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No. 3

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
CA153/02	Gold Coast Family Support Certified Agreement 2002	24/6/02	CA7/99
CA351/02	Barron Gorge Power Station - Certified Agreement 2002	26/8/02	CA487/99
CA334/02	Group 4 Securitas (Qld. Enterprise Bargaining) - Certified Agreement 2002	8/8/02	CA342/00
CA363/02	Allcorp Security (Qld) Pty Ltd (Qld. Enterprise Bargaining) – Certified Agreement 2000	30/8/02	CA611/00
CA352/02	Kareeya Power Station - Certified Agreement 2002	4/9/02	CA329/98
CA358/02	Butter Producers Co-Operative Federation Limited – Certified Agreement 2002	5/9/02	CA548/00
CA360/02	Driza Bone Pty Ltd Enterprise - Certified Agreement 2002	5/9/02	CA341/01

The following Agreements have been withdrawn:–

No/s	Title
CA650/01	Redlands Patrol Certified Agreement 2001
CA651/01	TWD Security Pty Ltd

E. EWALD
Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 149 – determination by commission

Queensland Treasury Department AND The Queensland Public Sector Union of Employees (No. B729 of 2002)

**QUEENSLAND OFFICE OF GAMING REGULATION CASINO-BASED
INSPECTORS' DETERMINATION 2002**

DETERMINATION

THIS matter coming on for hearing at Brisbane on 14, 20 and 28 May, 19, 29 and 30 July and 2 August 2002, this Commission determines as follows as from 11 September 2002:

**QUEENSLAND OFFICE OF GAMING REGULATION CASINO-BASED
INSPECTORS' DETERMINATION 2002**

PART 1 APPLICATION AND OPERATION**1.1 Title**

This Determination shall be known as the *Queensland Office of Gaming Regulation Casino-Based Inspectors' Determination 2002*.

1.2 Arrangement

Subject Matter	Clause No.
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PART 1 – APPLICATION AND OPERATION

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PART 4 – PREVENTION AND SETTLEMENTS OF DISPUTES**SCHEDULE 1 – ROSTERS****SCHEDULE 2 – CALCULATION OF BLOCK PAY ALLOWANCE****1.3 Application**

This Determination shall apply to Gaming Inspectors, Supervising Inspectors and Assistant Regional Managers employed by the Queensland Office of Gaming Regulation, Queensland Treasury Department who work within a casino operation on a continuous shift work or shift work (other than continuous shift work) basis.

1.4 Date of Operation

This Determination shall operate from 11 September 2002 and shall remain in force until 1 January 2004.

1.5 Posting of Determination

A copy of this Determination must be displayed in a conspicuous place at the workplace where it is easily read by employees covered by the Determination.

1.6 Relationship to Awards, Certified Agreements, Acts and Ministerial Directives

- (1) This Determination is to be read in conjunction with existing awards and certified agreements applying to employees covered by this Determination. In the event of any inconsistency with existing awards and certified agreements, the terms of this Determination shall take precedence.
- (2) Unless specifically defined in this Determination, the terms of this Determination shall be read as defined in the *Public Service Award – State*.
- (3) The provisions of the Ministerial Directives made pursuant to the *Public Service Act 1996* shall continue to apply to the officers covered by this Determination except to the extent that the conditions of employment and remuneration to be received by such officers are affected by the provisions of this Determination.

PART 2 – SHIFTWORK, HOURS OF WORK AND RELATED MATTERS**2.1 Shiftwork**

Except as otherwise provided herein, employees covered by this Determination are shift workers in accordance with the relevant clause of the *Public Service Award – State* (currently 4.2 “*Shiftwork*”).

2.2 Hours of Work

Except as provided in clause 2.3(5)(d) below, the ordinary hours of work shall be an average of 36.25 hours per week worked on the basis of 145 hours within a work cycle of 28 days provided that ordinary hours shall not exceed twelve (12) hours in any one day.

2.3 Rosters

- (1) Shiftwork covered by this Determination shall be worked in accordance with the roster contained in Schedule 1.
- (2) The attachment of the roster to this Determination does not bind the employer to any particular organisational structure or establishment level.
- (3) The roster may be permanently amended by mutual agreement between the employer and the majority of employees directly affected. In reaching agreement, the parties shall negotiate in good faith and neither party will unnecessarily delay the process or unreasonably withhold consent.

Where agreement cannot be reached, the parties may access the disputes procedures set out in Part 4 of this Determination.

- (4) Management reserves the right to temporarily amend the agreed roster to meet operational requirements.
- (5) Rosters covered by this Determination shall be constructed on the basis of the following principles:

- (a) Under normal circumstances, the following minimum staffing levels shall be provided for in each roster:

Jupiter's/Treasury Casino

Sunday – Thursday	11 p.m. – 7 a.m.	one officer
Friday/Saturday/Public Holidays	2 a.m.– 7 a.m.	one officer *
All other trading hours		two officers

Townsville Casino

Sunday – Thursday	During trading hours up to at least 6 p.m.	two officers
	During other trading hours	one officer
Friday/Saturday/Public Holidays	11 p.m. – 4.30 a.m.	one officer
	During other trading hours up to 11 p.m.	two officers

Reef Casino

Sunday – Thursday	11 p.m. – 5 a.m.	one officer
Friday/Saturday/Public Holidays	2 a.m. – 9 a.m.	one officer *
All other trading hours		two officers

* the relevant overnight period is that following the commencement of the shift on the particular day stated.

- (b) Under normal circumstances, employees will not be rostered to work more than two (2) consecutive night shifts;
- (c) Employees engaged in twelve (12) hour shifts shall not be rostered to work more than five (5) consecutive days;
- (d) Where necessary, rosters shall include a shift of up to 13 hours to accommodate 145 hours in four (4) weeks and such shift shall be considered ordinary hours of work;
- (e) Rosters shall take account of best practice recommendations and guidelines in regard to continuous shift work and 12 hour shifts.

2.4 Overtime

- (1) Subject to the relevant DIR Directive (currently 19/01 “Hours and Overtime”) and the relevant clause of the *Public Service Award – State* (currently 4.3), all time worked in excess of the rostered hours each day shall be paid for at overtime rates.
- (2) Overtime will be authorised solely at the discretion of the employer.
- (3) Except in exceptional circumstances, the maximum length of time an officer should remain on duty is fourteen (14) hours. The Fatigue leave provisions of the *Public Service Award – State* continue to apply.

2.5 Hours of Absence

Hours of absence shall be actual ordinary hours that an employee does not attend shift. For example, if an employee is absent for the entire shift then the number of hours that should have been worked in that shift shall be deducted from the relevant leave entitlement.

PART 3 – BLOCK PAY ALLOWANCE AND LEAVE ENTITLEMENTS

3.1 Block Pay Allowance

- (1) In addition to base salary, a “block pay” allowance shall be paid to employees covered by this Determination on a fortnightly basis based on a percentage of base salary only (excluding any and all allowances) and representing an averaged payment in lieu of public holiday, shift and penalty allowances payable under the *Public Service Award - State*.
- (2) Existing rules and arrangements applicable to the payment of superannuation contributions to Public Service Employees as approved by the Queensland Government from time to time shall apply to employees covered by this Determination.

- (3) The block pay allowance is excluded from the calculation of overtime and recreation leave loading. The block pay allowance is included in salary for the purposes of Worker's Compensation claims.
- (4) The quantum of block pay allowance payable to employees covered by this Determination shall be in accordance with Schedule 2.
- (5) Such quantum shall be adjusted in the event that a permanent amendment to the roster is made under clause 2.3(3) above.
- (6) Gaming Inspectors and Supervising Inspectors employed as such under this Determination shall continue to be paid the quantum of block pay payable to them under the *Public Service Award State – Casino Inspectors, Queensland Office of Gaming Regulation Industrial Agreement 1997 (No IA6 of 1997)* until 30 April 2003, being the nominal expiry date of the *State Government Departments Certified Agreement 2000 (No. CA234 of 2000)*.

Any Supervising Inspector who is not appointed as an Assistant Regional Manager and, consequently, is redesignated a Gaming Inspector, will be paid the quantum of block pay under the 1997 Industrial Agreement for either a Gaming Inspector or Supervising Inspector (whichever is greater) until 30 April 2003.

- (7) Further provided that neither employees covered by this Determination nor the employer shall be financially disadvantaged by the payment of the block pay allowance.

3.2 Entitlement to Allowances on Leave for Employees Working on a Continuous Shiftwork Basis

- (1) On taking recreation leave or receiving the cash equivalent thereof, the block pay allowance payable under clause 3.1 above shall be payable in full on leave accrued from the date of commencement of the block pay system (such date being 30 April 1995 for employees employed at that time at the Gold Coast Inspectorate and 1 May 1996 for employees employed at that time at other 24 hour Inspectorates).

Provided that a special payment will be made to employees by 31 May 2003 in an amount representing the difference in the block pay payable under clause 3.2(1) above and the block pay payable on all recreation leave accrued by the employee between the date of commencement of the block pay system (as defined in clause 3.2(1) above) and 30 April 2003, and not taken at that date.

The annual leave loading shall be calculated in accordance with the *Public Service Award – State*.

- (2) On taking long service leave or receiving the cash equivalent thereof, the block pay allowance payable under clause 3.1 above shall be payable in full on leave accrued from the date of this Determination.

On taking long service leave or receiving the cash equivalent thereof, accrued between the date of commencement of the block pay system (as defined in clause 3.2(1) above) and the date of this Determination, the block pay percentage payable at the time of accrual shall be payable in full on the current rate of base pay.

Long service leave, or cash equivalent thereof, accrued prior to the date of commencement of the block pay system (as defined in clause 3.2(1) above) shall be calculated on base salary.

- (3) The block pay allowance is not payable when an employee is on sick, bereavement, special or defence force training leave.
- (4) Nothing in clause 3.2 above creates any entitlement to take recreation leave, long service leave or receive the cash equivalent of these leave types that does not exist under the *Public Service Award – State*, relevant ministerial directive or *Industrial Relations Act 1999* at the date of this Determination.

3.3 Entitlement to Allowances on Leave for Employees Working on a Shiftwork (other than continuous shiftwork) Basis

- (1) On taking recreation leave or receiving the cash equivalent thereof, the block pay allowance payable under clause 3.1 above shall be payable in full on leave accrued from 13 February 1997 (being the date of commencement of the block pay system):

Provided that a special payment will be made to employees by 31 May 2003 in an amount representing the difference in the block pay payable under clause 3.3(1) above and the block pay payable on all recreation leave accrued by the employee between 13 February 1997 and 30 April 2003, and not taken at that date.

The annual leave loading shall be calculated in accordance with the *Public Service Award – State*.

- (2) On taking long service leave or receiving the cash equivalent thereof, the block pay allowance payable under clause 3.1 above shall be payable in full on leave accrued from the date of this Determination.

On taking long service leave or receiving the cash equivalent thereof, accrued between 13 February 1997 (being the date of commencement of the block pay system) and the date of this Determination, the block pay percentage payable at the time of accrual shall be payable in full on the current rate of base pay.

Long service leave, or cash equivalent thereof, accrued prior to 13 February 1997 shall be calculated on base salary.

- (3) The block pay allowance is not payable when an employee is on sick, bereavement, special or defence force training leave.
- (4) Nothing in clause 3.3 above creates any entitlement to take recreation leave, long service leave or receive the cash equivalent of these leave types that does not exist under the *Public Service Award – State*, relevant ministerial directive or *Industrial Relations Act 1999* at the date of this Determination.

PART 4 – PREVENTION AND SETTLEMENT OF DISPUTES

- (1) The objectives of this procedure are the avoidance and resolution of any disputes over matters covered by this Determination, by measures based on the provision of information and explanation, consultation, co-operation and negotiation.

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- (2) Subject to legislation, while the dispute procedure is being followed, normal work is to continue except in the case of a genuine safety issue. The *status quo* existing before the emergence of a dispute is to continue whilst the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.
- (3) There is a requirement for management to provide relevant information and explanation and consult with appropriate employee representatives.
- (4) In the event of any disagreement between the parties as to the interpretation or implementation of this Determination, the following procedures shall apply:
- (a) the matter is to be discussed by the employee's union representative and/or the employee(s) concerned (where appropriate) and the immediate supervisor in the first instance. The discussion should take place within 24 hours and the procedure should not extend beyond 7 days;
 - (b) if the matter is not resolved as per (a) above, it shall be referred by the union representative and/or the employee(s) to the appropriate management representative who shall arrange a conference of the parties to discuss the matter. This process should not extend beyond 7 days;
 - (c) if the matter is not resolved then it may be referred by either party to the Queensland Industrial Relations Commission for conciliation, or if necessary, arbitration.

Dated 11 September 2002.

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

Operative Date: 11 September 2002
Determination – Queensland Office of Gaming Regulation Casino-Based
Inspectors' Determination 2002

Released: 11 September 2002

G S	
D	0700 – 1900
D **	0700 – 2000
D #	0700 – 1800
A	1300 – 2300
A *	1400 – 0200
N	1900 – 0700

ARM	
D	0800 – 1700
D #	0800 – 1800
A +	1300 – 2200

RM	
D	0900 – 1700

D *	Monthly Meeting
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Parameters		Block Rate	
1 x RM	18 x 8 hour shifts	N/A	
3 x ARM	16 x 9 hour shifts	ARM	23.48%
9 x GI	7 x 12 hr + 6 x 10 hr shifts or 6 x 12 hr shifts	GI	27.52%
<u>Gaming Inspectors</u> Day & Night shifts 12 hours Afternoon shifts: 10 hrs Sun to Thur; 12 hrs Fri & Sat <u>Afternoon shifts</u> Sunday to Thursday finish 2300 Friday and Saturday finish 0200			

+ The ARM afternoon shift is to be 1500 – 2300 when a Gaming Inspector is not rostered on an afternoon shift.

Townsville Base Roster

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
GI 1	L/C10	MG	MG	MG	MG	A			MG	MG	MG					MG	MG	MG				MG	MG	MG	MG			
GI 2			E/C	A	L/N	L/N	N					MG	L/N	N	N	N	A					L/C10	E/C	A			C	C
GI 3	N	N						N	N	N	N	L/N	A					E/C	L/C10	A	N				A	L/N	L/N	N
GI 4				E/C	L/C	C	C	MG				L/C10	C	C			N	N	L/N	L/N				E/C	E/C	L/C	A	
GI 5		E/C	N	N				L/C10	E/C	E/C	E/C				L/C	E/C	E/C				C	C	N	N	N	N		

ARM 1			D	D	A				D	D	D	A				D	D	D	A*			D	D			D10	D	D
ARM 2	D	D			D	D	D	D				D	D	D	D				D*	D	D			D	D10	A		

RM	D	D	D	D			D	D	D	D	D					D	D	D	D*	D			D	D	D9			D
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D	3	4	4	4	3	2	3	4	4	4	4	3	2	2	2	4	4	4	3	3	2	3	4	4	4	2	2	3
A	0	0	0	1	1	1	0	0	0	0	0	1	1	0	0	0	1	0	1	1	0	0	0	1	1	1	1	0
N	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Off	4	3	3	2	3	4	4	3	3	3	3	3	4	5	5	3	2	3	3	3	5	4	3	2	2	4	4	4
Total	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8

GI	
C	0815 – 1715
E/C	0545-1445/0545-1545
L/C	0930-1830/0930-1930
A	1400 – 2300
N	1730 – 0230
L/N	1930 – 0430
MG	0815 – 1715

ARM	
D	900 – 1800
D10	900 – 1900
A	1400 – 2300

RM	
D	0900 – 1700
D9	0900 – 1800
D/A*	Monthly Meeting

Parameters		Block Rate	
1 x RM	17 x 8, 1 x 9 hour shifts	N/A	
2 x ARM	17 x 8, 1 x 9 hour shifts	ARM	23.82%
5 x GI	15 x 9, 1 x 10 hour shifts	GI	28.10%

The Reef Casino Base Roster

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	
GI 1	C	MG	N								C	E/A	E/N	N				C	MG	E/N	N						C	E/A	A
GI 2			E/MG	A	E/A			D	A	N	N				E/MG	E/C	C			C	C	N	N						
GI 3	N	N						C	E/C	E/MG			C	C	A				C	E/A	A			C	MG	E/N			
GI 4		C	A	N	E/N				MG	A	A				C	MG	N								C	E/A	E/N	N	
GI 5				C	MG	E/N	N					E/C	E/A	A			E/MG	A	E/A			A	A	N	N				
GI 6	E/MG	D	C			C	C	N	N						N	N						C	E/C	E/MG			C	C	
GI 7	A				C	E/A	A			C	MG	E/N				A	A	N	E/N				MG	A	A				

ARM 1	L/D	A			D	E/D	E/D	A			D	D				D	D	A			D	D	A				E/D	E/D
ARM 2			D	D	D			D	D	D			E/D	E/D	L/D	D			D	E/D	E/D			D	D	D		

RM	D	D	D	A			D	L/D	D	D	A				D	D	D	A					D	D	A			D	D
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C	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
D	2	2	2	1	2	1	2	3	2	2	1	1	1	1	2	2	2	1	1	1	1	2	2	1	1	1	1	2	2
MG	1	1	1		1				1	1	1				1	1	1		1				1	1	1				
A	1	1	1	2	1	1	1	1	1	1	2	1	1	1	1	1	1	2	2	1	1	1	1	3	1	1	1	1	1
N	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Off	4	4	4	5	4	6	5	4	4	4	4	6	6	6	4	4	4	5	4	6	6	5	4	3	5	6	5	5	
Total	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10

GI	
C	0900-1900(10hrs)
E/C	0830-1900(10.5hrs)
D	0830-1900(10.5hrs)
MG	0830-1900(10.5hrs)
E/MG	0830-2030(12hrs)
A	1300-2300(10hrs)
E/A	1600-0200(10hrs)
E/N	1900-0700(12hrs)
N	1830-0430(10hrs)

ARM	
D	0900 - 1800
E/D	0700 - 1600
L/D	0900 - 1900
A	1400 - 2300

RM	
D	0900 - 1700
L/D	0900 - 1800
A	1500 - 2300

Parameters		Block Rate	
1 x RM	17x8 & 1x9 hour shifts	n/a	
2 x ARM	15x9 & 1x10 hour shift	ARM	23.82%
7 x GI	14 shifts (145 hours in total)	GI	28.71%

Schedule 2
CALCULATION OF BLOCK PAY ALLOWANCE (Jupiters and Treasury Casinos)

BASED ON:

9 Gaming Inspectors	}	Working the base roster
3 Assistant Regional Managers	}	

	AO4(1)	AO5(1)
Rate per fortnight	\$1,613.30	\$1,869.50
Hourly rate	\$22.25	\$25.79
<u>ADDITIONAL COST PER HOUR</u>		
Day shift hours @ 0%	\$0.00	\$0.00
Afternoon shift hours @ 15%	\$3.34	\$3.87
Night shift hours @ 15%	\$3.34	\$3.87
Saturday hours @ 50%	\$11.13	\$12.89
Sunday hours @ 100%	\$22.25	\$25.79
<u>ADDITIONAL COST PUBLIC HOLIDAYS</u>		
Not Worked 7.25 hours @ 100%	\$161.33	\$186.95
Worked – Hourly rate x AV. Shift length x 150%	\$388.92	\$350.53

Section A – Calculation of allowances based on

	AO4(1)	36 week rosters and 12 week rosters			
	AO5(1)	No. Hours AO4(1)	No. Hours AO5(1)		
Day shift hours		519	201	\$0.00	\$0.00
Afternoon shift hours		210	144	\$700.95	\$556.98
Night shift hours		240	0	\$801.09	\$0.00
Saturday shift hours		192	54	\$2,136.23	\$696.23
Sunday shift hours		144	36	\$3,204.35	\$928.30
		1305	435	\$6,842.62	\$2,181.51
Conversion to an annual amount					
		(divide by 36 x 45.7 weeks)		\$8,686.32	
		(divide by 12 x 46.7 weeks)			\$8,489.72

Section B – Calculation of Public Holidays adjustment based on 11 Public Holidays

PLUS – Public holidays worked					
				\$1,986.27	
					\$2,203.34
PLUS – Public holidays not worked					
				\$950.69	
					\$881.34
PLUS – On-call allowance					
				\$0.00	
LESS – Public Holidays that fall on weekends (1.28 days) –					
				\$21.01	\$23.31
LESS – Closures on Xmas and Good Friday – 24 hours					
				\$59.34	
				<u>\$137.53</u>	
				\$2,856.62	\$2,923.84
TOTAL OF SECTIONS (A) AND (B) –				\$11,542.94	\$11,413.56
Percentage of Base Salary –				27.52%	23.48%
Fortnightly Gross Salary –				\$2,057.26	\$2,308.48

CALCULATION OF BLOCK PAY ALLOWANCE (Townsville Casino)**BASED ON:**

5 Gaming Inspectors	}	Working the base roster
2 Assistant Regional Managers	}	

	AO4(1)	AO5(1)
Rate per fortnight	\$1,613.30	\$1,869.50
Hourly rate	\$22.25	\$25.79
<u>ADDITIONAL COST PER HOUR</u>		
Day shift hours @ 0%	\$0.00	\$0.00
Afternoon shift hours @ 15%	\$3.34	\$3.87
Night shift hours @ 15%	\$3.34	\$3.87
Saturday hours @ 50%	\$11.13	\$12.89
Sunday hours @ 100%	\$22.25	\$25.79
<u>ADDITIONAL COST PUBLIC HOLIDAYS</u>		
Not Worked 7.25 hours @ 100%	\$161.33	\$186.95
Worked – Hourly rate x AV. Shift length x 150%	\$302.49	\$350.53

Section A – Calculation of allowances based on

	AO4(1) AO5(1)	No. Hours AO4(1) AO5(1)	20 week rosters and 8 week rosters No. Hours AO5(1)		
Day shift hours		221	182	\$0.00	\$0.00
Afternoon shift hours		36	36	\$120.16	\$139.25
Night shift hours 280		0	\$934.60	\$0.00	
Saturday shift hours		108	36	\$1,201.63	\$464.15
Sunday shift hours		80	36	\$1,780.19	\$928.30
		725	290	\$4,036.59	\$1,531.70
Conversion to an annual amount		(divide by 20 x 45.7 weeks)		\$9,223.60	
		(divide by 8 x 46.7 weeks)			\$8,749.84

Section B – Calculation of Public Holidays adjustment based on 11 Public Holidays

PLUS – Public holidays worked			
16/28 * 11 * 1 shift @ time and a half	\$1,901.39		
16/28 * 11 * 1 shift @ time and a half		\$2,203.34	
PLUS – Public holidays not worked			
12/28 * 11 * 7.25 hours @ time	\$760.56		
12/28 * 11 * 7.25 hours @ time		\$881.34	
PLUS – On-call allowance	\$0.00	\$0.00	
LESS – Public Holidays that fall on weekends (1.28 days) –	\$20.11	\$23.31	
LESS – Closures on Xmas and Good Friday – 24 hours			
5 Gaming Inspectors	\$80.11		
2 Assistant Regional Managers		\$232.08	
		\$2,561.72	\$2,829.29
TOTAL OF SECTIONS (A) AND (B) –		\$11,785.33	\$11,579.13
Percentage of Base Salary –		28.10%	23.82%
Fortnightly Gross Salary –		\$2,066.58	\$2,314.85

CALCULATION OF BLOCK PAY ALLOWANCE (The Reef Casino)

BASED ON:

7 Gaming Inspectors } Working the base roster
 2 Assistant Regional Managers }

	AO4(1)	AO5(1)
Rate per fortnight	\$1,613.30	\$1,869.50
Hourly rate	\$22.25	\$25.79
<u>ADDITIONAL COST PER HOUR</u>		
Day shift hours @ 0%	\$0.00	\$0.00
Afternoon shift hours @ 15%	\$3.34	\$3.87
Night shift hours @ 15%	\$3.34	\$3.87
Saturday hours @ 50%	\$11.13	\$12.89
Sunday hours @ 100%	\$22.25	\$25.79
<u>ADDITIONAL COST PUBLIC HOLIDAYS</u>		
Not Worked 7.25 hours @ 100%	\$161.33	\$186.95
Worked – Hourly rate x AV. Shift length x 150%	\$345.71	\$350.53

Section A – Calculation of allowances based on

	AO4(1) AO5(1)	28 week rosters and 8 week rosters		
	No. Hours	No. Hours		
	AO4(1)	AO5(1)		
Day shift hours	379	182	\$0.00	\$0.00
Afternoon shift hours	172	36	\$574.11	\$139.25
Night shift hours	198	0	\$660.90	\$0.00
Saturday shift hours	128	36	\$1,424.15	\$464.15
Sunday shift hours	138	36	\$3,070.83	\$928.30
	1015	290	\$5,730.00	\$1,531.70
Conversion to an annual amount				
		(divide by 28 45.7 weeks)	\$9,352.17	
		(divide by 8x 46.7 weeks)		\$8,749.84

Section B – Calculation of Public Holidays adjustment based on 11 Public Holidays

<i>PLUS</i> – Public holidays worked				
		\$1,901.39		
			\$2,203.34	
<i>PLUS</i> – Public holidays not worked				
		\$887.32		
			\$881.34	
<i>PLUS</i> – On-call allowance				
		\$0.00		
<i>LESS</i> – Public Holidays that fall on weekends (1.28 days) –				
		\$20.11	\$23.31	
<i>LESS</i> – Closures on Xmas and Good Friday – 24 hours				
		\$76.29		
		<u>\$232.08</u>		
			\$2,692.30	\$2,829.29
TOTAL OF SECTIONS (A) AND (B) –			\$12,044.47	\$11,579.13
Percentage of Base Salary –			28.71%	23.82%
Fortnightly Gross Salary –			\$2,076.55	\$2,314.85

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INDUSTRIAL COURT OF QUEENSLAND

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

Bowen Old People’s Home Society AND Kenneth Howard Dicker (No. C49 of 2002)

PRESIDENT HALL

6 September 2002

DECISION

The respondent commenced employment with the appellant on or about 12 July 1999. On or about 26 June 2001 a staff member of the appellant subordinate to the respondent made a complaint about the respondent’s treatment of her. The complaint triggered enquiries and meetings which led to the dismissal of the respondent on 30 July 2001.

On 13 August 2001 the respondent filed an application for relief under the provisions of the *Industrial Relations Act 1999*. He was partially successful. The Queensland Industrial Relations Commission found that the respondent's dismissal had been harsh, unjust and unreasonable, found that reinstatement would be impracticable and ordered payment to the respondent of a sum of money equivalent to three months' salary by way of compensation. The decision of the Commission is reported at 170 QGIG 311. Essentially, the Commission found that the dismissal was harsh, unjust and unreasonable because of the inadequacies and unfairness of the appellant's investigation and determination of the complaint against the respondent. The appellant does not, on the appeal, attack the findings of the Commission adverse to it upon the matter of process. Rather, it attacks the decision of the Commission on the basis that the Commission gave inadequate consideration and weight to the gravity of the respondent's conduct. Such an attack on a decision about the harshness, justness and reasonableness of a dismissal is entirely consistent with principle. The processes followed by an employer leading up to a decision to dismiss and in determining to dismiss are relevant to the harshness, justness and reasonableness of a dismissal, but are not decisive of it. Many are the reported cases in which the substance of fairness of a decision to dismiss has prevailed over shortcomings in process, see e.g. *Byrne v. Australian Airlines Limited* (1995) 185 CLR 410 (misconduct) and *Alamzeb v. Education Queensland (No. 2)* (2002) 170 QGIG 190 (competence). The difficulty with the appellant's case lies in the detail. In short form, it seems to me that the relevant evidence to which the Commission is said not to have referred was in fact taken into account, and the view of the transaction involving the complainant and the respondent pressed upon the Court (and the Commission below) seems to me not to have been reasonably open on the evidence.

The appellant's first complaint is that the Commission did not take into account the allegations and/or the nature of the allegations made by the complainant about the respondent. In fact, the Commission found that "so be it, the manner in which the applicant spoke to [the complainant] was not a manner, which is in accordance with contemporary industrial relations". The only basis on which the Commission might have made such a finding was by accepting the truth of the allegations made by the complainant and acting upon them.

The second complaint is that the Commission "failed to consider the similar nature of the events which took place between Mr Dicker and [another subordinate] in January 2000". I would like to think that the Commission did fail to take that evidence into account. The incident was so far removed in time and circumstance from the allegations made against the respondent in June 2001 as to lack all cogency. Howsoever that may be, if the Commission did make use of the evidence it might have made use of the evidence only to support its acceptance of the allegations made against the respondent in June 2001. As noted above, the Commission did accept and act upon those allegations.

The third complaint is that the Commission failed to take into account that the exchange between the complainant and the respondent occurred in a nursing home. It is plain that the Commission was aware that the incident occurred in a nursing home. The Commission expressly refers to the nature of the appellant's undertaking at a number of points in its decision. It seems to me not to be legitimate to proceed on the view that the Commission was unaware of the materiality of the nature of the appellant's activities. It is notoriously the case that interactions between staff members which fall short of best practice may be pardonable when they occur only in the presence of other staff and unforgivable when they occur in the presence of clients. Indeed, in the case of hospitals there is clear authority (of this Court) that fighting "in the corridor leading to the public ward of a hospital" which "caused significant distress to patients and nursing staff" justifies dismissal and will operate to defeat a claim that the dismissal was harsh, unjust and unreasonable, see *Queensland Health v. Gary Robinson and Brian Grimley* (1990) 160 QGIG 194. However, it is not every snub, snide word or angry exchange in a hospital or nursing home which will justify dismissal. It was necessary for the Commission to make findings about where the conduct occurred relative to patients, the audibility of the incident, the acuity of the patients, the actuality (or likelihood) of distress being caused to the patients and the likelihood that in the absence of termination of the respondent's employment similar or more aggravated conduct might occur in the future. There was a paucity of evidence on those matters. On the critical issue of audibility the best evidence was that Mr Dicker could "clearly be heard outside the closed door". On that evidence it is entirely speculative whether the words were audible or merely the voice (and perhaps the tone). On the materials before the Commission a finding about the gravity of the respondent's conduct *in situ* was not reasonably open and it is not surprising that such a finding was not made.

Some attack unrelated to the gravity of the respondent's conduct was made upon the decision of the Commission. First, it was contended that the respondent was given money in lieu of notice pursuant to a contract voluntarily entered into. Assuming that to be so, the respondent had no civil action in contract, but it is a principal purpose of chapter 3, part 2 of the *Industrial Relations Act 1999* to confer remedies where perfectly lawful dismissals are unfair. Second, the appellant complains of the generosity of the emoluments and conditions made available to the respondent under the terms of his engagement. It is not immediately apparent whether the submission is that the generosity of the contract requires greater fidelity on the part of the employee or the submission is that the generosity of a contract gives the employer greater liberty in determining whether to bring the contract to an end. As a matter of first impression I should have thought that save for the exclusion from chapter 3 part 2 of employees whose annual wages immediately before the dismissal exceed a prescribed amount, see s. 72(1)(e)(iii), the munificence of a contract of employment is irrelevant to the harshness, justness or reasonableness of its termination. However, no argument should be condemned for its novelty, and in a proper case where the issue is ventilated in the Commission on proper notice all parties have had an opportunity to call evidence upon the matter I should be disposed to consider the argument. But that is not this case. Because of the way the matter has been conducted, the respondent has not had the opportunity to lead what might well be very material evidence.

The Commission did not err in law. I dismiss the appeal.

I notice that by his written submissions the respondent seeks both reinstatement and an increase in the amount of compensation which the Commission ordered to be paid. In the case of a lay respondent, the absence of a cross appeal and the circumstance that an issue is raised in submissions after the time for a cross appeal has expired may perhaps be excused. Here, however, nothing put by the respondent suggests that there was an error of law by the Commission. The submissions were really about the way in which the Commission assessed and resolved conflicting evidence. Such matters are entirely for the Commission.

The respondent also seeks costs. It is not immediately apparent to me what costs have been incurred by the respondent, who acted for himself. In any event, there has been no unreasonable act or omission on the part of the appellant which would trigger the power at s. 335(1)(b). Neither am I prepared to conclude that the appeal was made "vexatiously or without reasonable cause". In dealing with cases under chapter 3 part 2 the Queensland Industrial Relations Commission is in something of a difficult situation. It has a duty to fully expose the reasons for its decision. It also has a responsibility to be cautious about making and recording for posterity findings about conduct and credibility. The exercise of such tact may on occasion cause an unsuccessful litigant to be concerned that material matters have been overlooked. This seems to me to be such a case. I can understand why the appellant decided to test the decision. I refuse the application for costs.

Dated 6 September 2002.

D.R. HALL, President.

Released: 6 September 2002

Appearances:

Mr P. Norman of Groves and Clark, Solicitors, for the appellant.

The respondent in person.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 125 – application for amendment***Retailers' Association of Queensland Limited, Union of Employers AND the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and Others (No. B916 of 2002)****RETAIL INDUSTRY INTERIM AWARD - STATE**COMMISSIONER BLOOMFIELD
COMMISSIONER EDWARDS
COMMISSIONER BROWN

10 September 2002

Application – Ordinary hours of work on Sundays – Award amended to reflect new permissible trading hours.

EXPANDED DECISION

On 15 August 2002 we issued a decision in principle in relation to the subject application. In doing so we said:

*“The Commission has had the opportunity to discuss the application and we propose to announce our decision at this time, but not the reasons.**After deliberation and with some reservations, we have decided to approve the application in principle. I say “in principle” because we are concerned that there may be some unintended consequences associated with the application in the way that it is currently formed. We think that there might be some consequences which might arise if we delete clause 4.1(3)(f) of the Award and we will look at ways by which the application might be given effect to without altering that particular clause as proposed.**We have some other reservations about the application which we will address in our considered reasons. Those reservations go, firstly, to the issue of the protection of existing employees and the rights of existing employees. The Commission would view very seriously any proven allegations of coercion or pressure being applied to employees to work on Sundays. In that regard we note the provisions of s. 9 of the Trading (Allowable Hours) Amendment Act 2002 (to be inserted as s. 36A of the Trading (Allowable Hours) Act 1990).**Secondly, we are concerned about the issue of consecutive days off, particularly in the case of full-time employees and part-time employees and we will also mention that in our considered reasons.**Although there seemed to have been an implication in Ms Vanderstoep's submissions for the application to be granted retrospectively, we are not minded to do so. The variation which will arise from this application will operate from today's date. If anyone has acted in the last week or so in anticipation of this decision they did so at their own peril. If there are adjustments which need to be made to people's pay because employees have been rostered to work “ordinary hours” on a Sunday over the last several weekends – rather than overtime – then so be it.**We do not propose to condone actions taken by employers where they have taken it upon themselves to decide what constitutes ordinary hours of work in anticipation of our decision.**We shall issue formal reasons in due course. The parties will be advised when the reasons will be ready through the Registry. With that, the Commission may be adjourned.”.*

By way of an amended application No. B916 of 2002 the Retailers' Association of Queensland Limited, Union of Employers (RAQ) applied for amendment to the Retail Industry Interim Award – State to alter the spread of ordinary hours in the Award to allow for ordinary hours to be worked in South-east Queensland on Sundays between 9.15 a.m. and 4.30 p.m.

The application also seeks to insert a definition in the Award for the South-east Queensland area and to make some consequential amendments to reflect new trading hours in some other areas as a result of the recent amendments to the *Trading Allowable Hours Act 1990* following the introduction of the *Trading Allowable Hours Amendment Act 2002*.

The application was opposed by the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

It is important to note that the application does not seek to allow non-exempt retail stores to trade on a Sunday. That right has already been afforded to proprietors of shops by the Queensland Parliament via amendments to the *Trading Allowable Hours Act 1990* through the enactment of the *Trading Allowable Hours Amendment Act 2002*. Similarly, it is also important to note that the application does not seek to alter penalty rates for working ordinary hours on a Sunday.

Rather, what the application does seek to do is to allow ordinary hours to be worked on a Sunday instead of necessitating that such day be worked as overtime. In other words, the application seeks to allow shop owners to roster volunteer employees to work on Sundays as part of such employees' ordinary weekly hours of work rather than Sundays being an additional, or overtime, day on top of the normal week of work.

It is clear that following the recent amendments to legislation (above) the whole of the retail industry in South-east Queensland is now a 7 day a week industry. Previously, ordinary hours were only able to be worked in the retail industry on a Sunday in areas where trading hours orders permitted stores to open on a Sunday – such as Brisbane City Heart, the Gold Coast, Sunshine Coast and Cairns tourist areas (see Exhibit 8).

Taking a line through previous decisions of this Commission where trading hours have been extended to late nights, Saturdays and Sundays in certain areas, we believe that it is appropriate on this occasion to, again, amend the ordinary working hours capable of being worked under the Award to reflect the hours during which stores may be open. In our considered view no good reasons have been advanced why stores should not be able to work ordinary working hours during periods when they are permanently able to trade either by decision of this Commission or by enactments of the Queensland Parliament.

In our view it would be a ludicrous situation for shop owners to be able to work ordinary working hours at other times when they are permitted by law to open their shops but to be required to work Sunday as an overtime day. There is simply no good sense or logic attached to such scenario. It would not be in the interests of either employers or employees.

We grant that part of the application which seeks to amend the Retail Industry Interim Award – State to allow for ordinary hours of work to be worked in South-east Queensland on Sundays between 9.15 a.m. and 4.30 p.m. We also grant that part of the application which seeks to define the South-east Queensland area.

However, we are not prepared to give effect to the first part of our decision by deleting the existing clause 4.1(3)(f) and inserting a new provision in lieu. The existing clause contains provisions relating to the working of ordinary hours in Bribe Island, Maroochydhore and Mooloolaba. Whilst RAQ argue that those provisions are outdated – and should be deleted – we do not believe that it is appropriate to make that change as part of the amendment. Any tidying up of the Award provisions should be carried out as part of the Award review exercise which is currently underway.

We propose to include the provision allowing for ordinary hours to be worked on Sundays in South-east Queensland as a new clause 4.1(3)(i). This will keep the provision separate and identifiable. The ultimate placement of the provision in the Award can be considered as apart of the Award review exercise.

In our decision on transcript on 15 August 2002 we reserved the right to make further comment about coercion or pressure being applied to employers to work on Sundays and the taking of consecutive days off.

Section 9 of the *Trading (Allowable Hours) Amendment Act 2002* provides, *inter alia*, that an employer must not require a current employee to work during extended hours unless the employee agrees, in writing, to work during extended hours. Breaches of that requirement are regarded as breaches of the Act and attract penalties. Any agreement should be voluntary and should not be obtained through coercion or economic pressure. The Commission would view seriously any proven allegations of agreements being obtained by dubious practices such as changing a part-time employee's hours of work so that the hours are maintained only if the employee agrees to work on a Sunday.

We also wish to draw the attention of employers and employees in the retail industry to the provisions of clause 4.1 (Hours of Work) of the Retail Industry Interim Award – State. That clause provides that work is not to be performed on more than a certain number of days in each week depending on the roster. The overall intent is that employees should enjoy 2 consecutive working days off (on average) each week. We urge employers and employees to make themselves familiar with such provisions so that employees may enjoy the benefits of consecutive days off and Award breaches do not occur.

We attach a copy of the amendment giving effect to this decision which, as stated, shall operate on and from 15 August 2002. We caution that work performed on the previous 2 Sundays, *viz* 4 and 11 August 2002, in the new South-east Queensland trading area – i.e. outside Brisbane City Heart, the Gold Coast and Sunshine Coast areas – would be overtime and payable as such.

We order accordingly.

A.L. BLOOMFIELD, Commissioner.
K.L. EDWARDS, Commissioner.
D.K. BROWN, Commissioner.

Appearances:

Ms L. Vanderstoep, of the Retailers' Association of Queensland Limited, Union of Employers.
Mr D. Matley, of the Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers).

Mr L. Gillespie, of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.
Mr M. Hopgood, for the Minister for Industrial Relations, Department of Industrial Relations.

Released: 10 September 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – Power to recover unpaid wages and superannuation contributions etc.

Dru Elliot Powell for the Department of Industrial Relations AND Pacrim Trading Co Pty Ltd
(No. W71 of 2002)

COMMISSIONER SWAN

9 September 2002

Application for alleged under-payment of wages – Overtime and meal breaks allegedly not paid – Implied authorisation for overtime by employer – “Sign on/off punch-cards” did not reflect true situation – Industrial Inspectors assessment accepted – Section 366 *Industrial Relations Act 1999* – Application Granted in full.

DECISION

This application is made by Mr D. Powell, Industrial Inspector of the Department of Industrial Relations, on behalf of Mr Raymond Horn. It is an application made under section 278 of the *Industrial Relations Act 1999* (the Act) relating to the alleged underpayment of wages to Mr Horn by his former employer, Pacrim Trading Co Pty Ltd. The quantum sought is \$2, 629.91.

The applicant was employed by the respondent from 12 October 1998 to 9 October 2001 as a driver Grade 2 under the *Transport, Distribution and Courier Industry Award – Southern Division* (the Award). There was a requirement for Mr Horn to deliver motor vehicle parts to various businesses around the Brisbane area.

The applicant states that the amount claimed, represents overtime and meal break payments allegedly due to him. The applicant kept a personal diary of his hours worked from 24 August 2000 to 9 October 2001, after consultation with his union official. The claim made relates to this period only.

Under the Award, Mr Horn was required to work a 38 hour week with an extra two hours being worked at time and a-half. The hours of work were scheduled from 8.00 a.m. to 5.00 p.m. each day with a half hour for a lunch break and two separate ten minute breaks during the day. Mr Horn's claim is that he frequently worked beyond 5.00 p.m. which was the acknowledged finishing time for employees at the work site. He states that he was not paid overtime for work performed past this time. As well, it is alleged that meal breaks could not always be taken.

Against these claims, the respondent states that any overtime worked by Mr Horn was unauthorised and that there had been an insistence by the respondent that the applicant take his meal breaks.

The applicant's evidence was that when he was performing his driving work and was required to work beyond 5.00 p.m., he would telephone the respondent's office and advise that he had not finished his duties. He states that he was:

"...often told to complete the deliveries resulting with me returning after my 5.00 p.m. finishing time."

Mr Horn would "clock-off" and the times entered into his diaries were the same as the ones shown on his "clock-off" cards. This fact was affirmed by the Industrial Inspector Mr Pfingst, who had made enquiries on behalf of Mr Horn.

Mr Pfingst's evidence was that he had calculated the quantum of the claim based upon the "clock on/off" details held by the respondent and those times were the same as the times kept in Mr Horn's diaries. Mr Horn had admitted that, on occasion, he may have started before 8.00 a.m. each morning however he had accepted that he was prepared to acknowledge an 8.00 a.m. start each morning. His concerns lay with time worked beyond 5.00 p.m. and lunch breaks.

The respondent held the view that Mr Pfingst had favoured the employee's version of events with regard to alleged overtime worked. To this Mr Pfingst responded as follows:

"Well there's probably two parts to that. The time and wage records are the same as the diaries, the employer accepted that in the interview. We did a random check there that the cards matched the diaries. The reason why I've accepted the employee, it's just that he's alleged that that was what he was instructed to do. The employer accepted that in the interview that he maybe work past 5 o'clock and there was procedures put in place for that occurrence."

The respondent's claim was that if the applicant had worked overtime, then he was required to get signed authorisation from the respondent. A sign placed near the "Bundy clock" stated that employees were required to have their overtime approved but there was no reference to having any signed authorisation before overtime could be paid.

The respondent stated that its "clock-off" cards did not reflect the true situation with regard to the hours that employees had worked. What did occur was that employees may finish work earlier than shown on the cards but not actually sign off until they were physically leaving the building. This then gave the appearance of employees working longer than they actually did.

Mr Campbell, Managing Director of the respondent company, stated that employees were required to have overtime approved before they would be paid. In terms of meal breaks, Mr Campbell claimed that at regular staff meetings employees were advised to ensure that they took their meal breaks.

As a consequence of a number of meetings held between Mr Campbell and Mr Horn and his Union official, the respondent agreed to have a back-up employee assist Mr Horn on those days when it appeared that he could not finalise his duties. Mr Campbell also stated that there were no "punch-cards" upon which overtime had been authorised by the respondent. Meetings had been held between these parties to discuss the respondent's concerns at the alleged poor work performance of Mr Horn. Mr Campbell investigated overtime claims made on a particular day by Mr Horn and determined that he would not authorise overtime payments because he believed that the run should have been split between Mr Horn and the aforementioned employee to enable Mr Horn to complete his duties within a specified time.

Mr Williams, State Organiser for the Transport Workers' Union of Australia, Union of Employees (Queensland Branch) (the Union) claimed that his early attempts to speak to Mr Campbell were frustrated by Mr Campbell's attitude towards the Union's desire to discuss issues surrounding Mr Horn. Mr Campbell expressed similar views concerning Mr Williams' alleged poor behaviour. Eventually, some debate ensued between the parties with Mr Campbell agreeing not to dismiss Mr Horn, an action which allegedly had been threatened earlier. Mr Williams stated that:

"Issues regarding the employee's hours of work or the taking of meal breaks were not raised at this time due to the fact that my main concern was to ensure that the employee was reinstated to his job and that due processes were followed in this regard."

Mr Charles Dean, Manager for the respondent, gave evidence to the effect that continual comments were made to employees directing them to take meal breaks. As well, Mr Dean had reason to believe that Mr Horn had been falsifying his run sheets – an allegation he claims Mr Horn took lightly. Mr Dean also confirmed evidence given earlier that, in meetings when Mr Williams from the Union was present, there had been no mention of unpaid overtime or inability to take lunch breaks.

In final submissions to the Commission, the advocate for the respondent stated that the major component of the applicant's claim related to the alleged inability of the applicant to take a meal break. It represented 134 hours of the 170 hours claimed. Within this vein, the employer was emphatic that it had advised Mr Horn to take his lunch break and that if this could not occur, then another employee could work with the applicant to afford him appropriate time. This break could be taken during the course of work outside of the company site or whilst at work.

During the course of its final submissions, the respondent was critical of the Industrial Inspector's failure to inspect its payroll system which the respondent stated, actually established the real finishing time for employees. The respondent went on to say that, its failure to alert the Inspector to these records may have been as a consequence of ignorance on its part however, the Inspector had not asked to see them – only the punch-cards. The payroll system recorded a standard finishing time of 5.00 p.m. which was then allegedly changed by default by those responsible for preparing employees' pays. An objection was raised by the advocate for the Department to this material being presented in final submissions, when it had not been addressed through witness evidence. The respondent claimed that it had been unaware that the applicant would be relying upon the "punch-cards" to support its claim for underpayment of wages. It claimed that had there been any reference in the applicant's statements to these points, then the respondent would have addressed the issue during the course of evidence being given.

I found the respondent's submissions in this regard totally unconvincing. Material attached to Mr Pfingst's affidavit referred directly to the "punch-cards" in question and evidence had been adduced around this point prior to the respondent's witnesses giving their evidence. In fact, Mr Pfingst was cross-examined on this point (see p.12, transcript). The respondent's advocate had every opportunity to deal with these issues during the course of the case. As well, the respondent was fully aware when the Industrial Inspector visited its premises that it was investigating alleged non-payment of wages and had the opportunity to produce its records in defence of that claim.

I am satisfied, from the applicant's evidence, that on many occasions he was required to work beyond 5.00 p.m. and that he did telephone his employer to advise that he would be running late. I also accept that he was advised to complete his work after 5.00 p.m. (e.g. work performed on 27 April 2001), but that he was not paid overtime. It became clear during the course of the case that, because of the nature of the work performed (i.e. where the applicant was required to deliver goods for the respondent at various locations around the city and beyond), the applicant could not be assured that he would always be able to return to the workplace by 5.00 p.m. This would also, to some degree, be an unknown factor for the employer. In the normal course of city living, one is never able to accurately predict how long a particular road trip may take.

The somewhat peculiar aspect of the respondent's case is that it asks the Commission to disregard its "punch-cards" when determining this issue. Throughout the course of the case, the evidence and cross-examination centred upon the reliability or otherwise of these cards with the employer emphatically stating that overtime was not paid because approval had not been sought prior to the event. The notice board near the "Bundy clock" contained the following advice:

"PLEASE NOTE

You must clock on and off every work day.

Hand write type of leave taken for days not worked – e.g. sick leave, leave without pay, annual leave. A doctor's certificate is required if sick for more than 2 days.

Overtime must be approved before commencement.

Non-compliance may result in short payments of your wages."

The applicant's overtime was approved upon his telephoning the employer that he would be unable to finalise his daily duties by 5.00 p.m. and upon the employer requiring him to complete those duties.

Section 366 of the *Industrial Relations Act 1999* **Time and wages record – industrial instrument employees** states specifically that an employer must keep in the workplace a time and wages record. This record must detail 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 (see s.366(1)(c)(iii)).

In my view, it is not sufficient for the respondent to state that the "sign-off punch-card" was not accurate because employees often stayed back after work talking etc prior to signing off. The "sign-off punch-card" was the record kept by the employer and it was the employer's responsibility, at law, to ensure that the card accurately reflected what was occurring at the workplace. The advocate for the Department is correct when he states that if these records are not a true reflection of what occurs at the workplace, what recourse would an employee ever have against an employer for alleged underpayment of wages.

The respondent is to be held to the detail provided upon its "punch-cards" and as such must pay the overtime claimed by the applicant.

In *Ray v Radano* (NSW AR 471 at 480) Sheldon J stated words to the effect that the employer who neglected to keep the statutory records, which, in their probative effect were as much a protection to himself as to the employee, deserved little sympathy if he lost in a battle reduced to oath against oath.

The evidence also leads me to accept that payment should also be made for the under payment of meal breaks. The respondent accepted that it was unable to exercise any control over the taking of meal breaks because there was an expectation that the break would be taken while "on the road". The evidence shows that the work performed was on the basis of an a.m. and p.m. run. The break, according to the Award, was to be taken between the fourth and sixth hour of work. Given the starting time was 8.00 a.m., the meal break would need to be taken between 12.00 p.m. and 2.00 p.m. when the employee was generally required to return to the depot to pick orders for the p.m. run. The evidence around this point favours the applicant's version of events. I have accepted that the applicant couldn't often take his break while "on the road" and that it was often impossible for him to take his break whilst back at work preparing for the afternoon run.

In all, I have been persuaded that the case as presented by the applicant is the more accurate.

I order the respondent to pay to the applicant an amount of \$2, 629.91 within 22 days from the release of this decision.

Order accordingly.

D.A. SWAN, Commissioner.

Released: 9 September 2002

Appearances:

Mr D. Powell of the Department of Industrial Relations for the Applicant.

Ms A. Reynolds for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Atherton
International Club (No. W36 of 2002)**

COMMISSIONER BLADES

9 September 2002

Unpaid wages – s. 278 *Industrial Relations Act 1999* – Trainee – Questions of fact – *Club Employees' Award – State (Excluding South-East Queensland)* – Applicant previously working as a Kitchen Hand – Traineeship in Commercial Cookery Certificate II in Hospitality – Employee's consent to the roster – Employee not an "existing employee" as defined in *Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)* – Flexible hours governed by *Club Employees' Award – State (Excluding South-East Queensland) Flexible Working Hours Etc Industrial Agreement* – Pay rates governed by the Order and the Industrial Agreement – Claim to be recalculated in accordance with findings.

DECISION

This is an application by the AWU for an order against the employer Atherton International Club for the payment of wages alleged to be due on behalf of Julie Horrigan to the extent of \$3,518.77.

The applicant commenced work at the Club on 2 February 2000 as a permanent part-time kitchen hand. About April 2000, she was approached and asked to consider a traineeship and she agreed to commence the course in Commercial Cookery Certificate II in Hospitality. Her employment ceased on 11 May 2001. It was alleged by the respondent that the traineeship commenced on 12 April 2000 and the nominal completion date was 11 April 2002. However, the Traineeship was fast-tracked and instead of the two years initially contemplated, was completed prior to her ceasing work.

The claim arises because the applicant alleges that Mrs Horrigan was not paid in accordance with the *Club Employees' Award - State (Excluding South-East Queensland)* at the rates applicable to Kitchen Hand Level 1, being the classification held by Mrs Horrigan before she commenced her traineeship. Penalty rates and overtime over the period of approximately 12 months make up the claim. The Union approached the claim, acting on information supplied by Mrs Horrigan, on the basis of the provisions of clause 4.8.4 of the *Order - Apprentices' and Trainees' Wages and Conditions (Excluding*

Certain Queensland Government Entities) which provides that existing employees shall not suffer a reduction in their ordinary hourly rate of pay by virtue of becoming an apprentice or trainee. It is provided in clause 4.8.1 that:

“In this clause, ‘existing employee’ shall mean a person who has been employed by an employer in a calling, or classification, relevant to the apprenticeship or traineeship for at least three months immediately prior to becoming an apprentice or trainee with that employer.”.

It is clear and I find on the balance of probabilities that Mrs Horrigan was not an ‘existing employee’ as defined. She commenced as a kitchen hand in February 2000 and the Training Agreement commenced on 12 April, 2000, inside the three month period, i.e. she became a trainee on 12 April 2000. While Mrs Horrigan claimed that the Agreement commenced on 6 June 2000, the written documentation proves otherwise and reveals a misunderstanding of the true situation by Mrs Horrigan. This written documentation consists of a letter from the Department of Employment, Training and Industrial Relations dated 11 July 2000 confirming 12 April 2000 as the commencement date; an “Assessment for Commonwealth Incentives for New Apprenticeships Form” dated 1 June 2000, signed by applicant and employer, confirming 12 April as the start date; the Training Agreement signed by all parties on 1 June 2000 confirming the start date as 12 April (although applicant claims that date was left blank when she signed that document); and a Commonwealth Incentives Claim Form confirming 12 April as the start date with both parties signing on 6 September 2000. The Training Agreement was witnessed by Ms Kylie Treen of Outcomes (Tablelands Job Training Inc) and she testified that 12 April had been inserted into the document before signature by the parties. Be that as it may, the other documents were not alleged to have been completed in blank and they indicated that the commencement date of the Traineeship was 12 April 2000. The documents are evidence of the date of the agreement to become a trainee. The commencement date of the Traineeship held no significance to Mrs Horrigan until this dispute arose. I am satisfied that Mrs Horrigan became a trainee on 12 April although her actual training may not have commenced until some time later. It was not necessary to the validity of any Traineeship that the actual training commence immediately. The time and wages records show that Mrs Horrigan was paid a salary of \$480 per week as from 12 April 2000 (or at least 19 April) which did not change until 1 September 2000 when there was a salary adjustment. Section 48 of the *Training and Employment Act 2000* provides that a traineeship starts on the day agreed by the employer and the person who is to become the trainee and s. 55 provides for penalties for false or misleading information. I consider it to be irrelevant that it was not decided on 12 April whether the course would be Certificate II or Certificate III.

There was a complaint (seemingly well justified), that during the Traineeship, Mrs Horrigan was not getting the full amount of supervised training. That would not appear to have relevance to her rate of pay. Her Traineeship was full time, that is, for 40 hours per week but did not require 40 hours per week of supervised training. That she initially did not receive an appropriate level of supervised training did not convert her Traineeship into something else.

The rates of pay then applicable to the engagement of Mrs Horrigan are those set out in the *Order – Apprentices’ and Trainees’ Wages and Conditions (Excluding Certain Queensland Government Entities)* and the claim by the Union (which proceeded on the basis of Mrs Horrigan’s assurance that the Training Agreement commenced in June 2000) is flawed. Because she was not an existing employee, she was not entitled to be paid at the rate of Kitchen Hand Level 1 under the Award.

However, there was also evidence, accepted by both sides, that because of dissatisfaction with the training Mrs Horrigan received, a meeting was held on 9 March 2001 when it was agreed that Mrs Horrigan’s roster be changed to include 15 hours minimum requirement of supervision/training. There was some evidence introduced from Ms Treen that the agreement was that the Traineeship would cease to be full-time and that Mrs Horrigan would hold 2 permanent part-time positions, one under the Traineeship and the other for the balance of her hours. An acceptance of this evidence leads to some curious and complicated results. That arrangement conflicts with the evidence given by Ms Dazzan of the Union that there was to be a change of roster to incorporate the training to fast-track Ms Horrigan’s Traineeship because of the lack of previous training. Ms Dazzan’s evidence appears to me to be more probable. There was no necessity for the complicated and unusual arrangement spoken of by Ms Treen. The employment, that is, the Traineeship was still full-time and remained so. All that needed to change was the hours of supervised training. There was no necessity for two part-time arrangements making up the full-time employment (if that be possible) and the Union believed that the same pay level, i.e. Kitchen Hand Level 1 under the Award applied to the whole of the arrangement because of the information supplied by Mrs Horrigan relevant to the date of commencement. Ms Treen admitted that she had little knowledge of or interest in industrial matters and she may have misunderstood the arrangement that was made.

The Order in clause 3.1.1 provides that “employment conditions for apprentices and trainees employed in areas of employment covered by an industrial instrument shall be as provided in the industrial instrument except where varied by the terms of this Order or the Act”. The rostering and overtime provisions of the Award and appropriate Industrial Agreements are then applicable.

Mr White, for the respondent, pointed to clause 3 of the *Club Employees’ Award – State (Excluding South-East Queensland) Flexible Working Hours Etc Industrial Agreement (1992) 139 QGIG 15 (Industrial Agreement)*. Clause 3(1) provides:

“The ordinary hours of work shall be an average of 40 hours per week to be worked continuously:

Provided that the arrangement of hours of work of all employees can be implemented in one or a combination of the following:–

- (a) 40 hours per week; or*
- (b) an average of 80 hours per fortnight; or*
- (c) an average of 160 hours per 4 week period:*

Provided further that such 4 week period shall not exceed 160 hours and be worked on not more than twenty days.”.

Clause 3(2) goes on to provide that:

“The number of ordinary hours to be worked each day shall be no less than 4 hours nor more than 8 hours to be worked within a spread of 14 hours per day from commencing time to ceasing time as set out according to a roster prescribed in clause 29 of the Award:

Provided that a shift or each work period in excess of 8 ordinary hours as prescribed in subclauses (3) and (4) below shall only be worked following agreement between the Employer and employee.

(3) Where shifts of 10 hours or more per day are rostered for work, employees working such hours shall not be rostered for that work on more than three consecutive days without agreement of the employee, and a break of at least two days off after eight shifts must be provided.

(4) The introduction of regular work periods greater than 10 hours per day shall be by agreement in writing between the Employer and the Branch Secretary of the Union, and having cognisance of the ACTU Policy on 12 hour shifts.”.

The applicant gave evidence that she agreed to the following roster:

Monday	Off
Tuesday	4.00 p.m. to 10.30 p.m. (6½)
Wednesday	Off
Thursday	10.30 a.m. to 2.30 p.m.; 4.00 p.m. to 10.30 p.m. (10½)
Friday	4.00 p.m. to 11.30 p.m. (7½)
Saturday	3.00 p.m. to 9.30 p.m. – earlier for weddings (6½)
Sunday	7.00 a.m. to 12.00 noon – 3.00 p.m. to 9.30 p.m. (11½).

On my reading of the Industrial Agreement, the employer does not need the consent of the employee to the arrangement of working hours to an average of 160 hours per 4 week period. The ordinary hours could well exceed 8 hours per day on occasions. There is a proscription, which cannot be varied by agreement, that the minimum of hours per day shall be 4. There is no provision for the spread of hours of 14 per day to be varied by agreement. There is no provision for consent to be given to working more than 20 days in the 4 week period.

The proviso to clause 3(2) of the Industrial Agreement indicates that consent is required to the situations arising under subclauses (3) and (4). What is identified in subclause (3) are shifts of 10 hours or more occurring on more than 3 consecutive days. That did not occur. What is identified in subclause (4) are regular work periods greater than 10 hours per day. No argument has been addressed to that provision but it may be that there were no "regular work periods exceeding 10 hours per day". (A "period" is something other than a "day").

In accordance with clause 7, time worked outside the rostered ordinary hours, the spread of hours or the rostered hours attract overtime penalties. I have not been supplied with details of the rostered hours other than details of the agreed hours referred to earlier. (They may be the same).

Applying this view to the evidence, I am satisfied that the schedule of hours produced as Exhibit 12 reveals that on 6 periods of 4 weeks, the 160 hours was exceeded. There were 4 occasions during the 4 week periods that she worked on more than 20 days. The schedule also reveals that her agreed Sunday hours of 11½ (presumably rostered) hours was exceeded on 11 occasions. Similarly, the 10½ hours (presumably rostered) she agreed to work on a Thursday was exceeded on 5 occasions. On no other days did she agree to work more than 8 hours (presumably rostered). That aspect of the arrangement was breached on 14 occasions. There were 4 days during the employment when she was paid for less than the minimum of 4 hours. There were 23 days when her shifts exceeded a spread of 14 hours per day from commencing time to ceasing time, all of which with the exception of one Friday occurring on a Sunday.

These breaches would appear to attract penalty rates in accordance with the *Order – Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)* applying the provisions of the Industrial Agreement.

The claim should be recalculated in accordance with these findings and the matter is referred back to the parties to enable this to occur. If there is dispute as to the amount owing (if any, for Mrs Horrigan was paid a salary which well exceeded the base rate under the Traineeship), the matter should be returned to the Commission with submissions not inconsistent with the findings I have already made. If there is agreement, the matter may be resolved without further reference to the Commission. If there is a requirement for any orders, the matter should be returned within 30 days of the release of this Decision.

B.J. BLADES, Commissioner.

Appearances:

Ms T. Lane, for The Australian Workers' Union of Employees, Queensland.

Mr R. White, for The Registered and Licensed Clubs Association of Queensland, Union of Employers, for the respondent.

Hearing date: 4 September 2002

Released: 10 September 2002

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 230 – application for orders

Brisbane City Council AND Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (No. B1423 of 2002)

COMMISSIONER BLADES

11 September 2002

Application for Orders s. 230 *Industrial Relations Act 1999* – Certified Agreement still current – Local Area Agreement adopted by Certified Agreement expired – Local Area Agreement providing for 8 day fortnight – Brisbane City Council seeking to reintroduce 9 day fortnight – No agreement – *Engineering Award - State* providing for 9 day fortnight, only with consent of Union – Consent not forthcoming – Award providing for employer right to make final determination as to method of implementation of 38 hour week – Held employer had right to invoke 10 day fortnight in accordance with Award – Orders to issue accordingly – Current certified agreement making no provision for implementation of 38 hour week in consequence of expiry of Local Area Agreement – Employees had right to commence bargaining period during currency of current Certified Agreement to obtain 8 day fortnight – Right to take protected industrial action – Orders preventing notified industrial action refused.

DECISION

Orders are sought under s. 230 of the *Industrial Relations Act 1999* (the Act) by the Brisbane City Council directed to employees of City Fleet Division and the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland and the Automotive, Food, Metals, Engineering, Printing Kindred Industries Union and/or the Australian Manufacturing Union (the Union). Of necessity and due to the urgency of the case, the matters raised have been considered only briefly.

The facts are that until recently, City Fleet workers operated on an 8 day fortnight. City Fleet Management wished to introduce a 9 day fortnight but that change was resisted. City Fleet Management was prepared to compromise with a 9 day fortnight for some employees and a continuation of an 8 day fortnight for others. That compromise has also been rejected.

A dispute notification (D214/2002) was filed in the Commission on 31 May 2002 and a number of Conferences were held before Commissioner Fisher. Commissioner Fisher released a recommendation on 2 August 2002.

A Local Area Agreement through which the 8 day fortnight was introduced to the workforce was adopted by the *Brisbane City Council Enterprise Bargaining Agreement 2001 - Certified Agreement* which has a nominal expiry date of 30 June 2003. That Local Area Agreement has expired. Clause 15 of the Certified Agreement provides, in part:

“The Partners commit to review and update existing Local Area Agreements (LAAs), and to develop and implement new LAAs which will deliver greater flexibility in working arrangements and lower operating costs. ... The Partners agree to finalise negotiation within three months from the commencement of discussions in respect of proposed arrangements, and to complete the approval processes within one month of finalisation of negotiations.

...

The Partners may seek the assistance of relevant industrial tribunals for conciliation, to facilitate resolution of any issue which is a barrier to the development of a draft LAA.

...

Existing LAAs that reach expiry date will continue to operate until the conclusion of the review/update process.”.

In clause 25.5.2 of the Certified Agreement it is provided that the LAA will continue to apply until the conclusion of the review/update process.

I am informed that negotiations have occurred over the last 6 months in regard to the introduction of the 9 day fortnight. By agreement, the matter has been dealt with in the Industrial Commission by way of conciliation conferences on a number of occasions, resulting in no agreement being reached. It appears that the process spoken of in the Certified Agreement has concluded. It was only conciliation that was authorised by the Certified Agreement in clause 15. Brisbane City Council wrote to the Union on 21 August 2002 and withdrew from the LAA.

It is my view that in the absence of a Local Area Agreement providing for an 8 day fortnight, the provisions of the Award become applicable. The workforce must revert to the *status quo* as existing prior to the introduction of the 8 day fortnight. Clause 4.11 of the *Engineering Award – State* provides that the employer shall have the right to make the final determination as to the method by which the 38 hour week is implemented or worked from time to time. Clause 4 of Schedule 3 also has relevance and this provides for the ordinary hours to be worked over a fortnightly period of 9 consecutive days, provided there is agreement between the Industrial Organisation and the Brisbane City Council. That agreement is not forthcoming.

It is my view that in the absence of the operation of the Local Area Agreement, the Brisbane City Council therefore has every right to direct that the working hours revert to the 10 day fortnight and has done so. Employees who wilfully disobey such a direction are in breach of contract.

The Union, by letter dated 12 August 2002, pursuant to the provisions of s. 143 of the Act, gave notice to Council that it intended to negotiate a certified agreement in accordance with Chapter 6, Part 1 of the Act. It sought a certified agreement that City Fleet would maintain the current 8 day fortnight arrangement. In other words, it commenced a peace obligation period and industrial action during that period was prohibited by any of the parties. That letter has been ignored by Council.

On September 3, 2002, the State Secretary of the Union gave notice that it intended to engage in “protected industrial action” in accordance with s. 174 of the Act and it is that action which the Brisbane City Council seeks to prevent.

Section 181 of the Act provides that that section applies to a certified agreement from when it starts operating until its nominal expiry date. The nominal expiry date of the Certified Agreement in this case is 30 June 2003. The section goes on to provide that the following persons must not engage in industrial action for the purpose of supporting or advancing claims against the employer in relation to the employment of employees whose employment is subject to the agreement:

- (a) an employee whose employment is subject to the agreement.
- (b) an employee organisation that is bound by the agreement.

If the employee or organisation does so, the action is not protected industrial action – s. 181(3).

The Union relied upon the decision in *Emwest Products Pty Ltd v AFMEPKIU (2002) FCA 61* and the judgment of Kenny J which dealt with the provisions of s. 170MN of the *Federal Workplace Relations Act 1996*, which is in substantially similar terms to s. 181 of the Act. Kenny J said:

“The effect of s. 170MN is straightforward enough. Where there is on foot a certified agreement, the nominal expiry date of which has not yet passed, s. 170MN(1) prohibits industrial action by an employee whose employment is subject to the agreement, or by a union bound by the agreement or officer of such a union, ‘for the purpose of supporting or advancing claims against the employer in respect of the employment of employees whose employment is subject to the agreement’. The prohibition in s. 170MN(1) against industrial action is, on any view, a limited one. The prohibition does not extend to industrial action taken for a non-prescribed purpose, even where there is a relevant certified agreement. ... This aspect of the provision’s operation reflects the statutory assumption that when parties make an agreement with respect to employment, they do so on the basis that they will not resort to industrial action during the currency of the agreement in respect of the matters upon which they have reached agreement.

...

Assuming the policy behind s. 170MN is to encourage parties to adhere to the bargain they have struck, then the policy would not, in my view, be defeated by permitting the parties to negotiate effectively in respect of matters that were not the subject of a relevant certified agreement. The policy is sufficiently protected if s. 170MN(1) is construed as prohibiting parties to a certified agreement from resorting to industrial action to undo matters they have agreed upon in the certified agreement, if its nominal expiry date has not passed. If the parties so desired, they could agree that a certified agreement made by them was intended to cover the whole field of relevant employment, thereby excluding the possibility of industrial action during the currency of the agreement.” (Emphasis added).

The Certified Agreement in clause 25.8 provides:

“This Agreement contains the major agreed strategies to be pursued in the life of the Agreement.

In the event that there is a need to develop and implement additional or new strategies, the Partners will discuss and agree implications for the workforce.

The Partners agree that no extra claims will be tabled during the life of this Agreement.

...”.

In the case of *Kilpatrick Green Pty Ltd v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia & Anor (1998) 559 FCA*, there was a clause in a certified agreement providing for the parties to negotiate a specific site agreement and there

was also a "No extra claims" clause. During the currency of the certified agreement, the Union gave notice of the initiation of a bargaining period for a site agreement and took industrial action. The nominal expiry date of the certified agreement had not passed. Ryan J said:

"... I consider that the framers of the certified agreement should be taken to have intended to deny to one party recourse to protected industrial action to pursue claims apparently contemplated as open during the life of the agreement, only if the language they have chosen intractably dictates such a construction."

What clause 15 of the Certified Agreement provides for is the opportunity to review and update existing LAAs and encourages negotiations on certain issues. In the same way as identified in *Kilpatrick Green*, the Certified Agreement contemplates claims being made during its life. In that way it seems to me to be inconceivable that the employees are denied the right to engage in protected industrial action for what is in effect a collateral agreement dealing with a specific issue, namely the implementation of the 38 hour week which is no longer dealt with by the Certified Agreement.

While clause 25.8 provides that there will be no extra claims, the Certified Agreement itself leaves open the possibility of negotiating matters the subject of the LAA. In other words, there was no intention for the Certified Agreement to cover the field, at least to the exclusion of those particular matters.

Unlike the position when the nominal expiry date of a certified agreement passes, the Local Area Agreement did not continue in force until a later Local Area Agreement replaced it. The Act makes no provision for its continuation upon its passing its expiry date. All the Certified Agreement says is that it operates until the conclusion of the review/update process. Because the Brisbane City Council have withdrawn from the LAA, the effect is that the employees must revert to the Award provisions which, as directed by Brisbane City Council in full exercise of its rights, means a 10 day fortnight. I am unable to agree with the Union's submission (if I have correctly put it) that there is an implied term that the LAA forms part of the Certified Agreement until the Certified Agreement expires. That is not what the document says. However, in my view, that the employees must revert to the Award provisions for the 38 hour week as directed by the employer, does not prevent the employees from initiating the bargaining period as they have done in an attempt to negotiate an agreement dealing with the 10 day fortnight. I see no inconsistency in any such manoeuvre.

I propose to issue Orders limited only to the resumption of the 10 day fortnight. The orders will not attempt to prohibit the industrial action signified by the Union in its notification of 3 September 2002 with the exception of "maintain existing rosters". The notified industrial action is now probably inappropriate in any event.

There was a submission that the Queensland Industrial Relations Commission does not have jurisdiction to issue orders against a Federal registered body. Nothing was advanced to support such a submission and I would find it surprising that there was an obstacle to the prevention of unlawful conduct simply because the body was Federally registered.

When this matter was first called on, I suggested to the parties that there be a compromise. Council has endeavoured to effect a compromise. There is no reason at all why a compromise along the lines of the 8 day fortnight for some, 9 day fortnight for others would not be better than a 10 day fortnight for all. I again urge the parties to effect a compromise.

For the purposes of s. 230 of the Act, I am satisfied that an industrial dispute exists between City Fleet Management and the employees of City Fleet and the relevant Union. I am satisfied that Notice of that dispute was given by the Manager, Employment Arrangements on behalf of Brisbane City Council on 31 May 2002. I am satisfied that the Commission has attempted to conciliate the matter.

The exercise of the power under s. 230 of the Act is an exercise of discretion. In this regard, I take into consideration that on 2 August 2002, Commissioner Fisher made certain recommendations which have been ignored. As indicated earlier, I also made suggestions for a compromise which have been ignored.

An Order will issue separately.

B.J. BLADES, Commissioner.

Hearing date: 10 September 2002
Released: 11 September 2002

Appearances:

Mr S. Cooney, with him Mr M. Dick and Ms K. Odgaard, for the Brisbane City Council.
Mr A. Dettmer, with him Mr E. Moorhead, for the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 69 – continuity of service – transfer of calling

Queensland Medical Laboratory (Partnership) AND The Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees and Another (No. B1342 of 2002)

PATHOLOGY (PRIVATE PRACTICES) AWARD - STATE

COMMISSIONER BLOOMFIELD

4 September 2002

ORDER

THIS matter coming on for hearing before the Commission at Brisbane on 4 September 2002, this Commission orders as follows as from 4 September 2002:

Queensland Medical Laboratory (Partnership) is exempted from any requirement which may otherwise exist under the Pathology (Private Practices) Award – State to make redundancy or severance payments pursuant to clause 4.10 to any employee whose employment may come to an end in circumstances where the employee has been offered employment with Mayne Health Pathology Pty Ltd. This order will have no application to any subsequent decision by Mayne Health Pathology Pty Ltd to terminate the employment of any employee by reason of redundancy.

This order shall come into operation from 4 September 2002 and shall remain in force for a period of 6 months. Leave is reserved to the parties to approach the Commission for an amendment of this Order if there is any unresolved dispute arising from the implementation of this Order.

Dated 4 September 2002.

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

Operative Date: 4 September 2002
Order – Exemption
Released: 9 September 2002

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Retailers’ Association of Queensland Limited, Union of Employers AND the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and Others (No. B916 of 2002)

RETAIL INDUSTRY INTERIM AWARD – STATE

COMMISSIONER BLOOMFIELD
COMMISSIONER EDWARDS
COMMISSIONER BROWN

10 September 2002

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 19 June 2002 and 30 July 2002, this Commission orders that the said Award be amended as follows as from 15 August 2002:

1. By inserting in clause 3.1 the following new definition:

“(30) “South-east Queensland area” – the area defined in s. 8 of the *Trading (Allowable Hours) Amendment Act 2002*.”.

2. By inserting a new clause 4.1(3)(i) as follows:

“(i) Non-exempt shops in the South-east Queensland area:

Notwithstanding any other provision in clause 4.1(3) the ordinary working hours of employees employed in non-exempt shops on Sundays in the South-east Queensland area shall be from 9.15 a.m. to 4.30 p.m.”.

Dated 10 September 2002.

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

Operative Date: 15 August 2002
Amendment – Retail Industry Interim Award – State
Released: 10 September 2002

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Police “Union of Employees” (No. Q29 of 2002)

REGISTRAR EWALD

5 September 2002

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

DECISION

On 3 and 5 September 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 positions of office:

Office	Number of Positions
Executive Member – Regional Representatives	
Northern Region	1
The above position has been notified as a casual vacancy.	
Conference Delegate	
Far Northern Region	1 from each group
Northern Region	1 from each group
Central Region	1 from each group
North Coast Region	1 from each group
Southern Region	1 from each group
South East Region	1 from each group
Metropolitan North Region	1 from each group
Metropolitan South Region	1 from each group
Headquarters and Support Region.....	1 from each group

Rule 22 provides for Conference Delegates to be elected annually. Each Region is divided into Groups and one financial member is to be elected for each group. The Industrial Organisation’s Rules define the stations for each group.

Under Rule 23 nominations are to be called not later than 5 months prior to the dates set for Annual Conference and shall be received no later than the end of the month in which they are called. The Annual Conference has been set for April, 2003 therefore nominations are to be called in October/November. In the month that nominations are to be called, the QPUE shall cause to be published in that month’s Journal a full page advice of the calling of such nominations, how members may nominate and the conditions surrounding nominations.

I have considered the application, the Act and Rules and I find that the elections being sought are for positions of office within the meaning of the Act.

I am satisfied that an election for the above named positions is required to be held under the Rules of the Industrial Organisation. The Organisation's Rules are affected by s.458 of the Industrial Relations Act 1999. By virtue of this section the Organisation's Rules are taken to contain the Model Election Rules.

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

Dated 5 September 2002.

E. EWALD,
Registrar

Released: 5 September 2002

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Nurses' Union of Employees (No. Q30 of 2002)

REGISTRAR EWALD

9 September 2002

Conduct of Election – Branch Elections – New Branches – Electoral Commission to Conduct Election.

DECISION

On 9 September 2002, the Queensland Nurses' Union of Employees lodged in the Registry under section 481 of the Industrial Relations Act 1999, the information as prescribed in section 36(1) of the Industrial Relations Regulation 2000 and supporting material in relation to its request for the conduct of an election by the Electoral Commission for each of the new branches of the Industrial Organisation as listed on Schedule "A" for the following positions:

Office	Number
Branch President	1
Branch Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Delegate to the Committee of Regional Delegates.....	} As Listed
Branch Alternate Delegate to the Committee of Regional Delegates.....	} on Schedule "A"

Reasons for Election

In its supporting material, the Industrial Organisation has advised that the new Branches, as listed on Schedule "A" hereto have been set up with the approval of Council in accordance with Rule 43.

Each branch consists of office positions of Branch President, Branch Vice President, Branch Secretary, Branch Assistant Secretary, and the number determined in Rule 44 for Branch Delegates to the Committee of Regional Delegates and Branch Alternate Delegates to the Committee of Regional Delegates.

The numbers of delegates and alternate delegates to be elected for each Branch are listed on Schedule "A".

Method of Voting

I am satisfied that the method of voting is by a direct voting system by way of a secret postal ballot.

Conduct of Elections

I have considered the request, supporting material, the Act and Rules, and I am satisfied that an election is required to be held under the rules for each of the above positions of Office for each of the new Branches listed on Schedule "A".

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

Dated 9 September 2002.

E. EWALD,
Industrial Registrar.

Schedule "A"

Branches	Number of Delegates	Number of Alternate Delegates
Monto	1.....	1
Maryborough Health Service.....	3.....	3
Wide Bat DONs	1.....	1
Dalby Health Service	2.....	2
Goondiwindi District	1.....	1

St George District	1	1
Charters Towers Hospital	1	1
Hervey Bay	3	3
Gympie Community Nurses	1	1
St Andrews Private Toowoomba	3	3
Rangeview Nursing Home	1	1
West Moreton Community Health	2	2
Toogoolawah Aged Care	1	1

Released: 9 September 2002

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