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No. 14

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
CA549/04	Presbyterian and Methodist Schools Association – Sunshine Coast Grammar School Enterprise Bargaining – Certified Agreement 2004	15/11/04	CA98/02
CA522/04	Brisbane Catholic Education – Principals’ – Certified Agreement 2004	17/11/04	CA498/01
CA534/04	E & N Bernabei – Certified Agreement 2003	17/11/04	
CA535/04	Kimfield Pty Ltd – Certified Agreement 2003	17/11/04	
CA536/04	C & L Nastasi & Sons Pty Ltd – Certified Agreement 2003	17/11/04	
CA537/04	Lucar Nominees Pty Ltd – Certified Agreement 2003	17/11/04	
CA550/04	Rockhampton City Council Enterprise Bargaining – Certified Agreement	17/11/04	CA95/02

G.D. SAVILL,
Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers’ Union of Employees, Queensland AND E.S. Randle & Co. Pty Ltd
(No. B971 of 2004)**

E.S. RANDLE & CO. PTY LTD INDUSTRIAL AGREEMENT

COMMISSIONER FISHER

28 September 2004

REPEAL AND NEW AWARD

THIS matter coming on for hearing before the Commission at Brisbane on 28 September 2004, this Commission orders that the Industrial Agreement that was given effect as an award on 29 June 2004 pursuant to s. 713(5) of the *Industrial Relations Act 1999* be repealed and awards as follows by consent as from 1 September 2004.

E.S. RANDLE & CO. PTY LTD AWARD – STATE 2004

PART 1 – APPLICATION AND OPERATION

1.1 Title

This Award is known as the E.S. Randle & Co. Pty Ltd Award – State 2004.

1.2 Arrangement

Subject Matter Clause No.

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1.3 Date of operation

This Award takes effect from 1 September 2004.

1.4 Award coverage

This Award applies to all employees engaged in or in connection with or incidental to the mooring and unmooring of ships or vessels who are employed by E.S. Randle & Co. Pty Ltd, and to the employer, E.S Randle & Co Pty Ltd within the State 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 Australian Workers’ Union of Employees, Queensland.

1.6 Parties bound

This Award is legally binding on the employer E.S. Randle & Co. Pty Ltd and employees as prescribed by clause 1.4, the Union and its members.

PART 2 – FLEXIBILITY

2.1 Enterprise flexibility

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

PART 3 – COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultative mechanisms and procedures in the workplace

- 3.1.1 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the employer and to enhance the career opportunities and job security of employees.

3.2 Grievance and dispute settling procedure

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

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee’s representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee’s representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer’s nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.

- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

4.1 Employment categories

4.1.1 Employees covered by this Award shall be advised in writing of their employment category upon appointment. Employment categories are:

- (a) Full-time;
- (b) Part-time (as prescribed in clause 4.2); and
- (c) Casual (as prescribed in clause 4.3).

4.2 Part-time employment

4.2.1 Part-time employees may be engaged on the following terms:

- (a) A part-time employee means a weekly employee who is engaged to work on a pre-determined days of the week for a regular number of hours, being more than 16 but less than 32 hours per week. Except, as hereinafter provided, all conditions provided for weekly full-time employees shall apply to part-time employees.
- (b) Part-time employees shall be paid an hourly rate equal to 1/38th of the weekly rate prescribed by this Award for the classification under which they are engaged.
- (c) A part-time employee who works outside the ordinary hours of work of 8.00 a.m. to 5.00 p.m., or in excess of the ordinary daily or weekly hours prescribed in the contract of employment shall be paid overtime in accordance with clause 6.4.
- (d) Part-time employees shall be entitled to receive *pro rata* entitlements to annual leave, sick leave, bereavement leave and long service leave, in accordance with the provisions contained in this Award.
- (e) Part-time employees shall be entitled to receive payment for ordinary hours they would have otherwise worked on any public holiday on which they would have been ordinarily rostered for duty.

4.3 Casual employment

- 4.3.1 "Casual Employee" means an employee, other than a "Part-time Employee" as defined herein, who is engaged as such and paid on an hourly basis to work, for less than 38 hours per week.
- 4.3.2 Casual employees are to be paid an additional 23% loading on the full-time hourly rate with a minimum of 2 hours' continuous work or payment therefore in respect of each engagement.
- 4.3.3 Casual employees are entitled to all penalties and allowances payable under the Award including weekend rates.
- 4.3.4 A casual employee who works outside the ordinary hours of work of 8.00 a.m. to 5.00 p.m. or in excess of 8 hours on any day, or 38 hours in any week shall be paid overtime in accordance with clause 6.4.

4.4 Incidental or peripheral tasks

- 4.4.1 The employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence, and training consistent with the classification structure of this Award provided that such duties are not designed to promote de-skilling.
- 4.4.2 The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- 4.4.3 Any direction issued by the employer pursuant to the clauses 4.4.1 and 4.4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.5 Anti-discrimination

- 4.5.1 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* as amended from time to time, 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 any of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

4.5.2 Accordingly, in fulfilling their obligations under the grievance and dispute 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.

4.5.3 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.

4.5.4 Nothing in clause 4.5 is to be taken to affect:

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

4.6 Termination of employment

4.6.1 *Statement of employment*

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

4.6.2 *Termination by employer*

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

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

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least two years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
 Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of 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 4.6.2.

4.6.4 *Time off during notice period*

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

4.7 Introduction of changes

4.7.1 *Employer's duty to notify*

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

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

4.7.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.8 **Redundancy**

4.8.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.8.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 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.

4.8.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter 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 transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.8.3, "business" includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

4.8.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, 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.

4.8.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.8.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

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

- (b) "Weeks' Pay" means the ordinary time rate of pay for the employee concerned:

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

4.8.7 *Superannuation benefits*

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

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

4.8.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.8.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause 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.

4.8.9 *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.

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

Clause 4.8 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.

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A "company" shall be defined as:
- (i) a company and the entities it controls; or
- (ii) a company and its related company or related companies; or
- (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (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:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
 - (B) 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 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.8.14 *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.

4.9 Continuity of service – transfer of calling

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

PART 5 – WAGES AND WAGE RELATED MATTERS**5.1 Classifications and wage rates**

The minimum rates of wages payable to full-time employees shall be:

	Per week \$
Employees engaged in mooring and unmooring of ships and vessels.....	524.00
All other employees not elsewhere classified.....	496.00

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 and over award 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 Queensland Minimum Wage

- 5.2.1 No Adult employee shall be paid less than the Queensland Minimum Wage.
- 5.2.2 The Queensland minimum wage for a full-time adult employee is \$448.40 per week.
- 5.2.3 Part-time or casual employees will continue to receive the wage rates determined under the casual and part-time clauses of the Award.
- 5.2.4 Application of Queensland minimum wage rates calculation:
- (a) The Queensland minimum wage:
 - (i) applies to all work in ordinary hours;
 - (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this Award; and
 - (iii) is inclusive of the arbitrated Safety Net Adjustments provided by the Declaration of General Ruling operative from 1 September 2002 and all the previous Safety Net and State Wage Adjustments.

5.3 Allowances5.3.1 *Travel allowance*

All employees shall be paid a flat allowance of \$44.80 per week to be paid on a *pro rata* basis of \$6.47 per day as compensation for having to travel to and from the place of work. Casual employees shall be paid this allowance of \$6.47 for each engagement.

In addition to the allowance prescribed by clause 5.3.1, the employer shall be responsible for making payment for any toll fee that may be incurred by the employee crossing the Gateway Bridge in the course of the employee's employment.

Employees who are instructed to report for work at a stipulated time and who report for work at such time, but for whom work is not available within 30 minutes of the said stipulated time shall be paid ordinary rates from the said stipulated time with a minimum payment as for 2 hours.

5.3.2 *Shift penalties*

For work done at any time during a shift (other than a day shift) the ordinary rate of pay shall be increased by 15% per shift, pursuant to clause 6.5.

An "Afternoon Shift" is defined as a shift commencing at or after 12 noon and before 6.00 p.m.

A "Night Shift" is defined as a shift commencing at or after 6.00 p.m. and before 6.00 a.m.

Provided that this extra shift rate shall not apply to shift work performed on a Saturday and Sunday where weekend rates apply as described in clause 6.6.

All ordinary time worked on Saturday and Sunday by employees as provided by clause 6.5, not being overtime within the meaning of clause 6.1 shall be paid for at the rate of time and a-half the ordinary rate between midnight Friday and midnight Sunday.

5.4 **Payment of wages**

5.4.1 Except upon termination of employment all wages and allowances shall be paid weekly.

5.4.2 Payment of wages shall be made at the discretion of the employer by one of the following means:

- (i) Cash
- (ii) Cheque
- (iii) Direct Credit (E.F.T.) into a nominated Bank or Building Society.
- (iv) Where an employee is paid in cash, payment for work performed during such a pay cycle shall not be held by the employer for a period in excess of two days.

5.5 **Superannuation**

5.5.1 *Application* – In addition to the rates of pay prescribed by this Award eligible employees, as defined herein, shall be entitled to Occupational Superannuation Benefits, subject to the provisions of clause 5.5.

5.5.2 *Contributions*

- (a) Amount – Every employer shall contribute on behalf of each eligible employee as from 26 February 1992, an amount calculated at 3% of the employee's ordinary time earnings, into an Approved Fund, as defined in clause 5.5. Each such payment of contributions shall be rounded off to the nearest 10 cents.
- (b) Regular payment – The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the Approved Fund Trust Deed.
- (c) Minimum level of earnings – No employer shall be required to pay superannuation contributions on behalf of any eligible employee whether full-time, part-time, casual, adult or junior in respect of any week during which the employees ordinary time earnings, as defined, do not exceed 35% of the Queensland Minimum Wage as declared from time to time.
- (d) Absences from work – Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on Workers' Compensation. In the case of Workers' Compensation the employer shall contribute in accordance with clause 5.5.2(a) whenever the employee is receiving by way of Workers' Compensation an amount of money no less than the Award rate of pay.
- (e) Other contributions – Nothing in clause 5.5 shall preclude an employee from making contributions to a Fund in accordance with the provisions thereof.
- (f) Cessation of contributions – An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.
- (g) No other deductions – No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the Fund other than the remission of contributions as prescribed in clause 5.5.

5.5.3 *Definitions*

- (a) "Approved Fund" means a Fund approved for the purposes of this Award by the Commission as one to which Occupational Superannuation contributions may be made by an employer on behalf of an employee, as required by this Award. Such approved Fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.5.2 effective from the commencement of that qualifying period.
- (c) "Fund" means a Superannuation Fund as defined in the *Occupational Superannuation Standards Act 1987* and satisfying the Superannuation Fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by Regulations made under that Act. In the case of a newly established Fund, the term shall include a Superannuation Fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

- (d) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and traveling time allowances or any other extraneous payments of a like nature.

5.5.4 *Approved funds*

For the purposes of this Award an Approved Fund shall be:

- (a) Sunsuper.
- (b) Any named Fund as is agreed to between the relevant employer/Union parties to this Award.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award of, or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction, and already has practical application to the majority of award employees of that employer.
- (d) (In an appropriate case). As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any Fund nominated by the employer and approved by the Brethren.
- (e) (In an appropriate case). Any Fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a Fund cited in an Award would be in conflict with the conscientious beliefs of that employee in terms of section 115.
- (f) In relation to any particular employer, any other established Fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.5.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions:

Provided that the making of a deposit, an initial or other contributions subsequent to 29 September 1989, but on a retrospective basis, in respect of any period up to and including 29 September 1989, shall not under any circumstances bring a Fund within the meaning of clause 5.5.4. The mere signing and submission of any nomination for membership documents to Trustees of a Fund prior to 29 September 1989 does not bring a Fund within the meaning of clause 5.5.4.

5.5.5 *Challenge of a Fund*

- (a) An eligible employee being a member or a potential member of a Fund, as well as the Union, may by notification of a dispute challenge a Fund on the grounds that it does not meet the requirements of clause 5.5.
- (b) Notwithstanding that the Commission determines that a particular Fund does not meet the requirements of clause 5.5, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that Fund as having met the requirements or part thereof of clause 5.5.2 up to and including the date of that determination.
- (c) In the event of any dispute over whether any Fund complies with the requirements of clause 5.5, the onus of proof shall rest upon the employer.

5.5.6 *Fund selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one Approved Fund. Such Fund, other than a Fund referred to in clauses 5.5.4(c), (d), (e) and (f), shall be determined by a majority decision of employees.
- (b) Employees to whom clause 5.5.6 applies who as at the date of this Award are members of an established Fund covered by clause 5.5.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.5.2 paid into a Fund as provided for elsewhere in clause 5.5.4 in lieu of the established Fund to which clause 5.5.4(f) has application.
- (c) The initial selection of a Fund recognised in clause 5.5.4 shall not preclude a subsequent decision by the majority of employees in favour of another Fund recognised under 5.5.4 where the long term performance of the Fund is clearly disappointing.

Where clause 5.5.6 has been utilised and as a result another approved Fund is determined, access to a further re-appraisal of the Fund for the purpose of favouring yet another Fund shall not be available until a period of 3 years has elapsed after that utilisation of clause 5.5.6.

5.5.7 *Enrolment*

- (a) Each employer to whom clause 5.5 applies shall as soon as practicable as to both current and future eligible employees:
 - (i) notify each employee of the employee's entitlement to occupational superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5.4;
 - (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund each eligible employee, receives, completes, signs and returns the necessary application forms provided by the employer to enable that employee to become a member of the fund; and
 - (iv) submit all completed application form/s and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.5 shall:
 - (i) complete and sign the necessary application forms to enable that employee to become a member of that fund; and
 - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 5.5.2.

- (c) Where an employer has complied with the requirements of clause 5.5.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employee of that form, then that employer shall:
- (i) Advise an eligible employee in writing of the no receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.5.
 - (ii) In the event that an eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form/s is/are received by the employer.
 - (iii) In the event that an eligible employee fails to return a completed and signed application form/s within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form/s is/are a pre-requisite to the payment of any occupational superannuation contributions.
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.5.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Secretary of the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.5.7(c)(i) and (iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.5.7(a)(iii) the employer shall be obliged to make contributions as from the date of operation of this Award or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where an eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of paragraph (c) hereof shall apply.

(e) Unpaid contributions

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.5.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.5.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.5.4, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.5 excepting that resort to this provision shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant Fund.

5.5.8 *Record keeping*

The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the, approved fund in similar form to time and wages records required to be kept in accordance with section 366 of the Act, and shall have such records available for inspection by an Industrial Inspector or Officer of the Union, authorised pursuant to section 373 of that Act.

5.5.9 *Exemptions*

An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.5 in the following circumstances:

- (a) incapacity to pay the costs associated with its implementation, or
- (b) any special or compelling circumstances peculiar to the business of the employer.

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

6.1 Hours of work

6.1.1 *Hours for day workers*

- (a) Subject to clause 6.1.2 (Implementation), and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 21 consecutive days; or
 - (iii) 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) The ordinary hours of work shall be Monday to Sunday inclusive.
- (c) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks between 8.00 a.m. and 5.00 p.m. The spread of hours prescribed herein may be altered as to all or a section of employees:

Provided there is agreement between the employer and the majority of employees concerned:

Provided further that work done outside the hours of 8.00 a.m. to 5.00 p.m. shall be paid at overtime rates and will be deemed to be part of the ordinary hours of work for the purposes of clause 6.1.1.

- (d) The ordinary hours of work prescribed herein shall not exceed 10 hours on any day:

Provided that where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned:

Provided further that by arrangement between an employer, the Union and the majority of employees in the work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- (i) the employer and the employees concerned being guided by the Occupational Health and Safety Provisions of the ACTU Code of Conduct on 12hour shifts;
 - (ii) proper health monitoring procedures being introduced;
 - (iii) suitable roster arrangements being made; and
 - (iv) proper supervision being provided.
- (e) Employees are required to observe the nominated starting and finishing times for the work day, including designated breaks to maximise available working time. Preparation for work and cleaning up of the employee's person shall be in the employee's time.
- (f) The ordinary starting and finishing times of various groups of employees or individual employees, may be staggered, provided that there is agreement between the employer and the majority of employees concerned.

6.1.2 *Implementation*

- (a) The 38 hour week shall be implemented on one of the following bases, most suitable to the particular business, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:
- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each work cycle; or
 - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one workday off during that cycle.

Subject to the provisions of clause 6.1, employees may agree that the ordinary hours of work are to exceed 8 on any day, thus enabling more than one work day to be taken off during a particular work cycle.

- (b) Notwithstanding any other provision in clause 6.1, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned, may agree to accrue up to a maximum of 5 rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.
- (c) Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in the business concerned.

6.1.3 *Procedures for enterprise grade discussions*

- (a) The employer and all employees in each establishment shall consult over the most appropriate means of implementing and working a 38 hour week.
- (b) The objective of such consultation shall be to reach agreement on the method of implementing and working the 38 hour week in accordance with clause 6.1.2.
- (c) The outcome of such consultation shall be recorded in writing.
- (d) In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their relevant employee or employer organization.
- (e) Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer shall have the right to make the final determination as to the method by which the 38 hour week is implemented or worked from time to time.
- (f) After implementation of the 38 hour week, upon giving 7 days' notice or such shorter period as may be mutually agreed upon, the method of working the 38 hour week may be altered, from time to time, following negotiations between the employer and employees concerned, utilizing the foregoing provisions of clause 6.1, including clause 6.1.3(e).
- (g) Emergencies – The employer shall have the right to change the roster in emergency circumstances arising from causes outside of the employer's control which involve the possibility of physical danger to employees or plant.

6.2 **Meal breaks**

- 6.2.1 *Day work* – All employees shall be entitled to a meal break of not less than one-half hour to be taken between the fourth and sixth hours from their ordinary starting time each day.

Except as hereinafter provided double time shall be paid for all work done during meal breaks and thereafter until a meal break is taken.

Employees performing ordinary work in excess of 8 hours and up to 10 hours per day shall be entitled to a meal break of not less than one-half hour and not more than one hour to be taken at or about the fifth hour from the ordinary starting time each day.

The duration of the meal break having been determined as the recognised meal break in accordance with clause 6.2.1 may be altered by either the mutual agreement between the employer and the employees or by the employer in the case of a situation requiring continuity of the work on the project or program:

Provided that:

- (a) the time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations;
- (b) an employer may stagger the time of taking a meal and rest break to meet operational requirements.

6.2.2 *Shift work* – Shift workers shall be allowed 30 minutes for crib without loss of pay to be taken in such manner as not to interfere with the continuity of the work.

6.2.3 *Overtime* – Any employees who are required to continue work after their normal or rostered ceasing time shall be entitled to a 30 minute crib break after 2 hours or after one hour if overtime continues beyond 6.00 p.m.

After each further period of 4 hours the employee shall be allowed 45 minutes for crib. No deductions in pay shall be made in respect of any such crib breaks.

6.2.4 *Meal breaks during week-end overtime* – Any employee required to work overtime on a Saturday or Sunday or their equivalent beyond the fifth hour of such overtime shall be entitled to an unpaid meal break of 30 minutes.

Should an employee be required to continue such overtime beyond 9 hours, there shall be an entitlement to a further break of 30 minutes for which no deduction of pay shall be made.

After each further 4 hours of overtime, the employee shall be entitled to a 45 minute break for which no deduction of pay shall be made, provided that the employee is required to continue working thereafter.

6.3 Rest pauses

Where practicable every employee covered by this Award shall be entitled to a rest pause of 10 minutes duration in the employers time in the first and second half of the working day. Such rest pauses shall be taken at such time as will not interfere with the continuity of work where continuity is necessary:

Provided that where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day, with such 20 minute rest pause and the meal break arranged in such a way that the ordinary working day is broken up into three approximately equal working periods.

Consent to combine the rest pause shall not be unreasonably withheld by either party.

6.4 Overtime

6.4.1 All time worked in excess of 38 hours per week shall be deemed to be overtime.

6.4.2 All time worked outside the ordinary hours of 8.00 a.m. to 5.00 p.m. shall be deemed to be overtime except in the case of *bona fide* shift work as described in clause 6.5.

6.4.3 All overtime worked shall be recorded on time sheets on the day following the day that such overtime is worked, and payment for any overtime worked shall be subject to such recording being claimed, adjusted, and made at the next ensuing date of payment of such employee.

6.4.4 Except as hereinafter provided all authorised worked performed outside the normal starting and ceasing times as prescribed by roster established pursuant to clause 6.1 shall be deemed to be overtime and shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

6.4.5 *Shift work* – All authorised overtime performed by shift workers shall be paid for at the rate of double time for all time worked.

6.4.6 *Holidays* – All time worked on the public holidays set out in clause 7.6 of this Award outside the ordinary working hours specified in this Award, prescribed by a roster or usually worked on the day of the cycle on which the holiday is kept, shall be paid for at double the rate prescribed by this Award for overtime when worked outside such working hours on an ordinary working day.

6.4.7 *Call back or recall to duty* – When an employee is recalled to perform duty after completion of the employee's normal or prescribed hours or after completion of the employee's rostered shift and having left the job site or on a rostered day off shall be paid for a minimum of 2 hours work at the appropriate overtime rate. Except in the case of unforeseen circumstances the employee shall not be required to work the full 2 hours if the job for which the employee has been recalled is completed within a shorter period.

Clause 6.4.7 shall not apply in cases where it is customary for an employee to return to the job site out of hours to perform a specific task where standard overtime rates would apply.

Overtime worked in the circumstances specified in clause 6.4.7 shall not be regarded as overtime for the purposes of clause 6.4.5 where actual work is less than 2 hours on such recall or on such recalls.

Provided further that where employees are called out, work between midnight and 6.00 a.m. shall be paid at the rate of double time for all time so worked up to the ordinary starting time Monday to Friday and up to 7.00 a.m. Saturday with a minimum of 4 hours.

6.4.8 *Rest pause after performing overtime duty* – An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between these times shall, subject to clause 6.4.8, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during an absence. If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until the employee is released from such duty for such period and the employee shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of clause 6.4.8 shall apply in the case of shift workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

- (a) for the purpose of changing shift rosters;
- (b) where a shift worker does not report for duty; and
- (c) where a shift is worked by arrangement between the employees themselves.

6.4.9 An employee called upon to work overtime for more than one and a-half hours after the ordinary ceasing time without receiving notice of such overtime on the previous day shall be paid an allowance of \$9.60 for a meal or shall be supplied by the employer with a reasonable meal in lieu of such payment, in respect of each meal break allowed during such overtime as provided for in clause 6.2.2.

6.4.10 Where an employee has provided themselves with customary meals after receiving notice to work certain overtime they shall be paid the relevant meal allowance of \$9.60 for each meal so provided in the event that the overtime work is not performed or ceases before the notified time of conclusion of work which such time of conclusion would, but for the giving of prior notice, have involved payment of one or more meal allowances.

6.5 Shift work

6.5.1 Hours for shift workers

(a) The ordinary working hours of continuous shift workers and shift workers whose work is connected with or incidental to any continuous process shall average 38 hours per week inclusive of crib time and shall not exceed 152 hours in 28 consecutive days:

Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 hours is achieved over a period which exceeds 28 consecutive days. Subject to the following conditions, such shift workers shall work at such times as the employer may require.

For the purposes of this Award:

A "Day Shift" shall commence at or after 6.00 a.m. and before 12 noon;

An "Afternoon Shift" shall commence at or after 12 noon and before 6.00 p.m.

A "Night Shift" shall commence at or after 6.00 p.m. and before 6.00 a.m.

"Continuous Shift Work" means work that is continuous for 24 hours per day for an unbroken period of one lunar month, or 28 days, except in the case of floods or breakdowns or shutting down for holidays:

Provided that by mutual consent provision may be made for the rotation of shifts.

(b) A shift shall consist of not more than 10 hours inclusive of crib time.

Provided that:

- (i) in any arrangement of ordinary working hours where the ordinary working are to exceed 8 on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the work section or sections concerned; and
- (ii) by agreement between an employer, the Union and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
 - (A) the employer and the employees concerned being guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 hours shifts;
 - (B) proper health and monitoring procedures being introduced;
 - (C) suitable roster arrangements being made; and
 - (D) proper supervision being provided.
- (iii) except at the regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

6.5.2 Hours – other than continuous shift workers – Clause 6.5.2 shall apply to shift workers not upon continuous work as herein before described. Subject to clause 6.1.2 the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (a) 38 hours within a period not exceeding 7 consecutive days; or
- (b) 76 hours within a period not exceeding 21 consecutive days;
- (c) 114 hours within a period not exceeding 21 consecutive days; or
- (d) 152 hours within a period not exceeding 28 consecutive days.
- (e) The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than 5 hours without a break for a meal. Except at a regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

(f) Provided that:

- (i) the ordinary hours of work prescribed herein shall not exceed 10 hours on any day;
- (ii) in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the work section or sections concerned; and
- (iii) by agreement between an employer, the union concerned and the majority of employees in the work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
 - (A) the employer and the employees concerned being guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 hours shifts;
 - (B) proper health and monitoring procedures being introduced;
 - (C) suitable roster arrangements being made; and
 - (D) proper supervision being provided.

6.6 Weekend work

All time worked on weekends shall be paid as follows:

- (a) between midnight Friday and midnight Saturday – at the rate of one and a-half times the ordinary rate for the first 3 hours the double time thereafter, with a minimum of 2 hours; and
- (b) between midnight Saturday and midnight Sunday – at the rate of double-time with a minimum of 2 hours work or payment therefore.

PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of their employment be entitled to annual leave on full pay as follows:

- (a) not less than 5 weeks if employed on shift work where three shifts per day are worked over a period of 7 days per week; and
- (b) not less than 4 weeks in any other case.

7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.4) shall be paid by the employer in advance:

- (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary pay at the rate in excess of the ordinary rate payable under this Award at that excess rate: and
- (b) in every other case at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall forthwith pay to the employee in to all other amounts due to the employee, the employee's pay calculated in accordance with clause 7.1.7 for 4 or 5 weeks as the case may be and also the employee's ordinary pay for any public holiday occurring during such period of 4 or 5 weeks.

7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid in addition to all other amounts due to them, an amount equal to 1/9th of their pay for the period of their employment if they are an employee to whom clause 7.1.1(a) applies, and 1/12th of their pay for the period of their employment, if they are an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.7.

7.1.5 One month's notice (or such other period as may be agreed) of the commencement of annual leave shall be given by an employee to their employer or by the employer to the employee.

7.1.6 Except as hereinbefore provided, it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.1.7 Calculation of annual leave pay

In respect to annual leave entitlements to which clause 7.1 applies, annual leave pay (including any proportionate payments) shall be calculated as follows:

- (a) Shift workers – Subject to clause 7.1.7(c) the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster; including Saturday, Sunday or holiday shifts.
- (b) Leading hands, etc. – Subject to clause 7.1.7(c), leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
- (c) All employees – Subject to the provisions of clause 7.1.7(d), in no case shall the payment by an Employer to an employee be less than the sum of the following amounts:
 - (i) the employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) leading hand allowance or amounts of a like nature;
 - (iii) a further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.7(c)(i) and (ii).

- (d) The provisions of clause 7.1.7(c) shall not apply to the following:
- (i) any period or periods of annual leave exceeding:
 - (A) 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week;
 - (B) 4 weeks in any other case.
 - (ii) employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.
- (e) Reasonable notice of the commencement of annual leave shall be given to the employee.
- (f) Except as hereinbefore provided it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer:
- Provided that part-time employees accrue sick leave on a proportional basis.
- (b) This entitlement will accrue at the rate of 7.6 hours' sick leave for each 6 weeks of employment.
- (c) Payment for sick leave will be made based on the number of hours which would have been worked by the employee if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

7.2.2 Employee must give notice

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

7.2.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence, about the nature and approximate duration of the illness.

7.2.4 Accumulated sick leave

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

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

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

7.2.5 Workers' compensation

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

7.3 Bereavement leave

7.3.1 Full-time and part-time employees

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

7.3.2 Long-term casual employees

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

7.3.3 "Immediate family" includes:

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

7.3.4 *Unpaid leave*

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

7.4 Long service leave

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

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Public holidays

7.6.1 Subject to clause 7.6.7 all work done by any employee on:

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

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

7.6.2 *Labour Day*

All employees covered by this Award are entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee will be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary time rate of pay prescribed for such work with a minimum of 4 hours.

7.6.3 *Annual show*

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

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

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

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

- (a) A full-time employee is entitled to either payment for each public holiday or a substituted day's leave.
- (b) A part-time employee is entitled to either payment for each public holiday or a substituted day's leave:

Provided that the part-time employee would have been ordinarily rostered to work on that day had it not been a public holiday.

- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day are entitled to payment for the public holiday or a substituted day's leave.
- (d) Where Christmas Day falls on a Saturday or a Sunday and the public holiday is observed on another day an employee required to work on Christmas Day (i.e. 25th December) is to be paid at the rate of double time.
- (e) Nothing in clause 7.6.4 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

7.6.5 *Double time and a-half*

For the purposes of clause 7.6 "double time and a-half" means one and a-half day's wages in addition to the employee's ordinary time rate of pay or *pro rata* if there is more or less than a day.

7.6.6 *Stand down*

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

7.6.7 *Substitution*

Where there is agreement between the employer and the majority of employees concerned, a public holiday may be substituted for another day. If such other day is worked, then payment for that day will be at the rate of double time and a-half at the employees' ordinary time rate of pay.

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

No provisions inserted in this Award relevant to this Part.

PART 9 – TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

The parties acknowledge that varying degrees of training are provided to employees in the establishment, both via internal, on-the-job and through external training.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the establishment and the parties agreed to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

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

10.1 Transport to hospital

Where employees are injured seriously, or fall seriously ill at their work the employer shall provide means of getting them to the nearest hospital or pay expenses of transmission to hospital.

10.2 First aid kit

An up to date St. Johns Ambulance first aid kit shall be supplied by the employer so that such kit is immediately accessible to the employees whilst they are performing these duties.

PART 11 – AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 *Authorised industrial officer*

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

11.1.2 *Entry procedure*

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

11.1.3 *Inspection of records*

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

11.1.4 *Discussions with employees*

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

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

11.1.5 *Conduct*

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

11.2 Time and wages record

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

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

11.2.2 The time and wages record must also contain:

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

11.2.3 The employer must keep the record for 6 years.

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

11.4 Posting of Award

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

11.5 Union encouragement

Preamble

Clause 11.5 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.

11.5.1 *Documentation to be provided by employer*

At the point of engagement, 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.

11.5.2 *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.
- (b) The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

Dated 28 September 2004.

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

Operative Date: 1 September 2004
Repeal of Industrial Agreement and New Award – E.S. Randle
& Co. Pty Ltd Award – State 2004
Released: 18 November 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Inghams Enterprises Pty Ltd AND Australasian Meat Industry Union of Employees (Queensland Branch)
(No. B1324 of 2004)**

INGHAMS ENTERPRISES (MURARRIE PROCESSING) – CERTIFIED AGREEMENT 2004

COMMISSIONER BROWN

28 October 2004

DETERMINATION

THIS matter coming on for hearing at Brisbane on 20 October 2004, this Commission determines as follows as from 28 October 2004:

INGHAMS ENTERPRISES (MURARRIE PROCESSING) – DETERMINATION 2004

1. TITLE

This Determination shall be known as the Inghams Enterprises (Murarrie Processing) – Determination 2004.

2. ARRANGEMENT

Subject Matter	Clause No.
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Annexure A	

3. APPLICATION

This Determination shall apply to Inghams Enterprises Pty Ltd operations 158 Murarrie Road, Murarrie, Queensland, 4172, in respect to all employees who are engaged in any of the occupations, industries or callings specified in the Poultry Processing Award – State (the Award).

4. PARTIES BOUND

- (1) Inghams Enterprises Pty Ltd;
- (2) Australasian Meat Industry Union of Employees (Queensland Branch); and
- (3) All employees of the Company's operations at 158 Murarrie Road, Murarrie, Queensland, 4172, engaged in any of the occupations, industries or callings specified in the Poultry Processing Award – State 2003.

5. DATE AND PERIOD OF OPERATION

This Determination shall operate from the date of this Determination and shall remain in force until 31 March 2007. The parties are committed to commencing meaningful negotiations for the next agreement in January 2007.

6. RELATIONSHIP TO AWARDS/AGREEMENTS

This Determination shall apply in addition to the provisions of the Poultry Processing Award – State 2003 and the provisions of previous certified agreements having application to Inghams Enterprises Pty Ltd, which are contained in Annexure A.

To the extent of any inconsistency between this Determination and the Award, this Determination shall prevail.

7. DISPUTES PROCEDURE

- (1) In the event of a matter in dispute, an employee after having gained permission to leave their area, and having previously tried to resolve the matter with their immediate supervisor, will, if a Union member advises their Union delegate on the matter.
- (2) The delegate concerned will discuss the matter with the relevant Superintendent or the Plant Manager. Where the employee is not a member of the Union then the employee may approach the Plant Manager if the issue is not resolved with their Superintendent.
- (3) If the matter cannot be resolved at this level, then the delegate shall be permitted to advise either the Works President or Works Secretary of the dispute within a reasonable time.
- (4) The matter in dispute shall then be discussed by the Works President or Secretary with the Plant Manager or his nominee.
- (5) All officials shall seek permission from the Supervisor in charge before leaving their area and such permission should be granted within a reasonable time. Where any of the Union positions referred to do not exist, then employees, after having discussed the matter with Management, can contact the Union.
- (6) Work shall continue normally, while the aforementioned procedures are being carried out.
- (7) Should discussions at the plant level fail to resolve the matters in dispute either party may seek the assistance of the Queensland Industrial Relations Commission.

8. NO FURTHER CLAIMS

This Determination is in full and final settlement of all claims against the Company and during the life of this Determination the Union and employees undertake not to make any further claims against the Company in respect to any matter that will increase Company labour costs.

9. CASUALS

- (1) A casual employee is an employee engaged and paid as such. A casual employee shall be paid 1/38th of the weekly rate for a full time employee plus a loading of 23% for ordinary hours worked. At all times the casual loading rate shall be no less than the Award loading rate.
- (2) Casual employees may be required by the Company to work the same hours each day as full-time permanent employees and casual employees shall work in accordance with such requirements.
- (3) Casual employees shall be paid their ordinary rate of pay plus the casual loading whilst they are working ordinary hours as specified for the section of the plant in which they are working.
- (4) The calculation of overtime payments for casuals will be on a daily basis and each day will stand alone except if the overtime commences on one day and extends into the following day.
- (5) The Company has a policy to use labour hire companies to recruit new casual employees. Such casuals will be paid the appropriate rate under this Determination.
- (6) Subject to satisfactory performance and meeting Inghams normal employment requirements, employees of the labour hire company will transfer to Inghams as a casual employee after three months of working time at Inghams Murarrie.
- (7) Casual employees engaged after 3 May 2002 shall be paid the same overtime and other penalty rates as full-time permanent employees in the equivalent classification. (i.e. without the casual loading)
- (8) The company has committed to transfer suitable casual employees engaged prior to 1 April 2002 to permanent employment.
- (9) The Company is committed to providing permanent employment to all employees. Availability and potential to offer such permanent employment shall be pursued having regard to the operational requirements of the Company. The Company is committed to pursue a maximum casual ratio of 20% of total employees.

10. PERMANENT PART-TIME EMPLOYEES

- (1) A regular part-time worker is an employee on a weekly contract of service who is required to work up to a maximum of 38 ordinary hours per week:

Provided that the employee shall be entitled to be rostered for a minimum of 4 hours for each day the worker is required to work.

- (2) A part-time employee shall be paid an hourly rate of 1/38th of the appropriate weekly wage rate of a full-time employee.
- (3) A part-time employee's entitlement to *pro-rata* sick leave and annual leave shall be calculated as follows:
- (a) the sick leave entitlement (in hours) shall be calculated by multiplying the ordinary hours worked in each week by .0308; and
 - (b) the annual leave entitlement (in hours) shall be calculated by multiplying the ordinary hours worked in each week by .0769.
- (4) Part-time employees shall receive *pro-rata* payment for any other entitlements proportionate to the hours worked by permanent employees.
- (5) A part-time employee shall be entitled to be rostered for a minimum of 20 hours per week.

11. ABANDONMENT OF EMPLOYMENT

An employee who is absent from work for 3 consecutive working days without notifying Inghams shall be assumed to have abandoned their employment. If within a further period of 7 days the employee has not satisfied the Company that there was a reasonable excuse for their absence then the employee shall be deemed to have abandoned their employment from the first day of absence.

12. ABSENCE FROM WORK

- (1) An employee who does not attend work for rostered ordinary hours shall:
- (a) Promptly notify the Company (preferably before start time) of the reason for the absence and the expected duration of the absence. The employee shall keep the employer informed as to the expected date of return to work.
 - (b) Upon return to work complete an "Employee Absence" form including stating the reason for the absence, whether prompt notice was given and whether the employee is claiming sick leave for the absence.
 - (c) If the absence is for 2 or more consecutive days on account of sickness or accident, produce a certificate from a duly qualified medical practitioner giving a description of the injury or illness which in the medical practitioner's opinion is the reason for the absence and the duration of the incapacity.
- (2) Where an employee has:
- (a) been absent from duty in a manner which is systematic or exhibits a pattern;
 - (b) has exceeded their annual or accumulated sick leave entitlement without due cause or satisfactory description of the injury or illness; or
 - (c) has failed to produce satisfactory evidence as to the reason for the absence including satisfactory description of the injury or illness; or
 - (d) failed to promptly notify the employer of expected absences as per (1)(a) above;
- then the disciplinary procedure in sub-clause (3) shall apply.
- (3) In the case of unsatisfactory absenteeism as outlined in (2) above then the following procedure shall apply. At all steps an employee may be accompanied by another employee of their choice or a Union delegate.
- (a) In the first instance informal counselling from their Supervisor shall occur including providing reasons for the counselling.
 - (b) If there is a further instance of unsatisfactory conduct then a written warning will be issued stating the exact nature of the warning and the instances leading to its issue. If an employee does not re-offend for a period of 12 months then the written warning shall be disregarded for the purposes of this clause.
 - (c) If there is a further instance of unsatisfactory conduct then a final written warning will be issued stating the instances leading to its issue and that further absences without an explanation satisfactory to the Company could lead to termination of employment. If the employee fails to comply with this warning, then the employment may be terminated by the Company.
 - (d) In the application of this clause the Company will ensure that manning to critical areas is maintained. However, the Company reserves the right to allocate labour on the basis of production demands. In this context it is essential that total flexibility is maintained to ensure customer requirements are met.

13. PUBLIC HOLIDAYS

- (1) The Company and the employees recognise that the chicken processing industry's customers are becoming more demanding. In particular, orders over the peak holiday periods of Easter and Christmas may require plants to be operational over those 4 day weekend holidays. While the Company would prefer not to work, it may be forced to do so.
- (2) In the event of a public holiday falling on a day which will result in the plant being closed for a period of four days including Saturday and Sunday i.e. Easter or Christmas, the employee may be required to work on one of those four days to meet customer requirements.
- (3) In the first instance the Company will call for volunteers to work. Only if there are insufficient volunteers with the appropriate skills will the Company require employees with the skills to work. Selection shall be in accordance with the seniority list starting with employees with the least service.

- (4) An employee rostered to work in accordance with this clause and who does not work as rostered, shall establish to the satisfaction of the Company that they had a reasonable excuse for the absence. In the case of illness or injury a Doctor's certificate will be required.
- (5) An employee who works on a public holiday in accordance with the requirements of this clause shall be paid the appropriate penalty rates in accordance with the Award or with the prior approval of the Company, an employee may request payment for time worked at either time and a-half or single time and be allowed a substitute day off, at a time mutually agreed with the Company. Payment on the substitute day shall be the balance of the money owing for time worked on the public holiday.
- (6) In order that all full-time employees receive the benefit of 11 public holidays per annum the following shall apply to employees working on the "Tuesday to Saturday night shift".
 - (a) Where a Monday is a public holiday then the night shift employees may be required by the Company to work. In such circumstances the employees will be paid as per a normal shift and will be entitled to a day off on an agreed date, without loss of pay, as their additional public holiday. Where employees are not required to work they will be entitled to payment for the shift not worked.
 - (b) The arrangement in paragraph (a) does not apply for Easter Monday because the night shift employees are entitled to a public holiday for Easter Saturday.
 - (c) Employees who are required by the company to work their ordinary hours on Easter Saturday shall be paid at the rate of double time and-a-half. Employees not required to work shall be entitled to the public holiday without loss of pay.
 - (d) Where shift employees are entitled to a public holiday for any Saturday shift then there shall be no entitlement to a public holiday for the following Monday.
 - (e) Casual employees employed after 3 May 2002 who work on a public holiday shall be paid the same rate per hour as the equivalent full-time employees.

14. BEREAVEMENT LEAVE

(1) *Full-time and part-time employees*

A full-time and part-time employee on the death of a member of their immediate family or household is entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 3 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

(2) *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 3 days unpaid bereavement leave on the death of a member of the person's immediate family or household.
- (b) The term "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under clause 14(2)(a).
- (3) "Immediate family" includes:
 - (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
 - (b) A child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- (4) An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household dies and the period of bereavement leave entitlement provided above is insufficient.

15. ANNUAL LEAVE

An employee may apply in advance for single days of annual leave. Such applications are to be in writing and are subject to approval by the employee's Supervisor. There shall be no entitlement to any annual leave unless it is applied for in advance.

16. MIXED FUNCTIONS

An employee shall be paid at their normal classification rate of wage for the whole of the day's work unless the following applies.

- (a) Where in consultation and agreement with the employees concerned and the Union they rotate on any day to a job carrying a lower rate of pay. In such circumstances they shall be paid for half the day at the lower classification wage rate.
- (b) Where an employee is required by the employer to perform on any day work for which a higher rate of wage is prescribed, and this is not for the purposes of training, shall be paid as follows:
 - If more than 4 hours on any day the higher rate for the whole of such day.
 - If 4 hours or less then payment of the higher rate for 4 hours.

17. ORDINARY HOURS

- (1) The ordinary hours of work for day workers shall be worked between 5.00 a.m. and 7.00 p.m. or such other spread of hours as is mutually agreed between the Company and the employees in a section of the Plant. With a 5.00 a.m. to 7.00 p.m. spread of ordinary hours an afternoon shift shall be a shift finishing after 7.00 p.m. and at or before midnight.

- (2) Ordinary hours may be worked on any days Monday to Friday.
- (3) For distribution employees who commenced employment with Inghams on or after 3 May 2002 ordinary hours may be worked on any five consecutive days Monday to Saturday. Where Saturday forms part of the ordinary work roster a 30% loading will be applied to the ordinary hours worked. This allowance shall be added to a shift penalty rate where applicable.
- (4) By mutual agreement between the employer and employee distribution employees who commenced their employment with Inghams prior to 3 May 2002 may work in accordance with the provisions of this sub-clause (3).

18. SHIFT LOADINGS

- (1) An employee, who is employed by the Company after 1 January 2001 to work afternoon or night shift and as a result does not rotate with day work then the employee shall not be regarded as working a fixed shift for the purposes of the Award. In such circumstances a shift loading of 20% shall be payable on night shift and afternoon shift.
- (2) All Inghams' employees engaged prior to 1 January 2001 (irregardless of which shift they were working) shall continue to be entitled to the shift allowance of 25% when working on a fixed shift as defined in the Award. Otherwise a shift allowance of 20% shall apply.

19. WAGE INCREASES

- (1) Weekly wage rates of pay of permanent full-time employees covered by this Determination are set out below and shall be payable in accordance with the terms of this clause.

<i>Employee Classification Level</i>	<i>Column 1 Per Week</i>	<i>Column 2 Per week</i>	<i>Column 3 Per Week</i>
\$	\$	\$	\$
Process Employee 1	604.45	631.65	660.07
Process Employee 2	588.79	615.29	642.98
Process Employee 3	582.09	608.28	635.65
Process Employee 4	572.04	597.79	624.69
Process Employee 5	534.83	558.90	584.05

- (2) The weekly rate shown in Column 1 shall be payable from the beginning of the first full pay period to commence on or after 1 April 2004.
- (3) The weekly rate shown in Column 2 shall be payable from the beginning of the first full pay period commencing 1 April 2005.
- (4) The weekly rate shown in Column 3 shall be payable from the beginning of the first full pay period commencing 1 April 2006.
- (5) All allowances shall be increased in line with relevant decisions of the Queensland Industrial Relations Commission.
- (6) Employees who work for a minimum of thirty-five minutes continuously in the "aging chiller" shall be paid 20 cents per hour for each hour or part hour thereof for work in that chiller.
- (7) Employees working in the "crate wash" shall be paid an allowance of 45 cents for each hour worked in compensation for all disabilities associated with work in this area.

20. CLASSIFICATIONS

- (1) The following reclassifications shall apply:
 - Meyn/Linco computer operator to Level 2
 - MRT Operator to Level 1
 - Re-hang at the end of the "spin-chill" – Level 2
 - Fully trained Digi operators – Level 2
 - Employees performing the full range of duties on the Mezzanine Floor – Level 2.
- (2) Subject to operational requirements, an employee may request and the employer may agree to transfer the employee to another section of the plant. Such a move would also be conditional on the employee being suitable for work in the new area. This clause shall not prevent the employer from deploying labour according to its operational needs.

21. PAYMENT OF WAGES

Payment of wages is by electronic funds transfer. In instances of late payment of wages and it is proved that the company is at fault, then the Company will reimburse the employee any dishonour fee charged by the bank. The employee shall provide a copy of bank statement to support any claim for reimbursement of the fee.

22. NOTICE OF CHANGE

- (1) Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Company shall notify the employees who may be affected by the proposed changes and their Union.
- (2) The Company shall discuss with the employees affected and their Union, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their Union in relation to the changes.

23. REDUNDANCY

- (1) Except as provided in this clause the terms and conditions of the Termination, Change and Redundancy Statement of Policy contained in the decision of the Full Bench of the Commission dated 29 October 2003, and published in the *Queensland Government Industrial Gazette*, Vol. 174, pages 908 - 921 shall apply.

Period of Continuous Service	Severance Pay
Less than one year	nil
1 year but less than two years.....	4 weeks pay
2 years but less than three years	6 weeks pay
3 years but less than four years	7 weeks pay
4 years and over.....	2 weeks pay per year of service to a maximum of 30 weeks pay.

- (2) This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency, neglect of duty of misconduct or in the case of casual employees, or employees engaged for a specific period of time or for a specific task or tasks.

24. CONSULTATIVE COMMITTEE

- (1) A Consultative Committee of the parties covered by this Determination has been established for the purpose of developing this Determination.
- (2) The Consultative Committee established as part of the enterprise bargaining process will continue to identify and monitor agreed performance measures. For this purpose a minimum of 2 Consultative Committee meetings will be held each year for the life of this EBA.
- (3) During the life of this Determination further improvements in productivity, efficiency and flexibility may be implemented, after consultation and agreement with the employees involved.

25. UNION MEMBERSHIP AND SERVICE AWARENESS

- (1) The Company agrees to incorporate into their induction program for new employees the current Union membership handout material and the showing of the Union video. In the event that the video or handout should be changed during the life of this Determination then the Union shall consult the Company regarding the provision of the new material.
- (2) The Company shall facilitate direct payroll deductions of union dues on the authority of an Employee.

26. TRAINING

- (1) The parties acknowledge that varying degrees of training are provided to employees both on-the-job and through external training providers.
- (2) The parties are committed to continuing this training and improving training where this is required.
- (3) The parties will co-operate in ensuring that appropriate training is available to employees and agree to continue discussion on issues raised by the union relating to training.
- (4) The Company shall conduct induction training for new employees in accordance with its Standard Operating Procedure dated 16 April 2002 (as amended).

27. PROBATIONARY PERIOD

- (1) The first 500 ordinary hours of employment shall be a probationary period for each employee.
- (2) During the probationary period the Company:
- Will decide on an employee's suitability for work with the Company.
 - May advise the employee that the employee's services are no longer required. In these circumstances the employee will only be paid for time up until they cease work.

Annexure A**INGHAMS ENTERPRISES PTY LTD (MURARRIE) AND AMIEU CERTIFIED AGREEMENT 1997****2.1 Daily Spread of Working Hours**

Employees may be required to perform their normal hours of work within a spread of 14 hours instead of the present 12 hour spread contained in the Award.

Where the 14 hour spread is utilised, the employer agrees to allow permanent (i.e. full-time) employees preference to working their ordinary hours during the earlier part of the spread.

2.3 Sick Leave

- Sick Leave shall continue to accrue and to be paid when employees are sick in accordance with the provisions of the Award and relevant Agreements, subject to available credits and subject to (b) below.
- Employees who have in excess of 60.8 hours accrued sick leave in credit may, by choice, receive payouts of such excess accumulation when taking annual leave, provided that such payout (as distinct from leave) shall not exceed 60.8 hours per annum, and the sick leave account is reduced accordingly.

Such payment shall be at the monetary rate of pay applicable at the time of accumulation, as per the relevant payout Agreements, and shall commence from the earliest accruals.

2.5 Maternity Leave for Casuals

It is agreed by the Parties that casuals who are employed on a regular and consistent basis for a significant number of hours per week for a period of at least twelve (12) months and who have a reasonable expectation of continued employment will be entitled to maternity leave in accordance with the Family Leave Award.

2.10 Classification of Employees

Employees appointed as "Quality Assistant" are paid at the level 1 rate under the Award. Inghams enterprises Pty Ltd has agreed to pay employees at level 1 regardless of whether their title is "Quality Control" or "Quality Assistant", irrespective of whether they have formal accreditation or equivalent house training.

INGHAMS ENTERPRISES PTY LTD AND A.M.I.E.U CERTIFIED AGREEMENT 1995

2.1 Work on certain Public Holidays

The Company and the employees recognise that the chicken processing industry's customers are becoming more demanding. In particular, orders over the peak holiday periods of Easter and Christmas may require plants to be operational over those 4 day weekend holidays. While the Company would prefer not to work, it may be forced to do so.

Employees who work on any of these holidays do so on a voluntary basis only and employees who do work shall be paid at the applicable award penalty rate.

SCHEDULE – MURARRIE

4.3 Breaks and Rest Periods

(a) The following arrangements shall apply to the taking of breaks and rest periods.

- Employees are to return to their workstation on time from breaks and rest periods.
- No relief break is to be taken between afternoon tea and the finish of the day's work.
- No employee is to leave their work station without permission from their leading hand or supervisor.
- At the regular change-over of jobs employees are to proceed directly to their next work station.

(b) Supervisors and leading hands are to monitor this time keeping to ensure compliance. A disciplinary warning system will apply to employees who abuse these arrangements:

4.4 Overtime

It is recognised that given that nature of the industry, overtime may be required on a daily basis to finalise a day's production. In such circumstances the Company may require employees to work overtime.

4.5 Clothing and Protective Equipment

All clothing and equipment issued to each employee remains the property of the Company and must be returned to the Company when the employee leaves the Company. Failure to do so will result in the value of the clothing and/or equipment not returned being deducted from wages owing to the employee.

4.6 Standard Procedures

All employees agree to comply with established standard procedures for safety and work methods.

INGHAMS ENTERPRISES PTY LTD AND A.M.I.E.U. CERTIFIED AGREEMENT 1993

Clause 2.1

- (1) Departmental starting times may be altered at the employer's discretion with 36 hours' notice instead of 7 days as per clause 5(2) of the Award.
- (2) Saturday overtime rates shall be paid for the first 3 hours at time and a-half then double time thereafter.
- (3) The employer may decide to substitute other ordinary working days for the Show Day Holiday and/or the Butchers Picnic Day. The method of substitution is to be agreed between the employer and the employees involved and may include such day or days being taken in conjunction with the employee's annual leave.

Where it is agreed that permanent employees will take such substituted day in conjunction with annual leave, then for casual employees an individual day is to be taken at a mutually convenient time.

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

- (4) Subject to agreement at the enterprise level between the employer and the employees, employees may perform their normal hours of work continuously on any single day within a spread of 14 hours per day instead of the present 12 hour spread contained in the Award.
- (5) Subject to agreement with the employees at the enterprise level, up to 10 ordinary hours per day may be worked.

- (6) Subject to agreement at the enterprise level, ordinary hours may be worked on five out of seven days per week with the appropriate week-end penalty rates.
- (8) Subject to agreement at the enterprise level, ordinary hours of work shall be an average of 38 hours per week over an agreed work cycle.

Dated 28 October 2004.

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

Operative Date: 28 October 2004
Determination – Inghams Enterprises (Murarrie Processing) – Determination 2004
Released: 22 November 2004

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 282 – case stated for opinion of industrial court

**Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
AND National Retail Association Limited, Union of Employers and Others
(No. C84 of 2004)**

PRESIDENT HALL

17 November 2004

DECISION

The question of law for the opinion of the court is:

“Does the Queensland Industrial Relations Commission have the jurisdiction under the *Trading (Allowable Hours) Act 1990* to order that non exempt shops be kept closed on Saturday 1 January 2005?”.

The answer is “yes”.

The restriction on the powers of the Industrial Commission at s. 31B of the *Trading (Allowable Hours) Act 1990* has no application. 1 January 2005 is not a Sunday. Neither is 1 January 2005 a Public Holiday. Whilst 1 January is often a Public Holiday, 1 January is not a Public Holiday in 2005 because by notice published in the Queensland Government Gazette of 25 July 2003 the relevant Minister exercised the power at s. 3 of the *Holidays Act 1983* to substitute 3 January 2005 as the time which the Public Holiday otherwise celebrated on 1 January is to be held.

Neither does the restriction at s. 21(1A) deprive the Commission of power to make an order about 1 January 2005. That is so because “Public Holiday” at s. 21 (1A) does not bear the meaning which it bears at s. 31B. By s. 21(3)(b) there is an express extension to include a day that would have been a Public Holiday had there not been a substitution under the *Holidays Act 1983*, s. 2(2) or (3) or 3.

I rather suspect that the debate below arises out of the application of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees which seeks an order closing shops on 1 January 2005. The function which the Commission performs under the *Trading (Allowable Hours) Act 1990* and in particular under s. 21(1) is the function of deciding trading hours for non-exempt shops. An order deciding that the trading hours of the non-exempt shops do not include hours on 1 January 2005 discharges that function and is squarely within the power.

There is nothing in the extrinsic materials relating to the *Trading (Allowable Hours) Amendment Act 2002* and the *Workers Compensation and Rehabilitation and Other Acts Amendment Bill 2004* to suggest that the answer to the question could be anything other than “yes” and much to suggest that “yes” is the correct answer.

The question is answered “yes”.

Dated 17 November 2004.

D.R. HALL, President.

Appearances:

Mr J. Murdoch SC for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and The Australian Workers’ Union of Employees, Queensland.

Mr G. Black for the National Retail Association Limited, Union of Employers.

Mr J. Price for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

Mr R. E. Wotherspoon for the National Meat Association of Australia (Queensland Division) Industrial Organisation of Employers.

Released: 17 November 2004

#####

INDUSTRIAL COURT OF QUEENSLAND

Vocational, Education, Training and Employment Act 2000 – s. 244 – appeal against decision of industrial commission

**Training and Employment Recognition Council AND
Australian Workers’ Union of Employees, Queensland (No. C60 of 2004)**

PRESIDENT HALL

22 November 2004

DECISION

By s. 230 (1)(ea) of the *Vocational, Education, Training and Employment Act 2000* a person aggrieved by a decision of the Training and Recognition Council given under s. 71 may appeal to the Queensland Industrial Relations Commission. This appeal is about the orders the Commission may make on an appeal under s. 230. The orders are particularised at s. 233(2). The subsection provides:

- “(2) The commission may –
 - (a) dismiss the appeal; or
 - (b) allow the appeal, set aside the decision being appealed and substitute another decision; or
 - (c) allow the appeal and amend the decision; or
 - (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the person who made the decision to act according to law.
- (3) Subject to section 244, the commission’s decision –
 - (a) is final and conclusive; and
 - (b) can not be impeached for informality or want of form.”.

The order of the Commission which caused the appeal to this Court to be brought was couched in the following terms:

“The decision of Council is quashed and the matter is referred back to the Council to be dealt with according to law.”.

The order was made in an appeal on behalf of Mr Allen Anderson by The Australian Workers’ Union of Employees, Queensland against a decision of the Council to cancel a training contract between Mr Anderson and Transit Australia Pty Ltd, trading as Marlin Coast Sunbus. The Commissioner made the order because:

“On balance I am of the opinion that the process used by Council was sufficiently flawed as to not provide the applicant with a reasonable opportunity to defend.”.

It is contended by the Appellant that the Commission had determined no more than that the cancellation of the training contract was procedurally flawed, and that the fault could and should be remedied by sending the matter back to the decision maker. It is contended that in those circumstances the Commission should have exercised the power at s. 233(2)(d) to allow the appeal, suspend the operation of the decision and remit the matter to the decision maker to act according to law. As a subsidiary point, it is contended that the Commission has no power to “quash” a decision of the Council.

With respect to the careful argument of Counsel for the Appellant it seems to me that the finding that the Applicant had not been provided “with a reasonable opportunity to defend” went beyond a finding of procedural deficiency. It is generally considered that such a finding goes to jurisdiction and renders void the order of the decision maker, compare *Ridge v Baldwin* [1964] AC40 and *Calvin v Carr* [1980] AC574. The same result may be reached as a matter of statutory construction. The procedure at part 4 of the *Vocational, Education, Training and Employment Regulation 2000* is mandatory but was not followed. In my view the Commission was required to do something about the decision of the Council.

Notwithstanding that Roget’s Thesaurus of English Words and Phrases (2nd ed) treats “abrogate” as an alternative to “quash” and that The Shorter Oxford English Dictionary On Historical Principles (3rd ed) gives as the first preference meaning of the word “to annual, to make null or void... to throw out.. as invalid...”, I am prepared to accept that as a matter of perfection it follows that because s. 233(2)(b) uses the expression “set aside” the Commission should also have used that expression. I am not however prepared to accept that only by making an order described at s. 233(2)(d) might the Commission send the matter back to the decision maker. The appeal to the Commission is “by way of rehearing on the record”, (s. 232(1)). As a statutory tribunal the Commission has no inherent power, but it does have incidental power to do that which is necessary to give effect of the exercise of its jurisdiction. The Commission was plainly entitled to refer the file back to Council in order that the matter (i.e. the allegation of misconduct) might be dealt with according to law. In my view s. 233(2)(d) is not so much a grant of power as a limitation on power. It is an express declaration that the Commission has no power permanently to stay a decision of Council, and that if a decision is stayed (i.e. suspended) the matter must be remitted to the decision maker. It is unnecessary to determine whether, having set aside the decision of the Council, the Commission “must substitute another decision”. It is sufficient to recognise that the substituted decision may not necessarily be a decision which disposes of the matter giving rise to the appeal. The substituted decision may well be the decision which the Council should have reached. Given that on another occasion doubt has arisen about whether s. 24AA of the *Acts Interpretation Act 1954* authorises the Council to review and change its decision, compare *Murray’s Australia Ltd v Training Recognition Council and Kerry Antony and Ors* (2002) 171 QGIG 93 at 95, it would be prudent in this case to do what the Council should have done and set aside the defective show cause notice.

I allow the appeal. I set aside the decision of the Commission. In lieu thereof I order that the decision of the Training and Employment Recognition Council to cancel the training contract between Mr Allen Anderson and Transit Australia Pty Ltd be set aside and that in lieu thereof the show cause notice issued by the Training and Employment Recognition Council on 24 February 2004 and directed to Mr Allen Anderson upon the matter of his training contract with Transit Australia Pty Ltd be set aside. I further order that the file be returned to the Training and Employment Recognition Council.

I reserve all questions as to costs.

Dated 22 November 2004.

D.R. HALL, President.

Released: 22 November 2004

Appearances:
Mr C. J. Murdoch instructed by Crown Law for the Appellant.
Mr A. Herbert directly instructed for the Respondent.

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INDUSTRIAL COURT OF QUEENSLAND

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

Kenneth Mark Turvey AND Peter Michael Jaremus (Nos. C66 and C67 of 2004)

PRESIDENT HALL

23 November 2004

DECISION

The proceedings which lead to this appeal were triggered by an incident which occurred on a difficult and sloping construction site in the Whitsunday’s. It occurred when two independent contractors, (Messrs Smith and Castellano) were attempting to fix cladding to the external wall of the dwelling at a point over the entrance. Because the cladding was to be fixed at a height, the two independent contractors had erected what passed for scaffolding to gain access to the relevant section of the exterior wall. They had leant a ladder against the wall and placed one end of a plank on a rung of the ladder and the other end of the plank on the top of the block wall. It is now common ground that the “scaffolding” which had been erected at the instigation of Mr Castellano and over the protestations of Mr Smith was entirely unsafe. When it fell, Messrs Smith and Castellano fell with it. Mr Smith suffered injuries which are admitted to have constituted grievous bodily harm.

Peter Michael Jaremus was substantially charged with a breach of s. 24 of the *Workplace Health and Safety Act 1995* (the Act). The obligation which he is said to have failed to discharge is the obligation cast by s. 30(1)(a) of that Act upon "a person in control of a workplace". The "risk" was particularised as "the risk of injury from falling". The source of the risk was particularised as "the source of the risk emanates from working at a height". The grievous bodily harm to Mr Smith was relied upon as a circumstance of aggravation. Additionally, at the commencement of the hearing, Counsel for Mr Jaremus made formal admissions. It was admitted that Mr Smith's injury amounted to grievous bodily harm, that Mr Jaremus was a person in control of a workplace, that Mr Smith was a person coming onto that workplace to work and that Mr Jaremus carried the obligation at s. 30(1)(a).

Having said that, I hasten to add that it is quite clear that the admissions relating to a workplace were admissions relating to the workplace constituted by the construction site. It is necessary to make that point because on the appeal a submission has been developed that the workplace was the segment of the exterior wall to which the cladding was to be applied. It will be necessary subsequently to say something about the difficulties posed by that submission, but it is appropriate to say at the outset that that was not the case which is fought. The case which was fought was that Mr Jaremus had failed to ensure that the risk of injury or illness from the construction site had been minimised for persons coming onto the construction site to work. Put aside the question whether a workplace in the control of a single person may be severed and the performance of the obligation at s. 30(1)(a) assessed segment by segment, such a case was not developed at first instance. The contest of first instance was about whether on a global view of the site, the risk of injury or illness had been minimised. Quite different evidence might well have been lead if the contest was about a workplace said to be constituted by the section of the exterior wall above the entrance, e.g. about whether the area beneath the plank had been barricaded or posted with signs warning of overhead work. It is neither necessary nor desirable in the interest of justice to exercise the power at s. 48 of the *Justices Act 1886* to change the issues at a trial after the trial is over.

The trial was always going to be a difficult trial. It did not commence until some seventeen months after the incident. Witnesses were always going to experience difficulty in recollecting with precision the events and conversations which preceded the fall. It was only the fall which made the day memorable. There was no reason to expect that earlier events and conversations would be embedded in memory.

The Industrial Magistrate expressly referred to the lapse of time and difficulty of recollection. He referred also to the importance of using the opportunity which he had to observe the witnesses and assess their demeanour in forming a view of their credibility and reliability as witnesses. It was fundamentally the opinion which the Industrial Magistrate formed about the credibility and reliability of Mr Jaremus, Mr Smith and Mr Castellano which lead him to reject the complainant's primary case at first instance; viz that Mr Jaremus had told Messrs Smith and Castellano to affix the cladding to the area of wall above the entrance, had subsequently observed Messrs Smith and Castellano working from the ladder/plank "scaffolding" and had failed to intervene. I am not persuaded that this is a case in which I should go behind the advantage that the Industrial Magistrate had in hearing and observing the witnesses and in watching the trial develop.

It should be understood that this is not a case in which a tribunal at first instance relied solely upon observation to resolve questions of credit and reliability. True it is that the Industrial Magistrate's finding that Mr Jaremus "was not unimpressive as a witness" was based squarely on his demeanour. But His Worship's reservations about the credibility and reliability of Smith and Castellano arose from factors which the Industrial Magistrate expressly identified as well as upon observation. In the case of Castellano, doubts about credibility arose from his denial that he had seen or signed a site safety plan, work schedule and/or a form identifying hazards and control measures. The denial was recanted when the signed documents were produced. Castellano's explanation that his memory had failed after seventeen months did not sit well with a similar denial given to an inspector under the Act in the course of an interview a matter of weeks after the documents were signed. In the case of Mr Smith, because of his injuries, he had been administered prescription drugs and morphine very shortly after the incident. It was entirely understandable that the Industrial Magistrate felt there was a need "for the exercise of care in assessing his evidence". In the case of each of Messrs Smith and Castellano, there was the difficulty that they had discussed their evidence on a number of occasions over a seventeen month period. As to the complainant's case that Mr Jaremus had told Mr Castellano that he and Mr Smith were to attend to the cladding above the entrance, Smith's evidence that he overheard the conversation had to be read in the life of his further evidence that he had been hammering at the time. The Industrial Magistrate was right to query his hearing. (And I add, though the Industrial Magistrate made no mention of it, that Counsel for the Respondent has taken the Court to passages in the transcript where in the course of cross-examination each of Messrs Smith and Castellano, (when pressed) recanted on the allegation that Mr Jaremus had asked for work to be performed on the exterior wall above the entrance. Whilst neither gentleman embraced Mr Jaremus' evidence that he had asked for work to be performed in or about the garage, there was an acknowledgement that they had been told to deal with those areas of the external wall where cladding had yet to be affixed. The area above the entrance was but one of their areas.) On the complainant's case that Mr Jaremus had observed Messrs Smith and Castellano working upon the "scaffolding", a case which turned very much upon the question whether Mr Jaremus had at any time been on the construction site whilst work on the "scaffolding" was occurring, it was the problem with the evidence of Messrs Smith and Castellano that if Mr Jaremus had left the site when Mr Castellano said that he had and was away for the period Mr Smith said that he had, he would have been absent for the whole of the period over which Messrs Smith and Castellano erected and worked upon the "scaffolding".

I hasten to say that there was other evidence. On the previous working day Mr Castellano and one of Mr Jaremus' sons had been working upon the section of exterior wall at or about the entrance. There was evidence which (if believed) supported a finding that the task had been abandoned, not because the scaffolding then being used was unsuitable for work at such a height, but because a piece of cladding had been incorrectly cut and there was not time to finish the task before the completion of work for the day. An inference was open that Castellano (with assistance) would return to the exterior wall above the entrance upon the resumption of work, and scope for speculation that Mr Jaremus should have foreseen that if told to resume the task of cladding, Mr Castellano would have returned to that area of the wall. But those issues are issues for the Industrial Magistrate. The evidence is far from the incontrovertible evidence about established facts which is necessary before findings of credibility may be reversed on the ground of inconsistency with the evidence, see e.g. *Fox v Percy* (2003) 214 CLR 118.

Of course, the evidence that Mr Jaremus was absent from the site (and the subsequent acceptance of that evidence) opened a battle on another front, because Mr Jaremus had not appointed somebody to supervise the site in his absence. At that point it is useful to say something of s. 30(1)(a) of the *Workplace Health and Safety Act 1995*. (By way of caution I add that in discussing the statutory context of the subsection I have confined myself to the form of the Act at the time of the alleged offence; i.e. I have not considered the effect of the amendments made by Act no. 27 of 2003.) Section 30 provides:

"Obligations of person in control of workplaces

30.(1) A person in control of a workplace has the following obligations—

- (a) to ensure the risk of injury or illness from a workplace is minimised for persons coming onto the workplace to work;
- (b) to ensure the risk of injury or illness from any plant or substance provided by the person for the performance of work by someone other than the persons' workers is minimised when used properly;
- (c) to ensure there is appropriate, safe access to and from the workplace for persons other than the person's workers.

(2) For this section—

“**person in control**” of a workplace does not include the occupier of domestic premises.”

The section received some consideration in *NQEA Australia Pty Ltd v Dare* (2002) 171 QGIG at 254 at 255:

“...It is sufficient to note that the obligation cast on occupiers by s. 30(1)(a) is not as wide as the obligation cast by on an employer by s. 28, and that comparison of the language of ss. 30 and ss. 31 may found an argument that an occupiers’ obligations extend to the workplace and to the plant but not to activities within the workplace. It must be remembered that the Court of Appeal has held that because the *Workplace Health and Safety Act 1995* is a penal statute “if there are two reasonable constructions open, the more lenient one should be preferred”, *Schiliro v Peppercorn Childcare Centres Pty Ltd* (No. 2) [2001] 1QdR 518 at 539....”

On this appeal, Counsel for the Respondent has pursued the argument that the obligations of the person in control of the workplace do not extend to activities within the workplace. On balance, I accept that there is a distinction between obligations relating to the workplace and obligations relating to activities within the workplace. It seems to me that that has to follow from the definition of “workplace” at s. 9(1), the definition of “workplace activity” at schedule 3, and the contrast in language between s. 30 and s. 31. I am however unable to accept the submission that the obligation owed under s. 31(1)(a) is an obligation about risks latent within or emanating from the physical workplace. It would I think be an unnecessary restriction on the language of s. 30(1)(a) to ignore the obvious reality that a workplace may become unsafe because of activities conducted within it. For example, as previously mentioned, it seems to be that the presence of Messrs Smith and Castellano on the “scaffolding”, presumably with some equipment, may well have posed a risk to persons coming onto the construction site at ground level to work. (And I take the opportunity to comment that if the reference to “a workplace” at s. 30(1)(a) is a reference to the same workplace whenever it occurs, if the workplace was the exterior wall above the entrance the duty was owed only to persons “coming onto” that workplace to work.) Further, it is necessary to consider the Explanatory Memorandum relating to the introduction of s. 30. Section 14B of the *Acts Interpretation Act 1954* permits consideration to be given to such extrinsic material to confirm an interpretation. The explanatory memorandum gave this example of the operation of what was then subclause (1)(a) of clause 30:

“A person who manages a transport depot must ensure an electrician visiting the transport depot to repair security lighting is aware of the risks associated with vehicles and forklifts moving in and around the depot.”

A limitation to risks which are latent within or which emanate from the physical workplace would drive a stake through the heart of that example. The example does, however, give force to Counsel’s other contention, supported by *NQEA Australia Pty Ltd v Dare* (2002) 171 QGIG 254 that the obligation to ensure that the risk of injury is “minimised” is less than an absolute obligation. If Mr Jaremus had been the employer of Mr Smith, his obligation (under s. 28) would have been to ensure the workplace health and safety of Mr Smith at work. The fact of the physical injury would have established failure to discharge the obligation. That is because by s. 22(1) workplace health and safety is ensured when persons are free from, *inter alia*, injury caused by workplace activities. That, plainly, would not have been the case. Notice also the obligation of designers, manufacturers, importers and suppliers of plant at s. 32(1), *viz* “without risk to health”, the obligation of erectors and installers of plant or specified high risk plant at s.33, *viz* “safe and without risk to health”, the obligation of manufacturers and importers for suppliers of substances for use at workplaces at s. 34, *viz* safe and without risk to health. Whatever explanation for the imposition of a lighter obligation may be, and it is an imposition contemplated by the objective of the Act, (s. 7(2)) which refers both to “preventing” and to “minimising”, there can be little doubt that a lighter obligation has been imposed. And I note that the example given in the explanatory memorandum permits discharge of the obligation by administrative controls. Most advisory standards and industry codes of practice discourage reliance upon administrative controls.

It was always going to be difficult for the complainant to succeed on a submission that the absence of Mr Jaremus was for something of the order of twenty minutes in the absence of a nominated replacement supervisor involved Mr Jaremus in breach of s. 30(1)(a). In my view the Industrial Magistrate was correct to hold that s. 30(1)(a) had no application and that the complainant was attempting to stretch the section to embrace the workplace activities of Messrs Smith and Castellano. Even if s. 30(1)(a) did have application in the circumstances of the case, the only proper course would have been to dismiss it. There were clear findings by the Industrial Magistrate that Mr Jaremus had identified the hazards and in particular the hazards posed by working at heights, had assessed the risks and had decided upon appropriate control measures, had produced in writing a site safety plan and drawn it to the attention of those working on site and (materially) had arranged for appropriate trestles, ladders, planks, safety harnesses and arrestors. Bird cage scaffolding had been ordered, (although at the time of the incident it had not been delivered) to perform at least the painting work associated with the area above the entrance. I should have thought the conclusion was inescapable that the risk of injury to persons coming on to the workplace to work had been minimised. Some attempt was made to rely upon the Advisory Standard – Plant 2000 and the generic Risk Management – Advisory Standard 2000. The Advisory Standard – Plant 2000 deals with Plants. It had no application. The Industrial Magistrate came to the conclusion as a matter of construction that the Risk Management – Advisory Standard 2000 did not apply. On the appeal, it is conceded that the Industrial Magistrate erred in that. But that does not matter. On the findings made by the Industrial Magistrate the only possible conclusion was that the defence at s. 37(1)(b)(ii) had been made out. Mr Jaremus had developed and reduced to writing another way of managing exposure to the risks posed by the workplace. He had taken reasonable precautions to prevent the contravention. The *Workplace Health and Safety Act 1995* is a penal statute which provides the imposition of very serious penalties, denies a right to trial by jury and largely reverses the onus of proof. It is not to be interpreted to produce an outcome which is “unjust and unworldly”, *Schiliro v Peppercorn Childcare Centres* (No. 2) [2001] 1QdR 518 at 539. Here, as the Industrial Magistrate expressly observed Mr Castellano, who had very great experience as a carpenter and had at times employed up to one-hundred people, was the stand-out candidate if supervision was to be delegated. In fact, because of his very great experience (and, perhaps strength of personality) and the limited experience of Mr Smith, who had only just received his carpenter’s contracting card, Mr Castellano was in fact supervising Mr Smith in any event. It was not unreasonable for Mr Jaremus to refrain from requesting Mr Castellano to do that which he was already doing.

I dismiss the appeal.

There was an application for a Stay of an order made by the Industrial Magistrates about costs. At the hearing of the appeal, it was indicated to the Court that such an order might be made *by consent* pending delivery of the decision on the appeal itself. Because it has been possible to deliver the decision of the appeal relevantly expeditiously, it seems to me that there is no need to draw up such an order.

I reserve all questions as to costs.

Dated 23 November 2004.

D.R. HALL, President.

Appearances:

Mr M. Byrne QC and with him Ms J. Cameron directly instructed by the division of Workplace Health and Safety for the Appellant.

Released: 23 November 2004

Mr M. Fellows instructed by John Ryan and Co, Solicitors, for the Respondent.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Chief Executive Officer, Department of Industrial Relations AND The Construction, Forestry, Mining & Energy,
Industrial Union of Employees, Queensland and Others (No. B1861 of 2003)**

BUILDING TRADES PUBLIC SECTOR AWARD – STATE 2002

COMMISSIONER THOMPSON

11 November 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 5 December 2003, 16 September, 4 and 11 November 2004, this Commission orders that the said Award be amended as follows as from 10 March 2003:

By deleting clause 5.1.2 and inserting the following in lieu thereof:

“As from 10 March 2003

5.1.2 The minimum rates of wages payable to the following classes of employees shall be as follows:

Calling – Southern Division, Eastern District

Classification Level	NBCIA equivalent	Relativity %	Award rate per week \$	On-site Allowance per week \$
BW 1 (a) – New Entrant (Upon commencement in the industry)	CW1 (a)	85	460.60	19.80
BW 1 (b) (After 3 months in the industry)	CW1 (b)	88	473.10	19.80
BW 1 (c) (After 12 months in the industry)	CW1 (c)	90	481.50	19.80
BW 1 (d)	CW1 (d)	92.4	491.50	19.80
BW 2	CW2	96	506.50	19.80
Trade BT 1		100	525.20	19.80
BT 2 (Trade + 12 points)	CW4	105	546.10	19.80
BT 3 (Trade + 24 points)	CW5	110	566.90	19.80

The ‘on-site’ allowance shall be as an additional allowance payable only when ‘Building Construction’ work is undertaken as defined in clause 1.7.5. This rate includes compensation for:

- (a) climatic conditions when working in the open on all types of work;
- (b) dust blowing in the wind on building sites;
- (c) sloppy and muddy conditions associated with the initial stages of the erection of a building;
- (d) dirty conditions caused by the use of form oil or from green timber;
- (e) drippings from newly poured concrete;
- (f) the disability of working on all types of scaffolds, other than single plank, swing scaffold or a bosun’s chair; and
- (g) the lack of the usual amenities associated with factory work (e.g. recreational facilities, sanitary conveniences, etc.).

The above additional payment shall form part of the weekly wage in the calculation of overtime payments, annual leave pay, public holiday pay and long service leave pay.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2002 Declaration of General Ruling and earlier Safety Net or arbitrated wage adjustments. [Disputed cases are to be referred to the 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.

As from 1 September 2003

The minimum rates of wages payable to the following classes of employees shall be as follows:

Calling – Southern Division, Eastern District

Classification Level	NBCIA equivalent	Relativity %	Award rate per week \$	On-site Allowance per week \$
BW 1 (a) – New Entrant (Upon commencement in the industry)	CW1 (a)	85	477.60	20.40
BW 1 (b) (After 3 months in the industry)	CW1 (b)	88	490.10	20.40
BW 1 (c) (After 12 months in the industry)	CW1 (c)	90	498.50	20.40
BW 1 (d)	CW1 (d)	92.4	508.50	20.40
BW 2	CW2	96	523.50	20.40
Trade BT 1		100	542.20	20.40
BT 2 (Trade + 12 points)	CW4	105	563.10	20.40
BT 3 (Trade + 24 points)	CW5	110	583.90	20.40

The 'on-site' allowance shall be as an additional allowance payable only when 'Building Construction' work is undertaken as defined in clause 1.7.5. This rate includes compensation for:

- (a) climatic conditions when working in the open on all types of work;
- (b) dust blowing in the wind on building sites;
- (c) sloppy and muddy conditions associated with the initial stages of the erection of a building;
- (d) dirty conditions caused by the use of form oil or from green timber;
- (e) drippings from newly poured concrete;
- (f) the disability of working on all types of scaffolds, other than single plank, swing scaffold or a bosun's chair; and
- (g) the lack of the usual amenities associated with factory work (e.g. recreational facilities, sanitary conveniences, etc.).

The above additional payment shall form part of the weekly wage in the calculation of overtime payments, annual leave pay, public holiday pay and long service leave pay.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2003 Declaration of General Ruling and earlier Safety Net Adjustments 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.

As from 1 September 2004

The minimum rates of wages payable to the following classes of employees shall be as follows:

Calling – Southern Division, Eastern District

Classification Level	NBCIA equivalent	Relativity %	Award rate per week \$	On-site Allowance per week \$
BW 1 (a) – New Entrant (Upon commencement in the industry)	CW1 (a)	85	496.60	21.10

Classification Level	NBCIA equivalent	Relativity %	Award rate per week \$	On-site Allowance per week \$
BW 1 (b) (After 3 months in the industry)	CW1 (b)	88	509.10	21.10
BW 1 (c) (After 12 months in the industry)	CW1 (c)	90	517.50	21.10
BW 1 (d)	CW1 (d)	92.4	527.50	21.10
BW 2	CW2	96	542.50	21.10
Trade BT 1		100	561.20	21.10
BT 2 (Trade + 12 points)	CW4	105	582.10	21.10
BT 3 (Trade + 24 points)	CW5	110	602.90	21.10

The 'on-site' allowance shall be as an additional allowance payable only when 'Building Construction' work is undertaken as defined in clause 1.7.5. This rate includes compensation for:

- (a) climatic conditions when working in the open on all types of work;
- (b) dust blowing in the wind on building sites;
- (c) sloppy and muddy conditions associated with the initial stages of the erection of a building;
- (d) dirty conditions caused by the use of form oil or from green timber;
- (e) drippings from newly poured concrete;
- (f) the disability of working on all types of scaffolds, other than single plank, swing scaffold or a bosun's chair; and
- (g) the lack of the usual amenities associated with factory work (e.g. recreational facilities, sanitary conveniences, etc.).

The above additional payment shall form part of the weekly wage in the calculation of overtime payments, annual leave pay, public holiday pay and long service leave pay.

NOTE: 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."

Dated 11 November 2004.

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

Operative Date: 10 March 2003
Amendment – Wage Rates
Released: 22 November 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Childrens Services Employers Association Queensland Union of Employers AND Shop, Distributive and Allied Employees Association
(Queensland Branch) Union of Employees and Others (No. B1660 of 2004)**

PARENTS AND CITIZENS AND OTHER ASSOCIATIONS RETAIL AWARD – STATE 2004

COMMISSIONER THOMPSON

19 November 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 19 November 2004, this Commission orders that the said Award be amended as follows as from 19 November 2004:

By deleting clause 1.5.10 and inserting the following in lieu thereof:

“1.5.10 ‘Exempted School’ means a school, or in an instance of amalgamation, a campus forming part of a school, within Queensland where student enrolment numbers are less than 600 on the first day of any school year, and where the Association is unable to operate a viable commercial business within the school or campus in that the retailing operations are performed on less than 5 days per week.”.

Dated 19 November 2004.

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

Operative Date: 19 November 2004
Amendment – Definitions
Released: 23 November 2004

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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

16 November 2004

DETERMINATION
(Correction of Error)

WHEREAS an error occurred in the abovementioned Determination as published in the *Queensland Government Industrial Gazette* of 19 November 2004, Vol. 177, No. 12, pages 653 – 663, this Commission orders that the following correction be made and to be effective as from 7 September 2004:

1. By deleting clause 3.1 and inserting the following in lieu thereof:

“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 Schedule 1 which represent an increase of 3.5% or \$25 per week whichever is the greater, shall apply to General Purpose Hands, Senior General Purpose Hands and Cooks 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 Schedule 2 which represent a further increase of 3.5% or \$25 per week (whichever is the greater) shall apply to General Purpose Hands, Senior General Purpose Hands and Cooks as from 1 July 2004.

The rates shown in Schedule 3 shall apply to Masters, Chief Engineers, Senior Second Engineers and Dredgemasters as from 7 September 2004.”.

2. By deleting Schedule 1 and inserting the following in lieu thereof:

“Schedule 1

Salary as at 1 July 2003			
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).”.

3. By deleting Schedule 2 and inserting the following in lieu thereof:

“Schedule 2

Salary as at 1 July 2004			
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”.

4. By deleting Schedule 3 and inserting the following in lieu thereof:

“Schedule 3

Salary as at 7 September 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

5. By inserting an additional Schedule "Schedule 4" as follows:

Schedule 4

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 16 November 2004.

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

Operative Date: 7 September 2004
Determination – (COE)
Released: 18 November 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment**Department of Industrial Relations AND The Queensland Public Sector Union of Employees
(No. B1550 of 2004)****QUEENSLAND PUBLIC SERVICE AWARD – STATE 2003**

COMMISSIONER ASBURY

15 November 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 15 November 2004, this Commission orders that the said Award be amended as follows as from 15 November 2004:

1. By deleting clauses 6.1.2, 6.1.3, and 6.1.4 and insert the following in lieu thereof:

“6.1.2 Day Work

- (a) The ordinary hours of duty for employees under this Award are 36.25 hours per week, except where provided otherwise in Schedule 3 or Schedule 4, and except where provided in a Directive relating to Field Staff as issued from time to time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*:

Provided that administrative officers engaged solely on telephonist duties, the ordinary weekly hours of duty shall be 32.5 hours per week.

- (b) The ordinary spread of hours for employees whose ordinary weekly hours of duty are 32.5 hours or 32.6 hours shall be 6.00 a.m. to 6.00 p.m. Monday to Friday, except where provided otherwise in Schedule 3 or Schedule 4.
- (c) Employees identified as field staff are subject to a Directive relating to field staff as issued from time-to-time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*.
- (d) Employees whose ordinary weekly hours of duty are 36.25 hours will be subject to organisational hours of work arrangements put in place in accordance with clause 6.1.6.
- (e) The provisions of clause 6.1.2 will not apply to employees subject to arrangements outlined in Schedule 3 and Schedule 4 where such provisions are inconsistent with the arrangements.

6.1.3 38 hour week arrangements – Schedule 4, Section 1 Employees

- (a) Subject to clause 6.1.4 ‘Implementation of 38 hour week’, and subject to the exceptions hereinafter provided, the ordinary hours of employees listed in Schedule 4 will be an average of 38 hours per week, to be worked on one of the following bases:
- (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) The ordinary starting and finishing times of various groups of employees or individual employees may be staggered, provided there is agreement between the employer and the majority of employees concerned.
- (c) Employees are required to observe the nominated starting and finishing times for the work day, including designated breaks to maximise available working time. Preparation for starting and finishing work including personal clean up will be in the employee’s time.

6.1.4 Implementation of the 38 hour week

- (a) The 38 hour week shall be implemented on one of the following bases, most suitable to each location, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:
- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days in each work cycle; or
 - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that work cycle.

The employer is to allow access to at least one rostered day off in any work cycle, except where the employer and employee otherwise agree.

- (b) Subject to Schedule 3 and Schedule 4, employees may agree that the ordinary hours or work are to exceed 8 hours on any day, thus enabling more than one day to be taken off during a particular work cycle.

- (c) Notwithstanding any other provision in clause 6.1.4 where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned may agree to accrue up to a maximum of 5 rostered days off.

Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.

- (d) Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in each location concerned.”.

2. By inserting a new clause 6.1.6 as follows:

“6.1.6 *Organisational Hours of Work Arrangements*

- (a) These provisions provide a framework within which hours of work arrangements and related conditions are to be implemented with the express purpose of providing all relevant employees with access to an accrued full day/s off within a work cycle. Provided that nothing will limit the ability of a Chief Executive and an employee to agree to access accrued time in part-days off.
- (b) Chief executives of all Queensland Government agencies subject to this Award will ensure that flexible hours of work arrangements are implemented at the organisational level and are tailored to meet the operational and client service needs of the organisation. Such organisational arrangements will:
- (i) apply to those employees whose ordinary hours of duty are 36.25 hours per week; and
 - (ii) include a provision specifying that while working hours arrangements should meet the operational and client service needs of the Agency, this does not limit the entitlement for employees to be able to access an accrued day(s) off within a work cycle.
- (c) Organisational hours of work arrangements are to be implemented in accordance with the provisions of Schedule 5.”.

3. By deleting clause 6.4.1 and insert the following in lieu thereof:

“6.4.1 Subject to Directives on “Hours and Overtime” and “Field Staff” as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*, and subject to clause 6.1.6 and Schedule 5, all authorised overtime worked by employees in excess of their ordinary daily hours of duty or outside their ordinary spread of hours are paid for at the rate of time and a-half for the first 3 hours in any one day and double time for all time worked thereafter.”.

4. By deleting clause 6.4.10 (Field Staff).

5. By inserting a new Schedule 5 as follows:

“Schedule 5 – Organisational Hours of Work Arrangements

S5.1 *Coverage*

- (a) Organisational hours of work arrangements implemented in accordance with clause 6.1.6 and this schedule apply to those employees including trainees whose ordinary hours of duty are 36.25 hours per week.
- (b) Organisational hours of work arrangements shall also apply to part-time employees except where operational requirements do not allow for the application of organisational hours of work arrangements. Examples of where operational requirements would preclude the application of these arrangements to part-time employees include:
- filling in spaces on a roster;
 - replacing employees absent on leave or accrued days off; or
 - covering peak workload periods or client service requirements at specific times.
- (c) This schedule does not apply to:
- employees performing shift and continuous shift work as defined at clause 6.1.1;
 - casual employees; or
 - those employees subject to a Directive relating to Field Staff as issued from time to time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*, except in the case of employees identified as field staff who are approved by the Chief Executive to work their ordinary hours on a 36.25 hours per week basis.
- (d) This schedule shall also not apply to arrangements prescribed in Schedule 3 or 4 where inconsistent with such arrangements.

S5.2 *Definitions*

- (a) ‘Accrued full day off’ means accrued time which is equal to an employee’s ordinary working hours which is taken as paid time off during a work cycle where there is agreement between the employee and the relevant supervisor.
- (b) ‘Accrued time’ means the hours of duty performed, approved leave taken and other hours credited to the employee which have not been compensated by the payment of overtime, which are in addition to the ordinary working hours of the employee.
- (c) ‘Carryover’ time means any accrued time not taken as paid time off (and debit time if included in the organisational hours of work arrangements) in one work cycle and which, subject to any specified limit(s), is carried over to the next work cycle.
- (d) ‘Debit time’ means the amount of paid time off taken prior to the accrual of time in excess of the ordinary working hours prescribed for each category of employee.
- (e) ‘Directive’ means a directive issued by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*.

- (f) 'Employee' means an 'officer' or 'employee' employed under this Award including a trainee registered under the *Training and Employment Act 2000* whose parent award is the *Queensland Public Service Award – State 2003*, subject to the provisions of clause S5.1.
- (g) 'Hours of work arrangements' means those working arrangements introduced in accordance with this schedule which are designed to give effect to the purposes in clause 6.1.6.
- (h) 'Normal operating hours' means the hours of operation of the Agency or work unit on any one day within the spread of hours (as defined) within which employees will be authorised to commence and cease duty.
- (i) 'Ordinary working hours' means 7.25 hours (seven hours fifteen minutes) per day.
- (j) 'Spread of hours' will be 6.00 a.m. to 6.00 p.m. Monday to Friday, or as provided in a certified agreement, or as agreed in accordance with the provisions of clause S5.3(b)(i).
- (k) 'Standard hours' means a standard 7 hours 15 minutes working day within the spread of hours with a lunch break of 45 minutes, e.g. 9.00 a.m. to 5.00 p.m. Mondays to Fridays inclusive with a lunch break of 45 minutes between 12.00 noon and 2.00 p.m.
- (l) 'Supervisor' means a person responsible for the daily supervision and operation of a work area.
- (m) 'Travelling time' means the difference between the time taken for an employee to travel as directed to an alternative place of work and the time taken for an employee to travel to their usual place of work.
- (n) 'Work cycle' means a period of time specifying a number of consecutive days during which accrued time and approved leave will be accounted.
- (o) 'Work unit' means an identifiable group of employees within an Agency.

S5.3 Arrangements

- (a) (i) Subject to clause S5.3(b), the spread of hours in an Agency or work unit are determined to be 6.00 a.m. to 6.00 p.m. Monday to Friday (except where a certified agreement provides otherwise).
- (ii) Hours of work arrangements in an Agency or work unit within the spread of hours of 6.00 a.m. to 6.00 p.m. Monday to Friday will be determined by the Chief Executive after consultation with the affected employees. Any subsequent changes to organisational hours or work arrangements relating to "carryover" balances, "normal operating hours", maximum accruals or maximum periods of accrued time off during a work cycle shall be subject to consultation with the relevant Union or Unions.
- (iii) Within the spread of hours of 6.00 a.m. to 6.00 p.m. Monday to Friday, the normal operating hours of an Agency or work unit will be determined by the Chief Executive.
- (iv) Hours of work arrangements based on a spread of hours of 6.00 a.m. to 6.00 p.m. Monday to Friday for each Agency or work unit will be recorded in writing, advised to affected employees and written notification provided to the relevant Union or Unions.
- (b) (i) A spread of hours extending outside 6.00 a.m. to 6.00 p.m. on Mondays to Fridays and related new hours of work arrangements may be introduced in an Agency or work unit by agreement of the Chief Executive, the majority of employees affected and the relevant Union or Unions.
- (ii) In reaching agreement, no party will unnecessarily delay the process or unreasonably withhold consent.
- (c) Hours of work arrangements will prescribe that the ordinary hours of work exclusive of meal times shall not exceed 9 1/2 hours per day to be worked within 'normal operating hours'.
- (d) Paid time off may only be taken with the prior approval of the relevant supervisor.
- (e) (i) Subject to clause S5.3(e)(ii), an employee will be required to accrue equivalent additional time prior to taking a part or full day (or longer period) as paid time off.
- (ii) The hours of work arrangements in an Agency or work unit may permit an employee to avail of debit time up to a specified limit.
- (iii) Where agreement cannot be reached, the Chief Executive may direct the starting and ceasing times of employees within the spread of hours.
- (iv) In determining hours of duty, wherever practicable, the Chief Executive must:
- consult on the requirements to work specific hours before directing employees to work those hours;
 - where the working of accrued time is not suitable to an employee on a given day take into account whether other employees are available and competent to perform the work;
 - take into account the needs of workers with family responsibilities or disabilities;
 - provide timely notice of the requirement to work in excess of ordinary hours; and
 - take into account the employees current accumulation of accrued time.
- (v) All employees will give first priority to the maintenance of acceptable work flows and ensure that co-operation exists with supervisors in planning office working times in order that resources are available to service the needs of the Agency and clients.
- (vi) An employee may not perform accrued time unless work is allocated for the employee to perform and is performed during such period.

- (vii) It shall be the responsibility of each supervisor in respect to their work unit to ensure that the needs of the organisation and clients are met and appropriate supervision is available at all times.
- (viii) Employees who resign, retire or otherwise cease employment should ensure that they have utilised all accrued time or made up any debit time, prior to termination of employment. Employees are not entitled to any compensation or payment for any accrued time not utilised as at date of termination of employment. Any debit time accrued as at date of termination of employment shall be recoverable by the Chief Executive at ordinary rates and deducted from any monies owed at date of termination of employment.
- (ix) Where an employee's time management is deemed to be unsatisfactory, the Chief Executive may direct the employee to work standard hours. Subject to Directives on "Hours and Overtime" and "Field Staff" as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*, any authorised time worked in excess of standard hours will be payable as overtime.
- (f) New hours of work arrangements may include provision for the carryover of accrued time (and debit time if included in the arrangements) from one work cycle to the next.
- (g) Issues which may be considered for inclusion in hours of work arrangements may include, but are not necessarily limited to, the following:
- (i) spread of hours (including consideration of a spread of hours beyond 6.00 a.m. to 6.00 p.m. Monday to Friday) in accordance with clause S5.3(b);
 - (ii) work cycle;
 - (iii) core times;
 - (iv) maximum balances;
 - (v) access to accrued time off; and
 - (vi) weekend overtime accrual, specifically accrual factor/s referred to in clause S5.3(j)(iii).
- (h) Entitlements relating to meal breaks, rest pauses, transport costs on recall and fatigue leave are as prescribed at clauses 6.2, 6.3 and 6.4.
- (i) Travelling time, as defined, other than authorised overtime, performed by employees in excess of the ordinary hours but within the nine and a-half hours of duty permitted in clause S5.3(c) will be recognised as accrued time on a time for time basis. Any travelling time undertaken outside the nine and a-half hours of duty permitted in clause S5.3(c) shall be compensated in accordance with a directive relating to Excess Travelling Time as issued from time to time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*.
- (j) (i) As part of the hours of work arrangements, employees may perform authorised work outside the spread of hours or in excess of nine and a-half hours exclusive of meal breaks on any one day (or other period specified in any certified agreement).
- (ii) Employees who mutual by mutual agreement with the relevant supervisor perform work as outlined in clause S5.3(j)(i) on Mondays to Fridays, will by mutual agreement with the supervisor, be compensated either by paid overtime at the rate prescribed in this award or relevant directive, or have such time accrued on a time for time basis.
- (iii) Where such overtime is performed on Saturdays or Sundays, the overtime shall be compensated by paid overtime at the rate prescribed in this award or relevant directive, or where the employee and the relevant supervisor agree, have such time accrued on a time for time basis or such other factor as prescribed in the organisational hours of work arrangements.
- (iv) All ordinary work performed on a public holiday shall be compensated in accordance with clause 7.7.
- (v) All authorised overtime performed on a public holiday shall be compensated in accordance with clause 7.7 and the provisions of the *Industrial Relations Act 1999*.
- (vi) All overtime accrued under the hours of work arrangements shall comply with minimum period provisions prescribed in clauses 6.4, 6.5 and 7.7.
- (vii) When applying clause S5.3(j), genuine consultation is to occur between the relevant supervisor and employees free from duress.
- (viii) Where agreement to accrue authorised overtime under hours of work arrangements is not reached, such overtime shall be compensated by paid overtime at the rate prescribed in this Award or relevant directive subject to classification restrictions to paid overtime.
- (ix) The provisions of clause S5.3(j) herein do not apply to:
- (A) employees in receipt of ordinary salary that exceeds the equivalent of the AO5(4) salary payable at any given time and who are compensated for overtime in accordance with a directive relating to "Hours and Overtime" as issued from time to time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*; and
 - (B) employees designated as field staff who receive overtime entitlements in accordance with a directive relating to Field Staff as issued from time to time by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*."

Dated 15 November 2004.

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

Operative Date: 15 November 2004
Amendment – Hours of duty and Schedule 5
Released: 22 November 2004

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999***PRIVATE HOSPITAL NURSES' AWARD – STATE 2003****(Gazette, 5 September, 2003)**

(AR145 of 2002)

DEPUTY PRESIDENT SWAN
COMMISSIONERS EDWARDS AND BECHLY

17 November 2004

AWARD REVIEW
(Correction of Error)

WHEREAS errors occurred in the Award as published in the *Queensland Government Industrial Gazette* of 5 September 2003, Vol. 174, No.1, pages 52-90, the following corrections are made to be effective as from 4 August, 2003.

1. By deleting clause 7.2.8(a) and inserting the following in lieu thereof:

“(a) Payment for work done – All work done by any employees (other than casual employees) during their ordinary shifts on:

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

shall be paid for at time and a-half.”.

2. By deleting clause 7.3.8(a) and inserting the following in lieu thereof:

“(a) Payment for work done – All work done by any employees (other than casual employees) during their ordinary shifts on:

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

shall be paid for at double time and a-half.”.

Dated 17 November 2004.

G.D. SAVILL,
Industrial Registrar.