for the employer to terminate the employee's employment.

#### 6.1.8 *Rosters*

- (a) The ordinary working hours of employees must be worked in accordance with a roster established by the employer. A copy of this roster must be posted in a conspicuous place accessible to employees at least a week in advance for permanent staff.
- (b) The employer agrees to roster weekend and evening/night work employees, insofar as is possible consistent with sound operational practice, in such a manner as to schedule all employees within each classification to work on an approximately equal number of weekend and evening/nights per year.

#### 6.1.9 *Meal breaks*

The hours of duty of employees will be inclusive of a meal break of not less than 30 minutes and not more than one hour and will be taken so as not to interfere with operational requirements.

#### 6.1.10 *Rest pauses*

Employees are entitled to a pause(s) totalling 20 minutes during their rostered daily ordinary hours to be taken at the employees designated duty station at times to suit operational requirements as determined by the Manager.

#### 6.1.11 *Fatigue break*

- (a) All employees are entitled to a ten (10) hour break between the end of an ordinary rostered shift and the beginning of another ordinary rostered shift, except where in emergency situations the minimum may be less than ten (10) hours.
- (b) Where the time between an ordinary rostered shift and the next ordinary rostered shift is less than ten (10) hours the next ordinary rostered shift will be paid at overtime rates, provided that ten hours are read as eight hours where hours where the overtime is worked:
  - (i) by arrangement between employees;
  - (ii) owing to the unforeseen absence of a relief employee; and
  - (iii) for the purpose of changing shift rosters.

- (c) Where an employee works by request an overtime shift or part shift which results in there being less than ten (10) hours from the end of that overtime shift and the beginning of the next ordinary rostered shift, that next ordinary rostered shift will be paid at ordinary rates.

Where an employee is directed to work an shift or part shift which results in there being less than ten (10) hours from the end of that shift and the beginning of the next ordinary rostered shift, the next ordinary rostered shift must be paid at overtime rates until the employee is released from duty and then must be entitled to be absent until ten (10) consecutive hours duty has occurred without loss of pay for ordinary working time occurred during such absence.

#### 6.1.12 *Part-time employees*

Part-time employees are subject, on a *pro rata* basis, to the provisions contained in this Award applicable to a full-time employee.

#### 6.1.13 *Casual employees*

- (a) A casual employee will be paid at the hourly rate for their relevant classification as indicated in clause 5.1. In addition they will receive 23% casual loading.

Each engagement stands alone, with a minimum payment as for two hours' work made in respect to each engagement. A casual employee will be entitled, where applicable, to overtime payment for work performed in excess of 12 hours on each engagement not including meal breaks.

- (b) Subject to the provisions of section 47 of the *Industrial Relations Act 1999* and except in accordance with (a) above, a casual employee is not entitled to any other award provision.

#### 6.1.14 *Temporary employment*

The company may, from time to time, employ persons on a temporary full-time basis, on the condition that one month of notice is provided to such employees of the cessation of the temporary employment. Preferential employment will apply to such employees for appointment to the permanent full-time and/or permanent part-time staff, as vacancies occur. Appointments will be based on the merit principle.

#### 6.1.15 Full time to casual employment

Upon the resignation of a permanent full-time position and simultaneous appointment into casual employment, an employee must forego all benefits and entitlements of the former office and be subject to the terms and conditions of any casual employment offer. Such employees then seeking further reappointment to the full-time staff, are subject to the usual terms and conditions of the company's recruitment processes.

### 6.2 Overtime

- 6.2.1 For the purposes of clause 6.2 time worked outside rostered ordinary hours must be paid as overtime.
- 6.2.2 All employees must be paid at an overtime rate of \$28.00 per hour.
- 6.2.3 All work performed by a casual in excess of 12 hours in any one day or 252 hours in any six week period must be paid overtime at the rate of \$28.00 per hour.
- 6.2.4 The rates set out in clauses 6.2.2 and 6.2.3 will be increased by the same percentage which the salary for a correctional officer – security (level 2) increases from to time.
- 6.2.5 Employees will be required to work overtime whenever necessary in the opinion of the employer, but twenty-four (24) hours notice must be given where practicable, to an employee required to work overtime.
- 6.2.6 An employee recalled to perform duty after completing ordinary duty must be paid at overtime rates with a minimum payment of four (4) hours.

## 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 leave on full pay as follows:

84 hour per fortnight employees	168 hours
---------------------------------	-----------

Such annual holiday is exclusive of any public holidays, which may occur during the period of leave.

- 7.1.2 In addition to the entitlement set out under clause 7.1.1:

A correctional officer – unit and correctional officer – security (84 hours) is entitled to a further 42 hours annual leave both inclusive of any public holiday which may occur during the additional period:

Provided that where the employee has not occupied this position for a full year but has been appointed to substantively occupy the position, a *pro rata* period must be allowed. The additional week's leave does not apply to an employee who may have been performing this function in a higher duties capacity.

- 7.1.3 An employee may, by a once only irrevocable choice, elect to avail of a salary package that provides one week of annual leave in addition to that provided by either clauses 7.1.1 or 7.1.2. The package provides the additional leave entitlement through a commensurately reduced annual salary rate, calculated as  $51/52 \times$  ordinary rate as per clause 5.1.1.
- 7.1.4 The employer may not give, nor any employee receive, payment in lieu of annual leave, except upon resignation, retrenchment or dismissal.
- 7.1.5 Annual leave loading does not apply.

### 7.2 Public holidays

- 7.2.1 An employee who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.
- 7.2.2 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;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

must be paid for at the rate of double time and a-half with a minimum of four hours.

- 7.2.3 *Employees who do not work Monday to Friday of each week*

Employees who do not ordinarily work Monday to Friday of each week are entitled to public holidays as follows:

- (a) A full-time employee is entitled to either payment for each public holidays or a substituted day's leave.
- (b) A part-time employee is entitled to either payment for each public holidays 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 are entitled to payment for the public holiday 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) is to be paid at the rate of double time.
- (e) Nothing in clause 7.2 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

7.2.4 Any employee, with two weeks' or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, is entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and New Year's Day.

#### 7.2.5 *Annual show*

All work done by employees in a district specified from time to time by the Minister by notification published in the *Industrial 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 will be paid for at the rate of double time and a-half with a minimum of 4 (4) hours.

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

### 7.3 **Sick leave**

#### 7.3.1 *Entitlement*

- (a) Every employee other than a casual employee is entitled to seventy-two (72) hours sick leave for each completed year of employment with the employer.
- (b) As regards any period of employment of less than one year with the employer, an employee is entitled to nine (9) hours' sick leave for each 6 weeks' employment.
- (c) Payment for sick leave will be made based on the ordinary number of hours that would have been worked by the employee if they were not absent on sick leave.
- (d) Sick Leave may be taken for part of a day.
- (e) Sick leave is cumulative, but unless the employer and employee otherwise agree, no employee is entitled to receive, and no employer is bound to make, payment for more than 520 hours absence from work through illness in any one year.

#### 7.3.2 *Employee must give notice.*

The payment of sick leave is subject to the employee promptly advising their employer of their absence and its expected duration.

#### 7.3.3 *Evidence supporting a claim.*

When the employee's absence is for more than two days the employee is required to give their employer a doctor's certificate about the nature and approximate duration of the illness or other evidence to the employer's satisfaction.

#### 7.3.4 *Accumulated sick leave*

- (a) Employee's accumulated sick leave entitlements are preserved when:
  - (i) they are absent from work on unpaid leave granted by their employer;
  - (ii) the employer or employee terminates the employee's employment and the employee is re-employed within three months; or
  - (iii) they are terminated because of illness or injury and re-employed by the same employer without having been employed in the interim.
- (b) Employees accumulate sick leave entitlements whilst they are absent from work on paid leave granted by their employer.

### 1.0 **Bereavement leave**

7.4.1 An employee (other than a casual) on the death of a member of their immediate family or household in Australia is entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave must 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 is to be furnished by the employee to the satisfaction of the employer.

#### 7.4.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least two days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) The term "long-term casual employee" means:
 

a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.4.2

7.4.3 The term "immediate family" includes:

- (a) a spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.4.4 An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household in Australia dies and the period of bereavement leave entitlement provided above is insufficient.

#### 7.5 Long service leave

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

#### 7.6 Family leave

The provisions of the Family Leave Award apply to and are deemed to form part of this Award.

7.6.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
- (b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.

7.6.2 The Family Leave Award also provides for the terms and conditions of leave associated with:

- (a) Maternity Leave
- (b) Parental Leave
- (c) Adoption Leave
- (d) Special Responsibility Leave for the care and support of the employee's immediate family or household.

#### 7.7 Special leave

7.7.1 At the discretion of the employer, special leave without pay, not to exceed twelve (12) weeks, will be granted for any worthwhile purpose.

##### 7.7.2 Court Leave

An employee subpoenaed to be a witness in any court proceedings arising out of their employment with the company must be granted leave as follows:

- (a) when rostered on duty: pay for the period of absence in accordance with the usual rostered duties;
- (b) when rostered off duty: payment of an amount equal to 8 hours at the usual hourly rate.

The employee must declare to the Court that they are receiving payment from the employer.

#### 7.8 Military leave

7.8.1 Unpaid leave not exceeding two weeks in any one calendar year (or five (5) weeks for members of the 49 RQR) will be granted by the general manager of the facility, to employees who are members of the Defence Force Reserves for the purpose of undergoing training or equivalent continuous duty.

7.8.2 Copies of military orders will be required to support such leave.

### PART 8 – TRANSFERS TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

#### 8.1 Travelling time and expenses

##### 8.1.1 Expenses and reimbursements

- (a) All reasonable fares incurred by an employee whilst travelling on their employer's business must be paid by the employer. The fares allowed are:
  - on passenger coaches – normal fare
  - on trains – first class (with sleeping berths if available)
  - on passenger aircraft – economy class
- (b) If an employee is required, in the course of their work, to remain away from home overnight, they must be reimbursed by the employer for all reasonable expenses actually incurred in obtaining board and accommodation.
- (c) A permanent employee who is required by the employer to commence and cease work at other than the Arthur Gorrie Correctional Centre (Brisbane) must, in addition to all other entitlements, be paid for all time in excess of that normally taken to travel between his or her residence and the Arthur Gorrie Correctional Centre (Brisbane) at ordinary time. In addition, if an employee uses their own vehicle, such employee must be paid for all excess travelling at the rate prescribed by the Australian Taxation Office from time to time.

**PART 9 – TRAINING AND RELATED MATTERS****9.1 Commitment to training and careers**

- 9.1.1 The parties to this Award recognise that in order to increase efficiency and productivity a greater commitment to training and development is required. Accordingly, the parties commit themselves to developing a more multi-skilled and flexible workforce and providing employees with career opportunities through appropriate training to acquire additional skills for performance of their duties.
- 9.1.2 Correctional officer – security is required to complete training to obtain eligibility for promotion to correctional officer – unit. Such training is to be determined by the employer from time to time, to include set examinations and prescribed pass rates.
- 9.1.3 Correctional officer – unit is required to complete training to obtain eligibility for promotion. Such training is to be determined by the employer from time to time, to include set examinations and prescribed pass rates.
- 9.1.4 Training and development may be both on-the-job or off-the-job and either internal or external to the organisation.
- 9.1.5 Training and development provided should assist employees to obtain knowledge and skills accredited by a relevant authority.
- 9.1.6 All such training and development should be directed at enabling employees to enhance skills relevant to duties performed.
- 9.1.7 Employees will be expected to attend scheduled training and development activities.

The employer will develop an organisational structure in accordance with its operational needs. It will be the objective of the employer to provide the widest range of employment opportunities to serve the operational needs of the centre, and identify the minimum requirements for each employment category. These must be reflected in the “Staff Establishment List”. Appointments to these positions will be made using merit principles, (including satisfactory performance appraisals and satisfactory completion of required training) and be subject to vacancies actually existing within 14 days of close of applications where practicable.

**PART 10 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES****10.1 Uniforms****10.1.1 Corporate uniform**

A corporate uniform will be required to be worn by all correctional officers. The uniform will be comprised of:

Item	Number	Minimum Life
Trousers / pants / skirts / shorts	3*	18 months
Vest	1	2 years
Tie (M) / scarf (F)	1	2 years
Belt	1	2 years
Shirts (M) / blouses (F) – long and short sleeved	5	1 year
Shoes #	1	1 year
Socks (grey)	3	1 year
Pullover	1	3 years
Windcheater	1	3 years
Hat / cap	1	2 years
Hat badge	1	Nil
Sun glasses (if working outside)	1	2 years
Lanyard – cat chain	1	2 years
Officer notebook	1	Nil
Safety pouch	1	Nil

\* Employees may select three lower garments of any mix.

# Shoes may be purchased by the employee to the value of \$75.00. Shoes must be black leather and fully enclosed.

Sufficient CERT gear is to be available within the Centre at all times.

All items listed above will be replaced by the company on a reasonable wear and tear basis.

**10.2 Occupational health and safety standards/NCSA 5 star safety programme**

- 10.2.1 The employer must, in accordance with accepted occupational health standards, provide immunisation to all employees covered under this agreement, for influenza and hepatitis B. The immunisation programme to be implemented by qualified staff at the Arthur Gorrie medical facility.
- 10.2.2 Employees covered under this Award are bound by the policies and procedures set out in the NCSA 5 Star Programme, and commit themselves to the ideals and standards of the company’s Safety Policy.

**10.3 Workplace health and safety***Medical Examinations*

On any occasion of injury at work it is a requirement of the employee to report such injury to the Health Services Supervisor, and where necessary, undergo a medical examination by the attending medical practitioner.

Subsequent to an injury or in the case of persistent ill health, employees will co-operate with the employer's independent health consultant in a review of the employee's medical circumstances. Such co-operation is to extend to medical examinations and authorised access to the employee's treating physician.

## **PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **Preamble**

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

### **11.1 Right of entry**

#### *11.1.1 Authorised industrial officer*

- (a) An authorised industrial officer is any union official holding a current authority issued by the industrial registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of that particular organisation.

#### *11.1.2 Entry procedure*

- (a) The authorised officer is entitled to enter the workplace during normal business hours as long as:
  - (i) the officer alerts the employer or other person in charge of the workplace to their presence; and
  - (ii) shows the authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any officer exercising their right of entry.
- (d) If the officer intentionally disregards a condition of clause 11.1.2 the officer may be treated as a trespasser.

#### *11.1.3 Inspection of records*

- (a) An officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
  - (i) is ineligible to become a member of the officer's organisation; or
  - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
  - (iii) has made a written request to the employer that they do not want their record inspected.
- (c) The officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

#### *11.1.4 Discussions with employees*

An officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the officer's organisation:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the officer's organisation, during non-working time.

#### *11.1.5 Conduct*

An officer must not unreasonably interfere with any personnel during their working time in exercising a right of entry.

### **11.2 Time and wages record**

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the Award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate – details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;

- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund

11.2.2 *The time and wages record must also contain:*

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee stopped employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act – the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records must be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act; or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

### 11.3 Union encouragement

Clause 11.3 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

11.3.1 *Documentation to be provided by employer*

At the point of engagement, an employer to whom this Award applies must provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

The document provided by the employer must also identify the existence of a union encouragement clause in this Award.

### 11.4 Union recognition and membership

The employer recognises the ALHMWU as the union which has the rights of exclusive representation of employees covered by this Award.

It is the policy of the employer that all employees will be encouraged to join the ALHMWU and will promote membership at the point of recruitment by recommending that employees join the ALHMWU. New employees will be provided with a union membership application form at the time of engagement and current employees, not presently members of the ALHMWU, will also be provided with a membership application form and advised of the employer's policy on the matter.

The employer undertakes, upon authorisation, to deduct union membership dues, as levied by the union in accordance with its Rules, from the pay of employees who are members of the Union. Monies collected will be forwarded to the union at the beginning of each month together with all information to enable the reconciliation and crediting of subscriptions to members' accounts.

11.4.1 *Union delegates*

Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or job representatives is encouraged.

The employer must not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

### 11.5 Trade union training leave

11.5.1 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 must be granted up to five (5) working days' leave (non cumulative) on ordinary pay, each calendar year, to attend courses and/or seminars conducted or approved by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees. For the purposes of this clause, ordinary pay means at the ordinary weekly rate paid to the employee exclusive of any disability allowances.

11.5.2 The granting of TUT Leave is 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) not more than three (3) employees must attend a TUT course or seminar at the same time and no more than three (3) employees in any one year;
- (c) the taking of TUT leave must 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 must be processed in accordance with the Grievance Procedure contained in this Award.

- (d) the scope, content and level of the course must be such as to contribute to a better understanding of industrial relations, industrial efficiency and workplace issues within the employer's operations;
- (e) 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;
- (f) leave granted to attend TUT courses will not incur additional payment if such course coincides with an employee's rostered day off; and
- (g) the taking of TUT leave will not affect other leave granted to employees under this Award, nor must it adversely affect the employee's service for the calculation of leave entitlements.

## APPENDIX A

### Australasian Correctional Management Pty Ltd – Position Description and Selection Criteria

**Position Title:** *Custodial correctional officer – security*  
**Location:** *The Arthur Gorrie Correctional Centre, Brisbane*  
**Reports To:** *Correctional manager*

#### 1.0 Primary objective

The primary objective of the security officer is to maintain, on a day to day bases, the security of the centre, to ensure the provision of a safe and secure environment for all staff prisoners and visitors.

#### 2.0 Duties and responsibilities

- 2.1 Supervise the day to day activities of prisoners on a day to day basis in accordance with the centre's routine or structured day.
- 2.2 Provide internal and external security in accordance with ACM policies and procedures and general manager's Rules.
- 2.3 Monitor and maintain the static security requirements of the correctional centre, reporting orally and in writing, an unusual behaviours or occurrences which could result in a breach of security.
- 2.4 Undertake searches and perform escort duties of prisoners both within the centre and externally when required.
- 2.5 Participate in the reception, induction, transfer and discharge of prisoners in accordance with ACM policies and procedures.
- 2.6 Participate in quality assurance teams as assigned by management, in order to assist with the implementation of the AS/NZA ISO; 9002:1994, (incorporating ACA Standards), accreditation throughout the company.
- 1.0 Other duties as directed by a correctional manager.

#### 1.0 Key selection criteria

- 3.1 Knowledge of, or the ability to rapidly acquire knowledge of the Queensland Corrective Services Commission's Acts and Regulations, policies and procedures.
- 3.2 Knowledge of, or ability to rapidly acquire knowledge of the Arthur Gorrie general manager's rules and ACM policies and procedures
- 3.3 Demonstrated high level of communication skills, including the ability to negotiate and interact with people from varying ethnic backgrounds.
- 3.4 Ability to write reports and correspondence.
- 3.5 Ability to initiate new ideas and apply creative solutions to the resolution of problems.
- 3.6 Ability to be decisive and handle situations in a fair, firm and equitable manner.
- 3.7 Knowledge of, or the ability to rapidly acquire knowledge of Equal Employment Opportunity, ACM's Affirmative Action Plan and Workplace Health and Safety Principles.

#### 4.0 Other information

- 1.0 Based on the requirements of the position the undermentioned selection criteria have been set. Selection for appointment to the position (commencing with short listing for interview) will be determined by how well applicants satisfy these criteria. It is important, therefore, that applicants attach a statement to their resume concisely describing, which examples, how they consider themselves meeting each selection criterion. Each selection criteria should be addressed separately.
- 2.0 The possession of formal tertiary qualifications is not included as a requirement within the selection criteria of this position description. While ACM values the enhanced work performance deriving from the expanded knowledge and skill base resulting from formal tertiary study, it also acknowledges that enhanced work performance can result from other learning experiences. These include on the job training, structured professional development or life experiences.
- 3.0 ACM will assess applicant's skills, knowledge and abilities against the selection criteria of the position without prejudice regarding the origin of those skills, knowledge and abilities.
- 4.0 When answering the selection criteria it is advised that you read the criteria carefully. Where it is asked for the applicant to have "knowledge of, or ability to rapidly acquire knowledge of" requires the applicant to demonstrate any skills directly relating to the criteria or to relate similar experiences, knowledge or skills that could be transferred to that area. Whilst it does not hinder your changes if you don't have direct

experience with the requirements of the selection criteria, you must demonstrate to the selection panel that you have similar experience which provides you with the capability to rapidly acquire the knowledge needed to perform the job.

I acknowledge receipt of this Position Description and Selection Criteria for the position of Custodial Correctional Officer – Unit. I acknowledge that the duties, responsibilities and key selection criteria are consistent with the work that I do at the Arthur Gorrie Correctional Centre.

Employee Name: .....

Signature: .....

Functional Manager: ...../...../.....

General Manager: ...../...../.....

## APPENDIX B

### Australasian Correctional Management Pty Ltd – Position Description and Selection Criteria

**Position Title:** *Custodial correctional officer – unit*  
**Location:** *The Arthur Gorrie Correctional Centre, Brisbane*  
**Reports to:** *Correctional manager*

#### 1.0 Primary objective

1.1 The primary objective of the unit officer is to supervise, on a day to day basis, the provision of services to prisoners, including case management, and actively participate in the operations and determination of priorities of any one of the assigned areas or functions.

#### 2.0 Duties and responsibilities

- 2.1 Supervise the behaviour and the activities of prisoners on a day to day basis in accordance with the Centre's routine or structured day.
- 2.2 Interact with offenders and respond to their needs through the provision of services in an appropriate manner in accordance with relevant Queensland legislation and general manager's rules.
- 2.3 Play an integral role in the rehabilitation of offenders by developing and establishing case management programs, (in conjunction with counsellors and health professionals), which form the basis of the offenders future within the prison system.
- 2.4 Participate in the implementation of the offender's case management plan and their work and program activities.
- 1.0 Monitor and maintain the dynamic and static security requirements of the correctional centre, reporting orally and in writing, any unusual occurrences or behaviours which could result in a breach of security.
- 2.0 Undertake searches and perform escort duties of prisoners both within the centre and externally when required.
- 3.0 Participate in the reception, induction, transfer and discharge of prisoners in accordance with ACM policy and procedures.
- 4.0 Supervise and co-ordinate other custodial staff assigned within the area of responsibility.
- 5.0 Participate in quality assurance teams as assigned by management, in order to assist with the implementation of the AS/NZS ISO; 9002:1994, (incorporating ACA Standards), accreditation throughout the company.
- 2.10 Other duties as directed by the correctional manager
- 2.11 To be familiar and compliant with section 36 of the *Workplace Health and Safety Act 1995*, as amended from time to time, and report any hazard, without delay, to the person in charge of your work. To take personal responsibility for health and safety issues at work, for self and others. Read and understand all health and safety rules that apply to the duties of this position. Follow all written safe work procedures, practices and verbal instructions.

#### 3.0 Key selection criteria

- 3.1 Served as a security officer within ACM.
- 3.2 Successfully completed the required ACM training for the position, including Case Management.
- 3.3 At least two (2) consecutive performance appraisals which have been rated well above average.
- 3.4 Demonstrated sound working knowledge of the Queensland Corrective Services Commission's Acts and Regulations, Policies and Procedures.
- 3.5 Demonstrated knowledge of the Arthur Gorrie's general manager's rules and ACM Policies and Procedures.
- 3.6 Demonstrated high level of communication skills, including the ability to negotiate and interact with people from varying ethnic backgrounds.
- 1.0 Ability to write comprehensive reports and correspondence.
- 2.0 Ability to initiate new ideas and apply creative solutions to the resolution of problems.

- 3.0 Ability to be decisive and handle situations in a fair, firm and equitable manner.
- 4.0 An ability to supervise and train staff.
- 5.0 A basic level of computer literacy.
- 6.0 Demonstrated knowledge of Equal Employment Opportunity, ACM's Affirmative Action Plan and Workplace Health and Safety Principles.
- 7.0 Based on the requirements of the position the undermentioned selection criteria have been set. Selection for appointment to the position (commencing with short listing for interview) will be determined by how well applicants satisfy these criteria. It is important, therefore, that applicants attach a statement to their resume concisely describing, which examples, how they consider themselves meeting each selection criterion. Each selection criteria should be addressed separately.
- 8.0 The possession of formal tertiary qualifications is not included as a requirement within the selection criteria of this position description. While ACM values the enhanced work performance deriving from the expanded knowledge and skill base resulting from formal tertiary study, it also acknowledges that enhanced work performance can result from other learning experiences. These include on the job training, structured professional development or life experiences.
- 9.0 ACM will assess an applicants skills, knowledge and abilities against the selection criteria of the position without prejudice regarding the origin of those skills, knowledge and abilities.

I acknowledge receipt of this Position Description and Selection Criteria for the position of custodial correctional officer – unit. I acknowledge that the duties, responsibilities and key selection criteria are consistent with the work that I do at the Arthur Gorrie Correctional Centre.

Employee Name: .....

Signature: .....

Functional Manager: ...../...../.....

General Manager: ...../...../.....

Dated 18 March 2002.

Operative Date: 18 March 2002

Repeal and New Award – Arthur Gorrie Correctional Centre (Custodial Correctional Officers) Award – State

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

Released: 03 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Queensland Health AND Queensland Nurses' Union of Employees and Ors (No. B787 of 2002)**

**SENIOR ADMINISTRATIVE NURSING STAFF AWARD – DIVISION OF PSYCHIATRIC SERVICES  
AND EVENTIDES, DEPARTMENT OF HEALTH**

And

**Queensland Health AND The Queensland Public Sector Union of Employees and Ors (No. B788 of 2002)**

**NURSES (OTHER THAN PUBLIC HOSPITALS) INTERIM AWARD – REGIONAL HEALTH AUTHORITIES, QUEENSLAND**

And

**Queensland Health AND Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and  
Administrative Branch, Union of Employees and Ors (No. 789 of 2002)**

**CLERKS' AWARD – PUBLIC HOSPITALS – STATE**

VICE PRESIDENT LINNANE

27 May 2002

REPEAL OF AWARDS

THIS matter coming on for hearing before the Commission at Brisbane on 27 May 2002, this Commission orders *by consent* that the said Awards be repealed as from 27 May 2002:

1. Senior Administrative Nursing Staff Award – Division of Psychiatric Services and Eventides, Department of Health;
2. Nurses (Other than Public Hospitals) Interim Award – Regional Health Authorities, Queensland; and
3. Clerks' Award – Public Hospitals – State.

Dated 31 May 2002.

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

Operative Date: 27 May 2002  
Repeal – Awards  
Released: 31 May 2002

#####

INDUSTRIAL COURT OF QUEENSLAND

*Workplace Health and Safety Act 1995* – s. 164(3) – appeal against decision of industrial magistrate

**Gary Eric Newman AND David Knox Holdings Pty Ltd (No. C31 of 2002)**

PRESIDENT HALL

31 May 2002

DECISION

The respondent was charged with a breach of section 28(1) of the *Workplace Health and Safety Act 1995* with a circumstance of aggravation, being the death of Kevin Rowe.

The charge was:

*“That on the 24<sup>th</sup> day of August 2001, at 137 Montague Road, West End, in the Brisbane District, DAVID KNOX HOLDINGS PTY LTD, being a person on whom a workplace health and safety obligation is imposed did fail to discharge that obligation, in that DAVID KNOX HOLDINGS PTY LTD, an employer failed to ensure the workplace health and safety of each of its workers at work and KEVIN ROWE in particular contrary to Section 24(1) of the Workplace Health and Safety Act 1995 in such case made and provided.”.*

The prosecution and defence agreed that the particulars of the failure to discharge the obligation would be restricted to the following:

*“Failure to ensure that workers complied with the requirement to wear fitted seat belts when operating forklifts.*

*It is alleged that as a consequence of the failure to discharge the workplace health and safety obligation Kevin James Rowe suffered injuries from which he died.”.*

The respondent pleaded guilty. No conviction was recorded. The respondent was fined \$15,000. This is an appeal against that sentence. The appellant does not seek that a conviction be recorded. It is common ground that in imposing sentence the Industrial Magistrate was exercising a discretion and that this Court should interfere with the sentence only if it is consistent with *House v The King* (1936) 55CLR 499 to do so.

The nature of the event which gave rise to the charge appears sufficiently from the agreed statement of facts handed to the Industrial Magistrate:

*“The defendant is a company which carries on business under the business name of Knox Cleaning Services. It employed 52 workers, five of whom worked at the premises occupied by ACI Glass Production Pty Ltd at 137 Montague Road, West End. Knox Cleaning Services held a cleaning contract with ACI Glass Production Pty Ltd (ACI) to perform work at that premises. ACI’s main business was the manufacture of glass products.*

*Kevin James Rowe was employed by Knox Cleaning Services as a full-time cleaner. Knox Cleaning Services employed a site supervisor at the ACI premises.*

*On 28 August 2000, Kevin James Rowe was emptying bins containing broken glass.*

*Due to the weight of the bins, forklifts owned and supplied by ACI were regularly used by David Knox Holdings Pty Ltd employees to transport the bins to other areas of the building for emptying. Mr Rowe was a ticketed forklift operator.*

*On 28 August 2000, Mr Rowe was operating a Toyota forklift and carrying a large yellow metal industrial bin containing glass from the palletising area to the large industrial bins adjacent to the batch house for emptying. The bins were lifted with the forks at the top of the bin which caused the forklift’s mast to be extended.*

*There were no yellow bins located in the cold end section and the cleaners did not normally travel through the cold end to empty the yellow bins. It was however usual for cleaners to travel through the cold end to empty other types of bins, such as skip bins. The skip bins contained other types of rubbish. When this occurred the masts were not extended to the same height.*

*Mr Rowe was travelling towards the ‘cold end area’ with the forklift mast raised to the higher point when the mast struck an overhead conveyer. The top of the mast in this position was measured and found to be approximately 3.94 metres above the ground. The overhead conveyer was measured and found to be only 3.3 metres above ground.*

*The impact between the mast of the forklift and the overhead conveyer caused the loaded forklift to overturn.*

*At the time the forklift was fitted with a seat belt. However, Mr Rowe was not wearing the seat belt and was thrown from the forklift and pinned underneath it. He sustained multiple head and neck injuries from which he died.”.*

The breach of s. 24(1) was a very serious one. The risk associated with driving a forklift without a seat belt or with a seat belt undone is an obvious one. It is the risk which fructified here. The risk is that if the forklift rolls the driver will be thrown out and be pinned by the falling forklift. Additionally, there were other factors.

The respondent had paid for Mr Rowe to obtain his licence to use the forklift. In the course of that training Mr Rowe had been informed of the need to wear a seat belt. The forklift which Mr Rowe was driving on 24 August 2001 was equipped with a manual advising the operator that the seat belt was to be worn. However, in fact, the culture at ACI’s premises was that seat belts were not worn. No-one bothered. The respondent was blissfully unaware of all of that. The respondent had no active and continuing involvement in workplace health and safety matters on the site. It chose to rely upon ACI, through its Workplace Health and Safety Officer, to discharge all obligations under the *Workplace Health and Safety Act 1995*. The respondent had not

made any risk assessment. It relied upon ACI’s workplace health and safety officer without making any inquiries and without monitoring that which was occurring.

Additionally, there is the factor of the death. Whilst the death was not an element of the offence it is by s. 24(i) deemed to be a circumstance of aggravation causing the maximum penalty, in the case of a corporation, to increase to \$300,000.

There were certainly significant mitigating factors. The Industrial Magistrate took into account that:

- (1) the respondent was not aware of the relevant advisory standard as there was no statutory mechanism for the information to reach the respondent;
- (2) the respondent is a small company normally engaged to clean supermarkets and offices – the contract to clean the ACI factory was different in that the premises was a manufacturing factory;
- (3) the defendant had no previous convictions;
- (4) although the guilty plea was not entered early, given the late agreement about particulars it should be treated as if it was an early plea;
- (5) the defendant co-operated with the investigators from Workplace Health and Safety;
- (6) before the fatality the respondent had some measures in place related to ensuring that the cleaning work at ACI was properly and safely carried out, and significantly improved those measures after the fatality;
- (7) the respondent’s financial position and that any financial penalty will have a significant effect on the ability of the defendant to continue operating.

[As to (1), it seems to me that if the respondent had been aware of the advisory standard and had chosen to ignore it, that would be an aggravating feature. In the absence of knowledge that aggravating feature is not present].

Notwithstanding the strictures of *House v The King* (1936) 55 CLR 499, it seems to me that this is a case in which the Court should interfere in the way in which the Industrial Magistrate exercised the sentencing discretion. So much has been made of the mitigating factors that all sight has been lost of the objective gravity of the breach. In saying that, I accept the submission of Mr Lippett, counsel for the respondent, that some measure of reliance upon ACI was understandable. ACI was the customer. It was ACI’s site. ACI had obligations under the *Workplace Health and Safety Act 1995* to its own employees on the site. As occupier, it had obligations under the *Workplace Health and Safety Act* to the respondent’s employees on the site. ACI had a significant workforce on the site. The respondent had five employees on the site (some of them part-time). It is entirely understandable that the respondent would cede a dominant and co-ordinating role to ACI. It was neither understandable nor acceptable for the respondent to vacate any responsibility for the safety of its employees because of (misplaced) confidence in ACI. While it would be unfair to describe the respondent as sitting on its hands, the respondent was certainly comfortably seated.

Determining an appropriate penalty is another matter. ACI was charged over the same incident. ACI pleaded guilty and was fined \$30,000. It is apparent from a perusal of the Workplace Health and Safety briefing note relating to the proceedings that the fine of \$30,000 was itself a mitigated fine. (The mitigating circumstances were quite different). For myself, I consider ACI to have been more blameworthy. The respondent did not know of the culture at the premises of ACI because the respondent had not bothered to find out. ACI by its superior servants and agents must have known of the unhealthy culture. Additionally, though it is not a matter of great moment, one has to acknowledge that ACI is a company of very much greater financial stature than the respondent. In all the circumstances, I consider a fine of \$25,000 is appropriate.

I allow the appeal. I set aside the orders of the Industrial Magistrate. I fine the respondent the sum of \$25,000, in default levy and distress. I reserve the question of costs in the Industrial Magistrates Court.

Dated 31 May 2002.

D.R. HALL, President.

*Appearances:*  
Mr S. Habermann, directly instructed by Workplace Health and Safety, for the appellant.  
Mr F. Lippett, instructed by McInnes Wilson, Solicitors, for the respondent.

Released: 31 May 2002

#####

INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999* – s.341(1) – appeal against decision of industrial commission

**Muhammad Alamzeb AND Education Queensland (No. 2) (No. C55 of 2001)**  
**Education Queensland and Muhammad Alamzeb (No. C56 of 2001)**

PRESIDENT HALL

4 June 2002

DECISION

Mr Alamzeb commenced employment as a full-time District relieving teacher with Education Queensland on 10 May 1999. He commenced as a probationary employee. A document described as “conditions of employment” which accompanied his letter of appointment addressed the matter of probation as follows:

**“Probation**

You will be required to serve a probationary period of at least eight months from the date of your commencement of duty.

On completion of your probationary period, your Principal is required to report on your work performance. Your District Office will notify your Principal in advance of the date for the report.

Subject to a satisfactory report, confirmation of your appointment will be approved by your District Office.

An unsatisfactory report will result in either remedial action and extension of the probationary period, or termination of your appointment. You will have the opportunity to respond to an unsatisfactory report. Any comments you may make will be considered in the process of determining the action to be taken.”.

In December of 1999 Education Queensland offered Mr Alamzeb a full-time teaching position at Isis State High School. He accepted and commenced as a full-time teacher at Isis State High School at the beginning of 1st semester 2000. He was dismissed in June of that year.

By an application to the Queensland Industrial Relations Commission filed on 23 June 2000 Mr Alamzeb sought reinstatement to his position at Isis State High School. He was partially successful. His termination was held to be unfair. However, reinstatement and re-employment were both found to be impracticable. Education Queensland was ordered to pay Mr Alamzeb an amount equivalent to four months' salary. (The order has since been stayed.)

Each of Mr Alamzeb and Education Queensland has appealed. Since Mr Alamzeb's appeal was filed first I shall try to deal with it first, though as subsequently will appear, there is much overlap. However, before turning to Mr Alamzeb's appeal, I shall deal with an issue which arises in each appeal, viz whether Mr Alamzeb was a probationary employee at the time of his termination. The issue is of some moment. Education Queensland proceeded on the view that it was terminating the employment of a probationary employee. If in truth Mr Alamzeb was a tenured employee, the *Public Service Act 1996* required Education Queensland to follow quite a different process to the process adopted in terminating Mr Alamzeb.

Mr Alamzeb's first submission is that it is the effect of sections 6 and 7 of the *Public Service Regulation 1997* that when at the end of the eight month probationary period he was neither told that he was confirmed nor told that his probationary period was extended, he acquired tenure by operation of law. The submission is misconceived. Sections 6 and 7 of the Regulation do not deal with the consequence of non-compliance. That matter is dealt with by s. 73 of the *Public Service Act 1996*. That section provides:

**“Appointments on probation**

- 73.(1)** If a person who is not already an officer is appointed as an officer on tenure, the person's chief executive may decide that the person be appointed on probation for not less than 6 months.
- (2)** The person's chief executive may –
- (a) by signed notice given to the person, terminate the person's employment at any time during the period of probation; or
- (b) at the end of the period of probation –
- (i) confirm the appointment; or
- (ii) extend the period of probation; or
- (iii) by signed notice given to the person, terminate the person's employment.
- (3)** If, within 13 months after the person's appointment, the appointment is not confirmed and the employment is not terminated, the person's appointment is taken to have been confirmed at the end of the 13 months.”.

In *Vidler v. Education Queensland* (2000) 165 QGIG 47 at 47 I summarised the effect of s. 73 as follows:

“In my view s. 73(3) does not operate as a cap upon what may be done pursuant to s. 73(2)(b)(ii). The verb used at s. 73(2) is 'may'. 'May' is defined at s. 32 CA of the *Acts Interpretation Act 1954*. It is given an entirely facultative meaning. It seems to me that [at] the end of the period of probation set pursuant to s. 73(1) the chief executive officer may confirm the appointment, extend the appointment or dismiss the probationer. The chief executive officer may also fail to take any step at all. In such a case once the sum of the period of probation set pursuant to s. 73(1) and the period of inaction totals thirteen months, by s. 73(3) the probation as appointment is taken to be confirmed. Compare *Sandra Fox-Spencer v. Education Queensland* 164 QGIG 119.”.

I reject Mr Alamzeb's submission that he acquired tenure when, after eight months, he was neither told that he was confirmed, nor told that he was terminated, nor told that his probation had been extended. I reject also the subsidiary submission that because the Director-General of Education had set an upper limit of 12 months on (extended) probation periods that Mr Alamzeb acquired tenure when 12 months came and went. The determination of the Director-General is neither in substitution for nor in derogation of s. 73 of the *Public Service Act 1996*.

It is then contended by Mr Alamzeb that he was not given notice of termination until the 13 months referred to at s. 73 had expired.

It is s. 39 of the *Acts Interpretation Act 1954* which defines how the nature of termination pursuant to s. 23(2)(a) of the *Public Service Act 1996* is to be given. Section 39 of the *Acts Interpretation Act 1954* proceeds as follows:

**“Service of documents**

- 39.(1)** If an Act requires or permits a document to be served on a person, the document may be served –
- (a) on an individual –
- (i) by delivering it to the person personally; or
- (ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document or;
- (b) on a body corporate – by leaving it at, or sending it by post, telex, facsimile or similar facility to, the head office, a registered office or a principal office of the body corporate.
- (2)** Subsection (1) applies whether the expression 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used.
- (3)** Nothing in subsection (1) –
- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subsection; or

(b) affects the power of a Court or Tribunal to authorise service of a document otherwise than as provided in the subsection.”.

The letter of termination was left at Mr Alamzeb’s residence on 2 June 2000. Mr Dent, Manager of Education Services in the Bundaberg District Office of Education Queensland was instructed to deliver the letter of termination. He was lawfully required to do so. He tells me that he obeyed the direction and left the notice of termination in the letterbox of Mr Alamzeb’s residence on 2 June 2000. I believe him.

The Commission seems to have accepted, in reliance on the decision in *Brown v. Southall and Knight* [1980] QJLR 130 that the letter of termination did not bring the probationary employment to an end until Mr Alamzeb had a reasonable opportunity to read the letter. It may be that at common law a written notice of termination is ineffective until the recipient has had a reasonable time to read it. It is, however, rather a gloss so as to limit the language of s. 39 of the *Acts Interpretation Act 1954*. In *Fancourt v. Mercantile Credits Ltd* (1983) 154 CLR 87 at 96 the High Court unanimously accepted the explanation of s. 39 (as it now is) advanced by Tindal C.J. in *Bishop v. Helps* (1845) 2 C.B. 45 at 5) [135 E.R. 857 at 862]. The High Court observed:

“As was observed by Tindal CJ in *Bishop v. Helps* (13) in relation to a comparable provision, although leaving notices at a place of abode or sending them through the post involve the possibility of non-receipt by the intended recipient:

‘It was probably considered that the public convenience would be promoted by the present provision, and that its advantages would greatly outweigh the inconvenience which, in some few cases, might possibly arise from it’.”.

In any event, Mr Alamzeb had been advised by the Principal of Isis State High School that the letter of termination was coming (and had become emotionally upset at the news). A reasonable person expecting a letter of such moment would have put in place steps to enable it to be read on the day on which it was delivered.

At one point it was contended by Mr Alamzeb that because he had (twice) been reviewed in 1999 and his performance found satisfactory, Education Queensland had a duty to appoint him to a tenured position at the end of his initial eight months of probation. The argument was not developed. If the contention be that Education Queensland having failed to perform the duty were bound to treat Mr Alamzeb as holding the tenured position to which he should have been appointed, it goes well beyond any (rare) decision of a Court of equity about contracts of employment and unconscionability. I do not propose to deal further with the contention.

I turn then to Mr Alamzeb’s appeal (No. C55 of 2001).

On the findings of fact made by the Commission the conclusion that each of reinstatement and re-employment was impractical was inevitable.

The decision of the Commission is reported at 167 QJIG 364. It is sufficient to note the following findings:

“The evidence also shows that Mr Alamzeb attended a Beginning Teachers Seminar in June 1999 (Exhibit 112/113), a Learning Technology Vacation Seminar in September 1999, a Trade and Business Mathematics Workshop in March 2000 (Exhibit 119), a Science Professional Development for the Future Seminar and a Beginning and Returning Teachers Seminar in March 2000 (Exhibit 118). He also attended the student-free day professional development sessions at Isis held on 27 and 28 January 2000 (Exhibit 121) and a special session at the school concerning teaching students with learning difficulties held on 8 February 2000.

Mr Alamzeb attempted to downplay the importance of several of those seminars/sessions and tried to suggest that they were not relevant to him or the classes he was teaching. For example, he claimed that the 1999 Beginning Teachers Seminar was for primary school teachers (see p. 283 of transcript) but under cross-examination conceded it had relevance to secondary teachers as well. A cursory look at the program suggests that it had relevance to both primary and secondary teachers.

Mr Alamzeb attempted to downplay what happened at the student-free days in January 2000. At one stage in his evidence (transcript p. 313) he said that none of the teachers took the session seriously with some of them reading newspapers and one of them writing exam marks. He also said that he could not see the overhead transparencies used at the 8 February session and that he did not feel completely free to ask questions of his supervisors (transcript pp. 320-321). His evidence was strongly refuted by Ms Collins, Ms Griffith and Mr Cook (transcript pp. 1,003-1,004).

During the 8 February special session Ms Griffith gave a presentation on her role as the Special Needs Co-ordinator, the assessment of students’ abilities and strategies teachers could use in classes with special needs or ascertained students. Her presentation included reference to specific classes and the nature of the needs of individual students within those classes (see transcript pp. 1,120-1,122 and Exhibits 124, 198).

Mr Alamzeb tried to belittle Ms Griffith’s presentation claiming he could not read the overhead transparencies she used. However, notwithstanding the importance of Ms Griffith’s presentation, under cross-examination Mr Alamzeb agreed that he did not ask to be moved to a different seat (so that he could see), nor did he seek copies of her material, nor did he ask any questions or otherwise follow her up afterwards.

Mr Alamzeb’s evidence on the presentation (see transcript pp. 319-325), and how little he apparently learned from it, is starkly revealing given his complaint that he had a class full of low ability students and was given no guidance or assistance on how to deal with them.

I found all of Mr Alamzeb’s evidence on the various seminars and presentations evasive and unreliable. The topics were all clearly relevant to a new teacher. However, from listening to Mr Alamzeb’s evidence I gained the impression that he thought they were mostly a waste of time, because he believed he was already an experienced and skilled teacher (see for example transcript p. 825). He attempted to dismiss the content as irrelevant because he clearly had not paid much attention to what was being dealt with (see for example transcript pp. 283-297 and 319-325).

In fact, Mr Alamzeb was provided with considerable support by Ms Griffith, the Special Needs Co-ordinator at Isis. Her witness statement (Exhibit 197) and her evidence (especially 1,121-1,140) highlight the considerable effort she went to to provide assistance and guidance to Mr Alamzeb.

Ms Griffith gave evidence (transcript p. 1,122) that she had asked all of the teachers with classes containing special needs students to meet with her so she could discuss the needs of each student. Her evidence was that every teacher came and spoke to her with the singular exception of Mr Alamzeb. She had to seek him out. Even then he did not seem particularly interested in discussing his special needs students.

Ms Griffith gave evidence about her extensive attempts, in company with the Support Teacher – Learning Difficulties, to assist Mr Alamzeb to develop lesson plans (transcript pp. 1,125-1,138). Ms Griffith said that the lesson planning support sessions were intense one-on-one sessions. Her evidence was that Mr Alamzeb demonstrated a significant lack of understanding of the concepts of, and reasons for, lesson planning and did not seem to know how to go about it. She said he had little understanding of the need to break the lesson up into units or of the need to check for understanding before moving on to the next area (Exhibit 197, pp. 2-3 and verbal evidence).

Much of the input came from herself or the Support Teacher. Mr Alamzeb's lack of understanding revealed a concerning lack of knowledge of the fundamentals of teaching.

Ms Griffith's evidence was that despite these intense planning support sessions, Mr Alamzeb's planning was not carried over into the lesson. She said that she regularly received reports (from the Teachers' Aide and Support Teacher – Learning Difficulties) that Mr Alamzeb did not follow the lesson plans constructed. (This problem is also reflected in some of the lesson observations and other evidence (for example, see Ms Vander Spoel's statement, Exhibit 175, p. 3)).

Ms Griffith also said that Mr Alamzeb refused to take responsibility for identifying and preparing resources to be used during classes. He consistently wrote on his lesson plans that all of the teaching resources were to be provided by the Special Needs Unit, despite having been told on many occasions that the unit would not provide the resources and that he would have to obtain them himself from the library.

The evidence shows that Mr Alamzeb had the opportunity to discuss any of this teaching concerns with the Heads of Department and other teachers at the school. The evidence from the HODSs was that they frequently provided feedback and assistance to Mr Alamzeb, but that he often did not seem to take on board what they were saying or practise what they suggested (see for example, Ms Vander Spoel's statement, Exhibit 175, p. 3)."

...

"I am satisfied Mr Alamzeb was provided with significant assistance by Ms Collins, Ms Griffith, Ms Walker and, to a lesser degree, by Mr Cook and Ms Vander Spoel, and that all of them made opportunities available for him to seek help or support if he needed it. Mr Alamzeb failed to avail himself of the help offered and did not act on their advice or suggestions.

The feedback he was given following his supervised lessons contained both positive comments and constructive criticism. It was designed to encourage Mr Alamzeb where appropriate and to make him aware of areas where improvement was needed. Mr Alamzeb's reaction to the efforts of others to assist him is perhaps best summed up in a document prepared by Ms Collins (Exhibit 74, tendered by Mr Alamzeb) where she says at point 8:

*'8. It has been very difficult to try to assist Mr Alamzeb to enhance his teaching skills because he has proven to be resistant to suggestions and is more strongly focussed on trying to refute the point that is being made in an apparent effort to defend himself. This is in spite of the approach that has been taken by the two Heads of Department, Deputy Principal and myself which has been to be as positive as possible while drawing attention to areas of concern, clarification and discussion of which during verbal feedback sessions must ultimately be of benefit to him. However, Mr Alamzeb, in his eagerness to justify what has been identified as a concern, consistently does not "hear" the point that is being addressed and rushes into an explanation about some action that he has previously taken that frequently bears little connection to what is being discussed . . . .'*

The evidence given by Ms Collins, Mr Cook, Ms Walker, Ms Vander Spoel and Ms Griffith – as well as my personal observation of Mr Alamzeb during the trial – lends support to that statement."

...

"In respect of these attempts at support Mr Cook [whose evidence the Commission accepted] commented (Exhibit 193, p. 4) that it takes a certain mindset to learn. He felt that Mr Alamzeb did not take an active or analytic interest in the classes he observed. Mr Alamzeb's lesson observations of the maths and science HODs classes (Exhibit 54) highlight this point. Mr Alamzeb's observations contain almost no comment on the teaching strategies of the teachers he was observing, rather they comprise detailed notes of every event happening within the class, however miniscule. In one observation he said he left fifteen minutes early because nothing was going on."

...

"Ms Collins [whose evidence the Commission accepted] particularly mentioned Mr Alamzeb's failure to comply with the school's behaviour management plan and his consistent blatant refusal to complete incident forms."

...

"Ms Walker gave similar evidence on this issue, her evidence overlapping with Ms Collins about a particular incident involving a knife in a classroom. Ms Walker said (Exhibit 172, p. 3) that she heard Mr Alamzeb's students yelling out 'fight, fight, fight' and she felt compelled to see what was happening. She said the class was in disarray and Mr Alamzeb was standing at the front of the class looking stunned. The students told her that Mr Alamzeb had taken a knife from one of the students. When she investigated the matter further she found that two of the boys had been arguing and abusing each other and that Mr Alamzeb had not separated them. The dispute escalated to the point where they started to fight. One of them produced a knife and Mr Alamzeb confiscated it. She asked him what consequences he applied to the students and he replied that he had not given them any. She asked Mr Alamzeb to write up an incident slip about the fight and knife so that the matter could be taken further, but Mr Alamzeb failed to do so.

Ms Collins said that she received a report from Ms Walker on this incident and had also attempted to get Mr Alamzeb to complete an incident slip, but was unsuccessful. Although Mr Alamzeb claimed that he did fill in an incident slip about this incident, after hearing his evidence on the point I am satisfied that he did not.

I am also satisfied that he did not complete incident slips on most other occasions when an incident required completion of a slip. Invariably, he sent a misbehaving student to report to a Head of Department, the Deputy Principal or the Principal, or sent them to sit at the desks outside the HODs rooms (see for example, Ms Vander Spoel's evidence, Exhibit 175, p.2).

By sending the students away to those persons and locations Mr Alamzeb avoided responsibility for disciplining his classes. Further, his failure to complete incident slips negated the school's behaviour management policy, because no records were being kept of many incidents. Consequences in accordance with the behaviour management plan could not be applied to students.

Mr Cook observed that if a teacher is unable to motivate students through good teaching, misbehaviour often results. He said students were very observant and pick up quickly whether they are being well taught/controlled. An effective teacher who engages the students, and gets them to work, has fewer behavioural issues in their classroom. He said Mr Alamzeb did not demonstrate the traits of an effective motivational teacher. His observations of Mr Alamzeb's classes indicated a classroom tone where there was little student respect for the teacher. Mr Cook's observation

indicated that Mr Alamzeb was not using lesson plans or applying appropriate teaching/behaviour management strategies effectively. Mr Cook summarised his position on Mr Alamzeb's performance as follows (Exhibit 193, p.5):

*'In conclusion, I would have considered that for a teacher with his years of experience in teaching, that the induction process for him should have been about settling into the school environment and that it should have been a relatively straight forward task. However, it became clear that Mr Alamzeb's teaching competencies in both control of students and teaching strategies were deficient to the point of not being competent to provide instruction to students. After a series of professional development sessions and support over a number of weeks, it also became clear to me that Mr Alamzeb was not showing the improvement I would have expected. As a result, in fairness to Mr Alamzeb and to the students who he had responsibility to provide instruction for, I believe the correct decision to terminate Mr Alamzeb's probation and employment was made by the Principal, Isis District State High School.'*

Mr Cook and Ms Walker spoke candidly and openly about their interaction with Mr Alamzeb and their concerns about his performance as a teacher."

...

"Ms Griffith was a very positive and credible witness who appeared to answer all of the issues put to her truthfully and frankly despite being placed under considerable attack by Mr Alamzeb. More than any other teacher at Isis, Ms Griffith attempted to assist Mr Alamzeb to understand some of the fundamentals he was lacking and to improve his teaching performance generally.

Her evidence recorded the total lack of co-operation she received from Mr Alamzeb, despite her considerable efforts (see transcript p. 1,120 onwards), and disclosed Mr Alamzeb's clear lack of understanding of basic teaching fundamentals and concepts. Her evidence revealed Mr Alamzeb was not interested in learning the principles of teaching ascertained/learning-disabled students or how to write teaching plans. He showed no enthusiasm for learning more about fundamental teaching concepts, nor preparing or chasing up suitable student resources. He showed reluctance to put any effort into availing himself of Ms Griffith's offers of her time and assistance. For example, on one occasion Mr Alamzeb was late to a lesson planning meeting. Rather than stay for the extra ten or so minutes needed to complete the lesson plan with Ms Griffith, Mr Alamzeb insisted on leaving when the lunchtime bell rang. This example, perhaps more than any other, demonstrates Mr Alamzeb's whole approach to his teaching. It was all too hard and he could not be bothered putting in the effort."

...

"Ms Collins said she again canvassed the issue of Mr Alamzeb's probation with Mr Cook and the two HODs before she completed the second probationary report. They were, again, unanimous in their agreement that Mr Alamzeb's performance had not improved – but had in fact deteriorated – and that it was appropriate to recommend his probation be terminated."

...

"Ms Collins also gave evidence about a number of inappropriate teaching practices adopted by Mr Alamzeb. Several of the examples were confirmed by Ms Walker. Importantly, these events were not denied by Mr Alamzeb – although he attempted to put a different spin on each of them.

One example concerned exam preparation in a maths class Ms Collins was observing. Mr Alamzeb gave the class some sample exam questions. Later Ms Collins established that a number of the same questions coincided exactly with the actual exam questions (see Exhibit 170) to be delivered the day after the lesson observation. This revealed either that Mr Alamzeb was incompetent, or that he was attempting to improve the class marks.

A second example concerned behavioural reward systems. In an attempt to positively influence behaviour in his classes Mr Alamzeb commenced a reward system which involved giving students chocolates as an incentive to behave. Although it induced some behaviour modification for a time it led to students expecting rewards and requesting them from other teachers.

A third example concerned another behavioural reward system. In order to encourage a particular class to behave and to perform, Mr Alamzeb promised them they would be allowed to play handball for half of a lesson if they behaved themselves in the first half of the lesson and completed the work he set for them. The handball game which resulted disrupted a number of other classes and Ms Walker was forced to stop it. When questioned about the matter Mr Alamzeb did not see anything wrong with his strategy, nor its likely consequences.

The fourth example concerned Mr Alamzeb incorrectly transferring students' percentage results to grades which were then placed on their records. The mistake had the effect of lifting the grades of seven out of fifteen students within the class. Again, it was either incompetence or an attempt to improve the appearance of the performance of his class. Having regard to Mr Alamzeb's answers under cross-examination on that issue (transcript pp. 771-775) I am inclined to the latter view.

The fifth example was a student survey (Exhibit 185) found amongst Mr Alamzeb's papers at around the time of his termination. The survey sought students' views on such matters as whether they preferred their previous teacher to Mr Alamzeb. Ms Collins thought the survey was inappropriate and unprofessional (transcript p. 1,151). I agree."

...

"Rather than go through the relevant incidents, I simply record that each of the witnesses made it clear that, in their view, Mr Alamzeb's performance had either not improved or had actually deteriorated in the month or so leading up to 24 May 2000. This was especially the case in relation to behaviour management. Some of the witnesses – especially Ms Walker – suggested that some of Mr Alamzeb's classes were frequently out of control and there were grave concerns about the learning that was (or was not) taking place. Mr Cook suggested that Mr Alamzeb's teaching competencies at the time of his termination were *'deficient to the point of not being competent to provide instruction to students.'*

I refer also to the summary at 382 to 383.

On the Commission's findings this is not a case of an overseas educated teacher experiencing difficulty in adjusting to Queensland traditions of pedagogy. It is a case of an incompetent and disruptive teacher, unwilling or unable to learn and wholly blinkered as to his failings. He could not function effectively in a school. A working relationship of employer and employee could not be established between Mr Alamzeb and Education Queensland. Each of reinstatement and re-employment was impracticable.

It is of course open to an appellant to challenge findings of fact by the Commission. But because s. 341(1) of the *Industrial Relations Act 1999* limits the grounds of appeal to error of law or excess or want of jurisdiction, it is necessary for an appellant to show that there was not any evidence to support a finding of fact. In *McPhee v Bennett Ltd* (1935) 52 WN (NSW) 8 at 9 Jordan CJ put the matter thus:

“The question whether there is any evidence of a particular fact is also a question of law: *Sittingbourne Urban District Council v. Lipton Ltd.* ([1931] 1 K.B. 539 at 544) and *Mersey Docks and Harbour Board v West Derby Assessment Committee* ([1932] 1 K.B. 40 at 110, 111). But if there is evidence of the fact, the question whether that evidence ought to be accepted in whole or in part, or ought to be accepted as sufficient to establish the fact, is itself a question of fact and not a question of law, unless, of course, there is some law which provides that the particular evidence, when given, is to be taken to establish the fact. If a tribunal which has exclusive jurisdiction to determine facts decides that it does not accept the evidence tendered as establishing a particular fact, its decision, apart from the exceptional case which I have just mentioned, is conclusive. In that case the party upon whom the burden of proving the fact lies must fail. There is no rule of law that such a tribunal must believe the evidence, because it is all one way. It can accept all, or some, or none of it. There are, no doubt, authorities which decide that, in a trial *in nisi prius*, if the evidence is all one way, and there is no reason to doubt its genuineness and accuracy, the trial judge may take the question from the jury, and a full court may set aside a perverse finding of a jury if he does not: *Davis v Hardy* (6B. & C. 225). This is, however, because both the trial judge and the full court have a certain measure of control over a jury’s finding of fact; and it is this which enables a full court to set aside a verdict on the ground that it is against the evidence and the weight of evidence, notwithstanding that this is a question of fact: *Haw v London and North-Western Railway Company* ([1891] 2 Q.B. 496 at 500, 501). This Court, however, has no such power with respect to the Commission.”

See also *The Australian Gas Light Company v The Valuer-General* (1940) 40 S. R. (NSW) 126 at 138 per Jordan CJ and *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 356 per Mason CJ:

“But it is said that ‘[t]here is no error of law simply in making a wrong finding of fact’: *Waterford v The Commonwealth* (51), per Brennan J. Similarly, Menzies J observed in *Reg. v District Court; Ex parte White* (52):

‘Even if the reasoning whereby the Court reached its conclusion of fact were demonstrably unsound, this would not amount to an error of law on the face of the record. To establish some faulty (e.g. illogical) inference of fact would not disclose an error of law.’

Thus, at common law, according to the Australian authorities, want of logic is not synonymous with error of law. So long as there is *some* basis for an inference – in other words, the particular inference is reasonably open – even if that inference appears to have been drawn as a result of illogical reasoning, there is no place for judicial review because no error of law has taken place.”

The case developed by Mr Alamzeb on the appeal was inherently incapable of hurdling the high bar which he confronted. Mr Alamzeb contended himself with intemperate attacks upon various staff members of Education Queensland. They were variously damned as malevolent, uncaring and bent on his professional destruction, or condemned as craven and supine creatures unwilling, even on oath, to voice truths which their superiors did not want to hear. Neither was the venom confined to Education Queensland staff. The entirely respectable practitioners who acted for Education Queensland were gratuitously accused of foul misconduct.

Some allegations were bizarre. The principal of Isis State High School had at one stage supported (and perhaps encouraged) Mr Alamzeb’s application for exemption from jury service. The first inference was said to be that the principal wished to deny Mr Alamzeb exposure to local legal process. The second inference was said to be that the principal sought to deny Mr Alamzeb legal experience because she was already determined to destroy his career. But it, if all was not bizarre, was all calumny. And it was all from the bar table and by way of accusation. In that circumstance there is no need to consider whether procedural fairness is concerned not only with procedure but with the basis upon which decisions are made, so as to broaden traditional approaches to the question whether an error of fact is an error of law.

The appeal which is No. C55 of 2001 is dismissed.

I turn then to the appeal of Education Queensland, *viz.* No. 56 of 2001. Education Queensland face the same problem as Mr Alamzeb. Education Queensland must show an error of law. It is not, however, necessary for an appellant to identify an error of law. There is a category of case in which one can conclude that there must have been an error of law though the precise nature of the error is not discernible. *House v The King* (1936) 55 CLR 499 at 505 per Dixon, Evatt and McTiernan JJ. As a matter of first impression this is just such a case.

In dealing with appeal No. C55 of 2001 I have given a shortened version of the Industrial Commission’s findings about Mr Alamzeb’s competence as a teacher, his inability to develop his skills and the absence of any prospect that time and instruction would lead to an improvement in Mr Alamzeb’s performance. The rhetorical question which immediately springs to mind is, “Why is it unfair to terminate the probationary employment of a teacher of whom those findings may properly be made?” There is the additional consideration that the facts relied upon by the Commission in making these findings were the facts relied upon by Education Queensland in determining to dismiss Mr Alamzeb. To the extent that the Commission relied upon opinions, the Commission relied upon the opinions of participants in the dismissal process. The Commission has found reinstatement and re-employment to be impracticable on the basis of the very materials which lead Education Queensland to make a decision to terminate, yet that decision has been found to be unfair.

On a careful perusal of the Commission’s decision the error appears. The Commission was of the view that, as a probationer, Mr Alamzeb had been treated unfairly. That finding was plainly open to the Commission. No serious attempt was made to assess Mr Alamzeb until first semester of 2000. The nominal probation period of eight months had already expired. The exercise of evaluating Mr Alamzeb and providing him with “feedback” about his performance was compressed. Education Queensland concedes as much (though pointing to the difficulties of assessing a probationer who is a relieving teacher). It is settled that a probationary employee is entitled to expect advice about his performance, including if need be, corrective advice; see *Buckman v Burdekin Resources NL* (1998) 85 IR 415 and *Price v Box Valley Pty Ltd* (1999) 90 IR 480.

However, the issue before the Commission was not whether Mr Alamzeb was fairly treated as a probationary employee but whether he was unfairly dismissed. Whilst the steps taken leading up to a termination may be relevant to the question whether an employee was unfairly dismissed, they are not determinative of the question; compare *Byrne v Australian Airlines* (1995) 185 CLR 410 at 466 per McHugh and Gummow JJ. This is not a case in which the use of an unfair probationary period has been so unfair that the decision to dismiss was arbitrary, irrational or unreasonable; compare *Australian Broadcasting Tribunal v Bond and Others* (1990) 170 CLR 321 at 367 per Deane J. This was a case in which, compressed though it was, the evaluation process revealed Mr Alamzeb to be so ineffective and recalcitrant that Education Queensland could feel confident in terminating his probation. (In the same way the Commission could confidently reject reinstatement and re-employment as remedies). It must be remembered that a probationer is not a trainee. I adhere to the view which I expressed in *Darling v Ultrarad Pty Ltd* trading as *Queensland X-Ray Services* (1997) 155 QGIG 1342 at 1342 to 1343:

“The essential quality of a period of probation is that it ‘is a time of testing or trial and a probationer, where conduct character or qualifications fail to meet the test, need not be confirmed,’ *O’Rourke v Miller* (1984) 9 IR 439 at 442 per Gibbs CJ. I accept that His Honour was directing his mind

to a police constable and to a period of probation preceding appointment to a statutory office. But Dowsett J. in *Beck v Darling Downs Institute of Advanced Education*, 20.4.90, unreported, No 3865 of 1988 seems to have taken much the same view of a period of probation of contractual origin. The Macquarie Concise Dictionary, the Shorter Oxford Dictionary, the Concise Oxford Dictionary and Jowitts Dictionary of English Law, 2<sup>nd</sup> ed, 1997, take what is in essence the same view of the noun probation. There is nothing in the context to displace that *prima facie* meaning.”.

There is nothing in s. 73 of the *Public Service Act 1996* to suggest that an employee must be tested or evaluated over at least an eight month period. Indeed, s. 73(2)(a) expressly provides that a probationer may be terminated at any time. On the evidence, if the evaluation of Mr Alamzeb had commenced in May 1999, his shortcomings would have emerged at that time. Mr Alamzeb might have been (fairly) terminated at that time. A short but revealing assessment may insulate a dismissal from categorisation as unfair.

This is not a case in which Education Queensland seeks to correct a decision of the Commission on a matter of weight. The proposition is that the Commission (unconsciously) asked the wrong question. In fairness to Education Queensland so much expressly appears from the Commission’s reasons in dealing with the matter of compensation, *viz*:

“Having determined that Mr Alamzeb’s reinstatement or re-employment is impracticable I turn to consider the only other possible remedy, monetary compensation.

Mr Alamzeb’s letter of appointment informed him that he was to be employed to serve a probationary period of at least eight months. In my view, Mr Alamzeb only started to receive an adequate level of supervision and support as was appropriate to a probationary teacher, when he commenced at Isis as a full-time teacher on 27 January 2000. He was terminated on 9 June 2000. As I see it, therefore, he received the benefit of a probationary period of effectively four months.

On the preponderance of evidence I am convinced that had the respondent provided Mr Alamzeb with the assistance and assessment he was entitled to receive as a probationer, his appointment would, nonetheless, have been terminated at the end of the minimum period of probation. Accordingly, I propose to award Mr Alamzeb four months’ compensation. This represents the difference between the period of effective probation and the likely length of Mr Alamzeb’s employment on probation before his inevitable termination by virtue of the respondent exercising its rights under the *Public Service Act 1996* and Mr Alamzeb’s terms of appointment.”.

The Commission was plainly compensating Mr Alamzeb, not for the termination of his employment and its consequences, but for the unfairness of his probationary employment. The Queensland Industrial Relations Commission has no jurisdiction to do so.

The appeal of Education Queensland in No. C56 of 2001 is allowed and the order of the Commission is set aside. In lieu thereof I order that Mr Alamzeb’s application for reinstatement No. B882 of 2000 be dismissed.

Education Queensland seeks costs. The appeal had no objective prospects of success. The process at s. 335 of the *Industrial Relations Act 1999* is triggered. However, Mr Alamzeb is a layman. He acted for himself in a new land. He was faced with the prospect, not merely of loss of his employment and the opportunity to support his family, but of loss of his career. Having regard to ss. 3(a) and 320(3)(a) I think that I should decline to award costs. I record that I considered exercising the power at s. 335(b) to award costs of the issue about Mr Alamzeb’s receipt of the notice of termination. I entertain great scepticism about Mr Alamzeb’s case, but am unable affirmatively to conclude that the case was born of dishonesty rather than ignorance. I dismiss the application for costs.

Dated 4 June 2002.

D.R. HALL, President.

Released: 4 June 2002

*Appearances:*

Mr M. Alamzeb in person.

Mr C. Murdoch, instructed by Crown Law for Education Queensland..

#####

#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 229 – notice of industrial dispute  
s. 230(3)(b) – arbitration of dispute

#### **Federated Engine Drivers’ and Firemens’ Association of Australasia Queensland Branch, Union of Employees AND Gold Coast City Council (No. D31 of 2002)**

COMMISSIONER BLOOMFIELD

30 May 2002

Dispute – Arbitration of dispute – 2 Council employees – Drinking of alcohol on work site – First written warning issued – Inspections – Employees not in view of public when drinking alcohol – Not in working time – Commission found that verbal warning should have been issued – Written warning to be removed from employees’ files.

#### DECISION

On 23 October 2001 two employees of the Gold Coast City Council – a Mr Fillippow and a Mr Househam – were each issued with a written first warning for consuming alcohol at a Council work site at Tugun at approximately 2.40–2.45 p.m. on Friday 12 October 2001.

The two gentlemen had been engaged on that day in the laying of concrete at a new round-a-bout which was being constructed at a major intersection at Pacific Parade and Musgrave Street, Tugun. They had apparently worked through their smoko breaks and had been allowed to knock-off for the day at approximately 2.30 p.m. This was some twenty minutes or so before their normal knock-off time.

Around the time of their knock-off another Council employee – who had been on leave – visited the worksite to inform his work colleagues that he was being admitted to hospital on the following day for urgent surgery as a result of having been diagnosed with bowel cancer. The employee also brought with him a six-pack of beer. The three employees entered the Council’s work hut and sat down inside it at a table and began to talk about the ill employee’s imminent operation. Whilst doing so they began to consume the beer.

On that same afternoon the work location was being inspected by the Council's Occupational Health and Safety Co-ordinator. He entered the work hut and observed the three gentlemen drinking beer. It is unclear what was said to the men at that time but the Co-ordinator subsequently brought the matter to the attention of the Council's Acting Director Engineering Services on the following Wednesday – 17 October 2001.

Each of Mr Fillippow and Mr Househam was called to a meeting with the Council's Manager Construction Services, Mr Harris, on 22 October 2001 where they essentially confirmed the nature of the incident and explained the mitigating circumstances.

On the following day Council issued a letter to Mr Fillippow in the following terms:-

“Dear Mr Fillippow

CONDITIONS OF EMPLOYMENT WHICH ARE NOT BEING MET – FIRST WARNING

On Wednesday 17 October 2001, it was brought to the attention of the Acting Director Engineering Services that the consumption of alcohol had taken place at a Council worksite located at Pacific Parade, Tugun at approximately 2.45 pm Friday 12 October 2001.

At our meeting of Monday 22 October 2001, it was confirmed that you had advised the Acting Supervisor that you had finished work early and that you were wishing a work colleague all the best before an operation. Whilst Council appreciates the concern for your work colleague, regardless of the reason it is inappropriate to consume alcohol inside normal business hours or at a Council worksite.

As Ganger, there is an expectation of you to demonstrate to other staff members an appropriate work ethic and abide by Council policies and procedures. A copy of Council's Policy on “Alcohol in the Workplace” is attached to remind you of your responsibilities as a Council employee.

Please be advised if an incident such as this occurs again Council will proceed with further disciplinary action. An incident such as this must not occur again and I trust that we can all work together for the benefit of Council and its objectives.

Yours faithfully  
Mr Keith Harris  
MANAGER CONSTRUCTION SERVICES.”

A similar letter – except for different wording in the first sentence of the third paragraph – was also given to Mr Househam.

The Federated Engine Drivers' and Firemen's Association of Australasia Queensland Branch, Union of Employees (FEDFA) took the matter of the first warning letters up with the Gold Coast City Council with a view to having them removed and replaced by verbal warnings. The approach was unsuccessful. As a consequence, the Union notified the Commission of a dispute. The matter first came before the Commission on 14 February 2002. On that day, the Commission as presently constituted suggested to the parties that they continue to confer about the issue in light of various matters canvassed during the conference. I also indicated to the parties that if the issue could not be resolved between them I would arbitrate the dispute pursuant to s. 230(3)(b) of the *Industrial Relations Act 1999*.

I was subsequently informed that the parties had not been able to resolve the dispute through their own endeavours. FEDFA asked me to arbitrate the dispute in line with my earlier indication.

By agreement with the parties I conducted inspections and held a hearing at the Gold Coast on 17 May 2002. The location of the work site at Pacific Parade, Tugun was inspected as was the actual work hut which had subsequently been removed from that site to a Council depot at Carrara.

The inspections revealed that the work shed was approximately 6 metres by 3 metres in dimension. In October 2001 it was positioned in an east to west direction in a grassed area between Pacific Parade and Tugun Beach. The entrance doorway to the hut was located at its western end. There was a two-pane window located at approximately the midpoint of the northern (long) side of the hut. Another window was located about a third of the way along from the eastern end of the hut on its southern side. The table and chairs inside the hut were against its eastern wall.

A pedestrian pathway runs east to west at a distance of approximately 12 to 15 metres from the northern side of the hut. Council containers – used to store various pieces of equipment – were located near the hut on its southern side. The men and the table at which the men were sitting inside the hut could not have been visible to members of the public passing by the hut unless they came right up to one of the windows or to the entrance door.

Ms Bourke and Ms Tatzenko, for Gold Coast City Council, said the incident occurred “at a busy tourist location” at approximately 2.40 p.m. “in full view of the general public”. They said the employees' behaviour was also inappropriate because two labour hire employees were outside the hut cleaning up for the day.

They said that each of the employees had been through a full Council induction and had each received training in regard to work and alcohol in the workplace. Official memorandums about alcohol in the workplace had also been issued by the Chief Executive Officer and the Council's policies had allegedly been reinforced by the employees' supervisors.

Ms Bourke and Ms Tatzenko said that it was also considered reasonable to expect that Mr Fillippow, who was a Ganger, would have been aware of the Council's Policy in regard to consumption of alcohol.

In support of the Council's position they also tabled statements from several supervisors which suggested that the two employees would have been aware, or should have been aware, of the Council's policies. Why the employees would have known, or should have known, of the policies was not stated.

One of the supervisors, Mr Patience, attested to having verbally discussed the drinking of alcohol during working hours with Mr Houseman in September 2000. However, a closer examination of the diary note submitted showed that Mr Houseman had been spoken to about the “previous day's effects of alcohol”.

I have placed little reliance on the statements because they do not contain any matters of fact. They only express opinions and appear to be somewhat self-serving.

Ms Bourke and Ms Tatzenko also referred to various workplace, health and safety induction programs and the Council's “Alcohol in the Workplace Policy” adopted in 1996. They said the Policy had been made known to all employees – including Mr Fillippow and Mr Houseman – most particularly by posting it on notice boards.

However, that position was rejected by each of the employees in signed statements. They said they had never been made aware of the Council's Policy. FEDFA's Organiser, Mr Spinks, said there had been a number of disputes between the Union and the Council as a result of the failure of various supervisors to post Council notices.

A closer examination of the Council's Policy disclosed that whilst it dealt generally with the issue of consuming alcohol on Council work sites, it also appeared to contain a number of inconsistencies. For example, whilst prohibiting the keeping of alcohol in certain work areas the Policy nonetheless permitted alcohol to be consumed in those same work areas after usual knock-off time provided that it was not in view of the public.

Further, a closer consideration of some of the subject matter canvassed through the Council's induction and other training programs does not lend support to the submissions made by Ms Bourke and Ms Tatzenko that each of the employees was clearly made aware of Council's expectations regarding the consumption of alcohol. For example, one of the programs which they claimed would have led to the employees knowing about Council's Policy was a training program dealing with confined spaces. Whilst the issue of consumption of alcohol was probably covered in that training program in a general sense, it requires a long bow to make the link between that training program and Council's Policy.

In addition, I am not satisfied on the evidence produced, including the statements of the various supervisors referred to above, that the employees were made aware of Council's Policy and how it might have related to the type of incident which occurred on 12 October 2001. There is no evidence that the employees received the Policy nor is there any evidence that they were put through a program which explained its purpose and intent. Even if they were, there are so many inconsistencies in the Policy that it is difficult to state with any certainty that the events of 12 October 2001 were fully captured by the Policy and were outside it.

Whilst the employees might have been drinking alcohol within a Council hut (which is dealt with in Council's Policy) they were not drinking alcohol during working time (certainly not "inside normal business hours" as alleged in Council's letter of 23 October 2001). Nor were they drinking in a place which would have been within view of the public.

In the absence of any solid evidence that the Policy was given to the employees – and its contents explained – I have decided to approach the matter on the basis that commonsense dictates that the employees knew, or should have known, nothing more or less than it was inappropriate to consume alcohol during working time and/or in view of the public. They did neither of those things.

After considering the material presented in the case and the very special extenuating circumstances on the day in question I have decided that the Council's decision to issue a first written warning to each of Mr Fillippow and Mr Househam was not justified based upon the events, and circumstances, of 12 October 2001.

In so deciding I have noted the following points:-

- The Council's warning letter has been framed on the premise that the employees consumed alcohol within normal business hours.
- The Occupational Health and Safety Co-ordinator who observed the incident did not report it immediately but waited for a number of days before taking the matter to a higher level.
- Council's Alcohol in the Workplace Policy contains a number of inconsistencies, some of which are referred to above.
- The employees in question consumed the alcohol in the hut out of the view of the public after they had completed work for the day.
- There is an exceptional mitigating circumstance involved – namely, the attendance of the third employee with the beer who wished to discuss with his work colleagues his diagnosis of bowel cancer as well as the fact that he was to undergo an urgent operation on the following day.

In considering those matters I have also noted the fact that the employees did not, for example, simply move away from the Council's work huts to one of the covered benches located further along Pacific Parade. It would have been an interesting test of the Council's Policy if the two employees, having knocked off work, sat down as members of the general public at one of the benches and consumed the alcohol.

In my view, having regard to the employees' previous work history and the events of the day, the appropriate disciplinary action would have been to have given the employees a verbal warning. The first warning letter should be removed from each of the employees' personnel files and be substituted with a verbal warning.

The Commission so determines in accordance with the powers vested in it at s. 230(3)(b) of the *Industrial Relations Act 1999*.

A.L. BLOOMFIELD, Commissioner.

*Appearances:-*

Mr C. Price and Mr D. Spinks for the Federated Engine Drivers' and Firemens' Association of Australasia Queensland Branch, Union of Employees.

Ms K. Bourke and Ms M. Tatzenko for Gold Coast City Council.

Released: 30 May 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Daniel Pattison Hislop (Bryen) AND Austral Meats Qld Pty Ltd t/a Deagon  
Drive-in Butchery (No. B805 of 2001)**

COMMISSIONER BLADES

30 May 2002

Unfair dismissal proceedings – Respondent company in liquidation – Leave of the Court as required by the *Corporations Act 2001* not obtained – Application adjourned.

In giving his decision from the Bench, Commissioner Blades said:

“The applicant, Mr Daniel Bryen, who worked as a butcher at the Deagon Drive-In Butchery, alleges that he was unfairly dismissed from his employment with the respondent, Austral Meats Qld Pty Ltd at Deagon on 6 April 2001. The application was not lodged until 3 May 2001 and is therefore out of time by a few days.

Mr Law has appeared on behalf of the Company. However, in correspondence with the Commission, he indicated that a Receiver had been appointed. Contact was made with the Receivers and a letter addressed to the Commission by the firm Worrells, now Exhibit 1, reveals that the respondent Company is in liquidation.

Because of the operation of s. 471B of the *Corporations Act 2001*, while a company is being wound up in insolvency or a provisional liquidator is acting, a person cannot begin or proceed with a proceeding in a court against the company, except with leave of the Court. ‘Court’ means the Supreme Court or similar – s. 58AA of the *Corporations Act 2001*.

For the reasons given in *Bosch v Project Constructions (Aust) Pty Ltd (No. 2)* 169 QGIG 105, these provisions apply to unfair dismissal proceedings.

The applicant has not obtained leave of the Court to proceed with this action.

I order that the application be adjourned until the appropriate leave is obtained.”.

Dated 30 May 2002.

By the Commission,  
[L.S.] E. EWALD,  
Industrial Registrar.  
Hearing Date: 30 May 2002  
Released: 30 May 2002

*Appearances:*  
Mr D.P. Bryen on his own behalf.  
Mr W.J. Law for the Respondent.

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Dawn Elaine Dickinson AND Workscan  
(No. B158 of 2002)**

COMMISSIONER BLOOMFIELD

31 May 2002

Reinstatement – Dismissal – Termination of employment – Recruitment consultant – Company restructure – Redundancy – Arbitrated matter – Commission found termination was harsh, unjust or unreasonable – 7 weeks’ compensation awarded.

DECISION

**Background**

Mrs Dawn Dickinson was employed by Workscan, the recruitment arm of Daryl Damerow Consultants Pty Ltd, as a business development consultant in May 2001 after being head-hunted by a specialist recruiting firm. The respondent was, itself, engaged in the business of recruiting and placing staff into a variety of industry sectors most specifically in engineering related industries. Mrs Dickinson’s services were terminated on the day of her return from annual leave on 7 January 2002. She seeks relief in respect of what is argued to be a harsh, unjust or unreasonable termination of her employment.

**Was the applicant notified of the reason for her dismissal?**

Mrs Dickinson said that her termination on 7 January 2002 came as a complete surprise and she still did not understand the reasons for it. She said Mr Damerow told her he had engaged an outside management consultant to review the business. On the advice of the consultant he had decided to make changes to the structure of the company. Mrs Dickinson said Mr Damerow showed her a new organisational chart which contained one less position than previously and told her that her position had been made redundant. She said Mr Damerow gave conflicting reasons for her termination. Firstly, he said it was because of financial reasons. Later, he said it was because he did not wish to pursue the type of business Mrs Dickinson had been chasing.

On the other hand, Mr Damerow said “all staff were aware and made aware that business conditions were tough and that Workscan was not meeting its targets”. Further, he said he had told all staff on 19 December 2001 that he had injected capital into the business and told some of the staff – including the applicant’s husband but not the applicant herself – on 21 December that the business had made a \$28,000 loss in the financial year to date.

Mr Damerow also said he addressed all staff on 7 January 2002, prior to meeting with the applicant, re-confirming that the firm had undergone difficult economic trading conditions, that it had made significant losses over recent months, that a capital injection had occurred during December, that a comprehensive review of the business had taken place during the Christmas break and that it was necessary for the business to be restructured.

This evidence was specifically rejected by Mr and Mrs Dickinson and by Mr Daugalis, another ex-employee of the firm.

Mr Damerow also said he had met with Mrs Dickinson after the staff meeting and explained that because of business conditions and the losses, he needed to restructure the business for financial reasons. He said he explained to her that her role had been selected for redundancy because he could cover Workscan’s role in the engineering and related fields whilst her husband could continue to focus on the architectural sector, as well as assuming some involvement with engineering clients.

After considering the evidence of Mr and Mrs Dickinson, Mr Daugalis and Mr Damerow, I have decided to accept the employees’ evidence that Mr Damerow did not make the type of staff announcement recorded above prior to the meeting with Mrs Dickinson on 7 January 2002. I have also decided to substantially accept the evidence of Mr and Mrs Dickinson as to what they were respectively told about the reasons for Mrs Dickinson’s termination. Mrs Dickinson’s version of events is recorded above. Mr Dickinson said that in his one-on-one discussion with Mr Damerow he had been told his wife

was being made redundant not because of performance, personal or financial reasons but simply because Mr Damerow no longer wished to pursue the industries that Mrs Dickinson had been servicing. Instead, Mr Damerow wanted to concentrate on the architectural market.

Put at its highest level I accept that Mr Damerow told Mrs Dickinson (and her husband) that he had decided to restructure the business by reducing staff numbers. However, I do not accept that Mr Damerow conveyed in any meaningful way, firstly, that the decision was based on financial factors and, secondly, that he (personally) would concentrate on the engineering and related areas and have Mr Dickinson concentrate on the architectural sector. In particular, I accept Mr and Mrs Dickinson's evidence that Mr Damerow's explanation was unclear and, at times, contradictory. I experienced the same problem whilst listening to, and attempting to understand, his evidence about the reasons for the restructure (see below).

#### **Was the termination based on the operational requirements of the employer's undertaking?**

In his witness statement Mr Damerow set out the reasons why he had decided to restructure the business in January 2002. Superficially, the reasons appear fairly logical.

Mr Damerow said he had injected \$29,000 of personal funds into the business in October 2001 on the basis that he had made losses totalling roughly that amount in the previous three months and because he needed to make BAS payments to the Australian Taxation Office. He had also made a further cash injection of \$90,000 on 19 December 2001. This additional capital injection was secured by a second mortgage on his home.

Further, Mr Damerow said that he had sought the advice of a business consultant about the state of the business over the Christmas/New Year period. He had been told that the business was top-heavy and it required more operational support at office level.

Mr Damerow said that after discussing the whole matter with the business consultant he had decided to terminate one of the business development positions, being Mrs Dickinson's, and to retain the other role which was to concentrate on the architectural sector. Although Mr Dickinson's period of employment was shorter, and he was receiving a higher salary than his wife, Mr Damerow felt that Mr Dickinson would be the best person to service the architectural sector. This was mainly because of his wider experience and also because it would involve less disruption in a firm-to-client contact sense. Mr Damerow already had some relationships with many of the firm's engineering clients and he could establish relationships with those clients of Mrs Dickinson which he did not already know. This would allow Mr Dickinson to continue to service his existing architectural clients undisturbed and to assume some role in servicing the firm's engineering clients.

#### **Other relevant matters**

Mrs Dickinson gave uncontested evidence that she had stressed to Mr Damerow at the time of her interview for employment that she was seeking a long-term position with a decent base salary and a level of autonomy. Mr Damerow agreed that these were reasonable requests and accepted them. He also made the comment that he, also, wanted her to stay for the long-term.

During July 2001 the respondent entered into discussions with the applicant's husband, Mr John Dickinson, about some role within the organisation. Each of Mr and Mrs Dickinson said the approach was initiated by Mr Damerow and initially involved discussions about Mr Dickinson becoming a business mentor or consultant to Mr Damerow. Mr Damerow claimed the discussions had been initiated by Mr and Mrs Dickinson and that Mr Dickinson approached him for employment. Irrespective of how the discussions began (I am inclined to accept Mr and Mrs Dickinson's version) they led to Mr Damerow offering Mr Dickinson a position as a business development consultant concentrating in the architectural field.

Mrs Dickinson also gave uncontested evidence that at the time that Mr Damerow was speaking to her husband about employment in July they (Mr and Mrs Dickinson) expressed surprise that the business could afford Mr Dickinson's higher salary. She said Mr Damerow told them that the company was in "more than a sound financial position".

During the month of November Mr Damerow held a performance review with each of Mr and Mrs Dickinson and Mr Daugalis. It was Mrs Dickinson's uncontested evidence that Mr Damerow told her "there were many exciting times ahead, things were going well and that the date for (her) next review would be in May 2002".

Mr Dickinson gave uncontested evidence that in the lead-up to the Christmas break Mr Damerow asked him about prospects for the new year. Mr Dickinson said he told Mr Damerow there was some exciting times ahead and that Mr Damerow might need to look at his capital because the new prospects could place a strain on his cash flow if they eventuated. Mr Dickinson said that Mr Damerow indicated that he "had this well covered with the bank". Mr Dickinson also gave uncontested evidence that several weeks prior to this discussion he had been involved in a similar discussion with Mr Damerow.

In early December 2001 Mr Damerow and Mr Dickinson spoke about further expanding the workforce to deal with the expected future workload. Mr Damerow authorised Mr Dickinson to advertise for and attempt to locate a suitable additional consultant for the firm. An advertisement was placed and Mr Dickinson interviewed one of the candidates during his Christmas vacation between 21 December 2001 and his return to work on 7 January 2002.

Each of Mr and Mrs Dickinson and Mr Daugalis specifically rejected that they had been informed prior to 21 December 2001 that there was any financial, or other, potential difficulties confronting the business. Mr Dickinson and Mr Daugalis said the only indication that they had received that there were any difficulties was when Mr Damerow mentioned to them, on 21 December, that the business made a \$28,000 loss for the financial year to date. I accept their evidence. As noted above, Mrs Dickinson only heard of the loss from her husband as she was absent on 21 December.

Further, each of Mr and Mrs Dickinson and Mr Daugalis rejected Mr Damerow's evidence that he had held a staff meeting at around 2.00 p.m. on 7 January 2002 and informed them that the firm had undergone difficult trading conditions, the business was not travelling well, that he had made a cash injection during December, that the firm had made significant losses over recent months, that a comprehensive review of the business had taken place during the Christmas break and it was necessary for the business to be restructured. Their evidence, which I accept unreservedly, was that Mr Damerow simply made a brief announcement that he wished to have individual discussions with staff to talk about their individual assignments and plans for the new year.

It is common ground between the parties that Mr Dickinson offered to resign his employment at his meeting with Mr Damerow on 7 January in order that his wife might continue to be employed. Further, it is common ground that Mr and Mrs Dickinson offered to take a reduction in salary or to work reduced hours to assist Mr Damerow to overcome any financial difficulties he was facing.

It is also common ground that Mr Damerow agreed to re-think the whole restructuring proposal over the evening of 7 January in light of the offers made by Mr and Mrs Dickinson (immediately above). However, after reviewing the options Mr Damerow decided to stay with his original decision to terminate Mrs Dickinson's employment. He communicated this to her on the following day.

## Conclusions

After considering the evidence I have come to the conclusion that Mrs Dickinson's termination on 7 January 2002 was harsh, unjust or unreasonable in all of the circumstances.

In arriving at this decision I have had particular regard to the following matters:-

- The fact that Mrs Dickinson was "head-hunted" just some seven months previously.
- The fact that Mrs Dickinson clearly expressed that she was looking for a long-term future with the business and Mr Damerow agreed that he, also, was looking for a long-term relationship.
- The fact that Mr and Mrs Dickinson were assured, at the time of Mr Dickinson's employment, that the business was financially sound and capable of sustaining his (and other employees) employment.
- The fact that there was no warning to any of the employees until 21 December 2001 that the business was in any way in trouble.
- The fact that as late as 21 December 2001 Mr Damerow was considering recruiting an additional consultant.
- The fact that the decision to restructure seemed to have been taken hastily and, with due respect to Mr Damerow, has still not been satisfactorily explained.

This point is reinforced by Mr Damerow's whole approach to the issue on 7 January 2002. Whilst initially advising the Dickinsons of the direction in which he wished to take the firm, Mr Damerow appeared to be rather uncertain about the whole rationale for his decision (and the direction). This uncertainty was exemplified by his decision (however commendable) to review the whole matter after they made certain suggestions and put certain offers to him.

- The fact that Mrs Dickinson was only given four weeks' pay in lieu of notice.
- The fact that the decision did not appear to be soundly based or well founded.

Overall, after listening to the evidence of all of the witnesses – especially Mr Damerow – I have concluded that Mr Damerow had no firm idea where he wanted the business to go during the seven months of Mrs Dickinson's employment and that he was still uncertain about its future direction when he had the discussion with Mrs Dickinson, and later Mr and Mrs Dickinson, on 7 January 2002.

Mr Damerow seems to have decided to expand his business during 2001 without a careful analysis of his financial ability to do so. He recruited Mr Dickinson in July/August 2001 after assuring each of Mr and Mrs Dickinson that he could afford to finance Mr Dickinson's employment when they specifically raised that matter with him. He was even considering expanding the business, by recruiting yet another consultant, when everyone went on Christmas leave on 21 December 2001.

Although the reasons for the restructure set out in the witness statement of Mr Damerow appear to be logical, those reasons, particularly the rationale underlying them, did not stand up to scrutiny under cross-examination.

Mr Damerow was equivocal and uncertain about why it was necessary to make the decision to effect Mrs Dickinson's termination. At times he stressed the financial factors. At other times he stressed that it was a problem with structure. With respect to him, the decision did not appear to have been soundly based but appeared, rather, to be the act of a desperate man who felt that he needed to do something to try to steer the ship away from the rocks before it grounded. Prior to 7 January Mr Damerow appeared to have been the captain of a ship without a rudder. He let it drift one way or another based upon what he felt was the right thing to do at the time.

I am left with the clear impression that Mr Damerow made the decision to restructure in the few days prior to 7 January 2002 because he genuinely felt that he had to do something drastic if he was going to be able to steer the ship in a new direction and away from the rocks.

It appeared that Mr Damerow agreed to a structure proposed by Mr Stouter on a "gut-feel" that it might improve things. As I observed above, it did not appear to be a soundly based or well founded decision in the sense that those words have been used in *Selvachandran v Peteron Plastics* ([1995] 62 IR 371) and the large body of subsequent cases which have followed the reasoning of Northrop J in that case.

Neither Mr Stouter – the business consultant – nor Mr Damerow could satisfactorily explain the structural change and the hard data upon which the decision to terminate Mrs Dickinson was made. There was no reference to any reliable data on such matters as the income generated by each staff member versus the costs of employing them. There was also no reference to any financial assumptions such as income and expense projections, cash flow projections and the like which one would normally expect to see in such a situation.

Given the whole history of the matter, Mrs Dickinson's unexpected termination on 7 January 2002 with just four weeks' pay in lieu, was harsh, unjust or unreasonable. It was unfair that she had to be the one to suffer the consequences of what were a series of poor business/management decisions by Mr Damerow during 2001.

## Remedy

It is clear that the relationship between Mrs Dickinson and Mr Damerow has broken down to the point where it would be not just impracticable for her to be reinstated, it would be impossible.

Accordingly, I am left to consider the only other possible remedy available under the Act, *viz* compensation.

As noted above, Mrs Dickinson stressed that she was looking for a long-term engagement at the time of her employment. Mr Damerow agreed that he, too, was looking for a long-term relationship. It ended just seven months later in the circumstances described above which I have found to have been harsh, unjust or unreasonable.

Following her termination Mrs Dickinson registered a new consulting business on 15 January 2002. She said the business had not commenced immediately and took some time to set up. She was not pressed on when it had actually started and how much income might have been generated since it commenced. At the time of the hearing she indicated she was pleased with the way that her new venture was going.

In all of the circumstances, I have decided to award Mrs Dickinson a total amount of additional compensation of seven weeks' wages at her normal wage rate prior to her termination. In assessing such amount I have approached the matter on the basis that reasonable notice, in all of the circumstances, would have been three months (13 weeks). Mrs Dickinson was paid four weeks in lieu of notice and I have discounted the overall amount of 13 weeks slightly – by approximately a further 2 weeks – to take into account Mrs Dickinson's mitigation of the loss occasioned by her unfair termination.

The amount of compensation determined, i.e. seven weeks, is to be taxed according to Australian taxation laws and paid to Mrs Dickinson within twenty-two days of the date of release of this decision.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Commissioner.

*Appearances:-*

Mr J. Shepley, of Counsel, for Mrs D. Dickinson the Applicant.  
Released: 31 May 2002

Mr M. Gavin, of Queensland Chamber of Commerce and Industry Limited,  
Industrial Organisation of Employers, with Mr N. Damerow for Workscan.

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 156 – application for certified agreement*

**The Palm Beach Currumbin Clinic AND Allied Health Employees (No. CA 235 of 2002)**

**THE PALM BEACH CURRUMBIN CLINIC – ALLIED HEALTH EMPLOYEES –  
CERTIFIED AGREEMENT 2002**

COMMISSIONER FISHER

5 June 2002

Certified Agreement– Relevant employee organization – Designated award – Right to be heard – s. 155, s. 156, s. 157 and s. 163 of *Industrial Relations Act 1999*.

DECISION

The Queensland Nurses' Union of Employees (QNU) has sought the right to be heard under s. 155(1) of the *Industrial Relations Act 1999* (the Act) in the matter of an application to certify the Palm Beach Currumbin Clinic – Allied Health Employees – Certified Agreement 2002. Mr Patti, who appeared for the Palm Beach Currumbin Clinic opposed the QNU being granted the right to be heard.

Ms Jeffrey, who appeared for the QNU, argued that the QNU was a relevant employee organisation for the purposes of s. 155 of the Act as the award nominated in the agreement as the parent award, the Private Hospital Nurses' Award – State is an award to which the QNU is a party. The QNU sought to be heard on whether the nominated parent award was the appropriate award to be designated in terms of s. 163 of the Act.

Mr Patti opposed the QNU being heard for several reasons including:

- the QNU is not a relevant employee organisation as defined by s. 155(4) of the Act;
- the classifications contained in the agreement are not ones for which the QNU has eligibility;
- the QNU does not have membership of employees who would be covered by the agreement.

The classifications contained in the agreement are award-free. Accordingly, the employer had proposed the Private Hospital Nurses' Award – State as the designated award under s. 163 of the Act. The majority of employees employed by the employer are covered by this Award. In those circumstances and in the absence of any other readily apparent relevant award – state or federal – the employer considered the Private Hospital Nurses' Award – State to be an appropriate award to be designated under s. 163 of the Act.

The Act provides at s. 155(1) that all relevant employee organisations are entitled to be heard on an application for the certification of an agreement. The term "relevant employee organisation" is defined at s. 155(4) in the following terms:

“ ‘relevant employee organisation’ means an employee organisation that –

- (a) is bound by an award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or
- (b) if there is no award or agreement that binds, or would bind, the employer – is entitled to represent the industrial interests of the relevant employees.”

There is no argument that the Private Hospital Nurses' Award – State binds the QNU. It also binds the employer in respect of employees engaged in the various classifications provided by the Award. The classifications to be covered by the agreement are not found within the Private Hospital Nurses' Award – State and are award-free. Section 155(4) (a) would appear to be not relevant in determining whether the QNU is a "relevant employee organisation" because there is no award or agreement that binds or would bind the employer. Such considerations are raised in s. 155(4)(b) of the Act. That subsection also includes the requirement that to be a "relevant employee organisation" that organisation is entitled to represent the industrial interests of relevant employees. The term "relevant employees" is defined in Schedule 5 of the Act for the purposes of a certified agreement, to mean an employee whose employment is, or will be, subject to the agreement. It is not the case that the QNU is entitled to represent the industrial interests of the employees whose employment will be subject to the agreement. Accordingly, I can find no basis for hearing the QNU under s. 155(1) of the Act.

Section 155(3) of the Act provides that:

“This section does not affect another right of an employee organisation, or any one else, to be heard on or intervene in an application.”

Section 322 of the Act provides for intervention by the Minister or a peak council. Clearly this section is not relevant here. Section 329 **Powers incidental to exercise of jurisdiction** provides at (b) that for proceedings the Commission may direct:

“(v) who may be heard and or what conditions.”.

Provided a case to be heard can be made out, s. 329(b)(v) would seem to permit the Commission to hear a person or an organisation in an application to certify an agreement even where a specific right might not be afforded under s. 155(1) of the Act. On that basis, I am prepared to grant the QNU a limited right to be heard.

As a matter of practicality, the Commission heard the concerns of the QNU as identified earlier. I am satisfied that the QNU has raised several points worthy of consideration.

The QNU submitted that s. 163 **Deciding designated awards of the Act** should be considered at the time an employer or organisation of employees proposes to make a certified agreement. It should not be the case that after the agreement is made that an award is selected and the no-disadvantage test then applied. Moreover, an application is required to be made to the Commission in advance of making a certified agreement in order to have the Commission decide the designated award and advise the employer or organisation in writing (s. 163(2), (3) and (4)).

Schedule 5 defines “designated award” as “in relation to whom a certified agreement will apply means an award that the commission under s. 163 . . . has decided is appropriate for deciding whether a certified agreement . . . passes the no-disadvantage test.”. This definition makes clear the purpose of a designated award. Section 163 also contemplates that the designated award will be determined in advance, hence the provision that the Commission must inform the employer or organisation in writing.

At the hearing of the application for certification of the agreement, Mr Patti made application from the bar table for the Private Hospital Nurses’ Award – State to be the designated award. In light of the provisions of s. 163 of the Act, this application is belatedly made and not in the required form. Given the agreement is now before the Commission for certification, I am prepared to overlook the procedural defects and deal with the matter. That this has been done in this case should not be construed as accepted practice.

There are other concerns about the approach by the employer in respect of this matter. While this Award is nominated in clause 4 of the agreement, it was not made known to me when the employees covered by the agreement were aware of the employer’s intention to have this Award designated for the purposes of the no-disadvantage test and whether they had the opportunity to make comparisons between the Award and the agreement in order to satisfy themselves that the terms and conditions in the agreement would not disadvantage them when compared to the Award.

There is however another more fundamental question and that is whether the proposed designated award is appropriate. The QNU raised the issue of whether it was appropriate to have a nursing award as the designated award for health professionals other than nurses. Neither the QNU nor Mr Patti could point to another award that might be capable of being designated for the purposes of deciding whether the agreement passes the no-disadvantage test.

Section 163(3) requires the Commission to decide an award regulating employment conditions of employees engaged in a similar kind of work as the person under the proposed agreement is appropriate to be designated for the purposes of the no-disadvantage test. The employees to be covered by the agreement are counsellors, social workers, psychologists and occupational therapists. While all are health care professionals, they are not nursing classifications.

The Commission has caused a search to be undertaken of awards of this Commission and the Australian Industrial Relations Commission to determine whether one covering a similar kind of work to that covered by the agreement could be found. The search of the Queensland jurisdiction produced the Physiotherapists’ Award – State while the search of the federal awards did not reveal any award that could be considered relevant. The Commission did not consider the Physiotherapists’ Award – State to be relevant as there are no Physiotherapists employed at this facility. Moreover, there are a range of occupational groups to be covered by this agreement whereas the Physiotherapists’ Award is limited to one occupational group.

There are of course public sector awards that cover similar work to the work in question. The Commission did not consider it desirable to designate a public sector award for the purposes of the no-disadvantage test as it is often the case that public sector awards provide conditions in excess of private sector awards. Given the search did not reveal an award regulating employment conditions of employees engaged in similar types of work to employees under the agreement, the Commission is prepared to accept the employer’s contention that the appropriate award to be designated for the no-disadvantage test is the Private Hospital Nurses’ Award – State. In the particular circumstances of this matter the Commission is prepared to accept the argument that like nurses, this group of employees are health professionals that all work along side of each other. In addition as nurses are the majority health care profession in the workplace it is arguably appropriate that the award that applies to nurses be designated for the specific purposes of the no-disadvantage test.

The third matter of concern is clause 4 itself. It provides:

“4.1 Where this agreement is silent the provisions of the Private Hospital Nurses Award – State (the Award) shall apply to Allied Health employees in all respects, but otherwise the Award shall apply only to the extent not modified by this Agreement.”.

Mr Patti advised that the wording was inserted into another agreement certified by this Commission, *viz*, the Toowong Private Hospital – Nursing and Allied Health Employees – Certified Agreement 2001. He submitted that the Commission as constituted should not therefore take objection to clause 4 of the present agreement.

The Commission notes that the QNU is a party to the Toowong Private Hospital Agreement and took no objection to the insertion of that clause into that Agreement. The QNU has now raised concerns about clause 4 of the present agreement in light of clause 1.2 Award Coverage of the Private Hospital Nurses’ Award – State.

I am concerned that there may be any number of conditions in the Private Hospital Nurses’ Award – State that are not intended to apply to employees covered by this agreement. The wording of clause 4 enables those conditions to be extended to employees without the employer specifically discussing those matters with them. These conditions might be beneficial or disadvantageous. I have not been satisfied as required by s. 156(1)(a) of the Act that the terms of clause 4 of the agreement have been explained in a way that was appropriate. It would be prudent to list in the agreement those conditions which are intended to apply at the time the agreement was made to employees covered by the Agreement. Such an approach will provide certainty and avoid disputation in the future.

It also seems to me that the title of clause 4 – Relationship to Parent Award is inappropriate. The Private Hospital Nurses’ Award – State is not the parent award, *i.e.*, the award that provides terms and conditions of employment for employees in the absence of this agreement. The Private Hospital Nurses’ Award – State is of course the award that has been designated for the purposes of the no-disadvantage test and the parties have also agreed to flow on to employees under this agreement certain, but as yet undefined, conditions from the Award. The title of the clause would be better described as “Relationship to Designated Award”.

Given my concerns about clause 4, the time when the designated award was determined by the employer as being appropriate and whether employees had a reasonable opportunity to consider their conditions, I am not prepared to certify the agreement at this point. I have decided to act under s. 157(1)(b) of the Act, to give the person who made the agreement the opportunity to take action that may be necessary to enable the Commission to certify the agreement. Action which may be appropriate could include amending the title of clause 4, amending the body of that clause to identify those provisions of the Private Hospital Nurses' Award – State that are intended to apply to employees covered by the agreement and submitting fresh affidavits in relation to employees being given the opportunity to compare the Award and the agreement before the agreement went to ballot. In light of the foreshadowed amendments to clause 4 and depending on their extent or particularity, a new ballot may be required.

G.K. FISHER, Commissioner.

Appearances:

Mr J. Patti (Employer Services) and with him Mr D. Wicks on behalf of the Palm Beach Currumbin Clinic.

Ms J. Skues on behalf of Allied Health Employees.

Ms J. Jeffrey for the Queensland Nurses' Union of Employees.

Released: 05 June 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.137 – application to amend order

**Training Recognition Council AND Queensland Confederation of Industry Limited,  
Industrial Union of Employers and Others (No. B795 of 2002)**

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

COMMISSIONER BLOOMFIELD  
COMMISSIONER BROWN  
COMMISSIONER THOMPSON

27 May 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 27 May 2002, this Commission orders that the said Order be amended as follows as from 27 May 2002.

1. In Schedule 5 "Business and Property Services Industry":

(a) by deleting clause 2.1.2 and inserting the following in lieu thereof:

"2.1.2 *Property Development and Management Training Package*

(a) Wages and conditions for trainees to whom the Property Sales Award Queensland – State and the Property Management Award Queensland – State applies, shall be provided in those Awards.

(b) Trainees to whom the above awards do not apply, shall receive wages in accordance with the Training Wage Award – State (Skill Level A) and conditions in accordance with this Order.";

(b) by adding a new clause 2.1.3(c) as follows:

"(c) Other Traineeships

Trainees registered in other traineeships based on qualifications contained in the Asset Maintenance Training Package, shall be entitled to the relevant wage progression arrangement specified in clause 3 of Schedule 1."

2. By inserting in Schedule 14 "Local Government Industry" in alphabetical order in the table in clause 3.1.3 the following:

<i>"Traineeship Stream</i>	<i>Industry Level</i>
Asset Maintenance Training Package traineeships (all streams)	Schedule 5".

Dated 27 May 2002.

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

Operative Date: 27 May 2002

Amendment – Order – Apprentices' and Trainees' Wages and Conditions  
(Excluding Certain Queensland Government Entities)

Released: 30 May 2002

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Director General,  
Department of Health and Others (No. B1079 of 2001)**

**DISTRICT HEALTH SERVICES EMPLOYEES' AWARD – STATE**

COMMISSIONER BLADES

27 May 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 16 July 2001, 14 March, 14 and 27 May 2002 this Commission orders, by consent, that the said Award be amended as follows as from 1 June, 2002:

1. By deleting clause 5.2.1(b) and inserting the following in lieu thereof:

“(b) The following definitions and salary levels will apply:

An Oral Health Team will be deemed to consist of up to one full-time equivalent dentist, up to 3 full-time equivalent operative dental auxiliaries and a variable mix of non-operative dental auxiliaries (i.e. dental technicians and dental assistants) working from one or more locations. Additionally, the team may be supported by administrative officers.

- (i) Dentist: (Level: DO1-DO7)

Clinical duties and responsibility for an Oral Health Team operating from one or more Community/Hospital Clinic(s) and/or fixed school clinic(s). Level dependent upon years of experience and satisfactory work performance. Dentists are eligible to advance by increment to pay point 7, and no further.

- (ii) Advanced Clinician (Level: DO8-DO9)

An advanced clinician is a Dentist who has advanced clinical skills recognised by their peers and a strong commitment to quality public oral health services. It is a merit based progression that recognises individuals who perform at a demonstrably higher level than that required of Staff Dentists. An Advanced Clinician (DO8) has the ability to progress to DO9 only after 12 months' satisfactory service.

- (iii) Senior Dentist (Level: DO10-DO11)

This position maintains clinical responsibilities, as for a Dentist position. In addition, the Senior Dentist maintains managerial responsibility for a number of Oral Health Teams. Senior Dentists shall commence on pay point 10 and be eligible to advance by annual increment to pay point 11, and no further.

- (iv) Senior Dental Officer - Pre-Specialist Registration (Level: DO12-DO13)

A dentist appointed as a Senior Dental Officer (Pre-Specialist Registration) in a group of Oral Health Teams is a holder of a prescribed qualification in relation to a dental specialty.

This specialty shall be prescribed under Section 18 (6) (a) of the *Dental Act 1971*, and must be relevant to the appointed position. Such a position shall have managerial responsibility for a group of Oral Health Teams. Senior Dental Officers (Pre-Specialist Registration) appointed as such, shall commence on pay point 12 and shall be eligible to advance by annual increments to pay point 13, and no further.

- (v) Principal Dentist (Level: DO12-DO13)

This position maintains clinical responsibilities, as detailed for Dentist. A higher level of managerial responsibility for a number of Oral Health Teams. Such managerial responsibilities shall include planning and resource management. Principal Dentists appointed as such shall commence on pay point 12 and shall be eligible to advance by annual increments to pay point 13, and no further.

- (vi) Principal Dentist - North Brisbane & QE11 (Level: DO14-DO15)

This position maintains clinical responsibilities, as detailed for Dentist. A higher level of managerial responsibility for a number of Oral Health Teams. Such managerial responsibilities shall include planning and resource management. This level is in recognition of the provision of secondary Oral Health Care on referral to the groups of Oral Health Teams, with which the Principal Dentist is associated in North Brisbane or QE 11 Districts only. Principal Dentists (North Brisbane & QE 11 Districts) appointed as such shall commence on pay point 14, and advance by annual increments to pay point 15, and no further.

- (vii) Director, District Oral Health Services (Level: DO14-DO15)

This position maintains both clinical and managerial responsibilities for a District, or a number of Districts. Directors, District Oral Health Services appointed as such shall commence on pay point 14, and advance by annual increments to pay point 15, and no further.

- (viii) Dental Specialist (Level: DS1-DS5)

A Dental Specialist registered in Queensland and appointed to provide specialist oral health care. Dental Specialists appointed as such shall commence on pay point DS1, and advance by annual increments to pay point DS5, and no further.

- (ix) Senior Dental Specialist (Level: SDS1-SDS2)

A Dental Specialist registered in Queensland and appointed to provide specialist oral health care may apply to become a Senior Dental Specialist, and if appointed as such shall commence on pay point SDS1, and advance by annual increments to pay point to SDS2 and, no further.”.

1. By inserting a new clause 11.3 (Industrial Relations Matters) as follows:

“**11.3 Industrial Relations Matters**

11.3.1 Union Encouragement

The employer recognises the right of individuals to join a union and will encourage that membership, however, it is also recognised that union membership remains at the discretion of individuals.

Where requested by a union who is party to this Award, payroll deduction facilities for union subscriptions will be available.

Information on relevant unions (which will be supplied by unions) will be made available to relevant employees at the point of engagement.

Union officials or authorised representatives will be given the opportunity to discuss union membership with new employees and to provide such employees with relevant union material including membership forms.

#### 11.3.2 *Leave to Undertake Work with Relevant Union*

At the discretion of the employer, employees may be granted special leave without salary to undertake a period of work with the relevant union.

#### 11.3.3 *Industrial Relations Education Leave*

Industrial relations education leave is paid time off to acquire knowledge and competencies in industrial relations. Such knowledge and competencies can allow employees to effectively participate in consultative structures, perform a representative role and further the effective operation of grievance and dispute settlement procedures.

Employees may be granted up to five (5) working days (or the equivalent hours) paid time off (non-cumulative) per calendar year to attend industrial relations education sessions.

Additional leave, over and above five (5) working days non-cumulative (or the equivalent hours) in any one calendar year may be granted where approved structured employees' training courses involve more than five (5) working days (or the equivalent hours). Such leave will be subject to consultation between the employer (or delegated authority), the relevant union and the employee.

Upon request and subject to approval by the employer (or delegated authority) and evidence of appropriate union authorisation; employees may be granted up to three (3) days paid leave in order to attend Union Annual Conferences. Upon request, and subject to approval by the employer (or delegated authority), employees may be granted additional paid time off in special circumstances to attend Management Committee Meetings, Union Conferences and ACTU Congress.

The granting of industrial relations education leave or any additional leave is subject to the approval of the employer (or delegated authority) and should not impact adversely on service delivery, work requirements or the effectiveness and efficiency of the relevant work unit. At the same time, such leave shall not be unreasonably refused.

#### 11.3.4 *Union Delegates' Assistance*

The employer acknowledges the constructive role democratically elected union delegates undertake in the workplace in relation to union activities that support and assist members. That role will be formally recognised, accepted and supported, provided that unions will notify the employer of such delegates. The employer supports the accepted industrial principle that delegates should perform their roles without fear of victimisation.

Employees will be given full access to union officials/delegates during working hours to discuss any employment matter or seek union advice, provided that service delivery is not disrupted and work requirements are not unduly affected:

Provided that service delivery and work requirements are not unduly affected, delegates will be provided with convenient access to reasonable, existing facilities for the purpose of undertaking union activities. Local arrangements may be entered into with unions at DCF level in relation to access to specific facilities. Such arrangements may include, but shall not be limited to, access to telephones, computers, e-mail, photocopiers, facsimile machines, storage facilities, meeting rooms and notice boards:

Provided that such arrangements shall be consistent with the employer's policies and procedures and shall ensure that personal privacy and information security is maintained.

Subject to the relevant employee's written approval and any confidentiality provisions, delegates may request access to documents and policies related to a member's employment."

2. By deleting Schedules B(i) to B(iv) inclusive and inserting the following in lieu thereof:

#### **"SCHEDULE B(i)**

#### **SALARIES AND WAGES**

#### **ADMINISTRATIVE STREAM**

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
<b>Level</b>			
AO1 (Under 21)	1 .....	723.70	18,881
	2 .....	794.80	20,736
	3 .....	863.40	22,526
AO2 (Age 21)	1 .....	1,025.90	26,765
	2 .....	1,061.10	27,683
	3 .....	1,096.50	28,607
	4 .....	1,131.70	29,525
	5 .....	1,167.10	30,449
	6 .....	1,202.30	31,367
	7 .....	1,242.80	32,424
	8 .....	1,279.80	33,389
AO3	1 .....	1,367.10	35,667
	2 .....	1,418.50	37,008
	3 .....	1,470.20	38,356
	4 .....	1,521.70	39,700

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
AO4	1	1,611.20	42,035
	2	1,663.90	43,410
	3	1,716.40	44,780
	4	1,769.20	46,157
AO5	1	1,863.00	48,604
	2	1,916.30	49,995
	3	1,969.20	51,375
	4	2,022.20	52,758
AO6	1	2,133.40	55,659
	2	2,182.60	56,943
	3	2,231.80	58,226
	4	2,280.90	59,507
AO7	1	2,384.00	62,197
	2	2,440.90	63,681
	3	2,497.80	65,166
	4	2,554.30	66,640
AO8	1	2,638.40	68,834
	2	2,688.70	70,146
	3	2,738.70	71,451
	4	2,788.70	72,755

**PROFESSIONAL STREAM**

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$	
Level				
PO1(Under Age 21)	1	744.10	19,413	
	2	851.00	22,202	
	3	958.00	24,994	
	(Age 21)	4	1,083.70	28,273
		5	1,141.70	29,786
		6	1,199.50	31,294
		7	1,263.00	32,951
PO2	1	1,365.70	35,630	
	2	1,440.80	37,589	
	3	1,515.50	39,538	
	4	1,590.50	41,495	
	5	1,665.60	43,454	
	6	1,740.20	45,401	
PO3	1	1,826.60	47,655	
	2	1,881.80	49,095	
	3	1,937.00	50,535	
	4	1,992.10	51,972	
PO4	1	2,119.10	55,286	
	2	2,173.00	56,692	
	3	2,226.90	58,098	
	4	2,280.90	59,507	
PO5	1	2,384.00	62,197	
	2	2,440.90	63,681	
	3	2,497.80	65,166	
	4	2,554.30	66,640	
PO6	1	2,638.40	68,834	
	2	2,688.70	70,146	
	3	2,738.70	71,451	
	4	2,788.70	72,755	

**TECHNICAL STREAM**

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
Level			
TO1 (Under Age 21)	1	744.10	19,413
	2	851.00	22,202
	3	958.00	24,994
	(Age 21)	4	1,083.70

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
Level			
	5 .....	1,141.70	29,786
	6 .....	1,199.50	31,294
	7 .....	1,263.10	32,953
TO2	1 .....	1,285.50	33,538
	2 .....	1,332.80	34,772
	3 .....	1,380.00	36,003
	4 .....	1,427.10	37,232
	5 .....	1,474.40	38,466
	6 .....	1,521.70	39,700
TO3	1 .....	1,611.20	42,035
	2 .....	1,654.30	43,160
	3 .....	1,697.30	44,281
	4 .....	1,740.20	45,401
TO4	1 .....	1,826.60	47,655
	2 .....	1,884.50	49,165
	3 .....	1,942.40	50,676
TO5	1 .....	2,022.20	52,758
	2 .....	2,081.50	54,305
	3 .....	2,140.70	55,849
	4 .....	2,199.70	57,389
TO6	1 .....	2,270.40	59,233
	2 .....	2,327.40	60,720
	3 .....	2,384.00	62,197

#### OPERATIONAL STREAM

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
Level			
OO1 (Under Age 21)	1 .....	589.70	15,385
	2 .....	671.20	17,511
	3 .....	753.20	19,650
	4 .....	835.20	21,790
	5 .....	917.00	23,924
	6 .....	999.70	26,081
OO2 (Age 21)	1 .....	1,025.90	26,765
	2 .....	1,062.90	27,730
	3 .....	1,100.20	28,703
	4 .....	1,137.10	29,666
OO3	1 .....	1,158.90	30,235
	2 .....	1,187.40	30,978
	3 .....	1,219.90	31,826
	4 .....	1,249.40	32,596
OO4	1 .....	1,305.10	34,049
	2 .....	1,346.80	35,137
	3 .....	1,388.60	36,228
	4 .....	1,430.10	37,310
OO5	1 .....	1,467.20	38,278
	2 .....	1,515.20	39,531
	3 .....	1,563.40	40,788
	4 .....	1,611.20	42,035
OO6	1 .....	1,681.30	43,864
	2 .....	1,725.00	45,004
	3 .....	1,769.20	46,157
OO7	1 .....	1,852.80	48,338
	2 .....	1,897.50	49,504
	3 .....	1,942.40	50,676

The rates of pay in this clause comprise the minimum rates payable under this Award. The rates of pay in this clause incorporate adjustments based upon the Queensland Health Certified Agreement (No. 3) 1998 (CA183/99). The rates of pay in this clause incorporate adjustments based upon the Queensland Health Certified 1 September 2001 Declaration of General Ruling and earlier Safety Net Adjustments.

SCHEDULE B(ii)

DENTISTS' SALARIES

Classification	Pay Point	Rate Per Fortnight \$	Rate Per Annum \$
Dental Stream			
Dental Officers	DO1 .....	2,173.00	56,692
	DO2 .....	2,227.00	58,101
	DO3 .....	2,280.80	59,504
	DO4 .....	2,384.00	62,197
	DO5 .....	2,440.90	63,681
	DO6 .....	2,497.90	65,153
	DO7 .....	2,554.30	66,640
	DO8 .....	2,614.70	68,216
	DO9 .....	2,675.10	69,791
	DO10 .....	2,759.20	71,986
	DO11 .....	2,849.70	74,347
	DO12 .....	2,940.00	76,703
	DO13 .....	3,030.40	79,061
	DO14 .....	3,144.60	82,040
	DO15 .....	3,265.50	85,195
Dental Specialist	DS1 .....	3,144.60	82,040
	DS2 .....	3,265.50	85,195
	DS3 .....	3,386.30	88,346
	DS4 .....	3,507.10	91,498
	DS5 .....	3,627.90	94,649
Senior Specialist	SDS1 .....	3,748.80	97,804
	SDS2 .....	3,869.50	100,953

The rates of pay in this clause comprise the minimum rates payable under this Award. The rates of pay in this clause incorporate adjustments based upon the Queensland Health Certified Agreement (No. 3) 1998 (CA 183/99). The rates of pay in this clause include the arbitrated wage adjustment payable under 1 September 2001 Declaration of General Ruling and earlier Safety Net Adjustments."

Dated 27 May 2002.

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

Operative Date: 1 June 2002  
Amendment – Classifications and Salaries  
Released: 31 May 2002

#####

QUEENSLAND INDUSTRIAL REGISTRAR

*Industrial Relations Act 1999* – s. 482 – arrangement for conduct of elections

**Queensland Police "Union of Employees" (No. Q19 of 2002)**

REGISTRAR EWALD

31 May 2002

Conduct of Election – Prescribed Information – Reason for Election – Electoral Commission to Conduct Election.

DECISION

On 22 May 2002 the Queensland Police "Union of Employees" lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 36 of the *Industrial Relations Regulation 2000* in relation to the conduct of an election by the Electoral Commission of Queensland for the following position of office:

Office	Number of Positions
General Secretary .....	1

The Industrial Organisation advises that the General Secretary has tendered his resignation to be effective from 30 August 2002. Under Rule 26.3 of the QPUE Rules an election is required to fill the position. The QPUE has requested the notice to be published in the June Journal. Rule 23 also specifies who may nominate for positions.

The election is by way of a direct vote by way of a secret postal ballot of the members of the Industrial Organisation.

I have considered the application, the Act and Rules and I find that the election being sought is for a position of office within the meaning of the Act.

I am satisfied that an election for the above named position is required to be held under the Rules of the Industrial Organisation.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election of the above named position by the Electoral Commission of Queensland.

Dated 31 May 2002.

E. EWALD,  
Industrial Registrar.

Filename: no.8 14.06.02  
Directory: S:\QIRCDEV-BASE\qgig\2002\vol 170  
Template: H:\NORMAL.DOT  
Title: QGIG - Vol. 170 No. 8 14.06.02  
Subject:  
Author: Queensland Industrial Relations Commission  
Keywords:  
Comments:  
Creation Date: 12/06/2002 12:32:00 PM  
Change Number: 5  
Last Saved On: 17/01/2008 2:00:00 PM  
Last Saved By: TorrenVM  
Total Editing Time: 4 Minutes  
Last Printed On: 17/01/2008 2:00:00 PM  
As of Last Complete Printing  
Number of Pages: 43  
Number of Words: 34,670 (approx.)  
Number of Characters: 178,204 (approx.)