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No. 12

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
CA337/04	Mossman Central Mill Company Limited – Certified Agreement	23/08/04	CA775/03
CA499/04	A & B Matthews Power Services Pty Ltd t/a ABM Power and Electrical Trades Union of Employees of Australia, Queensland Branch – Certified Agreement 2003/2005	18/10/04	
CA509/04	Global Air Conditioning Pty Ltd On Site Sheet Metal Employees and AMWU Queensland – Certified Agreement 2003-2005	18/10/04	
CA527/04	Hyne & Son Pty Ltd – Certified Agreement 2004-2007	5/11/04	CA619/01
CA529/04	Vitra Construction and Engineering Mount Isa Services Contractors – Certified Agreement 2004-2006	5/11/04	
CA531/04	Retail Solutions Australia Pty Ltd – Certified Agreement	5/11/04	
CA532/04	Skyrise Installations Pty Ltd – Certified Agreement	5/11/04	

The following Agreement has been amended by the Commission:

CA320/02	Building Service Contractors' Association of Australia – Queensland Division – Certified Agreement 2002	29/10/04	
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G.D. SAVILL,
Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION
Industrial Relations Act 1999 – s.125

Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Another (B1503 of 2004)

DRY CLEANING AND DYEING INDUSTRY AWARD – SOUTHERN AND CENTRAL DIVISIONS 2002

COMMISSIONER EDWARDS

21 October 2004

REPEAL AND NEW AWARD

THIS matter coming on for hearing before the Commission at Brisbane on 21 October 2004, this Commission orders that the said Award be repealed and awards as follows as from 21 October 2004:

DRY CLEANING AND DYEING INDUSTRY AWARD – SOUTHERN AND CENTRAL DIVISIONS 2004**PART 1 – APPLICATION AND OPERATION****1.1 Title**

This Award is known as the Dry Cleaning and Dyeing Industry Award – Southern and Central Divisions 2004.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 21 October 2004.

1.4 Award coverage

This Award applies to employees and employers engaged in the industry of dry cleaning and/or hat blocking and cleaning and/or dyeing and/or repairing and/or invisible mending of garments or articles and/or performing any operation incidental thereto in dry cleaning establishments and their auxiliary receiving depots in the Southern and Central Divisions of Queensland.

1.5 Definitions

- 1.5.1 “Act” means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.5.2 “Commission” means the Queensland Industrial Relations Commission.
- 1.5.3 “Union” means the Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees.

1.6 Area of operation

For the purposes of this Award, the State of Queensland, inclusive of the portion specified in clause 1.4 as being the area of operation of this Award, shall be divided into the following Divisions and Districts:

- 1.6.1 *Southern Division* – That portion of the State of Queensland north of the border of Queensland and New South Wales, commencing at the sea coast then westward along the border to the junction of the border with 145 degrees east longitude, then due north by that degree of longitude to its junction with 24 degrees 30 minutes of south latitude, then due east by that parallel of latitude to the sea coast, then by the coast southerly to the border.
- 1.6.2 *Central Division* – That portion of the State of Queensland north of a line running along the parallel of 24 degrees 30 minutes of south latitude from the sea coast to its junction with 145 degrees of east longitude, then due north by that degree of longitude to its junction with 22 degrees 30 minutes of south latitude, then along that parallel of latitude, due east to its junction with 147 degrees of east longitude then due north by that degree of longitude to its junction with 22 degrees of south latitude, then by that parallel of latitude due east to the sea coast, then down the coast in a southerly direction to its junction with 24 degrees 30 minutes of south latitude.
- 1.6.3 *Eastern District* – That portion of the Divisions east of 147 degrees longitude.
- 1.6.4 *Western District* – That portion of the Divisions west of 147 degrees longitude.

1.7 Parties bound

This Award is legally binding on the employer(s) and employees as prescribed by clause 1.4 the Union and its members.

PART 2 – FLEXIBILITY

2.1 Enterprise flexibility

- 2.1.1 Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the Award should be amended so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process will apply:
- (a) A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace will be established.
 - (b) For the purpose of the consultative process the employees may nominate the Union or other representative to represent them.
 - (c) Where agreement is reached an application will be made to the Commission.

PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Cumulative mechanisms and procedures in the workplace

The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries covered by this Award and to enhance the career opportunities and job security of employees in such industries.

3.2 Grievance and dispute settling procedure

3.2.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

- (a) The employee and their supervisor meeting and conferring on the matter; and
- (b) If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and their nominated representative, if any, and more senior levels of management.
- (c) If the matter is still not resolved, a discussion will be held between representatives of the employer and the Union or other employee representative.
- (d) If the matter cannot be resolved it may be referred to the Commission.

3.2.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to their health and safety.

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

4.1 Employment categories

4.1.1 Employees under this Award will be employed in one of the following categories:

- (a) full-time employees; or
- (b) regular part-time employees; or
- (c) casual employees.

4.1.2 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, regular part-time or casual.

4.2 Full-time employment

Persons employed under the full-time category of employment shall work 38 hours per week.

4.3 Part-time employment

4.3.1 Persons may be employed as part-time employees subject to the following terms and conditions:

- (a) Part-time employee for the purpose of clause 4.3.1 means an employee who is employed on a permanent basis of less than 38 hours per week.
- (b) Part-time employees will be paid 1/38th of the ordinary rate per hour for the work performed and will be entitled to sick pay, annual leave, long service leave and payment for public holidays on a *pro rata* basis in accordance with the hours worked in the performance of such duties.

Provided that:

- (i) by agreement between the employee and the employer, the employee will receive 20% extra in lieu of *pro rata* annual leave, sick leave and public holidays; or
- (ii) where, for a period not exceeding two months, the part-time employee genuinely works an irregular number of hours each week, the employer may decide to pay such employee 20% extra in lieu of *pro rata* annual leave, sick leave and public holidays.

4.3.2 Overtime

Part-time employees will be employed within the ordinary spread of hours applicable to full-time employees who may be employed in the same classifications. Where such part-time employees are employed at a time outside these ordinary hours, the hourly rate (exclusive of the 20% loading referred to in clause 4.3.1(b)(i), if paid) will be increased by the appropriate overtime penalty.

4.3.3 Time work and payment by results

Part-time employees may be employed on time work and payment by results work in accordance with the following provisions.

- (a) Time workers, will be paid for each hour worked at the rate of at least 1/38th of the minimum weekly wage prescribed by this Award for the class of work performed by them.
- (b) Payment by results workers will be paid at the appropriate payment by results rate payable under this Award.
- (c) Provided that
 - (i) no part time employee will be paid less than the minimum weekly wage as is proportionate to the time worked by them.
 - (ii) no part time employee will be employed both on time work and payment by results work in any week.

4.3.4 Payment or deduction of payment in lieu of notice, annual leave and severance pay

The payment or deduction of payment in lieu of notice, the entitlement to annual leave and severance pay pursuant to clause 4.10, will be calculated on a proportionate basis. The basis for this calculation will be the average weekly number of hours worked by the employee during the preceding 12 months or if there is not a 12 month period of employment then the average of the actual hours worked during the period of employment.

4.3.5 *Public holidays*

A part-time employee will only be entitled to payment for a public holiday for the number of hours the employee would have otherwise been rostered to work had the day been an ordinary working day for that employee.

4.3.6 *Sick leave*

A part-time employee will be entitled to sick leave in accordance with clause 7.2, but will be paid only on a proportionate basis.

4.3.7 *Attendance for duty*

A part-time employee will not be required to attend for duty more than once on any one day.

4.3.8 *Provisions of Award*

All other provisions of this Award will apply to part-time employees.

4.4 **Casual employment**

4.4.1 A casual employee for the purpose of clause 4.4 means an employee who is engaged in relieving work or work of a casual nature and who is engaged and paid by the hour, but does not include an employee who could properly be classified as a full-time or part-time employee.

4.4.2 Casual employees must be paid as follows:

- (a) If on time work, 1/38th of the ordinary rate for the class of work performed plus 23%.
- (b) If on any system of payment by results, the appropriate rate plus 23%.

4.4.3 A casual employee will not be entitled to any *pro rata* annual leave, sick leave or public holidays.

4.4.4 Any time worked by casual employees in excess of the daily limitations prescribed for weekly employees in clause 6.1, or in excess of 38 hours per week will be paid for at the rate of time and a half for the first 3 hours and double time thereafter.

4.4.5 A casual employee will not be required to attend for duty more than once on any one day.

4.5 **Mixed functions**

An employee engaged for more than 4 hours on one day on duties carrying a higher rate than their ordinary classification will be paid the higher rate for such day. If for less than 4 hours the employee will be paid the higher rate for the time so worked.

A higher paid employee will, when necessary, temporarily relieve a lower paid employee without loss of pay.

4.6 **Incidental or peripheral tasks**

Employees within each classification are to perform a wider range of duties, including work which is incidental or peripheral:

Provided that employees performing such tasks or functions are trained and able to do so.

4.7 **Anti-discrimination**

4.7.1 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.

4.7.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.2, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.7.3 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.

4.7.4 Nothing in clause 4.7 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*; or
- (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission / Anti-Discrimination Commission Queensland.

4.8 **Termination of employment**

4.8.1 *Statement of employment*

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

4.8.2 *Termination by employer*

- (a) The 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 (a) above, employees over 45 years of age 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 hour 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 4.8 shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of casual employees, or employees engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.8.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that given by an employer save and except that there shall be no additional notice based on the age of the employee concerned.

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 4.8.2(d) for a period of notice of one week.

Should any employee whose engagement has exceeded 2 months be discharged or dismissed from employment, other than an account of dishonesty, disobedience, or drunkenness within 14 days of Christmas Day, the employee shall be paid for Christmas Day, Boxing Day and New Year's Day at ordinary rates, and if so dismissed within 14 days of Good Friday, the employee shall be paid for Good Friday and Easter Monday at ordinary rates.

Annual leave will not be used to provide the notice prescribed in clauses 4.8.2 and 4.8.3 unless mutually agreed.

4.9 **Introduction of changes**

4.9.1 *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.
- (b) "Significant effects" include 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 this Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.9.2 *Employer's duty to discuss change*

- (a) The employer shall discuss with the employees affected and, where relevant their Union, 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 effects of such changes (eg. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (c) For the purpose of such consultation, the employer shall provide in writing to the employees concerned and, where relevant, their Union, 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 the employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.10 **Redundancy**

4.10.1 *Consultation before terminations*

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and, where relevant, their Union.

- (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 4.10.1, 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, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.10.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.10.1 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.

4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of clause 4.10 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 4.10.3 "business" includes trade, process, business or occupation and includes 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.

4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, 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.

4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1 the employer shall notify Centrelink as soon as possible giving 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.

4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1 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.

4.10.7 *Superannuation benefits*

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

- (a) an 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.

4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1 may terminate such employment during the period of notice, and if so, shall be entitled to the same benefits and payments under clause 4.10 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.

4.10.9 *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.

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

Clause 4.10 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.

4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

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

4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 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 annum, 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.

4.10.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of clause 4.10 into the Award, transmitted from an employer (transmitter) 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 transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - 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 transmitter; and
 - which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.10.14 *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.

4.11 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 to 71 of the Act, as amended from time to time.

4.12 Payment by results

4.12.1 Task system

Where an employer introduces a task system, the minimum task attracting the minimum rates provided for in this Award must be determined in a manner prescribed by this Award, and must be made known in writing to all employees to whom the task system applies, both individually and collectively.

- (a) The task rate in respect to all garments or other articles or parts of articles will be determined in the manner set out in this subclause and may only be altered in the manner set out in clause 4.12:
 - (i) Where there are fewer than 20 employees involved in the work to be performed, the employer or the employer's representative, in conference with two employees chosen by and from such employees, must agree with the rates;
 - (ii) Where there are 20 or more employees involved in the work to be performed the employer or the employer's representative in conference with three employees so chosen, must agree with the rates.
- (b) The task rates must be fixed so as to enable the average worker to earn the minimum wage prescribed by this Award for the class of work to be performed; and any number of garments or parts of garments or other articles or parts of articles made in excess of the minimum weekly task fixed by the task rates for the minimum weekly wage must be paid for at *pro rata* plus 10%.
- (c) When an employee is employed for less than a week on the task rates, then the task of the said employees must be fixed at *pro rata* the weekly rate.
- (d) Any excess number of garments or parts of garments or other articles or parts of articles made in any day by the employee are subject to the same *pro rata* payment as would apply if the employee were engaged for the whole week.
- (e) Where employees work in a combination or team the additional amount of wages must be distributed amongst the employees on a percentage basis, according to the amount of their ordinary weekly wages. In clause 4.12, a combination or team means 2 or more persons working together in the same class of work, employed on weekly wages where a task has been imposed.
- (f) Where a task worker is available, ready and willing to work during ordinary hours of duty prescribed by this Award, and where the employer does not provide work for the task worker, the employer must pay the task worker at the appropriate weekly rate for the class of work the employee normally performs. In the case of apprentices and improvers, the employer must pay not less than the amount prescribed by this Award for apprentices or improvers of like experience.

4.12.2 Piece-work

- (a) Subject to payment of the minimum weekly wages prescribed by this Award for employees in their respective classes, and to the conditions set out in clause 4.12.2, an employer in conjunction with their employees may fix piece-work rates. Such rates enable an employee of average capacity working under like conditions to earn at least 10% more than the minimum weekly wage in their respective classes. The same piece-work rate must be paid to all piece-workers doing the same operation in the factory or workshop, including improvers or apprentices.
- (b) Where a piece-worker is available and ready and willing to work during the ordinary working hours prescribed by this Award, and where the employer does not provide work for the employee, the employer must pay the employee the appropriate weekly rate for the class of work the employee normally performs. In the case of apprentices and improvers, the employer must pay not less than the amount prescribed by this Award for apprentices or improvers of like experience.
- (c) The piece-work rate in respect of all garments or parts of garments or other articles or parts of articles must be determined in the following manner:
 - (i) Where there are 20 or more employees involved in the work to be performed the employer or the employer's representative, in conference with three employees chosen by and from such employees must agree with the rates.
- (d) The employer must, within 24 hours of a new piece rate scheduled being agreed, post and keep posted a signed and dated copy of the schedules in a conspicuous place in each room of the workshop or factory where such piece-work is being performed.

4.12.3 Adjustment of piece-work rate

Piece-work rates must be adjusted proportionate to any alterations in the weekly wage set out in 5.2.

4.12.4 Bonus or other method of payment by results

- (a) Subject to employees receiving at least the appropriate minimum time rate provided by this Award and subject to the following provisions of clause 4.12, an employer may remunerate the employer's employees under any individual or group bonus system or other system of payment by results.
- (b) The employer may adopt any form of bonus system. Such system enables employees, who apply average skill and effort while working under normal conditions, to earn at least 10% above appropriate ordinary time rates.
- (c) Before any such system is introduced, it must meet the following requirements:
 - (i) where there are fewer than 20 employees involved in the work to be performed, the system must be approved by two employees chosen by and from such employees;

- (ii) where there are 20 or more employees involved in the work to be performed, the system must be approved by three employees chosen by and from such employees.
- (d) Where a bonus system is in operation, the basis of such system must be reduced to writing. Where the Union has at least one member covered by the system, the employer must provide a copy of this document on request, to the federal and/or state secretary of the Union, on a confidential basis. The basis of payment under any such system must not be altered except where warranted by change of circumstances, operations, methods or material or to correct a demonstrable clerical error or by mutual agreement between the employer and the majority of employees.

4.13 Apprentices

4.13.1 *Scope of the apprenticeship clause – definition*

- (a) Clause 4.13 applies to apprentices. An apprentice is an employee who is engaged under a Training Contract registered by the relevant State or Territory Training Authority, where the qualification outcome specified in the Training Agreement is a relevant qualification from a Training Package endorsed by the National Training Quality Council, or successor organisation.
- (b) For the purpose of clause 4.13.1 a relevant qualification is a qualification:
 - (i) from a National Training Package that covers occupations or work which are covered by this Award, or is a qualification from a Training Package listed in this Award; and
 - (ii) at Australian Qualifications Framework Certificate Level III [or at Level IV where applicable] except where the qualification can normally be completed through a Training Agreement of a duration of 2 years or less (note: such qualifications would generally be covered by traineeship provisions).
- (c) An apprentice shall also include an employee who is engaged under a Training Agreement or Contract of Training for an apprenticeship declared or recognised by the relevant State or Territory Training Authority.

4.13.2 *School based apprentices*

Clause 4.13.2 applies to school based apprentices. A school based apprentice is a person who is undertaking an apprenticeship in accordance with clause 4.13 while also undertaking a course of secondary education.

- (a) Wage rate:
 - (i) The hourly rates for full-time junior and adult apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the-job training.
 - (ii) For the purposes of clause 4.13.12, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the apprentice is paid is deemed to be 25% of the actual hours each week worked on-the-job. The wages paid for training time may be averaged over the semester or year.
- (b) Off-the-job training:
 - (i) The school based apprentice shall be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
 - (ii) For the purposes of clause 4.13.2, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- (c) Duration of apprenticeship:

The duration of the apprenticeship shall be as specified in the training agreement or contract for each apprentice. The period so specified to which the apprentice wage rates apply shall not exceed 6 years.
- (d) Progression through the wage structure:
 - (i) School based apprentices shall progress through the wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice.
 - (ii) These rates are based on a standard full-time apprenticeship of 3 years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.
- (e) Conversion from a school based to full-time apprentice:
 - (i) Where an apprentice converts from school based to full-time, all time spent as a full-time apprentice shall count for the purposes of progression through the wage scale. This progression shall apply in addition to the progression achieved as a school based apprentice.
 - (ii) Except as provided in clause 4.13 or where otherwise stated, school based apprentices shall be entitled *pro rata* to all of the conditions of employees under this Award.
- (f) Relevant training qualifications:

Subject to further orders of the Commission, school based apprentices will undertake the following relevant training qualification:

National code	Qualification name
LMT31200	Certificate III in Dry Cleaning Operations

In their training, school based apprentices will follow compulsory and elective units as specified in the endorsed training package.

PART 5 – WAGES AND WAGE RELATED MATTERS

5.1 Definition of classification

The classification of an adult employee will not affect their obligations to perform such duties as their employer may require from time to time providing such employee is skilled and competent to perform such duties.

5.2 Wage rates

5.2.1 Adult employees

- (a) Subject to clause 5.2, an employee having reached the age of 21 years, other than an apprentice shall be paid a rate of not less than that assigned in the following table to the relevant classification.

Group	Classification	Total Award Rate per week \$	Minimum
A	Tradesperson dry cleaner	561.20	
B	Invisible mender	527.50	
C	Presser, receiver and dispatcher in charge (namely a person in charge of a depot and responsible for the keeping of records and responsible for cash) Cleaner (operating dry cleaning machine)	492.40	
D	Repairer (other than tailor or tailoress) Spotter presser (off-set press) Hand ironer receiver and/or dispatcher	492.40	
E	Wet Cleaner, Steam air finisher, Examiner of garments, Assembler of garments, Sorter of garments	484.10	
F	All others	467.40	

- (b) A person employed in any area of operation of this Award who is required to be solely accountable for all aspects of a self contained dry cleaning establishment including the receiving of garments and articles, the cleaning, spotting, pressing, packaging and dispatch of garments and articles, the handling of monies, the keeping of records and maintenance of the establishment will be paid at a rate not less than the rate prescribed in this table for group A.

(c) Arbitrated Safety Net Adjustment:

- (i) The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2004 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.

5.2.2 Junior employees

- (a) The minimum rates of wages to be paid to junior employees will be as follows:

Age	Percentage of rate per week for adult employees under classification – sorter of garments
	%
Under 16 years of age.....	50
16 years and under 17 years	55
17 years and under 18 years	65
18 years and under 19 years	75
19 years and under 20 years	85
20 years and under 21 years	93

- (b) The percentage wages will be calculated in multiples of 5 cents, amounts of 2 cents or less being taken to the lower multiple and amounts in excess of 2 cents being taken to the higher multiple.

5.2.3 Juniors employed in a receiving depot

Notwithstanding anything contained in this Award, any junior working on their own and responsible for cash transactions and/or in charge of a depot will be paid not less than the rate prescribed for a junior 19 years and under 20 years plus an amount equivalent to the difference between the rates of pay of a Receiver and Dispatcher-in-Charge and a Receiver and Dispatcher, that is between groups C and D in clause 5.2 – Wage Rates.

5.2.4 Apprentice wage rates

- (a) The following wage rates will apply to apprentices engaged in accordance with 4.13.

Year of apprenticeship	Percentage of ordinary weekly wages of adult tradesperson	
	%	
1st year	first 6 months.....	45
	second 6 months	50
2nd year.....		60
3rd year	first 6 months.....	75
	second 6 months	90

- (b) The above percentages will be calculated in multiples of 5 cents, amounts of 2 cents and less being taken to the lower multiple and amounts in excess of 2 cents being taken to the higher multiple.
- (c) An employee who is under 21 years of age at the expiration of their apprenticeship and thereafter works as a minor in the classification of dry cleaner will be paid not less than the adult rate of that classification.

5.3 Allowances

5.3.1 Meal allowance

- (a) An employee required to work overtime for more than one hour after the usual ceasing time or beyond 6.00 p.m. (whichever is the later) on any day, Monday to Friday inclusive, will be reimbursed for the purchase of a meal or paid a meal allowance of \$9.60. The provisions of clause 5.3.1 will not apply where the employer provides the employee with a meal of equivalent value.
- (b) If the notice is given and overtime is not worked (except as a result of a breakdown in machinery or plant) the meal money prescribed above will be paid.

5.3.2 Protective clothing allowance

Where any person is required to work under wet or dirty conditions, the employees will be reimbursed for the purchase of suitable protective clothing, including footwear. The provisions of clause 5.3.2 do not apply where such clothing is supplied free of charge by the employer to the employee concerned.

5.3.3 Uniforms allowance

- (a) Where the employer requires an employee to wear any uniforms the employer must reimburse the employee for the cost of purchasing such uniform. The provisions of clause 5.3.3 do not apply where the uniform is paid for by the employer.
- (b) Where the employee is responsible for laundering the uniform the employer must reimburse the employee for the demonstrated costs of laundering it. The employer and the employee may agree on an arrangement under which the employee will wash and iron the uniform for an agreed sum of money to be paid by the employer to the employee each week.

5.3.4 Tools of trade allowance

An employee will be reimbursed the demonstrated cost of purchase for all tools of trade required in the performance of the employee's duties. The provisions of clause 5.3.4 will not apply where the employer provides such tools of trade.

5.4 Payment of wages

Employees will be paid all wages due to them in full during the ordinary working hours not later than 2 working days following the termination of the working week.

5.5 Superannuation

The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1995*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993* (collectively the superannuation legislation). This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

5.5.1 Definitions

- (a) The Fund means the Australian Retirement Fund.
- (b) Ordinary time earnings for the purposes of clause 5.5, means:
 - (i) award classification rate;
 - (ii) any regular over-Award pay as well as casual rates received for ordinary hours of work;
 - (iii) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;
 - (iv) the payment for work performed exclusively and wholly during overtime hours as Saturday and Sunday;
 - (v) payment by results earnings; and
 - (vi) ordinary time earnings does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowances.

5.5.2 Employer contributions

- (a) In addition to other payments provided for under this Award, the employer will make a superannuation contribution to the Fund on behalf of the eligible employees, of an amount equivalent to three percent of the employees ordinary time earnings.
- (b) A respondent employer will contribute to the fund:
 - (i) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or

- (ii) equivalent monthly contributions at such other time and in such manner as may be agreed in writing between the Trustees of a fund and the employer; and
- (iii) contributions will continue to be paid in accordance with clause 5.5 during any period in respect of which an employee is entitled to receive accident pay in accordance with clause 10.4.
- (c) The provisions of clause 5.5 do not exclude the employer from their obligations under the *Superannuation Guarantee (Administration) Act 1992* or the *Superannuation Guarantee Charge Act 1992* as amended from time to time.
- (d) Subject to further order of the Commission, respondent employers are only required to make contributions in accordance with clause 5.2.2 on behalf of employees who have been employed for a qualifying period of eight continuous weeks. Once an employee has completed the qualifying period, the employer's contributions must be paid from the date the employee commenced employment.

5.5.3 Cessation of contributions

The obligation of the employer to contribute to the Fund in respect of an employee will cease on the last day of such employees employment with the employer.

5.5.4 Voluntary employees contributions

- (a) An employee may make contributions to the fund in addition to those made by the respondent employer under clause 5.5.2.
- (b) An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.
- (c) An employer who received written authorisation from the employee, must commence making payments into the fund on behalf of the employee within 14 days of receiving authorisation.
- (d) An employee may vary their additional contributions by a written authorisation and the employer must alter the additional contributions within 14 days of receiving the authorisation.
- (e) Additional employees contributions to the fund requested under clause 5.5 will be expressed in whole dollars.
- (f) Employees will have the right to adjust the level of contributions made on their own behalf on the first of July each year. By agreement with the respondent employer the employees may vary their additional contribution at other times.

5.5.5 Exemptions

- (a) An employer must, in accordance with the governing rules of the fund, make superannuation contributions to:
 - (i) the Australian Retirement Fund; and
 - (ii) any fund agreed between an employer and an employee.
- (b) If the employee is a member of the Union, the employee may be represented by that Union in meeting and conferring with the employer about the matter and the employer must give the Union a reasonable opportunity to meet and confer about the matter. Note: the consent of the Union is not required to any agreement between the employer and the employee.
- (c) Any agreement reached in accordance with clause 5.5 must be recorded in the time and wages records kept by the employer in accordance with clause 11.2.
- (d) Any dispute or difficulty which arises over the implementation or continued operation of clause 5.5 must be handled in accordance with clause 3.1 and 3.2.
- (e) An employer is not required to contribute to more than one fund in respect of an employee employed under this Award.

5.5.6 Absence from work

Subject to the governing rules of the fund, the following provisions will apply:

(a) Paid leave

Contributions will continue whilst a member of the fund is absent on paid annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave or other paid leave.

(b) Work related injury or illness

In the event of an employees absence from work being due to work related injury or work related illness, contributions at the normal rate will continue for the period of the absence, provided that:

- (i) the member of the fund is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this Award; and
- (ii) the person remains an employee of the employer.

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

6.1 Hours of work

6.1.1 Ordinary working week

Unless otherwise specified in clause 6.1 the ordinary hours of work will average 38 hours per week, worked in accordance with 6.1.

6.1.2 *Spread of hours*

- (a) Ordinary hours will be worked between:
 - (i) 7.00 a.m. and 7.00 p.m. – Monday to Friday;
 - (ii) 7.00 a.m. and 9.00 p.m. on a prescribed late night shopping night(s) in an area or locality covered by this Award; and
 - (iii) 7.00 a.m. and 5.00 p.m. on Saturday.
- (b) The starting and finishing times of each employee will be fixed by the employer and will not be altered, except in a case of emergency, unless one week's notice of the change has been given to the employee.
- (c) Any other starting or finishing times may be agreed upon by the employer and the employee concerned.
- (d) An employer who requires employees in package plants to work 38 ordinary hours in one week within 4 days, Monday to Friday inclusive, will inform the employee at least 7 days prior to commencement of that working week of the days upon which they are rostered to work and the days on which they are rostered off. Where the regular late night shopping night(s) is a public holiday(s) and another night(s) is nominated, the prescribed late night shopping hours will apply.
- (e) No employee will work more than 9 hours without payment of overtime in non-package plants and 10 hours without payment of overtime in package plants.

6.2 **Roster posting**

6.2.1 *Rostered days off*

- (a) Subject to the daily limitations prescribed in clause 6.1, where the employer and a majority of employees agree, the hours of work may be arranged by any one of the following methods:
 - (i) by working shorter hours on one or more days of each week;
 - (ii) by fixing a day on which all employees will be off during a particular work cycle;
 - (iii) by rostering employees off on various days of the week during a particular work cycle.
- (b) In circumstances where a rostered day off applies, the starting and finishing times determined in accordance with clause 6.1.2(a) will constitute the ordinary hours of work. Any work performed outside or in excess of those hours must be paid as overtime.
- (c) Where employees are entitled to a rostered day or days off in accordance with clauses 6.2.1(a) or 6.2.1(b), the employer must notify employees not less than 4 weeks in advance of the weekday the employee is to take off. Where an employee has not accumulated a full day's entitlement when a rostered day off occurs, the employee for that day will be paid for the actual time accrued.
- (d) Where there is agreement between the employer and the majority of employees, rostered days off may accumulate to a maximum of 4 days which must be taken in one continuous period within one month of accrual.
- (e) Substitution of an employee's rostered day off may occur in the following circumstances:
 - (i) by agreement between the employer and the majority of employees, in cases where there is a breakdown in machinery or a failure or shortage of electric power, or to meet the requirements of the business in the event of a rush of orders or some other emergency situation; or
 - (ii) by agreement between the employer and an individual employee that the rostered day off can be taken on another day.

6.3 **Meal breaks**

- (a) An employee will be granted a meal break of not less than 30 minutes which should be taken not later than 5 hours of commencing duty.
- (b) Where it is not possible to take the meal break on any day, the meal break will be treated as time worked and paid at the rate of time and a half of the ordinary hourly rate, until released for a meal.

6.4 **Rest pauses**

A rest period of 10 minutes will be allowed by an employer to all employees each day between the time of commencing work and the usual meal break. A further rest period of 10 minutes will be allowed between the usual meal and the usual time of ceasing work.

6.5 **Overtime**

- 6.5.1 All time worked by a weekly employee in excess of 38 hours in a week or in excess of their normal number of daily hours or outside the daily limits prescribed in clause 6.1 will be paid for at the rate of time and a half for the first three hours and double time thereafter. Each day will stand alone for the purpose of calculating overtime and any overtime worked on any day of the week will be paid for on a daily basis.

6.5.2 *Reasonable overtime*

- (a) Subject to clause 6.5.2(b), an employer may require an employee to work reasonable overtime at overtime rates.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace or enterprise;

- (iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
- (v) any other relevant matter.

6.5.3 *Overtime meal break*

Notwithstanding anything contained in this Award, employees required to work for longer than one and a-half hours after the usual ceasing time will be allowed not less than 30 minutes meal break. Clause 6.5.3 will not apply to employees on any day where there is an early ceasing time, unless a total of 5 and a-half hours or more inclusive of overtime is to be worked following the midday meal break.

6.5.4 *Overtime rest period*

An employee other than an employee subject to 6.5.3 who is required to work overtime for more than one hour beyond the ordinary ceasing time on any day, other than on a working day of less than 8 hours, will be entitled to a rest period of 10 minutes paid for at the appropriate rate.

6.5.5 *Time off in lieu*

- (a) an employer and an employee may agree that the employee will take time off in lieu of payment for all or some overtime worked.
- (b) The agreement will:
 - (i) provide for the time off in lieu of overtime to be taken in the normal working hours of the employee;
 - (ii) provide for the time off to be taken to be calculated as "value time" i.e. if an employee works for one hour at time and a-half penalty rates, the employee will be entitled to take one and a-half hours off in lieu;
 - (iii) be in writing;
 - (iv) provide for the time off in lieu of overtime to be taken within a period of 2 months of the date on which the overtime is worked.

6.6 **Shift work**

Shifts may be worked by adult employees at hours which are agreed upon by the employer and employee(s). An employee employed on shift work other than day shift will be paid 15% more than the prescribed rate of pay for the classification.

6.7 **Weekend work and late night penalties**

- (a) Where any ordinary hours of work are performed by a weekly employee:
 - (i) after 7.00 p.m. and before 9.00 p.m. on a prescribed late night shopping night(s) in an area or locality covered by this Award and between 7.00 a.m. and 12.00 p.m. on a Saturday, an employer will pay a penalty of 25% above the wage rate prescribed in clause 5.2;
 - (ii) between 12.00 p.m. and 5.00 p.m. on a Saturday, an employer will pay to an employee a penalty of 50% above the wage rate prescribed in clause 5.2.
- (b) The usual working hours will be prominently displayed in each work room or factory or depot.

6.8 **Facilitation provision**

- 6.8.1 A facilitation provision provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or an employee, or the majority of employees, in the enterprise or workplace concerned.
- 6.8.2 Facilitative provision in this Award are contained in the following clauses:

Subject Matter	Clause Number
Part time employees	4.3
Bonus or other method of payment by results	4.12
Hours of work	6.1
Overtime	6.5
Annual leave	7.1
Public holidays	7.5

PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 *Period of leave*

- (a) A full-time or part-time employee is entitled to a period of 28 consecutive days leave (i.e. 4 weeks) after 12 months continuous service (less the period of annual leave) with an employer. Casual employees are not entitled to annual leave.
- (b) The annual leave will accrue at the rate of 2.923 hours for each 38 ordinary hours worked.

7.1.2 *Payment for period of leave*

Subject to (annual close down), employees before going on leave are to be paid the wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. This amount will be calculated as follows:

- (a) Time workers:
 - (i) The wages paid must be worked out on the basis of what the employee would have been paid under the Award for working ordinary hours during the period of leave during the relevant period including any over Award payment.
 - (ii) The employee is not entitled to payments in respect of overtime, shift work or penalty rates.

(b) Payment by results:

- (i) In the case of employees employed under any system of payment by results, the rate will be at the time workers rate. Provided that they will be entitled to receive an additional payment based on the average weekly incentive payment earned in excess of the appropriate Award wage for the classification concerned. The average will be calculated on the previous twelve months' service for employees who have completed twelve months' continuous service and in cases where employees have completed less than twelve months' continuous service the average for the time so worked.
- (ii) The employee is not entitled to payments in respect of overtime, shift work or penalty rates.

(c) Over Award payments on annual leave:

- (i) An employee who is not working under an incentive scheme based on production, and who is receiving a weekly over-award payment will be entitled to receive the whole of such weekly over-award payment for each week of annual leave to which employee is entitled.
- (ii) All amounts paid in respect of overtime, shift work or penalty rates will be excluded.
- (iii) The over Award payment will not apply where the employee receives *pro rata* payment in lieu of annual leave on termination of employment with less than 12 months' service, except where:
 - (A) the employee has more than 6 months' service with an employer and is terminated for reasons other than for misconduct
 - (B) an employee terminates during the year on account of personal illness, substantiated by a medical certificate
 - (C) an employee terminates on the day that the factory closes down for annual leave.
- (d) Where an employee has accrued a full entitlement to annual leave after qualifying 12 month period and their employment ceases for any reason before the whole or any part of such leave entitlement has been taken, the weekly over-award payment referred to in clause 7.1.2(c) will apply in respect to that full entitlement.

7.1.3 *Loading on annual leave*

- (a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed by clause 5.2.
- (b) An employee employed on day work or shift work will receive the 17½% loading.
- (c) The loading prescribed by clause 7.1.3 does not apply to proportionate leave on termination.

7.1.4 *Calculation of continuous service*

- (a) Except for the following, any absences from work are not to be taken into account and will not count as time worked in calculating the leave entitlement:
 - (i) any interruption or termination of the employment by the employer which has been made with the intention of avoiding obligations under clause 7.1;
 - (ii) any absence from work on account of personal sickness or accident or on account of leave granted by the employer or absence due to long service leave; or
 - (iii) any absence with reasonable cause, proof of which will be upon the employee.
- (b) Any absence with reasonable cause (proof of which will be upon the employee) which does not count as time worked in calculating the leave entitlement does not break continuity of service for the purpose of this Award.

7.1.5 *Public holidays falling during annual leave*

- (a) If any public holiday prescribed by clause 7.6 falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there must be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.
- (b) Where a holiday or holidays fall in a period of annual leave and the employee without reasonable excuse is absent from their employment on the working day prior to the commencement of their annual leave, or fails to resume work at the ordinary starting time on the working day immediately following the last day of the period of the employee's annual leave, the employee will not be entitled to payment for the public holidays.

7.1.6 *Annual leave to be taken in one or more continuous periods*

- (a) Annual leave will be given and taken in one or 2 continuous periods.
- (b) If the employer and an employee so agree, the annual leave entitlement may be taken in more than 2 periods.

7.1.7 *Leave to be taken*

The annual leave provided for by clause 7.1 must be taken and except as provided by clauses 7.1.10 and 7.1.11 payment will not be made or accepted in lieu of annual leave.

7.1.8 *Time of taking leave*

Annual leave will be given at a time fixed by the employer within a period not exceeding 3 months from the date when the right to annual leave accrued and after not less than one months' notice to the employee.

7.1.9 *Leave allowed before due date*

- (a) An employer may allow an employee to take annual leave either wholly or partly in advance before the leave becomes due. In such case a further period of annual leave will not commence to accrue until after the expiration of the 12 months in respect of which the annual leave or part of it had been taken before it accrued.

- (b) Where annual leave or part of it has been granted before the leave is due, and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, and the amount paid by the employer to the employee for the annual leave or part so taken in advance exceeds the amount which the employer is required to pay to the employee under clause 7.1.10, the employer will not be liable to make any payment to the employee under clause 7.1.10 and is entitled to deduct the amount of excess from any remuneration payable to the employee upon the termination of employment.

7.1.10 Proportionate leave on termination

An employee other than a casual who after one month's continuous service in any qualifying 12 monthly period with an employer lawfully leaves the employment of the employer or is terminated by the employer will be paid 2.923 hours for each 38 ordinary hours worked at the appropriate rate of wage calculated in accordance with clause 5.2.

7.1.11 Annual close down

Where an employer closes down the enterprise, or part of it, for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part of it, the following will apply:

- (a) The employer may, by giving not less than one month's notice of the intention to do so, stand off for the duration of the close-down all employees in the enterprise or part of it concerned and allow to those who are not then qualified for a full entitlement to annual leave for 12 months' continuous service paid leave on a proportionate basis at the appropriate rate of wage as prescribed by clauses 5.2 and 5.3 for 2.923 hours for each 38 ordinary hours worked.
- (b) An employee who has then qualified for a full entitlement to annual leave for 12 months' continuous service and has also completed a further week or more of continuous service will be allowed leave, and will subject to clause 7.1.5, also be paid for 2.923 hours in respect of each 38 ordinary hours worked service since the close of the employee's last 12 month qualifying period.
- (c) The next 12 monthly qualifying period for each employee affected by such close down will commence from the day on which the enterprise or part of it concerned is re-opened for work. All time during which an employee is stood off without pay for the purposes of clause 7.1.11 is deemed to be time of service in the next 12 monthly qualifying period.
- (d) An employer may close down the enterprise or part of it for one or 2 separate periods for the purpose of granting annual leave.
- (e) An employer may close down the enterprise or part of it in three separate periods. Provided that:
 - (i) at least a 75% majority of the employees in the enterprise or part of it concerned agree with the employer to do so and the date upon which the third closure will be made;
 - (ii) that the employees concerned be given at least one month's notice of the proposed closure; and
 - (iii) that the longest of the 3 periods of leave will be at least 12 working days exclusive of public holidays prescribed by this Award.

7.2 Personal leave

- (a) Paid personal leave is available to an employee when he/she is absent due to:
 - (i) personal illness or injury (sick leave); or
 - (ii) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or
 - (iii) because of bereavement on the death of an immediate family or household member (bereavement leave).
- (b) The amount of personal leave to which an employee is entitled depends on how long the employee has worked for the employer and accrues as follows:

Length of time worked for the employer	Personal Leave
less than 1 month	16 hours
at the end of the first month	23.6 hours
at the end of the second month	an additional 31.2 hours
at the end of the third month	an additional 31.2 hours
Each year thereafter	64

- (c) In any year unused personal leave accrues at the rate of the lesser of:
 - (i) 64 hours less the total amount of sick leave and carer's leave taken during the year; or
 - (ii) the balance of the year's unused personal leave.
- (d) Personal leave may accumulate to a maximum of 640 hours.

7.2.1 Immediate family or household

- (a) The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:
 - (i) a member of the employee's immediate family; or
 - (ii) a member of the employee's household.
- (b) The term immediate family includes:
 - (i) spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse) of the employee. A *de facto* spouse means a person of the opposite sex to the employee who lives with the employee as their husband or wife on a *bona fide* domestic basis; and

- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.2.2 Sick leave

(a) Definition

Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of their personal illness or injury.

(b) Entitlement

- (i) An employee will be entitled to paid leave of absence of not more than 38 hours of working time during their first year of service. The amount of personal leave an employee may take as sick leave depends on how long they have worked for the employer and accrues as follows:

Length of time worked for the employer (hours)	Rate of accrual of paid sick leave
Less than 1 month	0
At the end of the first month	7.6 hours
At the end of the second month	an additional 15.2 hours
At the end of the third month	an additional 15.2 hours
Each year thereafter	64 hours

- (ii) Accumulated personal leave may be used as sick leave if the current sick leave entitlement is exhausted.
 (iii) Service before the date of the commencement of clause 7.2.2 will be counted as service for the purpose of qualifying thereunder.

(c) Employee must give notice

- (i) Before taking sick leave, an employee will, within 48 hours, of the commencement of such absence, inform the employer of the inability to attend for duty.
 (ii) As far as practicable the notice of absence must include:
- the nature of the injury or illness (if known); and
 - how long the employee expects to be away from work.

(d) Evidence supporting claim

The employee will prove to the satisfaction of the employer that the employee was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed. For such purpose the employer may require the employee to make a statutory declaration or present other reasonable evidence which is satisfactory to the employer, justifying the absence.

(e) The effect of workers' compensation

If an employee is receiving workers' compensation payments, the employee is not entitled to sick leave.

7.2.3 Carers leave

(a) Paid leave entitlement

An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of their immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carers leave where another person has taken leave to care for the same person.

(b) Notice required

Before taking carers leave, an employee must give at least 2 hours' notice before their next rostered starting time, unless he/she has a good reason for not doing so.

The notice must include:

- (i) the name of the person requiring care and support and their relationship to the employee;
 (ii) the reasons for taking such leave; and
 (iii) the estimated length of absence.

If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

(c) Evidence supporting claim

The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

(d) Unpaid leave

An employee may take unpaid carer's leave by agreement with the employer.

7.2.4 Bereavement leave

(a) Paid leave entitlement

An employee other than a casual is entitled to use up to 16 hours personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household dies.

(b) Unpaid leave entitlement

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, the employee is entitled to take unpaid bereavement leave. The employer and the employee should agree on the length of the unpaid leave. In the absence of agreement, the employee is entitled to take up to 16 hours' unpaid leave.

(c) Evidence supporting claim

The employer may require the employee to provide satisfactory evidence of the death of the member of the employees immediate family or household.

7.3 Parental leave

The provisions of clause 7.3 apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.

An eligible casual employee employed by their current employer, on or prior to 1 January 1998, shall be entitled to parental leave under the terms of the Award as of 4 July 2001.

An eligible casual employee employed on or after 4 July 2001 shall be entitled to parental leave under the terms of the Award as of 1 July 2002.

7.3.1 Definitions

- (a) For the purpose of clause 7.3.1 child means a child of the employee under the age of one year except for adoption of a child where child means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.
- (b) Subject to clause 7.3.1(c), in clause 7.3 spouse includes a *de facto* or former spouse.
- (c) In relation to clause 7.3.5, spouse includes a *de facto* spouse but does not include a former spouse.
- (d) For the purpose of clause 7.3, an eligible casual employee means a casual employee:
 - (i) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
 - (ii) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- (e) For the purposes of clause 7.3 "continuous service" is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

7.3.2 Basic entitlement

- (a) After 12 months' continuous service, parents are entitled to a combined total of 52 weeks' unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (b) Subject to 7.3.5(f), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (i) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (ii) for adoption leave, an unbroken period of up to 3 weeks at the time of placement of the child.

7.3.3 Maternity leave

- (a) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (i) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (ii) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (b) When the employee gives notice under clause 7.3.3(a)(i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (c) An employee will not be in breach of clause 7.3 if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- (d) Subject to clause 7.3.2(a) and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within 6 weeks immediately prior to the expected date of the birth.

- (e) Where an employee continues to work within the 6 week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (f) Special maternity leave:
 - (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (ii) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (iii) Where an employee not then on maternity leave suffers an illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- (g) Where leave is granted under clause 7.3.3(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

7.3.4 *Paternity leave*

- (a) An employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave, with:
 - (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
 - (ii) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
 - (iii) a statutory declaration stating:
 - he will take that period of paternity leave to become the primary care-giver of a child;
 - particulars of any period of maternity leave sought or taken by his spouse; and
 - that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- (b) The employee will not be in breach of clause 7.3.4(a) if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

7.3.5 *Adoption leave*

- (a) The employee will notify the employer at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (b) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (i) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (iii) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (c) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding 4 weeks from receipt of notification for the employee's return to work.
- (e) An employee will not be in breach of clause 7.3.5 as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- (f) An employee seeking to adopt a child is entitled to take unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employer is entitled to take up to 2 days' unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such paid leave instead.

7.3.6 *Variation of period of parental leave*

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least 4 weeks prior to the commencement of the changed arrangements.

7.3.7 *Parental leave and other entitlements*

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave which they have accrued, subject to the total amount of leave not exceeding 52 weeks.

7.3.8 *Transfer to a safe job*

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

7.3.9 *Returning to work after a period of parental leave*

- (a) An employee will notify of their intention to return to work after a period of parental leave at least 4 weeks prior to the expiration of the leave.
- (b) Subject to clause 7.3.9(c), an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 7.3.8, the employee will be entitled to return to the position they held immediately before such transfer. Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.
- (c) An eligible casual employee who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on parental leave. Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the employer shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.
- (i) An employer must not fail to re-engage a casual employee because:
- the employee or employee's spouse is pregnant; or
 - the employee is or has been immediately absent on parental leave.
- (ii) The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with clause 7.3.9.

7.3.10 *Replacement employees*

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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 **Public holidays**

7.5.1 *Entitlement*

- (a) Full-time employees in Queensland will be entitled to the following holidays without loss of pay:

- New Year's Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Monday
- Anzac Day
- Sovereign's Birthday
- Labour Day
- Christmas Day
- Boxing Day
- Show Day

or such other day as is generally observed in the locality as a substitute for any of the days respectively.

- (b) By agreement between any employer and the majority of their employees other days may be substituted for a said day or days or any of them as to that employer's undertaking.
- (c) Employees will be entitled to an additional public holiday without loss of pay, to be observed as a holiday for all purposes of the Award.
- (d) No employee will be entitled to payment more than once for the same holiday whilst working in the industry and will be in breach of the Award in accepting a double payment without informing the employer in relation thereto.
- (e) Where an employee is absent from their employment on the working day before or after a holiday without reasonable excuse or without the employer's consent, the employee will not be entitled to payment for such holiday.
- (f) Where an employee is rostered for duty on 4 days of the week rather than 5, Monday to Friday inclusive, or is rostered for less than 8 hours on any one of those days and for longer than 8 hours on the other days to make up 38 hours per week, then such an employee will not be denied the full benefit of a public holiday falling on any day Monday to Friday inclusive.

In a case where, say, a holiday falls on Monday and that day is not normally a full working day because of excess hours worked on one or other week days the employee will be paid additional pay so as to be equal with other employees in the amount of time actually worked in that particular week.

- (g) An employee, other than a casual employee, who works on Christmas Day, New Year's Day, or both, will be paid at the appropriate holiday rate as provided in the Award; and if such an employee also works on the substitute day or days, they will be paid at the normal Award rate for work on this day or these days.

- (h) In addition to the benefit provided by clause 7.5.1(f), an employee who works on Christmas Day or New Year's Day will either be allowed a substitute holiday at a time convenient to the employer or receive an extra day's wages at ordinary rates.

7.5.2 *Penalty rates for public holidays*

- (a) Any weekly employee who works on any holiday provided for in clause 7.5.1(a) will for all time worked on that day be paid at the rate of double time and a-half.
- (b) Any employee working under any system of payment by results who works on any holiday provided for in clause 7.5 will for all time worked on that day be paid their ordinary earnings under such system of payment by results and in addition an amount calculated on the basis of time and a-half of the ordinary rate for the class of work being performed.
- (c) The minimum payment for work performed on a public holiday will be as for 4 hours worked.

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

8.1 Court attendance

8.1.1 *Jury service*

- (a) An employee other than a casual employee required to attend for jury service during their ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of the ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service.
- (b) An employee will notify the employer as soon as possible for the date upon which they are required to attend for jury service.
- (c) Further, the employee will give the employer proof of attendance, the duration of such attendance and the amount paid in respect of such jury service.

PART 9 – TRAINING AND RELATED MATTERS

9.1 Relationship to National Training Wage Award 1994

- 9.1.1 A party to this Award will comply with the terms of the National Training Wage Award 1994 [Print N4816 [N0277CR] as amended, as though bound by clause 3 of that Award.
- 9.1.2 The appropriate training rate of the National Training Wage Award will be Skill Level B.

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

10.1 Accident pay

10.1.1 *Definitions*

For the purposes of clause 10.1 the following definitions will apply:

- (a) Accident Make-up Pay means a weekly payment of an amount equal to the difference between the weekly amount of compensation paid to an employee pursuant to the relevant legislation and the Award rate to which such employee is entitled, or, where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the Award rate for that period.
- (b) Relevant Legislation means the Workers' Compensation Act in the State such employee is employed, as amended from time to time.
- (c) Injury means any injury occurring at the place of employment, but otherwise will be given the same meaning and application as applying under the respective legislation. No injury occurring at the place of employment will result in the application of accident make-up pay unless an entitlement exists under the relevant legislation.
- (d) Week(s) means any week in which accident make-up pay is paid even if a payment is only for part of a week.

10.1.2 *Entitlements*

- (a) Other than in the State of Queensland, an employer will pay and an employee will be entitled to receive accident make-up pay in accordance with clause 10.1.
- (b) Accident pay will be paid for a maximum period of 26 weeks in respect of any one injury or until the incapacity ceases whichever event will first occur.
- (c) An employee will only be entitled to weekly payments of accident make-up pay whilst an employee remains employed by an employer. An entitlement will continue subject to clause 10.1 where:
- (i) the employee is employed by another employer because suitable employment could not be provided by an employer; or
 - (ii) the employee has been terminated on the decision of an employer and the termination is not due to serious and/or wilful misconduct; or
 - (iii) the employee has been terminated and the termination does not arise from the liquidation/bankruptcy of the employer. Where a termination arises from a declaration of liquidation of the company the employee's entitlement will be determined by the appropriate State legislation.
 - (iv) If an employee on partial incapacity cannot obtain suitable employment from their employer but such alternative employment is available with another employer then the relevant amount of accident pay will still be payable.
 - (v) In order to qualify for the continuance of accident pay on termination an employee will if required provide evidence to their employer of the continuing payment of weekly workers compensation payments.

10.1.3 Application of accident make-up pay

- (a) Accident make-up pay is not payable in respect of the first 5 normal working days of incapacity;
- (b) Accident make-up pay is not payable in respect of any incapacity occurring during the first 4 weeks of employment unless such incapacity continues beyond the first 4 weeks and then, accident pay will apply only to the period of incapacity after the first 4 weeks;
- (c) Accident make-up pay is not payable where the injury for which the employee is receiving weekly compensation payments is a pre-existing injury which work has contributed to by way of recurrence, aggravation, acceleration or deterioration and the employee deliberately or knowingly failed to disclose the injury on engagement following a request to do so by the employer in circumstances where the employee knew or ought to have known about the nature of the injury;
- (d) Accident make-up pay is not payable where in accordance with the relevant Act a medical practitioner provides a certificate to an employer of an employee's fitness for work or specifies work for which an employee has a capacity and such work is made available by the employer but not commenced by the employee;
- (e) An employee will not be entitled to any payment under clause 10.1 in respect of any period of paid annual leave or long service leave or for any paid holiday.

10.1.4 Calculating the amount of accident make-up pay

- (a) The amount of weekly accident make-up pay entitlement will comprise a weekly payment of an amount representing the difference between:
 - (i) on the one hand, the total amount of compensation paid to the employee during incapacity pursuant to the respective Act for the week in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business and,
 - (ii) on the other hand, the total weekly Award rate and weekly over-Award payment if any, being paid to such employee at the date of the injury together with any amendment in Award rates which would have been applicable to the classification of such employee for the week in question if the employee had been performing their normal duties.
- (b) In making such calculation any payment for overtime earnings, shift premiums attendance bonus, incentive earnings under any system of payment by results, fares and travelling time allowances, penalty rates and any other ancillary payments payable by the employer will not be taken into account.
- (c) Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount will be a direct *pro rata*.

10.1.5 Changes to the compensation

Any changes in the rate of compensation due to the operation of the respective legislation will not increase the amount of accident make-up pay above the amount that would have been payable had the rate of compensation remained unchanged.

10.1.6 Furnishing of evidence

An employee who has suffered any injury for which the employee is receiving payment or payments for incapacity in accordance with the provisions of the respective Act will furnish evidence to the employer from time to time as required by the employer of such payment and compliance with this obligation will be a condition precedent to any entitlement under clause 10.1.

10.1.7 Medical examination

- (a) Nothing in clause 10.1 will in any way be taken as restricting or removing the employer's rights under the respective Act to require the employee to submit themselves to examination by a legally qualified medical practitioner, provided and paid by the employer or in the State of Queensland paid for by the Workers Compensation Act or authorised self-insurer as defined.
- (b) If the employee refuses to submit themselves to such examination or in any way obstructs the same, the employee's right to receive or continue to receive accident pay will be suspended in like manner as their right to compensation is suspended pursuant to the respective Act until such examination has taken place.
- (c) Where in accordance with the respective Act a medical referee gives a certificate as to the condition of the employee and the employee's fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay will cease from the date of such refusal or failure to commence the work.
- (d) Where an employee refuses to conform to the requirements in relation to medical examinations under the relevant Act.
- (e) Where a medical referee in accordance with the relevant Act certifies that an employee is fit for work or specifies work that the employee can perform, and the employer makes it available and the employee refuses to do the work or fails to resume duty.

10.1.8 Transfer to new employer

Any employer taking over a business will be responsible for the payment of accident pay to employees receiving same.

PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.1 and 11.2 replicated 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 workplace 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 Posting of Award

This Award will be exhibited by each employer on their premises in a place accessible to all employees.

11.4 Union encouragement

Clause 11.4 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.4.1 *Documentation to be provided by employer*

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

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

11.4.2 *Union delegates*

- (a) 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.
- (d) The employer shall not unnecessarily hinder accredited Union Delegates and/or job representatives in the reasonable and responsible performance of their duties.

APPENDIX A – OUTWORK

An outworker means a person who works by themselves and is not employed in a workshop or factory.

An outworker will be paid at the rates provided in this Award for the actual work performed and will be reimbursed for, or provided with, all materials used in connection with their work at no cost to the outworker.

An outworker will be paid annual leave and public holidays. Such payment is to be on a *pro rata* basis in proportion to the amount that their aggregate earnings bears to the annual time rate earnings of an indoor worker doing similar work, payable on an annual basis or on termination of employment: Provided that such payment will not exceed the total amount to which such indoor workers are entitled to annually.

The employer will deliver and/or collect the work of an outdoor worker and the outdoor worker will not be charged for such delivery and collection.

An employer who has work done elsewhere than in their factory or workshop will keep a record book in English which contains, written in ink:

- (a) the name and address of the outdoor worker;
- (b) the number of articles and description of the work given out;
- (c) the rate paid or agreed to be paid for such work.

Where an employer is to employ an outworker, the employer will allow the outworker if the outworker requests to be represented by the Union in negotiations.

Dated 21 October 2004.

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

Operative Date: 21 October 2004
Repeal and New Award: Dry Cleaning and Dyeing Industry
Award – Southern and Central Divisions 2004
Released: 10 November 2004

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INDUSTRIAL COURT OF QUEENSLAND

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

Shane Bradley Klein AND Graham Clyde Whell-Foan (Case No. C59 of 2004)

PRESIDENT HALL

8 November 2004

DECISION

The application before the Industrial Magistrate was an application pursuant to s. 399 of the *Industrial Relations Act 1999* to recover unpaid wages in the sum of \$2,302.14. The components of the sum of \$2,302.14 were said to be an amount for unpaid overtime and unpaid meal allowances, an amount for underpaid Saturday work, unpaid wages for the period Saturday 21 September 2002 to Tuesday 24 September 2002 and unpaid *pro rata* holiday pay.

The Industrial Magistrate allowed the claim in so far as it related to the period 21 to 24 September 2002 and *pro rata* holiday pay. The claim relating to overtime and meal allowances was wholly unsuccessful. The claim for underpaid Saturday work was dealt with on the basis that the appropriate penalty rate was time and one quarter. The appeal is against the decision of the Industrial Magistrate about overtime and meal allowances and about Saturday work.

The appeal is, of course, by way of rehearing, s. 348 of the *Industrial Relations Act 1999*. It has not however followed the traditional path of agitating whether inferences drawn from admitted facts and facts bound by the Industrial Magistrate were inferences reasonably open to the Industrial Magistrate. Rather, it has been contended that this is one of those cases in which findings made on the basis of credibility were so inconsistent with facts incontrovertibly established by the evidence and/or so glaringly improbable that an appellate Court might properly and should intervene, see generally *Devries v Australian National Railways Commission* (1992 – 1993) 177 CLR 472 and *Fox v Percy* (2003) 214 CLR 118.

The case about overtime and meal allowances failed because the Industrial Magistrate treated the employee's evidence about the hours she had worked as not worthy of credit. The error is said to be that the Industrial Magistrate rejected the employee's evidence because it was inconsistent with a "wages book" kept by the employer and signed by the employee on receipt of wages, notwithstanding that all the evidence was that the "wages book" did not correctly record the hours worked by the employee. Counsel for the appellant rightly relies upon a passage whereat the Industrial Magistrate said:

"Therefore where there is a conflict between the hours Ms Williams claims she worked, and the times recorded on the timesheets, I accept the recorded times, rather than her written notes."

The difficulty is that two paragraphs further on the Industrial Magistrate refers to the evidence about the inaccuracy of the "wages book". His worship observes:

"As to Mr Foan-Whell, I generally accept his evidence as accurate and reliable. However, having said that I do feel that he has tried to get around the award system by this loose "give and take" arrangement he had with Ms Williams."

That passage plainly refers to the evidence that Ms Williams sometimes went home early without reduction in wages and sometimes worked late without being paid and that because the "wages book" did not record those "give and take" transactions it was inaccurate.

One starts with the presumption, particularly on a matter of credit, that the tribunal in first instance was correct. The decision was given by a busy Industrial Magistrate who, of course, did not enjoy generous levels of secretarial assistance and as a whole it is understandable and correct. In my view the point being made by the Industrial Magistrate was that with all its inaccuracies the "wages book" was a better guide to what had been worked than the evidence of Ms Williams. In any event, the critical point is that once Ms Williams' evidence was rejected, there was not material before the Industrial Magistrate to satisfy the onus of proof. In the paragraph which immediately follows the paragraphs previously quoted, His Worship said:

"As stated above, because of this conflict between Ms Williams' evidence and the signed records, I am not satisfied on the balance of probabilities as to what hours she did work. I find that part of the claim is not payable."

With respect to the careful argument of Counsel for the appellant, it seems to me that there was a proper basis upon which the Industrial Magistrate might have rejected the evidence of Ms Williams without placing any reliance whatever upon the "wages book". To begin with there were Ms Williams' "explanations" of her election to sign the "wages book" containing inaccurate hours. At one point Ms Williams said that she hadn't read the book. At another point Ms Williams said that the book was often incomplete; something which Ms Williams could only have known if she had read the book. The Industrial Magistrate referred to both of those matters. Additionally, the transcript at a later point reveals a claim by Ms Williams that she was signing the record of the money paid, (which was accurate) and not the record of hours. I can well understand why an Industrial Magistrate who had heard and observed the witnesses and who had watched the whole of the evidence emerge would say:

"As to the credit of Ms Williams, to my mind she does not give a reasonable explanation as to why she signed for her wages in the 'hours and wages record book'."

It is not to the point that the hours recorded were, in fact, because of the "give and take" system, partially false. The real matter of concern is that Ms Williams was giving varying explanations of her election to sign the variations which caused the Industrial Magistrate to form an adverse view of her credibility. Additionally, in her affidavit, Ms Williams referred to noting the hours that she had worked in her diary and indicated that the diary could be made available at the hearing if required. What was produced at the hearing was pages which had been torn from a book.

Accepting that "diary" has no fixed meaning and that incarcerated persons (and others) do keep diaries which are not bound note books, I can understand why the Industrial Magistrate who had heard all the evidence emerge would wonder why pages that had been in a book had been torn out. Further, and once again the Industrial Magistrate refers to the matter, Ms Williams claimed that the record of hours worked was originally maintained by her in the appointments book. When examined, the book showed no such notations. I quite accept that Ms Williams explained that away by suggesting that the entries were in pencil and might have been rubbed out. But the Industrial Magistrate, who referred to that explanation, was entitled to take the view that on the case as a whole, too much was being explained.

I accept the criticism of Counsel for the appellant that the Industrial Magistrate erred in relying upon inconsistencies between the opening and closing times shown by the till tapes and the hours suggested by Ms Williams. There was evidence by Ms Williams that on four occasions she had asked clients to pay before rendering the service required, in order that the till might be closed before work had finished. Only three till tapes were put in evidence. Those tapes may well have been tapes which related to the occasions mentioned by Ms Williams. Whilst the till tapes were within the precincts of the Industrial Magistrates Court the respondent, a lay person acting for himself, did not take Ms Williams through the till tapes in cross-examination. With respect to the Industrial Magistrate, I consider His Worship did err in placing reliance upon the inconsistency. But the inconsistency seems to have played but a marginal role in influencing the Industrial Magistrate's conclusion that Ms Williams' evidence of the hours worked was not worthy of credit.

In my view the Industrial Magistrate's finding about Ms Williams' credit was plainly open to His Worship and, indeed, on what I have seen of the evidence was almost certainly correct. In so far as the appeal is about overtime and meal allowances, it must be dismissed.

The appeal about Saturday work is another matter. Whether the employee's version or the wages book be accepted, it is plain that Ms Williams worked Monday to Friday and on Saturday. By s. 4.1(2) of the *Hairdresser's Industry Award – State* ordinary hours are to be worked over a spread of five days. Inevitably, work on the sixth day is overtime and must be paid pursuant to s. 4.2(2)(a) at the rate of time and one-half for the first three hours and double time thereafter. The appeal about Saturday work must be allowed.

With a view to minimising costs, my associate will arrange for the exchange of written submissions about the calculation of the sum of money owing for Saturday work in the light of the findings on this appeal so that an order may be substituted for the order made by the Industrial Magistrate.

There can be no issue about costs.

Dated 8 November 2004.

D. R. HALL, President.

Released: 8 November 2004

Appearances:

Mr C. Murdoch instructed by the Crown Solicitor for the Appellant.

The Respondent in person.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Thomas Graham Sheumack AND Denny Realty Pty Ltd t/a Mackay Business Brokers (Case No. W42 of 2004)
Thomas Graham Sheumack AND Mackay Business Brokers Pty Ltd (Case No. W43 of 2004)
Thomas Graham Sheumack AND Mackay Business Brokers Pty Ltd (Case No. W44 of 2004)

DEPUTY PRESIDENT SWAN

4 November 2004

DECISION

There are three wages applications before the Commission. All involve the same applicant. The general particulars of the claims are as follows:

- W42 of 2004 – That Denny Realty Pty Ltd trading as Mackay Business Brokers pay to the applicant \$10,341.00 representing \$8,721.00 for wages, \$854.00 for *pro rata* annual leave (plus loading) and \$766.00 for superannuation.
- W43 of 2004 – That Mackay Business Brokers Pty Ltd pay to the applicant \$13,606.00 representing \$11,475.00 for wages, \$1,123.00 for *pro rata* annual leave (plus loading) and \$1,008.00 for superannuation.
- W44 of 2004 – That Mackay Business Brokers Pty Ltd pay to the applicant \$3,083.00 representing “the amount payable to me” under the *Property Sales Award Queensland – State*.

The applicant states, amongst other things, that:

“The applicant Thomas Graham Sheumack was employed as a full-time permanent Real Estate Salesperson specialising in the sale of businesses on 17 November 1994, by the Partnership entity Denny Realty Pty Ltd and Paycliffe Pty Ltd trading as Mackay Business Brokers (ABN 78 829 4460 064).

Sheumack was employed continuously in the same job in the business ‘Mackay Business Brokers’ from 17 November 1994 until 1 May 2002.

Sheumack was employed in the business “Mackay Business Brokers” by 3 consecutive different employers:

- (a) Denny Realty Pty Ltd and Paycliffe Pty Ltd trading as Mackay Business Brokers (ABN 78 829 460 064) from 17 November 1994 until 23 September 2000.
- (b) Denny Realty Pty Ltd trading as Mackay Business Brokers (ABN 46 009 917 239) from 23 September 2000 until 1 March 2001.
- (c) Mackay Business Brokers Pty Ltd trading as Mackay Business Brokers (ABN 31 095 283 024) from 1 March 2001 until termination.”.

There has been other litigation around similar issues by former employees against the named respondents. One decision was the subject of a successful appeal to the Industrial Court of Queensland (*Denny Realty Pty Ltd trading as Mackay Business Brokers AND Peter Herbert Hodge (No. C30 of 2004)*). Both parties have relied in part upon the outcome in that matter to support their various positions in this case. As well, there has also been an attempt to dissect the decision from which the appeal emanated where it might favour one or the other’s position.

Briefly, the applicant, who was a Real Estate Salesperson, worked for three named businesses during a period of employment from 17 November 1994 to 1 May 2002. He claims that during this time there were periods in time when he was covered by an ‘individual employee flexibility Agreement’ under Part C of the *Property Sales Award Queensland – State* (the Award). He further claims that:

- (a) He had never been advised by his employer that his first employment engagement had come to an end.
- (b) The second employer did not discuss the transfer of the Agreement under Part C of the Award between the first employer and himself.
- (c) He claims that his first period of employment with the partnership of Denny Realty Pty Ltd and Paycliffe Pty Ltd trading as Mackay Business Brokers came to an end as a consequence of termination of employment.
- (d) This termination of employment occurred because there was a “major split” between the partners sufficient to cause the cessation of his employment engagement.
- (e) The non-adherence to the Award provisions by the employer means that the applicant can fall back upon the general provisions of the Award for applicable wages, holiday pay and loadings.
- (f) That the applicant at the cessation of the third employment engagement should have been paid *pro rata* Long Service Leave according to s. 43 of the *Industrial Relations Act 1999* (the Act).

The first claim (W42 of 2004) relates to the following matters:

Mr Sheumack was employed by Denny Realty Pty Ltd and Paycliffe Pty Ltd trading as Mackay Business Brokers from 17 November 1994 to 23 September 2000. The partnership between Denny Realty Pty Ltd and Paycliffe Pty Ltd ceased around 23 September 2000.

It is accepted that each case turns on its own facts. In the aforementioned Appeal, President Hall found that a Real Estate Salesperson in a similar employment position to that of this applicant (with the same named respondent as in this matter) did not have his employment terminated at the cessation of the partnership between Denny Realty Pty Ltd and Paycliffe Pty Ltd merely because of that cessation. President Hall set out the case law with regard to the cessation of an employment contract where a dissolution of a partnership had occurred. His Honour stated:

“I am unable to discern an intention that resignation of one of the two partners was to automatically terminate the respondent’s employment. The Commission’s finding that the respondent was unaware that the appellant was his employer after the resignation is compatible only with the view that the respondent’s focus was the business, not the proprietor.”.

His Honour stated that, on the evidence, there had been no “major split” in the business upon the cessation of the partnership sufficient to determine that the contract of employment had automatically ended.

Relying upon that decision, the applicant submitted in this hearing that there had in fact been a “major split” in the partnership but that the President may not have had such material put to him during the course of the appeal.

On 12 June 1997, Mr Sheumack entered into an Individual Employee Flexibility Agreement (the Agreement) under Part C of the *Property Sales Award Queensland – State*. The Agreement was made between the employer (at the time) being Denny Realty Pty Ltd and Paycliffe Pty Ltd trading as Mackay Business Brokers and the applicant. This Agreement was renewed yearly on 23 June 1998, 29 June 1999 and 7 July 2000. These renewals were approved and registered by the Property Sales Association of Queensland (PSAQ) in accordance with the Award.

Had there been a "major split" at the time of the cessation of the partnership between Denny Realty Pty Ltd and Paycliffe Pty Ltd, or did Mackay Business Brokers continue on in business as usual?

I have accepted that there was no "major split" in the business when the partnership of Denny Realty Pty Ltd and Paycliffe Pty Ltd was dissolved. A restraint of trade clause (and subsequent problems associated with it) entered into between the two aforementioned parties was not indicative of a "major split". There were obvious changes upon the dissolution of the partnership – i.e. the Hotels and Motels section of the business went to Paycliffe Pty Ltd. Some staff, furniture and computer equipment also moved to Paycliffe Pty Ltd (see evidence of Mr Denny). Mr Doughty gave evidence that the dissolution of the partnership was not amicable and action had been taken by Paycliffe Pty Ltd in the District Court against Denny Realty Pty Ltd for a purported breach of contract in terms of the restriction of trade clause. These difficulties arose after the partnership had ceased. They related to the implementation of the terms of the settlement agreement reached between the former partners. There is nothing to suggest that any of these issues flowed to employees. I see none of these occurrences as being sufficient for there to have been a break in the contract of employment of Mr Sheumack.

The evidence also does not support Mr Sheumack's version of events that he was unaware of what was occurring at the time (See Ms C. Martin – affidavit point 2); (see Mr S. Sutton – affidavit points 3, 5 and 7). Mr Sheumack's version of events around this point is simply not credible.

There being no "major split" in the business at the time, Mr Sheumack's contract continued on as usual. As earlier stated, the employment Agreements were registered on 23 June 1998, 29 June 1999 and 7 July 2000. All of these renewals were approved by the PSAQ. There is no relief to be awarded to Mr Sheumack against the named respondent in this case. The terms of Mr Sheumack's original Agreement were still in force when Mackay Business Brokers Pty Ltd became his employer on 1 March 2001 (see Clause 14 of the original Employment Agreement).

In the other matters, W43 and W44 of 2004, the applicant firstly claims that the procedural requirements pertaining to the applicability of the employment Agreement during this period were faulty. The matter relates to when the Agreement was signed. The Agreement was made (and signed) between the applicant and Mackay Business Brokers Pty Ltd on 3 September 2001. However, the Agreement was undated as to the last signatory of the parties. Under the 1997 Award, the Agreements were required to be re-registered (or re-negotiated) at least every twelve months and they were operative from the date they were signed by the last party (see Clause 3.2.2(b)(viii)). Within seven days of that date, they were required to be lodged for approval and registration. In this case, the Agreement was signed by the Secretary of the PSAQ on 13 October 2001.

There is a period of time during which the Agreement was not in place – i.e. between July 2001 and September 2001. Under other circumstances, the applicant may have been able to rely upon the Award provisions to fill this void, although there is insufficient information around this point for me to make a particular finding. However, when one considers the type of work performed by the applicant during this period, it is submitted that the Award would not be applicable in any event.

Reference was made to a decision of Commissioner Bechly (*Kevin James AND Mackay Business Brokers Pty Ltd (No. W107 of 2002)*) where a detailed analysis of work performed by another employee of Mackay Business Brokers was provided. In that case, it was determined that the work of a business broker was not covered by the Award.

During this period of employment, Mr Sheumack's evidence is that his employment should have been covered by the Award. In the aforementioned decision, Commissioner Bechly stated:

"There is no exclusion specifically directed to persons employed as business brokers contained in the award effective from 1 July 1997... Neither is there such an exclusion in the subsequent award operative from 8 April 2002... However, that award does contain a definition of the meaning to be attributed to 'Sale of Real Property' in the following terms: ' "Sale of Real Property" shall mean the duties carried out by an employee whose principal responsibilities include, but are not limited to the listing of real property, however, it excludes any persons employed principally as a clerk or for secretarial support' (emphasis added).

Given the nature of this award, including its relative recent heritage it would not be inappropriate to impute that definition to the previous award. Even in the absence of that definition I would be inclined to the view that the major proportion of a business brokers activities are outside the ambit of the award."

The applicant states that during this period of time he was involved in the sale of some 17 businesses. However, the applicant was not involved in the listing, sale or lease of any real property which might have led to the sale of a business. In some instances, the applicant stated that no real property had changed hands at all. With the exception of two cases, the leases had changed hands through the exchange of correspondence or through solicitors. For most of the applicant's employment, the Award contained a definition of "Sale of Real Property", and the current Award refers to a salesperson's "principal" responsibilities. There is little doubt that the major part of the applicant's work was not involved in the "listing, sale, auction, tender purchase, leasing ... of real property." It has been put by the respondent that the fact that a Business Broker is required to hold a Salesperson's Certificate is not indicative of Award coverage – that requirement is determined by the Office of Fair Trading.

Evidence was supplied by Mr Proud to the effect that, when analysing the lists of Mr Sheumack's sales during this period, "none of those sales was solely the sale of real property." The Award did not apply to Mr Sheumack.

The applicant, during this period, was not employed in a capacity which brought him under the coverage of the Award. While the applicant was employed as a salesperson, and licenced to work as such, the primary work performed by the applicant was that of selling businesses. For those reasons, the second claim is rejected.

Regarding the request for superannuation payments (and noting the very limited submissions around the point), the respondent states that the Award does not require the employer to pay contributions to a specified superannuation fund. Section 278(3)(a) of the Act requires that an application must relate to an employee on whose behalf an employer is required to contribute to an approved superannuation fund. Schedule 5 of the Act defines an "approved superannuation fund" as one being a complying fund nominated in an industrial instrument; or agreed to between an employer and employee under s. 405. The term "nominated" means "named" and there was no named fund in the Award.

Mr Sheumack states that his services were terminated by Mr W. Proud. I do not accept Mr Sheumack's evidence on this point. All of the evidence points to the fact that Mr Sheumack had been complaining about his level of income (and perhaps rightly so), however, he had made it clear that he could not stay with the business on that level of remuneration and by his own actions he chose to leave the employ of his employer. There is no claim of any nature against the employer in this regard. Any residual claims stemming from the substantive matters which have been determined are therefore refused.

Order accordingly.

D. A. SWAN, Deputy President.

Hearing Details:
2004 13 and 14 July

Released: 4 November 2004

Appearances:

Mr P. Hodge for the Applicant.

Mr B. Siebenhausen, of Bruce Siebenhausen & Associates, with
him Mr P. Parish for the Respondent.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Independent Education Union of Employees AND Whitsunday Christian Community College Limited (Nos. B1071 and B1072 of 2004)

COMMISSIONER BROWN

1 November 2004

REPORT ON DECISION (as edited)

In giving his decision from the Bench on 1 November 2004, Commissioner Brown stated:

“In these matters, heard jointly, Pamela Morgan and Gysbertus Van Essen, represented by the Queensland Independent Education Union of Employees (the applicant), sought reinstatement to their former positions with the Whitsunday Christian Community College Limited (the respondent), by applications lodged on the 8th and 15th of July respectively.

The respondent, in correspondence dated 28th of September 2004 to the applicant, indicated that the respondent was not in possession of assets or resources and therefore advised the applicant that they ‘will not be contesting it’ (the applications). Mr Spriggs for the applicant, submitted sworn witness statements on behalf of both Morgan and Van Essen, the contents of which were obviously uncontested. The evidence in both cases indicated *inter alia*, that the terminations occurred without appropriate consultation, without the correct payment in lieu of any notice of termination and without any severance payments.

Mr Spriggs highlighted these aspects of the evidence and referred the Commission to a decision of the Full Bench of the South Australian Industrial Relations Commission in *Commercial Computer Centre Pty Ltd v. Holman* (2001) and submitted that his cases were supported by this authority. I agree.

Mr Spriggs made submissions regarding the inappropriateness of reinstatements in the circumstances, with this I also agree. Mr Spriggs then outlined factors that in his view the Commission should consider with respect to compensation.

Having considered the uncontested evidence and submissions, together with the provisions of the *Industrial Relations Act 1999* generally, and in particular Section 3 – Principal object of this Act, Chapter 3, Part 2 – Unfair Dismissals and sections 78 and 79 (Remedies), I find that both dismissals were harsh and make the following orders.

With respect to case No. B1071 of 2004, I order compensation of \$24,000, being 24 weeks pay, be paid to Pamela Morgan by Whitsunday Christian Community College Limited. I indicate that in determining this amount I have taken into account the notice of two weeks already paid, the fact that Ms Morgan should have received severance pay of \$6000, that is six weeks pay, and in accordance with the relevant industrial instrument should have received a further two weeks pay in lieu of notice, that is \$2000.

With respect to case No. B1072 of 2004, I order compensation of \$24,000, being 24 weeks pay, be paid to Gysbertus Van Essen by Whitsunday Christian Community College Limited. I indicate that in determining this amount I have taken into account the notice period of two weeks already paid, the fact that Mr Van Essen should have received severance pay of four weeks, that is \$4000 and in accordance with the relevant industrial instrument should have received a further two weeks pay in lieu of notice, that is \$2000.

The amounts ordered above are to be paid within 22 days of today (1 November 2004) and taxed according to law.”.

Dated 1 November 2004.

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

Appearances: Mr J. Spriggs for the Queensland Independent Education Union of Employees. No appearance for the respondent.

Hearing Details: 2004 1 November

Released: 5 November 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 149 – arbitration of a dispute

Merchant Service Guild of Australia, Queensland Branch, Union of Employees AND Port of Brisbane Corporation (No. D217 of 2003)

Port of Brisbane Corporation AND The Seamen’s Union of Australasia, Queensland Branch, Union of Employees and Others (D273 of 2003)

PORT OF BRISBANE CORPORATION – “BRISBANE” – EMPLOYEES – DETERMINATION 2003

COMMISSIONER THOMPSON

8 November 2004

Arbitration – Submissions – Determination of operative date – Operative date will be 7 September 2004.

DECISION

Background

The Commission (as constituted) was allocated this matter on 7 September 2004 following advice forwarded by Commissioner Brown to the then Acting Vice President Bloomfield, which stated:

"In the most recent conference in the above matters I put the following on transcript which is self explanatory:

'The parties have agreed to request the Commission to arbitrate on the remaining issue outstanding preventing certification of the agreement. That is the date of operation for increases contained in Schedule 1 for Masters, Dredge masters, Shift Engineers and Snr Second Engineers.

I will advise the Vice President of this application and also of the fact that the parties have further agreed that pursuant to s. 149(10) the Commission as presently constituted can hear and determine the matter.

The parties will receive directions for the conduct of the hearing in due course.'

All parties signified their agreement to the process on transcript.

I would appreciate if you could in your capacity of 'Acting Vice President', make the appropriate arrangements to enable the matter to proceed to arbitration."

The matter had been to conference on numerous occasions following notification of an industrial dispute (D217 of 2003) by the Merchant Service Guild of Australia, Queensland Branch, Union of Employees (MSG) on 16 June 2003 and a further notification of dispute (D273 of 2003) lodged by the Port of Brisbane Corporation (PBC) on 23 July 2003.

The dispute centred around the failure of the parties to reach an agreement on the making of a certified agreement to cover employees who are employed under the *Port of Brisbane Corporation Employees' Award 2003* and who are the crew of the Trailer Hopper Suction Dredger "Brisbane", and to the Maritime unions who would become signatories to the Agreement.

A preliminary hearing was convened on 16 September 2004 at which the parties reached an understanding as to how the matter would proceed.

Mr Michael Fleming, for the MSG, indicated his preparedness to lead in the matter.

It was his intention not to call witnesses and he would rely upon submissions.

He undertook to prepare a file containing exhibits and documents that would be relied upon and provided such documents to the Commission prior to the hearing proper.

Mr Peter Ashton, from PBC, informed the Commission that he had discussions with Mr Fleming some two days earlier and was comfortable with the approach outlined by Mr Fleming.

The PBC would adopt a similar approach to that of the MSG.

Mr David Perry from The Seamen's Union of Australasia, Queensland Branch, Union of Employees (SUA) indicated that his members had signed off on an enterprise bargaining agreement and were currently being paid the increases from 1 July 2003 and 2004.

Mr Perry indicated the role of the SUA would be of an interested party and any submissions made would be brief.

The matter was scheduled to be heard in Brisbane on 28 October 2004.

On 21 October 2004 correspondence was forwarded to the Industrial Registrar under the hand of Mr Tom Barlow, General Manager, Public Sector Industrial and Employee Relations Division, advising that, under s. 322 of the *Industrial Relations Act 1999*, the Minister of Industrial Relations would be intervening in the matter when it was next before the Commission on 28 October 2004.

An outline of the Minister's submissions were received by the Commission on 26 October 2004.

MSG

Mr Fleming commenced his submissions by taking issue with the intervention by the Minister for Industrial Relations.

His attention was then directed to materials supplied which contained 16 sections (tabs) of documents to be relied upon by the Union.

The documentation was admitted as a bundle (Exhibit 1) with the index identifying the materials as follows:

1. Unearth Australia's Most Advanced Dredger – the Brisbane
2. *Port of Brisbane Corporation – "Brisbane" – Employees Certified Agreement 2000*
3. *Port of Brisbane Corporation – "Brisbane" – Employees Certified Agreement 2003*
4. *Port of Brisbane Corporation Employees Award – 1991*
5. *Port of Brisbane Corporation Employees Award 2003*
6. Notification of an Industrial Dispute – D217/03 by Merchant Service Guild re "Brisbane" – 16 June 2003
7. Notification of an Industrial Dispute – D273/03 by Port of Brisbane Corporation – 23 July 2003
8. Report by Ray Dempsey Consulting – 7 May 2003
9. Extract from Transcript of Proceedings 26 June 2003
10. *Port of Brisbane Corporation Employees – Certified Agreement 2003*
11. *Port of Brisbane Corporation – Brisbane Multi Modal Terminal Employees – Certified Agreement 2003*

12. *State Government Departments Certified Agreement 2003* – extract
13. *Maritime Safety Queensland Marine Pilots (Cairns Mackay and Townsville Regions) Agreement 2003 – 2006, Maritime Safety Queensland Marine Pilots (Gladstone Region) Agreement 2003 – 2006*
14. *Queensland Transport – Maritime Division – Maritime Operations Statewide Certified Agreement 2001*
15. Latest Version – 6 September 2004 – of proposed *Maritime Safety Queensland Maritime Operations Certified Agreement 2004*
16. Correspondence in connection with the final settlement of the proposed *Maritime Safety Queensland Maritime Operations Certified Agreement 2004*.

Mr Fleming's submission went on to address individually each of the separate areas of documentation placed before the Commission.

In respect of the *Port of Brisbane Corporation – "Brisbane" – Employees Certified Agreement 2003* he went to lengths to explain the reasoning why his Union had not committed to accepting the terms of agreement by the end of July 2003 as was the position of the SUA.

His arguments went to the *Port of Brisbane Corporation Employees Award 2003* which replaced the previous Award and the failure, according to Mr Fleming, to include specific conditions for the crew of the Brisbane.

Note: The new Award came into force on 9 December 2003.

Mr Fleming acknowledged that the 2003 Agreement rates of pay were implemented to all employees on 1 July 2003 with the exception of his members on the "Brisbane".

In advancing the reasoning behind his failure to reach agreement, he went to considerations that the Union and members were giving to a possible work value case and for that reason did not, as such, sign off.

Following the Notification of an Industrial Dispute by the MSG on 16 June 2003, and a further notification by the PBC on 23 July 2003, a number of conferences were held before Commissioner Brown.

Whilst various recommendations were made by the Commission, the PBC would not accept such recommendations and, in particular, where they referred to the operative date of the wage increases.

Mr Fleming informed the Commission that sometime in July 2004 the PBC was forwarded signed documentation from the MSG accepting the conditions in the proposed Certified Agreement on the proviso that the operative date be 1 July 2003.

In response to what he described as the "major contention" of the Minister, he stated that he did not believe that the Commission should be precluded by the fact that agreement was reached on 7 September 2004 to arbitrate the matter of the operative date.

The Commission should consider the Notification of an Industrial Dispute on 16 June 2003 as the date the Commission became cognisance of the matter.

In the course of Mr Fleming's submission, reference was made to a ballot said to be ordered by the Commission which, in or around May 2004, did not provide a valid majority of employees in favour of the proposed Agreement.

On the issue of public interest, it was contended that, in the context of industrial harmony and proper application of the disputes settlement, then the operative date for all employees should be 1 July 2003.

It was further raised that the granting of an operative date of 1 July 2003 would not offend the public interest.

Mr Fleming referred to a range of other Government agreements, including the Core Agreement which had operative dates of 1 July 2003.

A decision in favour of 1 July 2003 would, in effect, be confined to the crew of the "Brisbane" and, if not granted, had the potential to cause disharmony and disputation in future relationships between MSG members and the PBC.

The submission relied upon the provisions of s. 125 of the Act which goes to the making of an award.

SUA

Mr Perry provided brief commentary on the negotiations further acknowledging that the outcomes were tied into Government policies on the wage increase component.

He indicated support for consistent operative dates based upon historical relativities.

PBC

Mr Ashton commenced his submissions by providing a background to the negotiations and stated that, like a number of other parties, carried out those negotiations in the midst of the Award Review process.

He confirmed that discussions were held with the MSG around the context of a work value wage increase during the negotiations for the Agreement.

The corporation had reached agreement with respect to two agreements prior to the end of July 2003, leaving all employees covered with the exception of the MSG members on the "Brisbane".

Throughout the negotiations, the PBC consistently stated that the Government policy in relation to back-dating of the increases could not occur beyond the first day of the month in which agreement is reached.

There was no such agreement reached in the matter currently before the Commission.

Minister for Industrial Relations

Ms Dinah Priestley presented submissions on behalf of the Minister, firstly by emphasising Government policy that operative dates within the public sector for wage increases is the date upon which the parties reach in-principle agreements, operative from the first day of the said month.

Ms Priestley took issue with the submissions of Mr Fleming in reference to ongoing negotiations around the Maritime Operations Agreement.

She contested his arguments that the notification of dispute date in June 2003 was the date the Commission (as constituted) became cognisant of the issue now before the Commission.

The drawn out dispute over the work value and the Award Review issues, whilst subject to the conferences before Commissioner Brown, were not before the Commission in these proceedings and it was only the matter of operative dates to be determined.

The PBC has been engaged in bargaining with the MSG for more than 18 months and, if the Commission was to award a retrospective operative date, it would set a precedent where a party could refuse "to cut a deal" and then at a later date, gain a benefit.

On the public interest argument, it was put that by the granting of a retrospective date, it would act as a disincentive to future bargaining in both the PBC and the Public Sector.

The final position was that the operative date for both 3.5% increases should be the date of the Commission's decision with the increases to apply in a cumulative way with the second increase compounding the first one.

If the Commission was to find that there were some special circumstances that justified a retrospective effect, then that date should not precede the date the Commission first became cognisant of arbitration under s. 149 of the Act – which was 7 September 2004.

Decision

The task before the Commission was to determine simply the date upon which the increases under the *Port of Brisbane Corporation "Brisbane" – Employees Certified Agreement 2003* would be paid to the MSG members employed on the "Brisbane", numbering eight (8) persons in all.

All other employees of PBC covered by the Agreement with the exception of the eight (8) have been paid both increases of 3.5% from 1 July 2003 and 2004 respectively.

There is nothing complicated in the reasoning for those payments having been made, just simply that an agreement, in principal, was reached between the parties prior to the end of July 2003.

Mr Fleming, in articulating his case, placed a significant degree of emphasis upon the ongoing nature of the negotiations between the parties and the considerations of the Union in respect of the running of a work value case.

The Commission, in going to that phase of the process, said, at page 52, line 55 of transcript:

"You'd continued to bat on, so to speak, in terms of concerns over the inability to advance wage rates because of a no further claims clause."

I have no doubt that a person of Mr Fleming's standing would clearly have known the consequences of "holding out" and not reaching an agreement would have on the operative date of the Agreement.

The SUA had accepted the terms prior to the end of July 2003, later entering into an administrative arrangement to facilitate the payments on offer.

They (SUA) were undoubtedly receiving their payments during the course of the conferences before Commissioner Brown, and this was known to the MSG.

The PBC, in their submissions, were clear in that they had made known the policies of the Government in respect of the operative date and such policies were never, from their perspective, going to be put aside for a party continuing to seek further benefits.

Ms Priestley, in putting forward submissions on behalf of the Minister, most eloquently informed the Commission of the Government's "across the board:" approach to operative dates.

The Commission, in considering an outcome, is bound by s. 149 of the Act and, in particular, clause (5):

"(5) In considering the matters at issue, the commission must consider at least the following –

- (a) the merits of the case;
- (b) the likely effects of the commission's proposed determination, and any matters agreed before arbitration, on employees and employers who will be bound by the proposed determination;
- (c) the public interest, and to that end the commission must consider –
 - (i) the objects of this Act; and
 - (ii) the likely effects of the commission's determination on the community, economy, industry generally and on the particular enterprise or industry concerned;
- (d) the extent to which the negotiating parties have negotiated in good faith."

Finding

Based upon the submissions before the Commission, there is no doubt that the MSG, at no time, committed, during the negotiations, to the acceptance of the terms (in total) of the proposed Agreement.

The MSG continued to pursue additional payments, unsuccessfully as it turned out, and thus forfeiting the right to be paid the increases contained in the Agreement from 1 July 2003 and 2004.

The actions of the Union were deliberate and, whilst their right to pursue such increases is not challenged, they were being quite unrealistic in believing that the operative dates for the increases would be the same as for those employees that had reached agreements in principle much earlier in the piece.

A departure from the well known and established policy of the Government, in the view of the Commission, would not be in the interest of the community, industry generally, and the PBC, even if convincing arguments to make such a decision were before the Commission.

In this matter, the MSG failed to place such arguments before the Commission.

In terms of the operative date, it is the view of the Commission that 7 September 2004 would, in the circumstances, be a reasonable date upon which both wage increases should apply to the employees subject to this determination.

Further, the increases should be applied in a cumulative manner as was the case for those already in receipt of the said increases.

The Commission has opted for the abovementioned date rather than a date to coincide with the release of this decision, for reasons relating to the availability of the parties (including the Commission) to complete the hearing process once Commissioner Brown had agreed the matter be arbitrated.

I order accordingly.

J.M. THOMPSON, Commissioner.

Hearing Details:

2004 16 September
28 October

Released: 8 November 2004

Appearances:

Mr P. Ashton, of the Port of Brisbane Corporation.
Mr M. Fleming, of Merchant Service Guild of Australia, Queensland Branch, Union of Employees.
Mr D. Perry, of The Seamen’s Union of Australasia, Queensland Branch, Union of Employees.
Ms D. Priestley, of the Department of Industrial Relations.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 150 – determination by commission

**Merchant Service Guild of Australia, Queensland Branch, Union of Employees AND
Port of Brisbane Corporation (No. D217 of 2003)**

**Port of Brisbane Corporation AND The Seamen’s Union of Australasia, Queensland Branch,
Union of Employees, and Others (No. D273 of 2003)**

PORT OF BRISBANE CORPORATION – “BRISBANE” – EMPLOYEES – DETERMINATION 2003

COMMISSIONER THOMPSON

8 November 2004

DETERMINATION

THIS matter coming on for hearing at Brisbane on 16 September and 28 October 2004, this Commission determines as follows as from 7 September 2004:

PORT OF BRISBANE CORPORATION – “BRISBANE” – EMPLOYEES – DETERMINATION 2003

PART 1 – PRELIMINARY

1.1 Title

This Determination shall be known as the Port of Brisbane Corporation – “Brisbane” – Employees – Determination 2003.

1.2 Arrangement

Subject Matter **Clause No.**

PART 1 – PRELIMINARY

Title	1.1
Arrangement	1.2
Application	1.3
Date and Period of Operation	1.4

PART 2 – RELATIONSHIP TO AWARD AND OBJECTIVES

Relationship to Parent Award	2.1
Objectives of the Determination	2.2
Equity Consideration	2.3
Procedures for Preventing and Settling Disputes	2.4

PART 3 – WAGES

Salary Rates	3.1
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Subject Matter	Clause No.
Leave and Training Sacrifice Option.....	3.2
Incentive Payments	3.3
Annualised Salary	3.4
No Further Claims/Leave Reserved	3.5
PART 4 – PRODUCTIVITY MOTIVATED CHANGES	
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Terms and Conditions of Employment.....	5.10
General.....	5.11
Long Service Leave	5.12
Expenses	5.13
PART 6 – FUTURE NEGOTIATION OF AGREEMENT	
Renewal or Replacement of Determination	6.1
Schedule 1	
Schedule 2	
Schedule 3	

1.3 Application

This Determination shall apply to the Port of Brisbane Corporation and its employees who are employed under the Port of Brisbane Corporation Employees' Award and who are the crew of the Trailer Hopper Suction Dredger "Brisbane", and to the Maritime unions signatory to this Determination.

1.4 Date and Period of Operation

This Determination shall operate from 7 September 2004 and shall remain in force until 30 June 2005.

PART 2 – RELATIONSHIP TO AWARD AND OBJECTIVES

2.1 Relationship to Parent Award

- (a) This Determination shall be read and interpreted wholly in conjunction with the *Port of Brisbane Corporation Employees' Award 2003*.
- (b) To the extent of any inconsistency between this Determination and the Award, this Determination shall prevail.

2.2 Objectives of the Determination

The aim of this Determination is:

- (a) To promote productivity and efficiency on board the "Brisbane".
- (b) To facilitate flexibility of working arrangements as contained in this Determination.
- (c) To ensure continued reform in the operation of the "Brisbane" using a consultative approach utilising teamwork.
- (d) To put in place a mechanism which will ensure continuous improvement in the manner of operation of the "Brisbane".
- (e) To promote multi-skilling and flexibility and to eliminate the possibility of demarcation among the officers and crew of the "Brisbane".
- (f) To provide the mechanisms for the above to occur.

2.3 Equity Consideration

The Port of Brisbane Corporation and the unions' party to the enterprise bargaining negotiations are committed to the principles of equity and merit and thereby to the objectives of the *Equal Employment Opportunity in Public Employment Act 1992* and the *Anti-Discrimination Act 1991*.

It is, therefore, the intention of the parties to jointly monitor the implementation of the changes as a result of enterprise bargaining agreements in the Port of Brisbane Corporation, to ensure that there is no adverse impact in terms of existing equity protection, or in terms of creating any new situation of inequity referred to in the legislation.

2.4 Procedures for Preventing and Settling Disputes

The provisions of clause 2.3 (Grievance Procedures) of the *Port of Brisbane Corporation Employees' Award 2003* shall apply to this Determination.

PART 3 – SALARIES**3.1 Salary Rates**

Notwithstanding the rates of remuneration contained in Schedule 2 of the *Port of Brisbane Corporation Employees' Award 2003*, the rates of pay shown in Appendix 1 which represent an increase of 3.5% or \$25 per week whichever is the greater, shall apply to all employees of the Corporation who are engaged as Crew of the Trailer Hopper Suction Dredger "Brisbane" in consideration of matters specified in the Determination as from such date as the Queensland Industrial Relations Commission approves.

The rates shown in Appendix 2 which represent a further increase of 3.5% or \$25 per week (whichever is the greater) shall apply to all employees as from 1 July 2004.

3.2 Leave and Training Sacrifice Option

New employees may exercise the following option:

- (a) Reduce their entitlement to Annual Leave from 6 weeks to 4 weeks' and
- (b) Reduce their "Home Leave" by one week (Monday to Friday – Equivalent to 42 Hours) for training purposes. Such training to be carried out at no additional salary cost to the Corporation. Training must be completed within the calendar year.

New employees must exercise this option within three months of commencement on the "Brisbane" as a permanent employee. Once an employee chooses to take this option there is no provision to return to the original leave entitlement.

Any employees who chooses to take this option will be paid a salary as set out in the "Salary Package" column of schedules 1, 2 and 3 as attached to this Determination.

3.3 Incentive Payments**Incentive payment 1**

An amount of \$500.00 (Net) will be available to all staff covered by this Determination provided that certain Performance Indicators are met by 30 June 2004.

Those Performance Indicators are to be agreed between the General Manager of the relevant Division of the Corporation and a majority of the employees within that Division. Agreement is to be reached on those indicators by 31 August 2003.

The "Grossed-up" amount will be paid directly into the employees' Q Super account, alternatively, employees may elect to have the net amount paid direct as salary but should they choose this alternative, they must advise the Corporation of their intention prior to the final qualification for the additional remuneration being determined.

A further amount of \$500.00 (Net) will be available to all staff covered by this Determination provided that further Performance Indicators are met by 30 June 2005.

Those Performance Indicators are to be agreed between the General Manager of the relevant Division of the Corporation and a majority of the employees within that Division. Agreement is to be reached on those indicators by 31 August 2004.

These payments are based on a full-time equivalent employee. *Pro rata* payments will apply to those employees who are employed on a part-time or casual basis. Employees must have been employed continuously from 1 April each year to be eligible for this payment.

Incentive payment 2

A further amount of \$500.00 (Net) will be available to all staff covered by this Determination provided that certain Performance Indicators are met each year of the Determination by 30 June.

These Performance indicators will be determined as follows:

No	Indicators	Definition	Reporting Source	2003/2004 Budget	Award Employee Goal for 03/04	Improvement versus Budget
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1	EBIT	Earnings before Interest & Tax	Profit & Loss	\$51.8M	\$54.4M	5%
2	Revenue	Total Revenue	Profit & Loss	\$107.3M	\$112.6M	5%
3	LTI Frequency Rate	Lost Time Injury Frequency Rate	Loss Control		LTIFR of 15 or less.	N/A
4	Maintain ISO certification	ISO 9001 / 2000 and ISO 14001	External Auditors	Maintain with no non-conformances	Maintain with no non-conformances	No Improvement

For achieving at least 3 of the 4 indicators above a full-time equivalent employee will be paid a bonus of \$500 net.

For achieving at least 2 of the 4 indicators above a full-time equivalent employee will be paid a bonus of \$350 net.

For the remaining 1 year of the Determination the Employees' goals for EBIT and Revenue will be 5% above the Corporation's budget which will be determined as part of the Corporate Planning process. The Lost Time Injury Frequency Rate goal for employees for the 2004-5 financial year will be 10 or less. The Unions can raise this matter with the Corporation in the period preceding 30 June 2004 if they believe the target is not achievable. The future goal for LTIFR for the Corporation is zero.

Maintaining ISO 9001 and 14001 in all areas of the Corporation with no non-conformances will remain for the life of the Determination.

Any extenuating circumstances beyond the control of Port of Brisbane Corporation employees that prevent the Corporation achieving the EBIT or Revenue indicators will be taken into consideration by Port of Brisbane Corporation Management.

These payments are based on a full-time equivalent employee. *Pro rata* payments will apply to those employees who are employed on a part-time or casual basis. Employees must have been employed continuously from 1 April each year to be eligible for this payment.

3.4 Annualised Salary

The rates of pay shown in Schedule 1 represent an annual salary inclusive of overtime and shipkeeping payments and incremental, special, victualling, sea rates, thickness testing, dirt money, living-away-from-home and travelling allowances. Such salary shall be paid every two weeks by direct debit.

Pursuant to the objective of the Port of Brisbane Corporation to seek dredging work outside Queensland waters, the parties subject to this Determination shall consult on the scope, location and duration of the work, and any possible effect it may have on the crew of the dredger. The rates of salary contained in this Determination shall continue to apply for the period of such contract.

3.5 No further Claims/Leave Reserved

This Determination is a closed Determination and there shall be no further claims in respect to any matter in respect of the employment relationships covered by the Determination during the life of the Determination. However, should the applicable rates of remuneration in Schedule 2 of the *Port of Brisbane Corporation Employees' Award 2003* at any time during the life of this Determination change so as to exceed the rates applicable in Appendix 1 or Appendix 2 (as the case may be), then Port of Brisbane Corporation shall apply the new rates in Schedule 2 of the *Port of Brisbane Corporation Employees' Award 2003* with effect from the date of the change.

PART 4 – PRODUCTIVITY MOTIVATED CHANGES

4.1 Facilitative Provisions

To achieve workplace changes and flexibility in conditions throughout the period of the Determination, any workplace practice or arrangement to meet Port of Brisbane Corporation or employee requirements may be varied subject to the following conditions:

- (a) The proposed changes to conditions of employment have been agreed by management and the majority of employees potentially affected by the proposal. Where this is required, all employees potentially affected will be consulted as a group. In these circumstances, agreement is defined as a majority of employees affected. However, it is acknowledged by the parties that consensus should, wherever possible, be the basis of agreement. In determining the outcome, neither party will unreasonably withhold or delay agreement.
- (b) All employees, the subject of consultation will have the right to confer with their Union delegate/official before any changes are introduced.
- (c) In cases of significant workplace changes, the application of a trial period will be allowed when requested.

4.2 Absenteeism

In any case when an employee is unable or fails to give reasonable notice of being unable to embark for a period of duty, that person's counterpart on the offgoing crew shall remain on board the dredger for a maximum of two working days to allow for a replacement to be organised.

4.3 Sick Leave

Preamble

Sick leave is unlike annual or long service leave in that it is conditional upon an employee being ill or injured to the point of being unfit for duty.

It is an insurance to protect the employee and his or her family against hardship should he or she be unable to continue in their normal occupation and should be only so utilised.

- (a) Every employee (other than a casual) shall accrue 84 hours of sick leave for each completed year of the employee's employment with the Port of Brisbane Corporation:

Provided any employee who completes less than a full year of service shall accrue 8.4 hours sick leave for each thirty-six calendar days of such period.

- (b) (i) An employee absent from work through illness on the production of a certificate from a duly qualified medical practitioner specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the Corporation, and subject to the employee having promptly notified the supervisor of the estimated duration of the absence shall, subject as herein provided be entitled to payment in full for all time so absent from work, provided that such employee has the necessary leave accrued.
- (ii) Provided that it shall not be necessary for an employee to produce such certificate if the employee's absence from work on account of illness does not exceed two consecutive days and the employee has notified the Corporation in accordance with (a) above.

However, if any employee has taken sick leave on more than five occasions in any 12 month period, then the Chief Executive Officer may require the employee to produce a medical certificate for each and every absence thereafter on account of medical reasons in the following 12 month period. This position may be taken if the Chief Executive Officer requires further evidence to support the employee's claim for sick leave pay.

- (iii) Employees who fail to notify their supervisor of their inability to attend work as soon as practicable will not be entitled to payment of sick leave.

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

- (i) Absence from work on leave granted by the Corporation.
- (ii) The employee having been dismissed or stood down by the Corporation, or the employee having self-terminated employment with the Corporation, for any period not exceeding three (3) months.

In determining service for the purpose of calculation of sick leave entitlements:

- (i) Absences on sick leave without pay for any period in excess of three (3) months.
- (ii) Absences on special leave without pay in excess of nine (9) working days.
- (iii) Absences from work without pay for which an employee is entitled to receive workers compensation under the WorkCover Act for any period in excess of three (3) months

shall not be recognised as service.

4.4 Team based work

A further aim of the Determination is to provide the appropriate framework to develop flexible and multi skilled crews aboard the vessel thereby allowing a team approach to activities wherever possible.

It is intended that this team approach will eventually allow any employee to perform any tasks in an area for which that employee is appropriately trained and a position is available. It is not intended that team-based work will reduce the incidence of Higher Duties Payments.

4.5 Performance Management Remuneration System

The Performance Management Remuneration System will apply annually, to all the crew of the "Brisbane" dredger and will be applied in the same way as elsewhere in the Corporation.

It is further agreed that the PMRS system will recognise circumstances under which the employee can not achieve the agreed objectives. The PMRS will be structured to ensure that "behaviours" as defined in the PMRS system will not be assessed on a subjective basis.

4.6 Salary Sacrifice

Employees covered by this Determination will be allowed to "Salary Sacrifice" in respect to Superannuation for Q Super only. Salary Sacrifice arrangements will be consistent with the arrangements made from time to time with the Queensland Government Superannuation scheme (Q Super).

Employees may enter into a novated lease arrangement with a leasing company nominated by the Corporation in respect to motor vehicles.

Options available to employees will be limited to the provisions contained in the document agreed to between the Corporation and the successful leasing company.

4.7 Maternity and Paternity Leave

Notwithstanding the provisions contained in clause 5.5 of the Parent Award, employees with at least 1 (one) year's continuous service will be entitled to the following:

Payment of 6 weeks' paid Maternity or Adoption Leave under conditions contained within the Maternity Leave policy as approved by the Chief Executive Officer and one (1) weeks' paid leave, which will be available to spouses at the time of birth or adoption of a child/children.

Paid prenatal/pre-adoption leave will be available up to the following limits:

- A total of 38 hours per pregnancy/adoption for employees.
- A total of 7.6 hours per pregnancy/adoption for partners,

to attend medical appointments or interviews prior to the birth or adoption of a child/children

4.8 WorkCover Rehabilitation

Any period of rehabilitation as determined under the WorkCover/Seacare Act shall be carried out in Brisbane, where possible and practicable. In other circumstances there shall be consultation between the employee and the Corporation.

PART 5 – GENERAL ISSUES

5.1 Administrative Arrangements During Brisbane Refit and Dredging Out of Brisbane.

Crew members reporting for work when the "Brisbane" is working outside of the Port of Brisbane, shall report to the designated Brisbane airport at the time nominated by the Dredging Superintendent, in sufficient time to board the aircraft. The Corporation will supply transport to employees proceeding on or returning from other port dredging duties. Members using taxis will practice the form of multiple use.

The Corporation will only be liable for the cost of fares for the distance travelled from the Brisbane Airport and the employee's usual place of residence or to the appropriate boundary of the Brisbane Metropolitan Taxi District nearest the employee's usual place of residence, whichever is the lesser distance travelled. The Corporation shall provide transportation between Brisbane and the "Brisbane".

Flights will normally be by commercial airline, except where circumstances dictate that charter flights would be more practicable. The Corporation shall not be liable for the costs of provision of meals or refreshments other than those provided as part of the normal airfare or for meals in respect to charter flights.

Crew members required to work during the refit of the "Brisbane" which occurs in Brisbane will be required to provide their own means of transport to and from the place of refit, including Gateway toll or any other associated costs. This provision will also apply to crewmembers who are required to report to the Whyte Island depot because they are unable to report for work on the dredger in ports outside of Brisbane due to sickness or other reason acceptable to the Corporation.

The principle behind the proposal to remunerate crew members on the Brisbane in regard to travelling time, when the dredge is operating outside Brisbane, is that actual travelling time will be noted and added to the individual's annual leave account after the northern dredging program is completed. As the aggregate wage already makes provision for 18 hours travel time per year this will be deducted from the tallied amount. For ease of calculation the annual leave entitlement will be based on a calendar year.

With regard to the calculation of the travelling time, it is proposed that the ongoing crew will accrue time from 1 hour before the scheduled aircraft departure time from Brisbane Airport up to the scheduled crew change time on the vessel. The offgoing crew will accrue their travelling time from the scheduled crew change time to the actual aircraft arrival time at Brisbane Airport.

In situations where aircraft schedules result in crew change time being scheduled after 10.00 a.m., the crew change time of 10.00 a.m. will remain for remote ports such as Weipa and Karumba. However the offgoing crew will continue to work to 12 noon carrying out such tasks as loading stores, refuelling etc. In this case the offgoing crew accrues travelling time from 10.00 a.m. and the oncoming crew up to 10.00 a.m. This will maintain a situation where the crew is available for 168 hours per fortnight and limit unnecessary downtime to the vessel.

5.2 Hours of Work

- (a) Each crew will be required to work 168 hours in each four week period by working a continuous cycle of 14 days per each four week period and have 14 continuous days home leave.

Crews will commence and cease work at 10.00 a.m. each second Thursday.

- (b) (i) To achieve the efficient operation of the vessel, employees will be required to perform operational and maintenance duties 12 hours per day each day of the week.
- (ii) All watches will be 12 hours duration. Day workers, excluding the catering staff, will work the same hours, i.e., 0600 to 1800 hours, unless other mutually agreed arrangements have been made with the Master.
- (iii) The Catering staff shall work a total of 12 hours daily as agreed between the parties to suit the meal times of the crew.
- (iv) To meet the operational and safety requirements of the vessel, employees may be required to work in excess of 12 hours per day for which no additional payment will be made. However, all parties should ensure that employees are provided with reasonable and equitable workload and ensure that employees have adequate rest.
- (c) Employees who work in excess of 12 hours in any 24 hour period must receive a ten hour break before commencing their next shift. This may be varied by agreement in emergent circumstances.
- (d) Where Officers are required to work on occasions beyond 12 hours in any one day to meet operational requirements the Master and the Corporation will ensure that the provisions of STCW95 – Chapter (viii) are strictly complied with.

5.3 Shortages and Replacements

- (a) In cases of short term vacancies caused through sickness or injury, the Master/Chief Engineer, in consultation with the Dredging/Maintenance Superintendent/Project Leader and Management Committee, will decide whether replacements are necessary consistent with their responsibilities to provide a safe and healthy working environment.
- (b) In cases where there are shortages and no replacements are made, the crew will provide its own relief and a flexible attitude will be shown at all times by the crew. Lack of skills/qualifications will be the only reason accepted for any crew member not performing duties requested during times of shortage.
- (c) The dredger will operate shorthanded only when the provisions of the Safe Manning Certificate are complied with.

5.4 Selection of Labour

The Corporation will advertise for replacements to fill any permanent positions that may become vacant in accordance with its obligations under the *Equal Opportunity Public Employment Act 1992*. A member of the crew will form part of the selection panel for any permanent replacements.

5.5 Meal Hours

Meal Breaks shall be of 30 minutes duration to suit the operation of the vessel and shall be coordinated by the Shipboard Management Committee in conjunction with the catering staff.

5.6 Shipkeeping

The crew will provide shipkeeping duties as required to ensure the safety of the crew and the vessel.

5.7 Annual Leave

Employees will accrue six weeks annual leave at the completion of each year's service. Days accrued under clause 5.7 include Saturdays, Sundays and statutory holidays.

This leave will be paid at the rates set out in Appendix 1 of this Determination.

5.8 Emergency Leave

Employees may be entitled to Emergent Leave for such purposes and under such conditions as determined by the Chief Executive Officer. Emergent leave is unlimited and will only be approved if the Chief Executive Officer is satisfied that the request for leave to be of a truly emergent nature.

5.9 Embarkation/Disembarkation

In circumstances where crew or crews are detained overnight an assessment of compensation will be determined by the parties taking into account all the circumstances.

The Corporation reserves the right to alter the scheduled departure time of aircraft without incurring any penalty payment provided a minimum of eight hours notice prior to schedule departure time is given either by verbal or written communication. Verbal communication will include a taped message which employees can contact by telephone and confirm their flight arrangements.

For transportation to a destination outside of the Port of Brisbane other than by plane, the place of embarkation and disembarkation shall be either the Whyte Island Operations Base or the terminal of the organisation supplying such transport.

5.10 Terms and Conditions of Employment

- (a) **Contract of Employment** – An employee shall receive one fortnight's notice in writing of termination of employment or the employee shall receive payment of one fortnight's salary in lieu thereof.

The employee shall give the employer one fortnight's notice of the employee's termination of employment or forfeit one fortnight's salary in lieu thereof:

Provided that the period of notice may be reduced by mutual agreement between the employer and employee.

An employee dismissed on account of intoxication, insubordination, dishonesty or misconduct shall not be entitled to receive the aforementioned notice of termination of employment or payment in lieu thereof:

Provided that as soon as it is practicable Management will inform Unions and employees of intended changes that could either result in positions becoming redundant or significantly alter the manner in which employees currently carry out their duties.

Any employee who is dismissed on account of drunkenness, dishonesty, insubordination or culpable negligence whilst employed on the dredger shall be paid his/her entitlements to the time of dismissal. In addition, the employer shall be responsible for necessary and reasonable transport, meals and accommodation expenses of the employee to the point of disembarkation.

Any employee whilst working on the dredger who gives notice to finish forthwith in addition to (a) above shall be responsible for his/her own transport, meals and accommodation expenses to the point of disembarkation. The employer shall be responsible to put such an employee ashore where transport to the point of disembarkation is reasonably available.

- (b) (i) The parties to this Determination are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the Corporation and to enhance the career opportunities and job security of employees employed by the Corporation.
- (ii) All measures raised by the Corporation, unions, or employees for consideration consistent with the objectives of paragraph (i) herein shall be processed through the consultative mechanism and procedures set up by the parties.
- (iii) Employees will carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Schedule provided that such duties are not designed to promote de-skilling. This will include an employee carrying out the duties of a higher designated position than the position in which the employee was employed.

Employees will also carry out such duties and use such tools and equipment as may be required provided that the employees have been properly trained in the use of such tools and equipment.

Any direction issued by the Corporation pursuant to this subclause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

- (c) **Career Paths** – Each employee should be allowed to work to the level of their ability/skill level. It is the objective of the Corporation to provide employees with the opportunity to develop their skills and experience through training and work experience. Employees will also be encouraged to attain higher formal qualifications which will assist in their endeavours to attain more responsible positions within the Corporation as vacancies become available. The Corporation would, whenever possible, promote employees from within the organisation. Merit will be the sole basis for promotion.

5.11 General

- (a) The cost of transport, meals and accommodation shall be met by the employer whilst permanent and temporary employees are travelling from the place of embarkation to the dredger and from the dredger to the place of embarkation. When the "Brisbane" is operating away from Brisbane and employees are required to be transported by plane, employees will travel either domestic or charter. When travelling domestic, employees will travel economy class.
- (b) The Master and Chief Engineers of the dredger shall be responsible for the proper recording of employees' times.
- (c) The Master of the dredger shall be empowered to make inspections of all cabins and to issue such instructions to any employee as may be necessary to bring any employee's cabin and its contents to a state of cleanliness and tidiness, especially prior to change of crews.
- (d) Employees will be paid fortnightly

Provided that each employee will be paid his/her wages by means of direct credit (Electronic Funds Transfer) into a nominated Bank, Credit Union or Building Society account to be available on the agreed pay day.

- (e) Employees other than those proceeding on home leave at 10.00 a.m. on a Thursday shall remain on board the dredger and shall not leave the vessel without submitting a written request to the Master seeking permission to leave the vessel and receiving the Master's approval.

- (f) Employees shall not take or consume alcohol on board the vessel. No alcohol will be allowed on the vessel without the approval of the Chief Executive Officer of the Corporation. The possession, soliciting, secreting or consumption of prohibited or illegal drugs is prohibited. The penalty is instant dismissal.
- (g) All crew members must meet the required medical/revalidation criteria as required by the *Navigation Act* and/or the Corporation for the position held upon the vessel. The Corporation will be liable for all medical/revalidation costs involved. The Corporation shall facilitate the revalidation of the Certificate of Competency held by each individual officer and the Corporation agrees to pay the course costs and reasonable travelling, accommodation and meals/incidental expenses.
- (h) Prior to the last tour of duty in each calendar year the Corporation will, where agreed, reallocate employees to one of two crews in the following year after consultation with the Management Committee.
- (i) Crew members are not entitled to any payment for periods of home leave irrespective of the time worked during the duty period.

5.12 Long Service Leave

Long Service Leave shall be accrued as per the conditions set out in clause 5.4 of the Parent Award.

5.13 Expenses

The Corporation shall reimburse an officer upon presentation of receipts, for expenses reasonably incurred by the officer in the performance of their duties including but not limited to:

- (a) Where the officer is involved in an inquiry in relation to casualties or proceedings concerning the conduct of the officer for alleged breach of any maritime, port or related regulations. However, the Corporation will not be liable to reimburse the officer where the authority conducting the inquiry or proceeding or appellate tribunal finds serious default or serious misconduct by the officer.
- (b) In respect to a breach of any applicable environmental legislation, the officer shall be reimbursed for:
- (i) reasonable legal costs incurred where the Corporation has approved the expenditure; and
 - (ii) fines imposed by a competent tribunal,

unless those proceedings have been occasioned by the serious default or serious misconduct of the officer concerned. If the Corporation disputes liability under clause 5.13, the dispute shall be dealt with in accordance with the settlement of disputes procedures in this Determination.

PART 6 – FUTURE NEGOTIATIONS OF AGREEMENT

6.1 Renewal or Replacement of Determination

The parties undertake to commence discussions three months prior to the expiry date of this Determination with the objective of reaching a new agreement which will operate from 1 July 2003.

Schedule 1

Salary as at 1 July 2003			
Masters			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
78,399	3,005.04	82,906	3,177.78
75,335	2,887.58	79,666	3,053.62
73,914	2,833.12	78,163	2,996.00
71,071	2,724.16	75,157	2,880.76
Chief Engineers			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
76,862	2,946.12	81,281	3,115.48
73,858	2,830.98	78,104	2,993.72
72,464	2,777.56	76,630	2,937.24
69,678	2,670.74	73,683	2,824.28

Dredgemasters and Senior 2nd Engineers			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
69,615	2,668.34	73,617	2,821.76
68,326	2,618.94	72,255	2,769.52
67,037	2,569.52	70,891	2,717.24
64,459	2,470.70	68,165	2,612.74
Senior General Purpose Hands & Cooks			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
59,816	2,292.76	63,255	2,424.58
58,708	2,250.28	62,083	2,379.66
57,601	2,207.82	60,912	2,334.76
55,386	2,122.94	58,570	2,244.98
General Purpose Hands			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
54,902	2,104.38	58,057	2,225.34
54,274	2,080.34	57,395	2,199.96
53,250	2,041.08	56,311	2,158.42
51,202	1,962.58	54,146	2,075.42

*Salary package amounts are available only to employees who elect to take the option set out in clause 3.2 (Leave and Training sacrifice option)

Schedule 2

Salary as at 1 July 2004			
Masters			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
81,143	3,110.21	85,808	3,289.00
77,971	2,988.63	82,454	3,160.47
76,501	2,932.27	80,899	3,100.85
73,558	2,819.47	77,787	2,981.59

Chief Engineers			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
79,552	3,049.23	84,126	3,224.53
76,443	2,930.04	80,838	3,098.51
75,000	2,874.74	79,312	3,040.04
72,117	2,764.24	76,262	2,923.11
Dredgemasters and Senior 2nd Engineers			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
72,052	2,761.73	76,194	2,920.49
70,717	2,710.59	74,784	2,866.46
69,383	2,659.45	73,372	2,812.35
66,715	2,557.17	70,551	2,704.20
Senior General Purpose Hands & Cooks			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
61,909	2,372.98	65,469	2,509.42
60,763	2,329.04	64,256	2,462.94
59,617	2,285.11	63,044	2,416.47
57,324	2,197.24	60,620	2,323.56
General Purpose Hands			
Salary		Salary package*	
Per Annum	Per Fortnight	Per Annum	Per Fortnight
\$	\$	\$	\$
56,823	2,178.02	60,089	2,303.20
56,174	2,153.13	59,404	2,276.94
55,114	2,112.50	58,282	2,233.94
52,994	2,031.25	56,041	2,148.05

Schedule 3**Progressional Arrangements**

Masters and Chief Engineers Level

Paypoint	Criteria for progression/appointment
4	Performance Management
3	Performance Management
2	Performance Management
1	Performance Management

Dredgemasters and Senior 2nd Engineers Level

Paypoint	Criteria for progression/appointment
4	Performance Management
3	Performance Management
2	Performance Management
1	Performance Management

Senior General Purpose Hands Level

Paypoint	Criteria for progression/appointment
	Performance Management
	Performance Management
2	Drag Operator and Leading Hand Experience & Leadership Training Course.
1	Drag Operator and Leading Hand Experience.

General Purpose Hands Level

Paypoint	Criteria for progression/appointment
4	Integrated Rating Certificate PLUS Riggers and Doggers Certificate PLUS Radar Observer Certificate.
3	Integrated Rating Certification.
2	AMSA Certificate of Safety.
1	General Purpose Hand with TAFE OH&S at sea & current eyesight Certificate to U.S.L. standard.

Increases within Salary levels shall be dependant upon reaching prerequisite Ratings as described in the Port of Brisbane Corporation Performance Management System as well as attainment of the skills/qualifications listed above.

Ratings within the Performance Management System are:

5	Outstanding
4	Superior
3	Fully Competent
2	Satisfactory
1	Marginal/Developmental

Progression within Salary Levels

Progression from one paypoint to any other paypoint within any Level shall be dependant upon attainment of a rating of at least Fully Competent. This process will occur annually.

Progression from one level to another, will be dependant on appointment to a vacant position.

Dated 8 November 2004.

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

Operative Date: 7 September 2004
Determination – Port of Brisbane Corporation – “Brisbane” – Employees –
Determination 2003
Released: 9 November 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Nurses’ Union of Employees (No. Q29 of 2004)

REGISTRAR SAVILL

4 November 2004

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

DECISION

On 3 November 2004, after its Council Meeting, the Queensland Nurses’ Union of Employees lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, further information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* and supporting material in relation to its request for the conduct of an election by the Electoral Commission for each of the new branches of the Industrial Organisation as listed on Schedule “A” for the following positions:

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

Reasons for Elections

The Industrial Organisation has advised that the new Branches, as listed on Schedule "A" hereto have been set up with "the approval of Council" in accordance with Rule 43(a). The number of delegates for each Branch is apportioned in accordance with the scale of delegates set out in Rule 44 based upon the number of financial members of each branch.

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

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

Method of Voting

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

Conduct of Elections

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

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

Dated 4 November 2004.

G. SAVILL
Industrial Registrar

Schedule "A"

Branches	Number of Delegates	Number of Alternate Delegates
Friendly Society, Bundaberg.....	2	2
Gertrude E Moore Nursing Home.....	1	1
Masonic Home, Townsville.....	1	1
Mater Private Hospital, Mackay.....	2	2
Sunshine Coast Community Mental Health.....	1	1
Villa Vincent, Townsville.....	1	1
Warrina Nursing Home, Innisfail.....	1	1

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999

**HEALTH AND FITNESS CENTRES AND INDOOR SPORTS AWARD –
SOUTH EAST QUEENSLAND – 2003**

(Gazette 9 May 2003)

(AR131 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

9 November 2004

AWARD REVIEW
(Correction of Error)

WHEREAS an error occurred in the Award as published in the *Queensland Government Industrial Gazette* of 9 May 2003, Vol. 173, No. 1, pages 46-63, the following correction is made to be effective as from 2 June 2003:

By deleting clause 6.6 and inserting the following in lieu thereof:

"6.6 Weekend penalty rates

All ordinary time worked by employees, including casual employees, between midnight Friday and midnight Saturday, shall be paid for at the rate of time and a-quarter. All time worked between midnight Saturday and midnight Sunday shall be paid for at the rate of time and a-half. Casuals working on weekends shall be paid the same as full-time employees."

Dated 9 November 2004.

G.D. SAVILL,
Industrial Registrar

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1990 s. 142
Industrial Relations Act 1999 s. 713(2)

Millaquin Sugar Company Limited

AND

The Australian Workers' Union of Employees, Queensland

**SUGAR REFINERS' AWARD – MILLAQUIN AND BRISBANE – SHIFT WORK – PACKAGING
DEPARTMENT – MILLAQUIN REFINERY, BUNDABERG
INDUSTRIAL AGREEMENT**

NOTICE OF INTENTION TO RETIRE FROM INDUSTRIAL AGREEMENT

TO: The Industrial Registrar, Industrial Registry, Level 14, Central Plaza 2, 66 Eagle Street (Corner Creek and Elizabeth Streets), Brisbane 4000,
GPO Box 373, Brisbane Q 4001.
Phone: (07) 3227 8060, Fax: (07) 3221 6074

TAKE NOTICE that Bundaberg Sugar Ltd. of 21 Magura Street, Enoggera QLD 4151, one of the parties to the industrial agreement made between Millaquin Sugar Company Limited and The Australian Workers' Union of Employees, Queensland and dated 18 August 1966 filed at the registry and given the registered No. A70 of 1966 and that expired on 15 August 1967 will retire from the agreement and cease to be a party to the agreement at the expiration of 30 days from the date this notice is filed.

FURTHER TAKE NOTE, that a copy of this notice has also been served on each of the original and any later parties to the agreement.

Signed for:

G. LONGDEN
Regional Manager Southern Milling

In the presence of – G. CHANDLER

Filed in the Industrial Registry on: 8 November 2004

G.D. SAVILL,
Industrial Registrar.