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No. 13

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	Certified on and certificate issued	Cancelling
CA169/04	Cairns Private Hospital – Support Staff – Certified Agreement 2003	31/5/04	CA590/98
CA288/04	Noosa Council – Certified Agreement 2004	8/7/04	CA62/02
CA207/04	Duckinwilla Farms – Certified Agreement 2004	13/7/04	

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 699 – obsolete industrial instrument

ACTING INDUSTRIAL REGISTRAR

15 July 2004

NOTICE
(Correction of Error)

WHEREAS an error occurred in the Notice as published in the *Queensland Government Industrial Gazette* of 13 February 2004, Vol. 175, No. 6, pages 568-572, the following correction is made to be effective as from 13 February 2004:

By deleting the following from the Schedule to the Notice:

IA12/97	FAST FOOD INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND) – GREAT AUSTRALIAN ICE CREAMERY – INDUSTRIAL AGREEMENT	(1997) 155 QGIG 406
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Dated 15 July 2004.

G.D. SAVILL,
Acting Industrial Registrar.

INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999 – s. 346(2) – application for extension of time***Tony Abu-Dabat AND Jason Clifford Gibbons (No. C21 of 2004)**

PRESIDENT HALL

8 July 2004

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 1 July 2004, the President stated:

“This matter commenced on a complaint by a State Public Officer within the meaning of the *Justices Act 1886*, being an inspector duly appointed under the *Industrial Relations Act 1999*, which was filed on 13 May 2003.

The complaint initiated proceedings under s. 399 of the *Industrial Relations Act 1999* directed at the recovery of wages said to be due and unpaid to a former employee of the respondent.

The matter was listed before Mr Gordon, Industrial Magistrate, for 10 June 2003. There was no appearance for the respondent. Having satisfied himself that the respondent had been served within the meaning of s. 56 of the *Justices Act 1886* Mr Gordon elected, as he was entitled to do, to deal with the matter *ex parte*. In the end result, he found that wages in the amount of \$1,421.72 were owing and he made appropriate orders requiring the defendant to pay that amount plus certain costs of court, in default, levy and distress.

I reject the claim made by the applicant for an extension of time that by that decision Mr Gordon convicted the applicant of anything. The matters were, from first to last, civil proceedings.

Subsequently, the applicant sought to reopen the proceedings before the Industrial Magistrate. Mr Gordon listed that matter for 14 October 2003. At that hearing, it emerged that the application to reopen was itself out of time.

Pursuant to the discretion vested in his Worship by the *Justices Act 1886* Mr Gordon extended time for the application to reopen. However, on the substantive hearing the difficulty confronting the applicant squarely emerged. The applicant had been served by post within the meaning of s. 56 of the *Justices Act 1886*. The complaint that in fact the document did not come to the notice of the applicant was one which Mr Gordon could not entertain. In those circumstances, the application to reopen was dismissed.

What subsequently happened verged on tragedy. The applicant sought to appeal against the “decision” of the Industrial Magistrate. Unfortunately, that appeal was taken to the District Court of Queensland whereas it should have been brought to this Court. I am satisfied that that was a result of a *bona fide* error.

The documents relating to the District Court appeal are before me. It is apparent that there was some confusion in the applicant’s mind whether the appeal was against the decision of Mr Gordon to refuse a reopening or against the earlier decision of Mr Gordon making orders *ex parte*.

In any event, after the District Court proceedings had been discontinued on 23 March 2004, the applicant sought relief in this Court. Once again it is not clear whether the proposed appeal is against the refusal of the application to reopen or against the earlier *ex parte* proceedings.

It is clear that the appeal is out of time. The period limited for an appeal to this Court from a decision of an Industrial Magistrate is 21 days, (see s. 346 of the *Industrial Relations Act 1999*). Whichever decision of the Industrial Magistrate is said to be the decision targeted by the appeal, the matter is out of time.

The period set by s. 346 has been set by the Legislature. It is not a provision contained in a rule of Court. The Legislature has made a judgment and, in the ordinary case, justice will be served if the 21 day time limit is observed.

It is for the applicant to demonstrate a reason why the 21 day time limit should be departed from. To do that, an applicant must at least show reasonable prospects of success. Here, regrettably, the applicant has no prospects of success. If this appeal were to be heard, I will be in the same difficulty confronting Mr Gordon in June and October of 2003. The *Justices Act 1886* sets up a regime for service; the regime for service has been complied with; it is not open to an Industrial Magistrate or to this Court to go behind the legislation and in some way treat a document as not being served when it has been served within the meaning of the Act.

In all those circumstances, I dismiss the application for leave to appeal.”

Dated 8 July 2004.

By the Court,
[L.S.] G. D. SAVILL,
Acting Industrial Registrar.

Appearances:
Mr A. Revell on behalf of the Appellant.
Mr J. Gibbons, the Respondent.

Released: 8 July 2004

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INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial commission***Ian Charles Carmichael AND JSG Holdings Pty Ltd (No. C19 of 2004)**

PRESIDENT HALL

13 July 2004

DECISION

This is an appeal against a decision of the Queensland Industrial Relations Commission now reported at 175 QGIG 1101. By that decision the Commission dismissed the now appellant’s application for reinstatement for “unfair dismissal” within the meaning of Chapter 3, Part 2 of the *Industrial Relations Act 1999*. Both at first instance and on the appeal the appellant has represented himself. Since the criticisms made of the Commission’s decision on the appeal are suggestive of a failure to understand the Commission’s decision, I propose to take the liberty of speaking directly and without citation of authority, and to sacrifice precision to avoid turgidity of style.

The purpose of Chapter 3, Part 2 of the *Industrial Relations Act 1999* is to provide remedies to an employee who is unfairly dismissed by his employer. Here, the appellant was not dismissed. The appellant resigned. Both under the general law and under the *Industrial Relations Act 1999*, resignation is a unilateral act which terminates the relationship of employer and employee. A resignation does not require acceptance by the employer to be effective. In circumstances in which the respondent did absolutely nothing, it is impossible to conclude that the dismissal was at the initiative of the employer.

I quite accept that other employers might have treated the resignation as a call for help and engaged the appellant upon the concerns and dissatisfactions, giving rise to the resignation. But the respondent was under no obligation to respond so and Chapter 3, Part 2 does not redress the respondent's omission to do so by granting a remedy available to the appellant.

On the appeal, an alternative argument was advanced that the respondent was content to allow a situation to develop in which the appellant had no alternative but to resign. For present purposes, I am prepared to accept that such a resignation may properly be branded as a "constructive dismissal".

The difficulty is that the submission is not a submission which was made at first instance. The general rule is that an appellant is bound by the conduct of his case at first instance. The rule is a sensible one. The respondent is entitled to assume that the case developed at first instance is the case which the respondent has to meet, and to confine its evidence and questioning to that case.

The rule is of particular importance in proceedings under Chapter 3, Part 2 conducted by self-represented litigants on the basis of informal pleadings. Here, there can be little doubt that the cross-examination by the respondent and the evidence led by the respondent would have been different if the respondent had appreciated that it was faced with the alternative argument raised on the appeal.

Indeed, the appellant himself is confronted with the difficulty that because the argument was not developed at first instance, evidence essential to a particular aspect of the submission *viz.*, his diminished capacity to work arising out of a workplace related injury, was not led. The appellant seeks to meet that difficulty by leading additional evidence. Whilst there is discretion to allow further evidence it should not be exercised to allow the admission of evidence which was available at the time of the hearing at first instance and which was not called because a different case was run. In fairness to the respondent I should add that the argument would fail in any event.

The decision of the Commission at 175 QGIG 1101 describes an incident involving the appellant and a co-worker. To succeed in appealing that decision, the appellant would have to persuade this Court to take a view of the altercation differing from the view taken by the Commission. The appeal to this Court from the Commission is limited to the grounds of error of law and excess or want of jurisdiction. A finding of fact which is not supported by any evidence or which is perverse is both an error of fact and an error of law. But a decision by the Commission to accept evidence which supports a particular conclusion rather than other evidence which leads to a different conclusion is a pure finding of fact. This Court has no power to intervene.

Even on the view of the altercation adverse to the appellant, I have some sympathy for him. Indeed, he may well have a remedy. But the remedy which he chose to pursue was not a remedy open to him. The Commission was right to dismiss his application and I dismiss the appeal.

I reserve all questions as to costs.

Dated 13 July 2004.

D.R. HALL, President.

Released: 13 July 2004

Appearances:

The Appellant in person.

Mr A. Walker of Redchip Lawyers, for the Respondent.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 473 – approval for other name amendment

Retailers' Association of Queensland Limited, Union of Employers (No. U25 of 2003)

VICE PRESIDENT LINNANE

9 July 2004

Application for approval of name amendment – No objection – Whether name should state the locality in which most of the members live or carry on their business or calling – Finding that Applicant was a corporation and therefore did not have to state the locality in its name – Application granted – *Industrial Relations Act 1999* ss. 424, 471 and 473.

DECISION

[1] This is an application by the Retailers' Association of Queensland Limited, Union of Employers (RAQ) to amend the name of the organisation from the RAQ to the National Retail Association Limited, Union of Employers. The application is made pursuant to s. 473 of the *Industrial Relations Act 1999* (Act). The RAQ complied with a direction of the Industrial Registrar and published a Notice of its application in the Courier-Mail of 22 August, 2003. There is no objection to the application.

[2] Section 471 of the Act provides as follows:

"471 Requirements for amendment

The proposed amendment may be made only if it has been –

- (a) proposed under the organisation's rules; and
- (b) approved under this subdivision."

[3] Further s. 473(2) of the Act provides as follows:

"(2) The commission may, by order, approve the name amendment only if satisfied the amended name –

- (a) has been proposed under the organisation's rules; and
- (b) is not –
 - (i) the same as another organisation's name; or
 - (ii) so similar to another organisation's name as to be likely to cause confusion."

- [4] In addition there is s. 424 of the Act which provides:
- “424 Registered name of organisation that is not a corporation**
- (1) If an organisation is not a corporation, its registered name must include the words –
- (a) if it is an employee organisation – ‘industrial organisation of employees’ or ‘industrial union of employees’; or
- (b) if it is an employer organisation – ‘industrial organisation of employers’ or ‘industrial union of employers’.
- (2) The name must state the locality in which most of its members live or carry on their business or calling.”.
- [5] As for the requirements of s. 473(2) of the Act I am satisfied that the name amendment has been proposed under the RAQ’s Rules. I am further satisfied that the name, National Retail Association Limited, Union of Employers, is not the same as another organisation’s name nor is it so similar to another organisation’s name as to be likely to cause confusion.
- [6] The only issue is the requirement of s. 424(2) that the name state the locality in which most of its members live or carry on their business or calling. There is no reference to Queensland in the proposed amended name. Most of the RAQ’s members live or carry on their business or calling in Queensland.
- [7] The RAQ’s application is made following a change in the name of the Retailers’ Association of Queensland Limited on 20 March 2003 to National Retail Association Limited. That change was effected in accordance with s. 157 of the *Corporations Act 2001*. The RAQ contends that the change in name of the industrial organisation is consequential to the change in name of the company and points to the same approach being adopted in 1949 when the United Retailers’ Association changed its name to the Retailers’ Association of Queensland and there was a subsequent change to the name of the industrial organisation. In each of those instances however the name of the industrial organisation stated the locality in which most of the organisation’s members live or carry on their business or calling i.e. Queensland.
- [8] In support of its application the RAQ referred the Commission to *Re: Queensland Confederation of Industry Limited, Union of Employers* (1996) 151 QGIG 2203 where the then Chief Industrial Commissioner Hall acquiesced to the change in name stating:
- “Accepting the second affidavit to be correct, the change of name has occurred pursuant to the Corporations Law of Queensland. This Commission must recognise the change and adjust its records accordingly. I order adjustment of the Commission’s records. Section 345 has no application to an organisation such as the Applicant, whose history I trace in my earlier decision, which must effect any change in name pursuant to the Corporations Law.”.
- [9] The then Chief Industrial Commissioner did not, in that matter, deal with the provisions of s. 335(3) of the then *Industrial Relations Act 1990* which required the registered name of every industrial organisation of employers or employees contain reference to the locality in which the majority of its members reside or engage in their business or calling. The other dissimilarity with the current matter is that the Queensland Confederation of Industry Limited was a corporation prior to any registration under industrial legislation.
- [10] The heading to s. 424 of the Act is “Registered name of organisation that is not a corporation”. The opening phrase to subclause (1) is “[i]f an organisation is not a corporation”. Subclause (2) of s. 424 of the Act does not however include the same wording. Subclause (2) simply provides that “[t]he name must state the locality in which most of its members live or carry on their business or calling.”.
- [11] The Explanatory Notes to the *Industrial Relations Bill 1999* at p. 108 provides as follows:
- “Registered name of organisation that is not a corporation**
- Clause 424* provides that the name of an organisation that is not a corporation must include the words industrial organisation or union of employees or employers, as the case may be, and include a reference to the locality in which most of the members live or carry on business.”.
- [12] It seems clear that the intention of s. 424 of the Act is that it relates to organisations that are not corporations. The issue then is whether the RAQ is a corporation for the purposes of s. 424 of the Act?
- [14] **History of incorporation and registration:** The history of the RAQ starts with the Brisbane Retailers’ Association, a non-corporatised entity. On 23 March 1931 that Association resolved to seek registration as an industrial union of employers under the then *Industrial Conciliation and Arbitration Act*. The Brisbane Retailers’ Association, Union of Employers became registered as an industrial union of employers on 2 April 1931.
- [15] Members of the Brisbane Retailers’ Association then decided to incorporate as a company to take over the activities of the Brisbane Retailers Association. The incorporated company was registered with the Registrar of Companies on 30 June 1944 under the name of the United Retailers’ Institute (Queensland) Limited. On 10 August 1944 the Brisbane Retailers’ Association, at an extraordinary general meeting, resolved to dissolve the Association and to transfer all monies, property and assets to the United Retailers’ Institute (Queensland) Limited. On 19 August 1944 the first meeting of United Retailers’ Institute (Queensland) Limited was held and it resolved to take over the activities of the former Brisbane Retailers’ Association. An application was then made on 25 September 1944 to change the name of the registered industrial organisation to United Retailers’ Institute (Queensland) Limited, Union of Employers. This application was made at a time when the Brisbane Retailers’ Association was defunct.
- [16] The application for registration of the United Retailers’ Institute (Queensland) Limited, Union of Employers was signed by the President and Secretary of the United Retailers’ Institute (Queensland) Limited and the application was filed with a covering letter from the Secretary of that organisation on the corporation’s letterhead. The application was granted on 25 September 1944. The organisation was duly registered as the United Retailers’ Institute (Queensland) Limited, Union of Employers. Upon registration, the Rules of the United Retailers’ Institute (Queensland) Limited, Union of Employers constituted the Memorandum and Articles of Association of the United Retailers’ Institute (Queensland) Limited.
- [17] On 7 July 1949 the Deputy Registrar of Companies issued a Certificate of Incorporation on Change of Name from the United Retailers’ Institute (Queensland) Limited to Retailers’ Association of Queensland Limited. On 12 July 1949 an application was made pursuant to the *Industrial Conciliation and Arbitration Act of 1932* by United Retailers’ Institute (Queensland) Limited, Union of Employers to change its name to the Retailers’ Association of Queensland Limited, Union of Employers. The corporation at the time was the Retailers’ Association of Queensland Limited. The change in name was approved by the Industrial Registrar on 14 July 1949.

[18] On 26 February 2003, a special general meeting of the Retailers' Association of Queensland Limited resolved that the name of the company should be changed to the National Retail Association Limited. An application for change of name was subsequently lodged with the Australian Securities and Investments Commission. On 20 March 2003 the Australian Securities and Investments Commission issued a Certificate of Registration of Change of Name. Following that, the RAQ filed this application.

[19] The submission of RAQ before me at the hearing of this matter was based on the RAQ's status as a corporation arising from its registration as a corporation and not from its registration as an industrial organisation under any industrial legislation.

[20] On 29 June 2001 the Industrial Registry wrote to all industrial organisations of employers registered under the *Industrial Relations Act 1999*, including the RAQ. Relevantly that correspondence stated as follows:

"Re: Organisations with dual corporate status

As you would be aware a body, on becoming registered as an Industrial Organisation under the Industrial legislation, gained status as a corporation by virtue of the provisions of the Industrial legislation. It is realised that some of these bodies already had the status of corporation before applying for registration.

To overcome the problem of a body having dual corporate status, section 726(2) of the *Industrial Relations Act 1999* says that 2 years after the commencement of the Act, the body loses the corporation status it gained under the Industrial legislation.

This provision applies to (a) a corporation under the *Corporations Law*, section 57A; or (b) an incorporated association under the *Associations Incorporation Act 1981*; or (c) a body incorporated under a law of the State.

Except as indicated below, the loss of corporate status under the Industrial legislation will not affect the application of the provisions of the current *Industrial Relations Act 1999* to the Industrial Organisation or its registration under that Act. The following outline the provisions which do not apply to Organisations which are corporations:

- Part 2 – Sections 423 and 424 only;
- Part 3 – Sections 430 and 436 only;
- Part 4 – Election Rules;
- Part 7 – Conduct of Elections;
- Part 8 – Election Inquiries.

Additionally the Industrial Organisation which is a corporation may apply for exemption from accounting or audit provisions under Chapter 13 subdivision 3.

As our records do not indicate the corporate status of the body which sought registration as an employer union or employer organisation under the relevant Industrial legislation, I am seeking your comments in relation to whether or not your Organisation may have dual corporate status. If you do feel your Organisation would be affected by section 726(2) of the *Industrial Relations Act 1999*, I would also suggest that a copy of the certificate of incorporation under the other appropriate Act is included with your comments..."

[21] The RAQ response to that correspondence on 5 July 2001 was as follows:

"Could you clarify the situation where there are 2 distinct legal entities.

There is for example the Union of Employers and a distinct legal body being the RAQ Ltd.

Do we need to do anything in this situation?"

[22] The RAQ's response to the Industrial Registrar was raised with the RAQ. The RAQ then filed a further affidavit of Patrick McKendry on 15 April 2004 which addressed the questions raised regarding the abovementioned correspondence. In that affidavit Mr McKendry states that contrary to the earlier advice to the Industrial Registrar, the RAQ is an organisation to which s. 726(2) of the *Industrial Relations Act 1999* applies. In support of that claim Mr McKendry relies on the following:

- the RAQ is of the view that it is a company limited by guarantee which has obtained registration as an industrial union of employers. It has never considered that two entities resulted from the company securing registration as an industrial union;
- the RAQ has always conducted its affairs as one entity and always on the basis that the RAQ is a corporation first which is also a registered union of employers;
- the assets of the organisation appear in the corporation's balance sheet i.e. the assets of the industrial union of employers are held by the corporation;
- only one set of accounts has operated;
- only one set of rules has application i.e. the RAQ's affairs are regulated by the Memorandum and Articles of Association of the corporation. This has occurred since 1944;
- the RAQ has complied with its financial reporting obligations as a single entity. The corporation's audited financial statements are presented to the Industrial Registrar as representing the registered union's affairs and the principal activity of the corporation in its financial reports is stated as being that of a registered union of employers engaged in the retail industry. The financial report for the year ending 30 June 2002 (Attachment F to the application) is prepared in the name of "Retailers Association of Queensland Ltd (A Company limited by Guarantee) ACN 009 664 073". That report also lists the principal activity of the corporation as being that of a registered union of employers engaged in the retail industry.
- the audited financial reports of the RAQ over the past ten years confirm the position that the Association is a company, the principal function of which is the conduct of the business of the union i.e. the affairs of the union are considered to be part of the operations of the corporation; and
- the Association has also conducted its affairs as a single entity. There have never been separate meetings of the union and the corporation for any purpose.

[23] In all the circumstances I am satisfied that the RAQ was a corporation and thus did not have to comply with s. 424(2) of the Act. I thus approve the change in name to National Retail Association Limited, Union of Employers effective from the date of release of this decision.

Order accordingly.

D.M. LINNANE, Vice President.

Appearances:

Mr G. Black of Retailers Association of Queensland Limited, Union of Employers.

Hearing Details:

2003 20 October

2004 15 April Affidavit filed by Applicant

Released: 9 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 473 – approval for other name amendment

Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees (No. U9 of 2004)

VICE PRESIDENT LINNANE

9 July 2004

REPORT ON DECISION (as edited)

In giving her decision from the Bench on 6 July 2004, Vice President Linnane stated:

“This is an application by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees to change the name of that organisation to Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.

I am satisfied that the change in name has been effected in accordance with the rules of the organisation and in accordance with the relevant provisions of the Industrial Relations Act 1999 and the Industrial Relations Regulation 2000.

There are no objections to the change in name. I find that the proposed name is not the same as the name of any existing industrial organisation of employers, nor is the proposed name so similar to the name of an existing organisation of employers as to be likely to cause confusion.

In the circumstances I approve the change of name.

The operative date for the change in name is 6 July 2004.”

Order accordingly.

Dated 12 July 2004.

By the Commission, [L.S.] G.D. SAVILL, Acting Industrial Registrar.

Appearances:

Mr J. Payne of Hall Payne Lawyers for the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

Hearing Details:

2004 6 July

Released: 14 July 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Tania Woollett AND W. Rudd Pty Ltd (No. B279 of 2004)

DEPUTY PRESIDENT SWAN

8 July 2004

REPORT ON DECISION (as edited)

This matter was heard on 8 July 2004 and a decision issued from the Bench.

“The Commission reserved the right to edit and expand upon the reasons offered for the decision made.

The respondent in this matter, W. Rudd Pty Ltd did not attend the hearing. The Commission was confident that the respondent was aware of the hearing, having attended the Compulsory Conference and Call-Over before the Commission. The Solicitors acting for the respondent at that time had advised the Commission that they no longer acted for the respondent. A question as to whether the respondent’s business had ceased trading was raised in correspondence from the Solicitors, however, in the absence of the respondent’s evidence, that issue remains undecided.

Ms Wolett was represented by the Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees.

Ms Wolett’s period of employment with the respondent was from 3 July 2003 until 3 February 2004. She was employed in a permanent part time capacity as a telemarketer. Ms Woollett’s evidence is as follows:

- A permanent roster was worked from Monday to Thursday each week from 10 a.m. to 3 p.m. on each day.
- On 3 February 2004, Ms Woollett was talking to another employee whilst waiting for a call to be answered.
- Ms Woollett’s supervisor “screamed” at her to stop talking.

- Ms Woolett advised the supervisor that she had been on the phones all day and the supervisor said words to the effect of "if you don't like it you can go home".
- Ms Woolett went home stating that she would see everyone on the next day.
- That evening, Ms Woolett was telephoned by her supervisor and told that her employment had been terminated.
- The reason given for her dismissal was that she had answered her supervisor back.
- Ms Woolett was not given an opportunity to explain her position.
- Ms Woolett has obtained other employment.

I accept the unchallenged evidence of the applicant. She presented to the Commission as an intelligent and straight-forward person.

It was clearly within Ms Woolett's rights to respond when her employer spoke to her. The manner in which the employer dismissed Ms Woolett's employment is contrary to the dismissal provisions contained within the *Industrial Relations Act 1999* (the Act) (see s. 77 of the Act).

In the view of the Commission reinstatement/re-employment is impracticable. I propose to award to Ms Woolett an amount of compensation equivalent to eight weeks' wages at the rate she had been receiving prior to her termination of employment (see s. 79 of the Act). That amount is \$2,400.00.

I order that this amount (\$2,400.00) be paid by the respondent within 22 days of the release of this decision.

Order accordingly."

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Appearances:
Mr J. Martin with him Ms C. Berry for Australian Municipal,
Administrative, Clerical and Services Union, Central and Southern
Queensland Clerical and Administrative Branch, Union of Employees.
No appearance by the Respondent.

Hearing Details:
2004 8 July

Released: 8 July 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 713(5) – application to give an industrial agreement effect of an award

The Australian Workers' Union of Employees, Queensland AND E.S. Randle & Co Pty Ltd (EA1 of 2004)

COMMISSIONER FISHER

9 July 2004

Application to give an Industrial Agreement effect of an award – s. 713(5) *Industrial Relations Act 1999* – Agreement made pursuant to *Industrial Relations Act 1990* – *Workplace Relations Act 1997* s. 504 – Agreement unable to be varied by General Ruling or application – Previous certified agreements – Commission review of Industrial Agreements – Proposed new award – No objection to Industrial Agreement being given effect as an award – Application granted – Case law – Amendments.

DECISION

The Australian Workers' Union of Employees, Queensland (AWU) has filed an application seeking that, pursuant to s. 713(5) of the *Industrial Relations Act 1999* (the Act), the Commission decide that the E. S. Randle & Co Pty Ltd Industrial Agreement be given effect as an award. The Agreement was made pursuant to the provisions of the *Industrial Relations Act 1990* (the 1990 Act) on 19 May 1993 between E.S. Randle & Co Pty Ltd and the AWU.

The application came on for hearing on 29 June 2004 and was granted on that day. This decision sets out the reasons for that action. The effect of the introduction of the *Workplace Relations Act 1997* (the 1997 Act) and specifically s. 504(2) and 504(4) of that Act, was that Industrial Agreements as provided under the repealed 1990 Act could no longer be made and the term of existing agreements could not be extended by agreement. Section 504(1) of the 1997 Act provided that an Industrial Agreement in force immediately before the commencement of that Act continued to have effect after the commencement.

Although the E.S. Randle & Co Pty Ltd Industrial Agreement has been varied from time to time to include standards of employment provided by Statement of Policy issued by the Commission, the combined effect of the provisions of the 1997 Act was that the Agreement has not been able to be varied either by General Ruling or by application. The parties to the Industrial Agreement have entered into two certified agreements (in 1993 and 1999) and on each occasion the Industrial Agreement has been used for the purposes of the no disadvantage test.

The application by the AWU has been made in light of the Commission's Review of Industrial Agreements. In addition to the present application, the AWU has filed an application for a new award entitled E.S. Randle & Co Pty Ltd Award – State 2004.

The employer party expressed no objection to the Industrial Agreement being given effect as an award. It has however, objected to the contents of the proposed new Award.

The Commission is encouraging parties to Industrial Agreements, through its Review of Industrial Agreements, to take steps to incorporate the terms of Industrial Agreements, into other forms of industrial instrument. One of the avenues available is that taken by the AWU in relation to this Agreement, that is, for it to be given effect as an Award and then for a new Award to be made in a form consistent with the Commission's Practice Note 9. In this light, the Commission decided that the AWU's application EA1 of 2004 should be granted. Accordingly the E.S. Randle & Co Pty Ltd Industrial Agreement was given effect as an Award operative from 29 June 2004. As Bloomfield, DP said in *Re: Diversional Therapy – AWU – Industrial Agreement* (2003) 174 QGIG 188:

"However, such a decision does not make the Industrial Agreement an award *per se*. Any decision of the Commission merely gives the industrial agreement *effect* as an Award and does not *create* an Award."

To ensure that this is clear, I propose to add certain wording as follows:

Clause 1.1. Title

By adding the following sentence:

“By decision of the Queensland Industrial Relations Commission on 29 June 2004 this Agreement shall effect as an Award of the Commission pursuant to s. 713(5) of the *Industrial Relations Act 1999*.”.

Clause 1.4 Date of Operation

By adding after “This industrial Agreement shall take effect” the words “as an Award.”.

The Agreement also contains provisions that have no legal force and effect. To avoid any misconception about these provisions a notation to this effect will follow each of the offending provisions viz., clause 2.1(3) and clause 2.7 Preference.

In my view the additional wording serves only to provide clarity and does not amend the terms of the Agreement.

Order accordingly.

G.K. FISHER, Commissioner.

Appearances:

Mr C. Simpson for The Australian Workers’ Union of Employees, Queensland.
Mr M. Loane and with him Mr D. Fitzpatrick for E.S. Randle & Co.

Hearing Details:
2004 29 June

Released: 9 July 2004

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees,
Queensland AND National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers
(No. B907 of 2004)**

MEAT INDUSTRY (PRIVATE EXPORT COMPANIES) MECHANICAL ETC. AWARD – STATE 2002

COMMISSIONER EDWARDS

1 July 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 29 June and 1 July 2004, this Commission orders that the said Award be amended as follows as from 1 July 2004:

By deleting from clause 5.4.2 the amount of \$17.85” where it appears in 7 instances and inserting the amount of “\$20.00” in lieu thereof in each instance.

Dated 1 July 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Operative Date: 1 July 2004
Amendment – Tool Allowance
Released: 7 July 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

CEMENT PRODUCTS AND CONCRETE BATCHING AWARD – STATE 2003

(Gazette 5 December 2003)

(AR107 of 2002

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

14 July 2004

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 5 December 2003, Vol. 174, No. 14, pages 1266-1289, the following correction is made to be effective as from 27 October 2003:

1. By deleting clauses 5.2.1 and 5.2.2 and inserting the following in lieu thereof:

“5.2.1 *Concrete batching*

(a) Base rate

Grade	Per week
	\$
1	284.80
2	299.50
3	319.20
4	365.20

(b)	Supplementary Payment per week
Grade	\$
1	163.60
2	165.50
3	168.40
4	175.00

(c) Excess payment

In addition to the rates expressed in clauses 5.2.1(a) and (b), the following excess payments shall be paid to all existing and future employees and shall be paid for all purposes of the Award. Such excess payments shall remain unaltered unless otherwise ordered by the Commission.

Grade	Excess payment \$
1	16.40
2	5.00
3	3.50
4	-

5.2.2 *Cement products*

(a) Base rate

Grade	Per Week \$
1	284.80
2	299.50
3	319.20
4	337.40
5	365.20

(b)	Supplementary Payment per week
Grade	\$
1	163.60
2	165.50
3	168.40
4	171.10
5	175.00

(c) Excess payment

In addition to the rates expressed in clauses 5.2.2(a) and (b), the following excess payments shall be paid to all existing and future employees and shall be paid for all purposes of the Award. Such excess payments shall remain unaltered unless otherwise ordered by the Commission.

Grade	Excess payment \$
1	11.30
2	4.80
3	-
4	-

(d) Juniors shall be paid wage rates calculated at the undermentioned percentages of the Grade 1 rate.

Years	%
15 to 16 years of age	45
16 to 17 years of age	55
17 to 18 years of age	65
18 to 19 years of age	75

Junior rates shall be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple.

NOTE 1: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

NOTE 2: In determining whether an increase is payable because of the introduction of the Queensland Minimum Wage, the arbitrated State Wage Case adjustment in this decision and all previous Safety Net and State Wage Adjustments are first to be taken into account.”.

2. By deleting from the clauses listed in the first column of the Schedule, the amount in the second column, and inserting the amount in the third column in lieu thereof.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
	\$	\$
5.3.1	13.70	14.10
5.3.1	9.00	9.30
Appendix 1 (2)	3.70	3.80

Dated 14 July 2004.

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

EARLY CHILDHOOD EDUCATION AWARD – STATE 2003

(Gazette 14 November 2003)

(AR63 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

15 July 2004

AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Correction of Error to the Award as published in the *Queensland Government Industrial Gazette* of 11 June 2004, Vol. 176, No. 6, pages 208-209, the following correction is made to be effective as from 13 October 2003.

In Item 2, by deleting the amounts of “\$77.29” and “\$79.79” from where they appear in columns 2 and 3 and inserting the amounts of “\$77.20” and “\$79.70” respectively in lieu thereof.

Dated 15 July 2004.

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

LOCAL GOVERNMENT EMPLOYEES’ (EXCLUDING BRISBANE CITY COUNCIL)

AWARD – STATE 2003

(Gazette, 29 August, 2003)

(AR165 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

15 July 2004

AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Correction of Error to the Award as published in the *Queensland Government Industrial Gazette* of 7 May 2004, Vol. 176, No.1, pages 23-25, the following correction is made to be effective as from 15 September 2003.

In Item 2 by adding the following to the end of columns 1, 2 and 3:

“10.2.7(c) \$8.51 \$8.80”.

Dated 15 July 2004.

G.D. SAVILL,
Acting Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

MOTOR DRIVERS, ETC., AWARD – SOUTHERN DIVISION 2003

(Gazette 30 January, 2004)

(No. AR55 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

14 July 2004

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 30 January 2004, Vol. 175, No. 4, pages 396–412, the following corrections are made to be effective as from 1 December 2003:

1. By inserting a clause 5.2.4 as follows:

“5.2.4 *Special night allowance* – All employees shall be entitled to an allowance of \$1.318 per hour for all ordinary time worked between 8.00 p.m. and the end of the shift and payable at ordinary rates.

Broken parts of an hour of less than 30 minutes on any shift shall be disregarded and 30 minutes to 59 minutes shall be paid for as an hour:

Provided that where overtime or penalty rates are payable the above special allowance shall not be payable.”

2. By deleting clause 6.4 and inserting the following in lieu thereof:

“6.4 **Shift workers**

6.4.1 The ordinary working hours for shift workers shall be worked in continuous shifts of not more than 8 hours.

6.4.2 Employees working Shift Work shall be paid in addition to their ordinary weekly wage, a penalty rate of \$9.70 when employed on afternoon or night shift.”

Dated 14 July 2004.

G.D. SAVILL,
Acting Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 130 – award review

TOURISM INDUSTRY – ZOOLOGICAL GARDENS AWARD – SOUTH-EASTERN DIVISION

(No. AR7 of 2004)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

29 June 2004

AWARD REVIEW

After reviewing the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made, as from 5 July 2004.

TOURISM INDUSTRY – ZOOLOGICAL GARDENS AWARD –
SOUTH-EASTERN DIVISION 2004

PART 1 – APPLICATION AND OPERATION

1.1 Title

This Award is known as the Tourism Industry – Zoological Gardens Award – South-Eastern Division 2004.

1.2 Arrangement

PART 1 – APPLICATION AND OPERATION

Title	1.1
Arrangement	1.2
Definitions.....	1.3
Date of operation	1.4
Award coverage	1.5
Area of operation	1.6
Savings clause.....	1.7
Parties bound.....	1.8

PART 2 – FLEXIBILITY

Enterprise flexibility	2.1
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PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

Grievance and dispute settling procedure.....	3.1
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PART 4 – EMPLOYER AND EMPLOYEES’ DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

Employment categories.....	4.1
Incidental or peripheral tasks.....	4.2
Mixed functions	4.3
Full-time employment	4.4
Part-time employment.....	4.5
Casual employment.....	4.6
Trainees	4.7
Anti-discrimination	4.8
Termination of employment	4.9
Introduction of changes	4.10
Redundancy.....	4.11
Continuity of service – transfer of calling.....	4.12

PART 5 – WAGES AND WAGE RELATED MATTERS

Zoological gardens classification definitions	5.1
Wages	5.2
Allowances.....	5.3
Payment of wages	5.4
Occupational superannuation.....	5.5

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

Hours of work	6.1
Meal breaks and meal allowance.....	6.2
Rest pauses.....	6.3
Overtime.....	6.4
Penalty rates	6.5
Rosters.....	6.6

PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

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

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

No provisions inserted in this Award relevant to this Part.

PART 9 – TRAINING AND RELATED MATTERS

Training	9.1
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PART 10 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

Uniforms	10.1
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PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS

Right of entry	11.1
Time and wages record.....	11.2
Union encouragement.....	11.3
Trade union training leave.....	11.4
Award posting.....	11.5

1.3 Definitions

- 1.3.1 “The Act” means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.3.2 “Adult Employee” means an employee of 20 years of age or more.
- 1.3.3 “Casual Employee” means an employee engaged by the hour for a period of not more than 38 hours in any one week.
- 1.3.4 “Commission” means the Queensland Industrial Relations Commission.

- 1.3.5 "Day" means a period of 24 hours between midnight and midnight.
- 1.3.6 "Part-time Employee" means a permanent employee engaged to work a regular number of hours per week.
- 1.3.7 "Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.
- 1.3.8 "Work Cycle" means Monday to Sunday inclusive.

1.4 Date of operation

This Award takes effect from 5 July 2004.

1.5 Award coverage

- 1.5.1 This Award applies to all employees for whom classifications and rates of pay are prescribed, employed in or in connection with zoos, bird and wildlife sanctuaries and to employees of contractors and subcontractors engaged substantially to undertake work at or for such establishments.
- 1.5.2 The following establishments will be exempt from this Award:
- The Big Pineapple, Sea World, Dreamworld and any public sector unit as defined in the *Public Service Act 1996*.
- 1.5.3 This Award will not apply to any employees who are principally engaged in activities specifically covered by the terms and conditions of the following Awards:
- Clerical Employees Award – State 2002; Motor Drivers, Etc., Award – Southern Division 2003; Transport, Distribution and Courier Industry Award – Southern Division 2003; Employees of Government Departments (Other Than Public Servants) Award 2003, Conservation, Parks and Wildlife Employees' Award – State Government 2003, Public Service Award – State 2003, General Stores, Warehousing and Distribution Award – State 2002 and Contract Cleaning Industry Award – State 2003.

1.6 Area of operation

This Award applies to the South-Eastern Division of Queensland and will comprise the district within the following boundaries:

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

1.7 Savings clause

No employee employed at the commencement of this Award will suffer a reduction in wages for ordinary hours of work as a result of this Award being introduced.

1.8 Parties bound

This Award is binding on the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees and its members and any employer in establishments of the type listed in clause 1.5 and their employees whose classifications are contained in this Award.

PART 2 – FLEXIBILITY

2.1 Enterprise flexibility

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in terms of clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with the Chapter 6 of the Act and is to have no force or effect until approval is given.

PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedure

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

- 3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.

- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.1.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.1.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

4.1 Employment categories

- 4.1.1 Employees covered by this Award will be advised in writing of their employment status upon appointment.

Employment categories are:

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

4.2 Incidental or peripheral tasks

- 4.2.1 An employer may direct an employee to carry out such duties as are within the limits of the employees' skill, competence and training consistent with the classification structure of this Award, provided that such duties are not designed to promote deskilling.
- 4.2.2 An employer may direct an employee to carry out such duties and use such equipment as may be required provided that the employee has been properly trained in the use of such equipment.
- 4.2.3 Any direction issued by an employer in relation to clauses 4.2.1 and 4.2.2 is to be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.3 Mixed functions

Where any person on any one day performs 2 or more classes of work to which a differential rate fixed by this Award is applicable, such person, if employed for more than 4 hours on the class or classes of work carrying a higher rate, will be paid in respect of the whole time during which the employee works on that day at the same rate, which will be at the higher rate.

4.4 Full-time employment

Unless otherwise specifically provided, full-time employees engaged on a weekly basis for an average of 38 hours per week and in accordance with clause 6.1 will be entitled to all the benefits provided by this Award.

4.5 Part-time employment

An employee may be employed as part-time in any classification of this Award on the following basis:

- 4.5.1 A part-time employee may work up to 76 hours in a fortnight, not exceeding 14 consecutive days, provided that the ordinary working hours will not be less than 4 hours on any one day or 12 in any one week. The spread of hours of part-time employees will be the same as that applicable to a full-time weekly employee in the section of the establishment in which they are employed.
- 4.5.2 Part-time employees will be paid an hourly rate equal to 1/38th of the weekly rate. Part-time employees will be paid as for a minimum of 4 hours worked on each occasion that such employee attends for work and in accordance with clause 4.5.1.
- 4.5.3 Part-time employees will be entitled to annual leave, public holidays, sick leave, bereavement leave, and long service leave, in accordance with the provisions of this Award on a *pro-rata* basis, which in the case of public holidays not worked, sick leave and bereavement leave, means that part-time employees:

- (a) whose ordinary rostered hours would otherwise fall on a public holiday but who are not required to work will be paid as if they had worked, had it not been a public holiday;
- (b) will accrue sick leave credits on a *pro-rata* basis and be entitled to be paid for all ordinary time they would have worked had they not been sick, subject to available credits, and;
- (c) will be entitled to receive up to 2 days pay for eligible bereavement leave on the basis of the ordinary hours they would have worked had they not been on bereavement leave.

4.6 Casual employment

An employee may be employed on a casual basis in any classification of this Award provided that:

- 4.6.1 A casual employee may work up to a maximum of 38 hours per week, provided that a maximum of 12 hours may be worked on any one day by mutual agreement.
- 4.6.2 The minimum engagement period which is to be paid is 2 hours for each continuous period of work.
- 4.6.3 Notwithstanding the regularity of weeks, days or hours previously worked, a casual employee is to have the right, without prejudice, to refuse work offered by the employer and the employer the right not to offer work.
- 4.6.4 The ordinary time hourly rate for a casual employee will be the appropriate weekly rate for the class of work performed divided by 38 plus a casual loading of 23% for all ordinary time worked. The casual loading is deemed to be full recompense for annual leave and sick leave accrued in the course of each period of engagement.

4.7 Trainees

Trainees are engaged under this Award, except as varied from time to time by the *Order for Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

4.8 Anti-discrimination

- 4.8.1 It is the intention of the parties to this Award to prevent and eliminate discrimination as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* which includes:
 - (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of the above attributes.
 - (b) sexual harassment; and,
 - (c) racial and religious vilification
- 4.8.2 Accordingly in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.1, the parties to the Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.8.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.8.4 Nothing in clause 4.8 is to be taken to affect:
 - (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
 - (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

4.9 Termination of employment

4.9.1 Statement of employment

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

4.9.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks
- (b) In addition to the notice in clause 4.9.2(a), employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

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

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in clause 4.9 shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.9.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.9.2(d) for a period of notice of one week.

4.9.4 Annual leave shall not be used to provide the notice prescribed by clauses 4.9.2.(a) and (b) and clause 4.9.3.

4.9.5 *Time off during notice period*

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

4.10 **Introduction of changes**

4.10.1 *Employer's duty to notify*

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

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

4.10.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.10.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees.

Provided that an employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11 **Redundancy**

4.11.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.11.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out.

Provided that an employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.11.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.11.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee’s employment had been terminated under clause 4.8.
- (b) The employer may, at the employer’s option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee’s employment contract.

4.11.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.11.3, “business” includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and ‘transmission’ includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and ‘transmitted’ has a corresponding meaning.

4.11.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.11.1, the employee shall be allowed up to one day’s time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.11.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.11.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.11.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.9.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.11.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks’ pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

- (b) “Weeks’ Pay” means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.11.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.11.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.11.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under clause 4.11 had such employee remained with the employer until the expiry of such notice:

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

4.11.9 *Alternative employment*

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

4.11.10 *Employees with less than one year's service*

Clause 4.11 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.11.11 *Employees exempted*

Clause 4.11 shall not apply:

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

4.11.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.11 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A "company" shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.11.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.11.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.11.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.11.14 *Incapacity to pay*

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

4.12 Continuity of service – transfer of calling

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

PART 5 – WAGES AND WAGE RELATED MATTERS

5.1 Zoological gardens classification definitions

Employees will be classified at or appointed to the appropriate classification where the characteristics of the job, as determined by the employer, fall within that level.

5.1.1 *Zoological Gardens Employee: Level 1* 78%

A Level one employee means an employee appointed as such, and who is:

- (a) undertaking up to 3 months on-the-job training so as to enable the employee to be employed as a Grade 2 employee; or
- (b) providing general assistance to employees of a higher grade, not including cooking or direct service to customers, and is primarily engaged in one or more of the following:

Cleaning, tidying and setting up to kitchen, food preparation and customer service areas, including the cleaning of equipment, crockery and general utensils;

Assembly and preparation of ingredients for cooking and/or salad ingredients;

Handling pantry items and linen;

Setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;

Basic general cleaning;

Basic gardening and labouring tasks, including operation of simple machinery;

Basic labouring including cleaning animal enclosures and assisting with animal care.

5.1.2 *Zoological Gardens Employee: Level 2* 82%

- (a) A Level 2 employee means an employee appointed as such, who has completed appropriate training either externally or "in-house" or has displayed equivalent competency so as to enable the employee to perform work within the scope of position descriptions at this level.
- (b) An employee at this level performs work above and beyond the skills of an employee on level one. Such an employee will possess the following:

Characteristics:

- (i) Performs tasks under direct supervision or in accordance with strictly defined procedures.
- (ii) Is trained in and applies basic customer service skills as required by the section/department.
- (iii) Is required to show minimal judgement.
- (iv) Performs routine functions requiring an understanding of clear procedures or guidelines and may require basic manual skills across work areas within the business.
- (v) Applies basic communication and interpersonal skills in dealing with customers and other workers.
- (vi) Requires basic health and safety knowledge.
- (vii) Generally performs a limited range of tasks of limited complexity and skill.

(c) Typical duties/skills:

As a guide only, following are indicative typical tasks for work performed at this level:

Basic food preparation, cooking and kitchen attending.

Undertaking general waiting duties of food and/or beverages.

Supplying, dispensing and mixing of liquor.

Attending a snack bar and/or receipt of monies.

Issuing clothing, costumes or uniforms.

Basic sewing and repairs to clothing.

Taking bookings and reservations.

Washing and pressing clothes.

Grooming, handling and feeding animals.

General gardening including operation of machinery.

General park maintenance including maintenance of enclosures.

Basic record keeping and telephone operations.

General cleaning duties.

5.1.3 *Zoological Gardens Employee: Level 3* 88%

- (a) A Level 3 employee means an employee appointed as such who has completed appropriate training either externally or "in-house" or has displayed equivalent competency so as to enable the employee to perform duties within the scope of position descriptions at this level.
- (b) An employee at this level performs work of greater complexity than an employee at Level 2. Such an employee will possess the following:

Characteristics:

- (i) Performs tasks under general supervision, exercising limited discretion within defined procedures.
 - (ii) Performs work which is subject to final checking and, as required, progress checking.
 - (iii) Is trained in and applies basic quality/service requirements relating to own work and may be required to give general inquiry assistance to the customer.
 - (iv) Applies good interpersonal and communication skills in dealing with customers and other workers.
 - (v) Has a good working knowledge of health and safety at this level.
 - (vi) May assist in on the job training of employees of a lower level who are undergoing training to attain this level.
 - (vii) May require basic technical skills to perform the work.
- (c) Typical duties/skills:

As a guide only, the following are indicative typical tasks for work performed at this level:

Undertaking waiting duties of food and/or beverages.

Supplying, dispensing or mixing liquor.

Non-specialised cooking duties.

Attending counter/snack bar and/or receipt of monies.

Guide duties and presentations to the public.

Operate games/amusement rides.

Maintenance of records and operation of a switchboard.

Specialised cleaning duties.

Assistance with animal training.

Preparation of animal feed and animal care.

Ordering stock and stock control.

Maintenance of enclosures and gardens including pruning and irrigation.

Security officer.

5.1.4 *Zoological Gardens Employee: Level 4* 94%

- (a) A Level 4 employee means an employee appointed as such who has completed appropriate training or has acquired equivalent competency so as to enable the employee to perform work within the scope of this level.
- (b) An employee at this level performs work of a greater complexity than an employee at Level 3.

Characteristics:

- (i) Can perform a greater variety of tasks competently in accordance with the establishment procedures within their work classification.
- (ii) Can provide assistance for problem solving and work direction.
- (iii) Is trained in, and can apply a higher level of quality control and customer service.
- (iv) Performs work which is the subject of final checking only.
- (v) Has a thorough knowledge of health and safety procedures relating to work within their department.
- (vi) May assist in the provision of on-the-job training.
- (vii) Works individually under general supervision while having the ability to co-ordinate work within a small team environment.
- (viii) Communicates effectively with other workers in their work section.
- (ix) May require some higher level technical skills below trade level to perform work.

(c) Typical duties/skills:

The tasks set out below are an indicative guide only and should not be regarded as an exhaustive list. Indicative typical tasks for work performed at this level are as follows:

International guide required to speak a second language and presentations to the public.

Cocktail or specialised waiter.

Supervision of a bar.

Non-trade cooking.

Operate a passenger vehicle.

Animal management.

Grading of garments and pattern making.

Animal health management, basic stable/animal compound management.

Specialised animal care.

5.1.5 *Zoological Gardens Employee: Level 5* 100%

(a) A Level 5 employee means an employee appointed as such who has completed appropriate training or has acquired equivalent competency so as to perform work within the scope of this level. Work performed at this level will be trade level or equivalent.

(b) An employee at this level performs work of greater complexity than an employee at Level 4. Such an employee will possess the following:

Characteristics:

- (i) Works from complex instructions and procedures and has a thorough understanding of the park's internal policies and procedures relating to their department.
- (ii) Is able to provide training for fellow employees within their specific area of responsibility for skill development.
- (iii) Is able to co-ordinate work in a team environment or work individually under general supervision.
- (iv) Is accountable for their own work at trade level or equivalent.
- (v) Has health and safety knowledge of the whole park.
- (vi) Is able to exercise good interpersonal and communication skills in dealing with fellow workers.
- (vii) Performs lower level tasks incidental to their work or which facilitate the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- (viii) Has worked or studied in a relevant field for a significant time to ensure competence to undertake and advise on a full range of normal requirements for the work and to have the ability to perform a variety of activities involving special or unusual features of the work.

(c) Typical Duties/Skills:

The tasks set out below are an indicative guide only and should not be regarded as an exhaustive list. Indicative typical tasks for work performed at this level are as follows:

Trade qualified cooking.

Menu planning.

Senior security officer for the park.

Trade qualified maintenance (i.e. plumbing, spray painting, construction work).

Design costumes and production.

Liaise with government agencies.

Staff recruitment.

Responsible for animal training and medication of animals.

Plantation management.

Co-ordinate cleaning operators.

Projectionist.

Maitre'd.

Qualified greenkeeper.

5.1.6 *Zoological Gardens Employee: Level 6* 110%

- (a) A Level 6 employee means an employee appointed as such who has completed appropriate training and is capable of applying skills learned to the work. A Level 6 employee may have specific supervisory duties and the authority to direct other staff, however, the greater percentage of their time need not be spent on management functions.
- (b) An employee at this level performs work of a greater complexity than an employee at Level 5 because of one or more of the following factors:

Level of responsibility and/or management, eg., administrative, financial, project co-ordination etc; such an employee will possess the following:

Characteristics:

- (i) Would have studied or worked in a relevant area to develop a specialised skill in a particular profession, technical or service field above trade level or its equivalent.
- (ii) Is accountable and responsible for workplace output and can work under pressure.
- (iii) Generally works without supervision.
- (iv) Understands all operations relevant to their job role and department.
- (v) Plans training and establishment development in conformity with employer guidelines.
- (vi) Has excellent knowledge of health and safety requirements throughout the park.
- (vii) Co-ordinates, supervises and directs the work of others in a team environment.
- (c) Typical duties/skills:

The tasks set out below are an indicative guide only and should not be regarded as an exhaustive list. Indicative typical tasks for work performed at this level are as follows:

Financial reporting.

Operational reporting.

Specialised supervision/direction of employees.

5.2 Wages

5.2.1 The minimum rates payable to Adult employees will be as follows:

<u>Classification</u>	<u>Per Week</u> \$
Zoological Gardens Employee Level 1	448.40
Zoological Gardens Employee Level 2	465.10
Zoological Gardens Employee Level 3	490.20
Zoological Gardens Employee Level 4	515.20
Zoological Gardens Employee Level 5	542.20
Zoological Gardens Employee Level 6	583.90

NOTE: The rates of pay in this award are intended to include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the Vice-President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required. Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

5.2.2 Junior employees will be entitled to not less than the following proportion of the appropriate adult rate for the relevant classification:

Under 18 years of age	65.0%
18 and under 19 years of age	75.0%
19 and under 20 years of age	85.0%

Junior rates will be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple.

5.3 Allowances

5.3.1 *Late work/early start rate*

- (a) Employees who are required to work any ordinary hours between 7.00 p.m. and 12.00 midnight Monday to Friday inclusive will be paid an additional \$1.1685 per hour for any hour or part thereof for any time worked within the said hours.

A minimum payment of \$1.71 will apply on any one day.

- (b) Employees who are required to work any ordinary hours between 12.00 midnight and 6.00 a.m. Monday to Friday inclusive will be paid an additional \$1.702 per hour for any hour or part thereof for any time worked within the said hours. For the purposes of clause 10.1.1(b) midnight will include midnight Sunday.

A minimum payment of \$1.71 will apply on any one day.

5.3.2 Broken shifts

All employees working broken shifts, being shifts of work in which the unpaid break exceeds that prescribed by clause 6.2, will be entitled to an allowance of \$11.00 for every shift so worked:

Provided that no employee will be required to work a shift with more than one such break per day.

5.3.3 Night tour guides and assistants – Currumbin Wildlife Sanctuary

Notwithstanding the provisions of clause 6.4 (Overtime), employees at Currumbin Wildlife Sanctuary, undertaking night tour duties will be paid \$73.85 for each tour.

This allowance will be increased or decreased by an amount equivalent to the percentage increase or decrease in the remuneration applicable to a Zoological Gardens Employee Level 5.

5.4 Payment of wages

- 5.4.1 Wages will be paid on the same day every week or by agreement with employees every fortnight, and the employer will hold not more than 2 days' pay in hand.

- 5.4.2 The payment of wages may be by any one of the following methods:

- (a) payment by electronic funds transfer into an account nominated by the employee without cost to the employee;
- (b) cash; or
- (c) cheque.

- 5.4.3 Where an engagement is terminated, all wages, overtime and other payments due to the employee will be paid within 15 minutes of such termination becoming effective:

Provided that where an employee is paid by electronic funds transfer the employer will ensure that such wages are transferred to the employee's account within the 24 hour period following the dismissal or on the next bank trading day.

- 5.4.4 Wages will be paid in the employer's time and any employee who is not paid within 15 minutes from the time specified will be deemed to be working during the time the employee is kept waiting.

5.5 Occupational superannuation

- 5.5.1 (a) An employer will contribute to an approved superannuation fund as specified in clause 5.5.2 on behalf of each eligible employee, 9% of the employees ordinary time earnings (or such other amount as may be prescribed from time to time by legislation) to comply with the *Superannuation Guarantee (Administration) Act 1992* as amended from time to time).
- (b) Ordinary time earnings for the purpose of clause 5.5 means the actual ordinary rate of pay the employee received for ordinary hours of work including shift loading, skill allowances and supervisory allowances where applicable. The term includes any over-award payment as well as casual rates received for ordinary hours of work. Ordinary time earnings will not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday and weekend work, fares and travelling time allowances or any other extraneous payments of a like nature.
- (c) Contributions on behalf of each eligible employee will apply from the date of the employee's commencement of employment with the employer.
- (d) The Fund must be complied with as follows:
- (i) An employer who receives written authorisation from the employee, must commence making payments into the Fund on behalf of the employee within 14 days of receipt of the authorisation.
 - (ii) An employee may vary the employee's additional contributions by a written authorisation and the employer must alter the additional contributions within 14 days of receipt of the authorisation.
 - (iii) Additional employee contributions to the Fund requested under clause 5.5 will be expressed in whole dollars.
- 5.5.2 (a) An approved fund means:
- (i) Sunsuper;
 - (ii) MTAA Industry Superannuation Fund;
 - (iii) Host Super;
 - (iv) Metway Super;
 - (v) Any other fund which complies with the legislation which is requested by the majority of employees within the establishment and agreed to by the employer.

PART 6 – HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK**6.1 Hours of work**

6.1.1 Unless otherwise provided in this Award the ordinary hours of work will be an average of 38 hours per week to be worked as follows:

- (a) 152 hours per each 4 week period; or
- (b) 160 hours per each 4 week period, with a paid day banked per period up to a maximum of 10 per annum; or
- (c) a combination of both clauses 6.1.1 (a) and (b) in any one establishment.

6.1.2 Implementation

The method of rostering such hours will be by agreement between the employer and the majority of employees concerned subject to the particular needs of the establishment and the following conditions:

- (a) Ordinary hours are to be worked within a minimum of 6 hours and up to a maximum of 10 hours per day or 12 by mutual agreement and will be exclusive of meal breaks. Where employees are rostered to work 4 consecutive shifts of 10 hours per day, such employees will not be rostered for work on more than 4 consecutive days without a break of at least 48 hours.
- (b) Employees rostered to work shifts of 9 or more ordinary hours in a four week period will be entitled to at least 9 full days off per period.
Provided that at least 8 days off will be allowed in any other case.
- (c) No employee will be rostered to work for more than 10 successive days without a day off.

6.1.3 Spread of hours – broken shifts

Where broken shifts are worked the spread of hours will not exceed the ordinary hours by more than 3 hours:

Provided that in no case will the spread of hours exceed 12 hours per day.

6.1.4 Banking of rostered days off

Where an employee's hours are worked in accordance with clause 6.1.1(b), the banked rostered days off will be taken within 12 calendar months from the date on which the first rostered day off was accrued.

6.2 Meal breaks and meal allowance

- 6.2.1 Where an employee is employed for at least 6 hours per day, such employee will be entitled to a continuous meal break of at least 30 minutes' duration and no more than one hour.
- 6.2.2 Where an employee is required to work through a meal break as prescribed in clause 6.2.1, such employee will be paid at the rate of double time for all work so performed and such double time will continue to be paid until such time as a meal break of the usual duration can be taken or until the employee ceases work for the day.
- 6.2.3 Any employee who is required to continue working for more than 2 hours beyond their ordinary ceasing time will be provided with an adequate meal by the employer or paid an amount of \$9.60 in lieu thereof.

Provided that where an employee has provided themselves with a meal because of receipt of notice to work overtime and such overtime is not worked, such employee will be paid \$9.60 for any meal so provided.

6.3 Rest pauses

All employees working at least a 7.6 hour day will be entitled to a rest pause of 10 minutes' duration in the employer's time in the first and second half of their working day. Where an employee works less than 7.6 hours but more than 4 hours on any day the employee will be entitled to one 10 minute rest pause on that day. Such rest pauses will be taken at times so as not to interfere with the continuity of work where continuity is necessary.

Provided that where an employee is rostered to work at least 7.6 hours per day and there is agreement between employer and the majority of employees concerned the rest pauses prescribed by this clause may be combined into one 20 minute rest pause.

6.4 Overtime

- 6.4.1 All time worked outside, or in excess of, the ordinary hours of work prescribed by this Award or outside of an employee's rostered hours, will be deemed to be overtime and will be paid at the rate of time and a-half for the first 3 hours and double time thereafter.

Provided that for the purposes of computing such overtime payments, each day will be exclusive of the preceding and succeeding days except where an employee continues working overtime past midnight whereupon all such time worked subsequent to midnight will be deemed to be work performed on the previous day.

Provided further that, in the computation of such overtime payments, any part of a quarter of an hour that is worked on any one day will be paid for as a full quarter of an hour.

- 6.4.2 All time worked on an employee's rostered day off will be paid for at the rate of double time with a minimum payment as for 4 hours worked.
- 6.4.3 Notwithstanding the provisions of clause 6.4, there may be an agreement in writing between the employee and the employer to take time off with pay. Such time off will be equivalent to the number of ordinary hours pay that the employee would have received for such overtime. Accumulated time must be taken within 12 months from the time of accrual and at a time mutually agreed between the employee and the employer.

Provided that outstanding accrued overtime will be paid at the appropriate rate in full at the time of termination, for any reason, by either party.

6.4.4 Employees of Currumbin Bird Sanctuary employed consistent with clause 5.3.3, will not be entitled to overtime rates when doing night tours.

6.5 Penalty rates

6.5.1 Weekend penalty rates

- (a) All employees will be entitled to time and a-quarter for all ordinary hours worked between midnight Friday and midnight Saturday and for all ordinary time worked between midnight Saturday and midnight Sunday will be paid at the rate of time and a-half.
- (b) Casual employees will receive the same rate of pay for weekend work as for all weekly employees.

6.6 Rosters

- 6.6.1 The ordinary working hours of all employees will be worked in accordance with a roster prescribing the starting and ceasing times which will not be changed except upon 7 days' notice, or where they are altered by mutual agreement between the employer and the employees.
- 6.6.2 A copy of the roster will be posted in a conspicuous place on the employer's premises.

PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

- 7.1.1 Every employee (other than a casual employee) covered by this Award will at the end of each year of employment be entitled to 4 weeks annual leave on full pay.
 - (a) Annual leave will be 152 hours per year (4 weeks annual leave on the basis of a 38 hour week).
 - (b) Rostered days off arising from the implementation of the 38 hour week may be taken in conjunction with a period of annual leave.
- 7.1.2 Annual leave will be exclusive of any public holiday which may occur during the period of annual leave and will be paid for by the employer in advance.
 - (a) In the case of any and every employee in receipt immediately prior to that leave, ordinary pay at a rate in excess of the ordinary rate payable under this Award, at that excess rate; and
 - (b) In every other case, at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.
- 7.1.3 If the employment of an employee is terminated at the expiration of a full year of employment, the employer will be deemed to have given annual leave to the employee from the date of termination of employment and will forthwith pay to the employee, in addition to all other amounts due, 4 weeks pay for annual leave calculated in accordance with clause 7.1.5, and in addition payment for any public holidays occurring during such 4 week period.
- 7.1.4 If the employment of an employee is terminated before the expiration of a full year of employment, such employee will be paid, in addition to all other amounts due, an amount equal to 1/12th of the employee's pay for the period of employment calculated in accordance with clause 7.1.5.
- 7.1.5 *Calculation of annual leave pay*

Annual leave pay (including any proportionate payments) will be calculated as follows:

- (a) Leading hands, etc. – Subject to paragraph 7.1.5(b), leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked will be included in the wages to be paid to employees during annual leave.
- (b) All employees – Subject to the provisions of clause 7.1.5(c), in no case will the payment by an employer to an employee be less than the sum of the following amounts:
 - (i) The employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) Leading hand allowance or amounts of a like nature;
 - (iii) A further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.5(a) and (b).
- (c) The provisions of clause 7.1.5(b) will not apply to the following:
 - (i) Any period or periods of annual leave exceeding 4 weeks;
 - (ii) Employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, pieceworkers, and school based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of 7.6 hours' sick leave after each 6 weeks of employment.

- (c) Payment for sick leave will be made based on the ordinary number of hours that would have been worked by the employee if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave will be cumulative, but unless the employer and employee otherwise agree, no employee will be entitled to receive, and no employer will be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.
- (f) Part-time employees accrue sick leave on a proportional basis.

7.2.2 *Employee must give notice*

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

7.2.3 *Evidence supporting a claim*

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

7.2.4 *Accumulated sick leave*

An employee's accumulated sick leave entitlements are preserved when:

- (a) The is absent from work on unpaid leave granted by the employer;
- (b) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

The employee accumulate sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.5 *Workers' compensation*

Where an employee is in receipt of workers' Compensation, the employee is not entitled to payment of sick leave.

7.3 Bereavement leave

7.3.1 *Full-time and part-time employees*

Full-time and part-time employees shall on the death of a member of their immediate family or household in Australia is entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave will be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

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

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

7.4 Long service leave

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

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Jury service

An employee other than a casual employee required to attend for jury service during their ordinary working hours will be granted the necessary leave without pay to fulfil those requirements, including a reasonable period of travel to and from the designated court. In terms of section 71 of the *Industrial Relations Act 1999*, an employee's service is not broken by the granting of this leave.

An employee will notify the employer as soon as possible for the date upon which they are required to attend for jury service.

Further, the employee will give the employer proof of attendance and the duration of such attendance.

7.7 Public holidays

7.7.1 All work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

will be paid for at the rate of double time and a-half with a minimum of 4 hours.

7.7.2 Labour Day

All employees covered by this Award will be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Acts 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day.

Provided that a part-time employee will only be entitled to be paid for Labour Day where such employee is normally required to work on a Monday and, in such case, the term "full day's wage" will mean the number of ordinary working hours usually worked on a Monday. If any employee concerned actually works on Labour Day, such employee will be paid a full day's wage for that day and in addition, a payment for the time actually worked at one and a-half times the ordinary rate prescribed with a minimum of 4 hours.

7.7.3 Annual show

All work done by employees in a district specified from time to time by the Minister by notification published in the *Gazette* on the day appointed under the *Holidays Acts 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district will be paid for at the rate of double time and a-half with a minimum of 4 hours.

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

7.7.4 All time worked on any of the aforesaid holidays outside or in excess of the ordinary hours of work prescribed for the class of employee and to which an overtime rate is applicable under this Award will be paid for at double the rate prescribed by clause 5.2 for the day of the week upon which such holiday falls.

7.7.5 Double time and a-half

For the purposes of clause 7.7, where the rate of wages is a weekly rate, "double time and a-half" means one and one-half day's wages in addition to the prescribed weekly rate, or pro rata if there is more or less than a day.

7.7.6 Stand down

Any employee except a casual, who, having been dismissed or stood down by the employer during the month of December in any year, will be re-employed by that employer at any time before the end of the month of January in the next succeeding year will, if that employee will have been employed by that employer for a continuous period of 2 weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and will be paid by the employer (at the ordinary rate payable to that employee when so dismissed or stood down for any one or more of the following holidays, namely, Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of dismissal or standing down to and including the date of re-employment as aforesaid.

7.7.7 Employees other than casuals who do not work Monday to Friday of each week

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

- (a) A full-time employee will be entitled to either payment for each of the abovementioned public holidays or a substituted day's leave.
- (b) A part-time employee will be entitled to either payment for each of the abovementioned public holidays or a substituted days leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.

- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day will be entitled to payment for the public holiday or a substituted day's leave.
- (d) Where Christmas Day falls on a Saturday and the public holiday is observed on another day, an employee required to work on Christmas Day will be paid at the rate of time and three-quarters in the case of work performed on a Saturday and double time in the case of work performed on a Sunday.
- (e) Nothing in clause 7.7.7 confers a right to any employee to payment for the public holiday as well as a substituted day in lieu of a public holiday.
- (f) Casual workers who are employed on prescribed holidays should be paid at the relevant holiday rate (but exclusive of any augmentation of the casual loading).

7.7.8 *Stand down*

Any employee, with 2 weeks' or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, will be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and New Year's Day.

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

No provisions inserted in this Award relevant to this Part.

PART 9 – TRAINING AND RELATED MATTERS

9.1 Training

The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this Award, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- 9.1.1 Developing a more highly skilled and flexible workforce;
- 9.1.2 Providing employees with career opportunities through appropriate training to acquire additional skills; and
- 9.1.3 Removing barriers to the use of skills acquired.

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

10.1.3 *Uniforms*

- (a) Where employees are required to wear a uniform or any other distinctive type of clothing, such uniform or clothing will be supplied, maintained, and laundered at the employer's expense, and will be the property of such employer.
- (b) Where uniforms or clothing are not supplied or laundered by the employer as required by clause 10.1.3(a), the following allowances will be paid:
 - (i) Employees who supply their own uniforms or clothing will receive an allowance at the rate of \$141 per annum, which will be paid on a *pro rata* basis each pay day;
 - (ii) Employees required to launder their own uniforms or clothing will be paid \$2.25 per week and \$0.45 per day in the case of casual or part-time employees.

PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 *Authorised industrial officer*

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 *Entry procedure*

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

11.1.3 *Inspection of records*

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

11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

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

11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

11.2 **Time and wages record**

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

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

11.2.2 The time and wages record must also contain:

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

11.2.3 The employer must keep the record for 6 years.

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

11.3 **Union encouragement**

Clause 11.3 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Queensland Industrial Relations Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of an organisation of employees that has the right to represent the industrial interests of the employees concerned.

11.3.1 *Documentation to be provided by employer*

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

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

11.3.2 *Union delegates*

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

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

11.3.3 *Deduction of union fees*

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

11.4 **Trade union training leave**

A Union delegate or duly elected or appointed Union representative will, upon written application by the Union to the employer, such application being endorsed by the Union and given to the employer at least 2 months in advance (or such lesser period as mutually agreed between the Union and employer/s), be granted up to 5 working days' leave (non-cumulative) on ordinary pay each calendar year to attend courses or seminars conducted by the Union or specific training courses approved and accredited by the Union. The scope, content and level of such courses or seminars will be such as to contribute to a better understanding of industrial relations within the employer's operations.

Other courses mutually agreed between the Union and an employer, or employers, may be included under clause 11.4.

Any written application by a union seeking release of a delegate or representative to attend a course will include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted.

For the purposes of clause 11.4 "ordinary pay" means the ordinary time earnings paid to the employee exclusive of any allowances, penalty rates or travelling time and fares.

The granting of such leave will be subject to the following conditions:

11.4.1 The employee must have at least 6 months continuous service with the employer prior to such leave being granted and be the elected Union delegate/representative.

11.4.2 Unless otherwise agreed the maximum number of ordinary hours of industrial training leave which an employer will be required to grant each year will be as follows:

Number of ordinary hours worked by employees per week	Number of ordinary hours ITL leave per calendar year
380 – 1900	38
1901 – 3800	76
3801 & over	152

11.4.3 Where an employer has more than one place of employment in Queensland then the maximum number of employees entitled to attend a course at the same time will be 2. This will not prevent an employer from agreeing to release additional employees.

11.4.4 The granting of such leave will be subject to the convenience of the employer so that the operations of the enterprise will not be adversely affected.

Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular Union delegate or representative at a particular time (including where the employer might have previously advised of its ability to release such Union delegate or representative) the Union will not unreasonably press its request for the release of that delegate/representative at that time. If the matter is not amicably resolved, it will be processed in accordance with the grievance and dispute settling procedure in clause 3.1.

11.4.5 In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted by the employer to cover the absence of the employee.

11.4.6 Leave granted to attend such training courses will not incur any additional payment or alternate time off if such course coincides with an employee's day off in a 19 day month working arrangement, or with any other concessional leave.

11.4.7 Such paid leave will not affect other leave granted to employees under this Award.

11.4.8 On completion of the course the employee will, upon request, provide to the employer proof of their attendance at the course. Except in the case of sick leave or other authorised leave, non-attendance at a training course will result in the employee not being paid for such time.

11.5 **Award posting**

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

Dated 29 June 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Operative Date: 5 July 2004