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No. 5

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
CA417/04	Sentinel Industries (Qld) Pty Ltd & Electrical Trades Union of Employees of Australia, Queensland Branch Certified Agreement – 2004/2006	2/9/04	
CA429/04	The Mulgrave Central Mill Co. Ltd Certified Agreement No. 6	7/9/04	CA443/02
CA431/04	Keperra Sanctuary Hostel Support Workers Certified Agreement 2004	7/9/04	
CA442/04	Churches of Christ in Queensland – Churches of Christ Care, Donacs Certified Agreement 2004	14/9/04	CA219/02
CA441/04	Kangaroo Couriers – Certified Agreement 2004	15/9/04	
CA448/04	Australia Meat Holdings Pty Limited – Rockhampton Maintenance – Certified Agreement 2004	17/9/04	CA199/01
CA449/04	CC Hansen & CH Hansen & TL Hansen t/a Hansen Ceilings and Partitions – Certified Agreement	17/9/04	
CA451/04	Inghams Enterprises (Cleveland Processing) – Certified Agreement 2004	17/9/04	CA557/02
CA453/04	Macri Constructions Pty Limited – Certified Agreement	17/9/04	

G.D. SAVILL  
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

INDUSTRIAL REGISTRAR

16 September 2004

NOTICE  
(Correction of Error)

WHEREAS an error occurred in the Notice as published in the *Queensland Government Industrial Gazette* of 11 June 2004, Vol. 176, No. 6, pages 149-152, the following correction is made to be effective as from 11 June 2004:

By deleting the following from the Schedule to the Notice:

A1/92                    WHOLESALE WAREHOUSES AND STORES AWARD – SOUTHERN DIVISION                    (1992) 13 QGIG 379  
(EASTERN DISTRICT) Shift Work – Hardings Manufacture Pty. Ltd. – INDUSTRIAL  
AGREEMENT

Dated 16 September 2004.

G.D. SAVILL,  
Industrial Registrar.

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INDUSTRIAL COURT OF QUEENSLAND

*Industrial Relations Act 1999* – s. 329 – application to be heard on appeal

**Toll Transport Pty Ltd AND Margaret Green and Q-COMP (C58 of 2004)**

PRESIDENT HALL

17 September 2004

ORDER

By written consent of the parties the court orders pursuant to s. 329(b)(iv) of the *Industrial Relations Act 1999*, that Toll Transport Pty Ltd be permitted to appear and make submissions at the hearing of the appeal by the appellant in matter C49 of 2004, from the decision of the Industrial Magistrate at Brisbane on 13 May 2004.

Dated 17 September 2004.

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

Released: 17 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Wendy Deniese Ussher AND Queensland Prawn Farms Pty Ltd  
(Nos. W79, W80 and W81 of 2003)**

COMMISSIONER BROWN

15 September 2004

DECISION

Wendy Deniese Ussher is the applicant (the applicant) in each of the 3 applications and is an Industrial Inspector duly appointed under and for the purposes of the *Industrial Relations Act 1999* (the Act) in accordance with the provisions of s. 350 of the Act.

Each application seeks an order that wages allegedly owing by Queensland Prawn Farms Pty Ltd (the respondent) be paid to Katherina McIvor (W79/03), Elizabeth Kingsley (W80/03) and Cynthia Cedergreen (W81/03).

The substantive hearing was conducted in Bundaberg on 4 August 2004 with final written submissions being received by 27 August 2004.

As this matter involved the interpretation of Award provisions, The Australian Workers' Union of Employees, Queensland (AWU) and other major respondents were invited, in accordance with Practice Note 6, to participate in the hearing.

Several conciliation attempts, spanning over 12 months with (the assistance of the Commission) were unsuccessful, and earlier attempts by the parties to reach agreement directly also failed.

The area of disagreement emanated from a belief by the applicant that the work performed by the named employees was subject to the then *Prawn and Other Seafood Processing Award – State* (the Award) and a belief to the contrary on the part of the respondent.

It was the position of all parties that the substantial issue to be determined was award coverage.

Common ground between the parties was that the respondent conducted (and still does) an operation at North Littabella whereby live prawn stock is purchased, delivered to the respondent, placed in ponds created for the purpose of growing the prawns, nurtured for a period of time and harvested. The work to this point in the operation of the respondent is not in question as none of the claims related to this part of the operation.

The harvested prawns are then taken to the respondent's shed on the same property where they are weighed, placed in vats of cold water and chilled, removed and sorted, graded, weighed again and packed for shipment overseas. In the case of weak prawns they are returned to the ponds for future harvest and in the case of dead or broken prawns they are frozen and stored for sale.

The respondent was (and is) engaged in all of the above listed functions. The employees in question, however, were only involved in either sorting, grading, weighing or packing at the times in question.

Clause 2 of the Award in question as it stood prior to its review (although the application clause didn't change) states:

“Application of Award

2. This Award shall apply to all employers engaged in Prawn and other Sea Food processing and their employees working at heading, sorting, grading, cutletting, processing, packing, freezing, storing, and handling of prawns and/or other sea foods and all other work in or in connection with or incidental to such work or services provided within the employer's establishment which is not covered by the Fishery Employees' Award – State.

This Award shall apply throughout the State of Queensland.”

It was agreed between the parties that the employees in question were engaged, at various times, on duties including the sorting, packing and handling of prawns.

The respondent took the Commission on inspections of both the operations of Raptis & Sons Pty Ltd at Colmslie and the premises of the respondent.

Evidence was given by the employees in question (McIvor, Kingsley and Cedergreen) and Tracey Reid for the applicant and Arthur Reck and Darren Rosetta for the respondent.

The evidence, in general, supported the outline above, with, predictably, the applicant's witnesses claiming that the work performed by them in connection with the prawns constituted “processing” and the witnesses for the respondent claiming that the functions performed by the employees in question or the respondent, generally did not constitute processing.

Witnesses Reck and Rosetta both held the view that processing involved a greater degree of impact on the product (prawns) than was the case in their operation. They believed that the term processing meant activities such as cooking, de-veining, removing heads and or shells and cutletting.

Regarding the dead and damaged prawns, there was some difference in the evidence as to the percentage of the work load that sorting, treating, packing and freezing of these amounted to, however, the Commission accepts that it was not great and on average something less than 10%.

The respondent submitted that:

- its operation is significantly different to that of Raptis & Sons;
- a process does not equate to processing;
- Departmental correspondence is advice;
- its primary calling is prawn farming (para 173) and secondary to the consideration of whether or not the Award binds it;
- its operation is not recognised by Authorities as prawn processing; and
- the intention of the parties that drafted the Award are relevant in determining coverage.

The respondent submitted that in interpreting the Award, the Commission should have regard to the decision of Deputy President Ives of the Australian Industrial Relations Commission wherein *National Union of Workers AND Graincorp Operations Limited* (PR918161) he stated:

“**Principles of Interpretation**

[46] A number of general principles relating to the interpretation of industrial instruments have been established by cases in the past. While an award or an agreement should be interpreted in the same manner as a court or tribunal would interpret legislation or another document, it must be borne in mind that often industrial instruments are framed and drafted by laypersons who are not aware of all the legal niceties that may have been developed by the courts.

[47] Among the general principles to be followed in the interpretation of awards and certified agreements are these:

- (a) if the terms of an industrial instrument are clear and unambiguous, then the industrial instrument must be interpreted in accordance with that clear and unambiguous meaning (*Re Clothing Trades Award (1950)* 68 CAR 597);
- (b) the words used in an industrial instrument should not be interpreted in a strict, technical fashion, because those who framed the industrial instrument are often non-lawyers drafting words in the context of custom and practice in an industry or particular enterprise (*Bond & Co Ltd (in liquidation) v McKenzie* (1929) 28 AR 499; Hancock SDP in *PTC of Victoria v ARTBIU*, above);
- (c) each clause should be interpreted within its context, that is, the meaning of particular words should be read in the context of the industrial instrument as a whole (*Australian Workers' Union v Abbey* (1939) 40 CAR 494) and in the context of the clause/section in which it falls (*Avondale Motors (Parts) Pty Ltd v Federal Commissioner of Taxation* (1971) 45 ALJR 280 at 283);
- (d) the court or commission should strive to give effect to the intention of the authority which made the award (or, presumably, in the case of an agreement, the intent of the parties to the agreement), provided that the words appearing in the instrument can reasonably be interpreted to mean that which the authority/parties intended them to mean (*Australian Timber Workers' Union v W Angliss and Co Pty Ltd* (1924) 19 CAR 172);
- (e) the court or tribunal's recourse to extrinsic material in the interpretation of industrial instruments is not dependant upon the existence of ambiguity in the industrial instrument (*Australian municipal, Administrative, Clerical & Services Union v Treasurer of the commonwealth of Australia* (1998) 82 FCR 175; 80 IR 345).”

The evolution of the application clause of the Award has been alluded to by the respondent and reference made to the Industrial Court proceedings of 1960 which established the first Award.

Submitting that consideration should be given to the intention of the drafters in determining the question of coverage, Mr Yates, for the respondent, cited the comments of Mr J. B. James appearing on behalf of the Queensland Employers' Federation, Union of Employers in that matter and the response of Mr F. W. Matthies:

“James: I would ask whether Mr Matthies would consider this award would extend to the coverage of employees purely buying prawns and packing them and sending them away? There are some employers who do not process prawns at all.

Matthies: It is not intended to cover them.”.

That might have been of assistance in determining this matter if it was not for the fact that the application clause of the then Award (Gazetted January 1961) was significantly different to the clause now in question.

The clause then read:

“Application of Award

1. This Award shall apply to all employees engaged in the heading and/or grading and/or processing and/or packing and/or handling of prawns and/or other sea foods, who are not covered by the Fishery Employees’ Award – State.

This Award shall apply throughout the State of Queensland.”.

The notable difference was that there was no reference to the employers’ callings and also each of the tasks identified was separated by the term “and/or”.

If that were the current clause, I suggest that the respondent would be well and truly obliged to pay employees so engaged in accordance with that Award. It was also possible that Mr Matthies was simply wrong and, in any event, the prawn farming/live exporting industry did not exist at that time.

The respondent submitted that the construction of the application clause in question is such that for the Award to apply to the respondent’s enterprise, the respondent must be engaged in all of heading, sorting, grading, cutletting, processing, packing, freezing, storing and handling and also for the Award to apply to employees, they too, must be engaged in all and every task listed.

The Commission accepts that, in the absence of the term “and/or” or simply the word “or” inserted between the nominated tasks, a literal interpretation might support the interpretation contended for by the respondent in relation to employees. However, the full context of the clause must be considered and if it is considered in the same strict literal sense it would be that an employee not engaged in each and every task mentioned and moreover “all other types of work in or in connection with the employer’s establishment” would not have the coverage of the provisions of the Award. I note also that no argument was mounted to suggest that the respondent must be engaged in both prawn and other seafood processing to be bound by the Award despite the fact that a literal interpretation such as that argued for by the respondent would seem to suggest this.

This would make a nonsense of the Award and, should it be interpreted in this narrow way, it would certainly mean that almost no one, including those employees already working under the Award, would be covered by it.

For this reason, I reject the submissions of the respondent that employees must perform all of the duties in clause 2 to be covered by the Award. In reaching this conclusion I have had regard to the comments of Deputy President Ives in the matter mentioned earlier, particularly at paragraph 47(b) thereof.

Regarding the submission that the respondent must be engaged in “all” of the tasks mentioned in clause 2, or that the respondent’s calling must be prawn processing, that proposition is rejected.

Put aside the question of whether or not the respondent is involved in processing. The respondent is engaged in prawn purchasing, growing and exporting and the Commission has no idea, because no evidence was presented to indicate whether any of the above occupied more than half of the time and resources of the respondent in terms of total hours worked or wages paid.

Having already concluded that employees do not have to be engaged in all of the tasks listed plus the task incidental to those listed for the Award to apply to them, the decision that will now determine coverage or otherwise is whether or not the activities of the respondent amount to “processing” and whether the respondent does all of the tasks listed in the application clause.

Mr Yates submitted that the inspections conducted at Raptis & Sons at Colmslie should assist the Commission in that the factory was recognised by Regulators as a “processing facility” and that the assertion that the respondent did not engage in the calling of the Award was supported by the fact that no such processing authority existed for the respondent.

Mr Yates submitted that the facilities of the respondent differed to that of Raptis & Sons in a number of ways including temperature, the ability to re-locate and odour.

Mr Yates submitted that the claimants agreed in evidence that the respondent did not direct workers to perform peeling, grading or cutletting.

Attached to Exhibit 3 is a notice posted by the respondent in the work area of the claimants that sets out the hygiene requirements for workers in this area. It is entitled “Hygiene Requirements for Processing Employees”. The respondent’s evidence was that the notice was a genuine document obtained by a former manager to outline Australian Quarantine Inspection Service requirements for workers in the packing shed and the respondent’s submissions are that the Commission is not assisted by that document.

I agree, however, that that view is consistent regarding the opinion of all regulators referred to by the respondent. It is for the Commission to determine the issue of award coverage, not for some other body or regulator with no interest or involvement in industrial relations.

It is the operation of the respondent and the work performed by the employees between the time when prawns are harvested and when they are exported that is in question and will be instrumental in establishing whether or not the Award applies.

I accept that generally the predominant (calling) activity of the respondent would be instrumental when determining which industrial instrument is appropriate.

However, I am not comfortable with the notion that an employer (possibly) engaged in an award free operation for seven months (if that be the case) is then automatically free from award coverage for the remainder of their activities for the next five months.

The provision requires that the employer be “engaged in” not predominately engaged in prawn processing.

On the evidence, both the respondent and the employees in question were involved in the operation that followed the harvesting of the prawns.

It is a question of whether this amounted to processing.

The Commission was not assisted by the respondent's submissions regarding *Neville Palk and Flora Production Services Pty Ltd* (C29 of 2001). There was no argument regarding the work of the applicants or mixed functions.

The Macquarie Dictionary states (*inter alia*):

"Process: a systematic series of actions directed to some end; a continuous action, operation, or series of changes taking place in a definite manner; to treat or prepare by some particular process, as in manufacturing; to convert (an agricultural commodity) into marketable form by some special process."

In the view of the Commission, the end result is the export of live prawns or the sale of dead or damaged prawns locally.

The process is:

1. weighing in crates;
2. the chilling in vats;
3. the sorting;
4. the grading;
5. the weighing of live prawns;
6. the preparation of packaging;
7. the utilisation of wood shavings in the packing process;
8. the packing of live prawns in wood shavings in cartons;
9. in the case of dead or damaged prawns, the application of a chemical; and
10. freezing of the dead or damaged prawns.

The Award does not stipulate that the process must be complex or that the prawns be live or dead at any particular stage of the **process**.

Having considered all of the submissions, evidence and material, I find that both the respondent, and the employees in question, were engaged in prawn processing at material times and hence I find that the Award applies for the purposes of assessing the wages of the employees in question whilst so engaged.

The parties are to prepare and submit draft orders within 22 days of the date of release of this decision.

Order accordingly.

D. K. BROWN, Commissioner.

*Hearing Dates:*

2003 5 September, 18 December  
 2004 30 January, 4 February, 18 March, 20 July and 4 August.  
 27 August – Final Written Submissions  
 3 August – Inspections

*Appearances:*

Ms W. D. Ussher for the Department of Industrial Relations.  
 Mr G. Yates of Queensland Chamber of Commerce and Industry Limited,  
 Industrial Organisation of Employers on behalf of Queensland Prawn Farms  
 Pty Ltd.  
 Mr J. Sharpe for The Australian Workers' Union of Employees, Queensland.

Released: 15 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* – s. 53 – application for payment of long service leave

**John Dennis Dallow AND Queensland Police Service (No. B1342 of 2004)**

COMMISSIONER BLADES

17 September 2004

*Industrial Relations Act 1999* section 53 – Cashing out of long service leave – Financial hardship – Principles – Previous applications – Refusal to provide documentary proof – Previous dismissal of similar application – Documents now provided – Estoppel – Abuse of process – No new material or grounds – Application dismissed.

DECISION

This is the third application by Mr Dallow for the cashing out of his long service leave pursuant to the provisions of s. 53 of the *Industrial Relations Act 1999* (the Act). Two previous applications sought the payout of 160 days entitlement, this application seeks the payout of 170 days entitlement. The Queensland Police Service, as has been the practice with all similar applications, neither supports nor opposes. It is confirmed there is an entitlement to 170 days leave.

Previous applications have been before the Vice President. The first application (B1248 of 2003, filed 1 August 2003) was brought to a close by Mr Dallow who withdrew it. It had been adjourned to 2 September 2003 for the production of certain material by Mr Dallow but on 1 September, by letter to the Registry, it was withdrawn. The circumstances leading up to its withdrawal were described by her Honour in her decision in another matter involving Mr Dallow on 31 October 2003, now reported at (2004) 175 QGIG 235-6 when she said:

"Mr Dallow was given the opportunity to be heard and to adequately present his case in B1248 of 2003. Mr Dallow did not await any outcome of that application. He was asked for supporting documentation for the claims he made in evidence before me and/or an affidavit to the effect that he was unable to obtain this information from either Medicare or his medical benefits provider. On that occasion I further indicated that I was not prepared, in the exercise of the discretion vested in the Commission under s. 53(4) of the *Industrial Relations Act 1999*, to make any order that would leave Mr Dallow with no entitlement to long service leave. I did however indicate that I was prepared to look at a payment in respect of 100 days of

*long service leave entitlement provided supporting documentation was provided in respect of his claims about medical expenses incurred and the need for a spa to be installed in his home to help alleviate an arthritic condition diagnosed some two years earlier.*

*Mr Dallow did not avail himself of the opportunity of providing that supporting documentation. Mr Dallow decided to withdraw his application the day prior to the re-listing of the matter.”.*

The next application (B1614 of 2003, filed 2 October 2003) was set down for hearing before her Honour on 22 October 2003. Mr Dallow then requested her Honour to disqualify herself from hearing the case on the grounds of bias which understandably, she dismissed. The application was to all intents and purposes identical to the first application. When the hearing proceeded on 31 October 2003, her Honour once again sought the documentation she had sought on the previous occasion. What happened then is recorded in the following passage from her Honour’s decision (2004) 175 QGIG 234-5 where she says at para 13:

*“On this occasion I also indicated to Mr Dallow that I would require documentary evidence to support his claims i.e. the documentary evidence I required in B1248 of 2003. In response to this Mr Dallow said that I had his word. I indicated that I was not prepared to make any payment unless I had documentary evidence of the expenditure of these monies. Mr Dallow indicated that he would not supply documentary evidence of this expenditure.*

Again understandably, her Honour then dismissed his application.

Mr Dallow appealed to the Court on the basis of ostensible bias. That appeal was dismissed – (2004) 176 QGIG 69-71.

The position now is that similar applications by Mr Dallow have been before the Vice President on a number of occasions and Mr Dallow has chosen not to comply with the Vice President’s requests for evidence. Because of that his application, B1614 of 2003, was dismissed. In my view an estoppel has arisen so that until Mr Dallow can rely upon new evidence, he is prevented from again raising the issues which were determined against him. He had the opportunity to produce the evidence. He refused. He is bound by that conduct. He had the opportunity to appeal the Vice President’s decision and the only ground relied on was bias. In essence, in dismissing the application, the Vice President found that the basis for the application had not been proved to her satisfaction.

Unless new issues have arisen, this latest application may well constitute an abuse of process which in itself is a form of estoppel – *Neil Pearson & Co Pty Ltd v Comptroller-General of Customs* (1995) 127 FLR 350 at 358. The Vice President is now on leave, a fact which could very easily have come to the notice of Mr Dallow and the timing of the application deserves scrutiny. In *Ho and Anor v BMW Australia Finance Ltd*, (Unreported Supreme Court Victoria 3.5.95 No 7728/94) Smith J held that an application before a second Magistrate for an adjournment based upon identical material which the previous day had resulted in the denial of an adjournment constituted an abuse of process. The application had, in effect, sought to challenge the first decision. There are distinct parallels to be drawn in Mr Dallow’s present application.

So what are the differences then between this latest application and application B1614 of 2003 so that it can be said that this is a new application based upon new grounds and not just a rehash of the previous? Mr Dallow has produced a folder containing accounts, quotations and receipts which were not in evidence in the earlier hearings but which mostly refer to expenditure incurred prior to the lodgement of the last application on 2 October 2003. The point is that the Vice President asked for them and Mr Dallow refused, not failed, to produce them.

The matters which appear to have arisen since that application was filed are:

- his wife was admitted to intensive care for four days earlier this year after contracting whooping cough.
- he has had to replace ageing worn out appliances and furniture (comprising wall oven, cook top, rangehood, refrigerator and lounge suite) at a cost of \$4,566.

Much of the documentation now produced went to prove expenditure which occurred prior to the previous application. Thus acquittances for solar hot water system (June 2002 – \$1,831), above ground pool (February 2003 – \$10,166), pool fence (February 2003 – \$3,430), most of the account for pool chemicals (March to November 2003 – \$382), new washing machine (July 2002 – \$765), Orthodontist quotations (February 2000 \$4,257 and March 2001 \$3,737) and documents relating to overtime for most of the period July 1997 to June 2004 were available to be provided in the previous hearing. These are not new matters which are available to be considered under this application. They could have been raised then and, under the principle of *res judicata*, it is irrelevant they were not.

At the hearing, the applicant also mentioned compassion. In that regard he addressed his illness and his associated financial difficulties but once again, it is important to note that it was raised before the Vice President in B1614 of 2003, particularly in his letter of 12 October 2003 when he also raised the question of bias.

Mr Dallow has obtained and exhibited quotations for other proposed works being replacement of the roof for \$14,850 and termite treatment for \$726.

The cashing out of a long service leave entitlement is not to be had just for the asking. The attitude of the employer may have some relevance but is not conclusive. There is a legislative fetter upon the discretion of the Commission. Section 53 of the Act permits the Commission to make an order only if satisfied the payment should be made (a) on compassionate grounds; or (b) on the ground of financial hardship. The Act does not define what “financial hardship” might entail. The **Concise Oxford Dictionary** includes “severe suffering or privation” among the meanings of “hardship”. The **Macquarie Concise Dictionary** defines “hardship” as “a condition that bears hard upon one; severe toil, trial, oppression or need”. In my view, “financial hardship” means or includes “severe financial need”. While recognising that there are degrees of financial hardship, the Act requires something more than merely being in debt and in my view means more than voluntarily and purposely generating debt so as to claim financial hardship. The Act does not permit long service leave to be just swapped for cash. The circumstances under which cashing out will be permitted cannot be defined. The Commission may be more flexible when only some of the leave is sought to be converted. It may be that an approval will be given to a partial cash out in circumstances were a holiday is proposed but unable to be afforded. This circumstance was identified by the Full Bench in the *Review of Entitlement to Long Service Leave* case, reported at (2000) 164 QGIG 236 where it was also stated:

*“We have decided to proceed upon the view that long service leave is intended to be a reward for long service (not long leave after service) and that long service leave is also intended to provide a respite from work...*

...

*On this issue the employee organisations and the employer organisations (and consultants representing employers) were divided beyond redemption. We unreservedly accept that the ‘cashing out’ of long service leave is incompatible with the purpose for which it is granted. Widespread ‘cashing out’ has the capacity to undermine any campaign by employee organisations for further enhancement of long service leave entitlements and, perhaps, capacity to undermine the current entitlements.”.*

With respect to the expenses for the swimming pool, the evidence reveals that the Doctor advised Mr Dallow to undertake hydrotherapy, not that he go to the expense of \$13,596 to install a swimming pool for hydrotherapy. Mr Dallow does not say how his wife’s illness has contributed to his hardship. The very fact that he is able to replace the worn out appliances and as recently as August 2004 (lounge \$1,527) leaves an inference that he is not suffering the financial hardship he alleges. These factors do not augur well for favourable consideration because the voluntary assumption of debt provides evidence of a lack of hardship.

Moreover, Mr Dallow still has not attempted to produce any evidence of the cost of the spa and its installation which surely would be facilitated by the production of documents from the seller/installer. His only explanation is that he cannot locate the receipts.

The net entitlement of the long service leave “cash out” is \$14,344. The voluntary expenditure identified in the swimming pool and the appliances and furniture far exceeds that amount.

So why make an application for the cashing out of long service leave if there is no real financial hardship? That question is probably answered by the following sentence in his affidavit:

“Under the terms and conditions of our present Enterprise Bargaining Agreement I am not able to take my Long Service Leave as holidays because I would lose \$476.09 per fortnight in Operational Shift Allowance thus exacerbating my financial hardship.”.

Because of the loss of that allowance, there is an understandable incentive for Officers to seek to cash out long service leave rather than to access it. There is no real incentive to take it, whether an Officer needs the rest or not.

The failure to provide new grounds to justify the grant of this application together with the principles of estoppel lead me to refuse this application, which is dismissed.

Whether the Vice President will be prepared to again consider Mr Dallow’s circumstances in view of his preparedness to now submit documentary material her Honour had previously sought, is a matter for her Honour upon her return.

B.J. BLADES, Commissioner.

Appearance:  
Mr J.D. Dallow on his own behalf.

Hearing Details:  
2004 16 September

Released: 17 September 2004

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QUEENSLAND INDUSTRIAL REGISTRAR

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

Queensland Teachers Union of Employees (No. Q26 of 2004)

REGISTRAR SAVILL

21 September 2004

Request for Conduct of Elections – Prescribed Information – Expiry of Terms of Office – Methods of Elections – Electoral Commission to Conduct Elections.

DECISION

On 20 September 2004 the Queensland Teachers Union of Employees lodged in the Registry under s. 481 of the Industrial Relations Act 1999, the information prescribed in s. 36 of the Industrial Relations Regulation 2000, in relation to the conduct of elections by the Electoral Commission of Queensland for the following positions of office:

Office	Number of Positions	Method of Election
<i>State Conference Delegate of a Branch:</i>		
Balonne .....	1	Direct vote by members of Branch
Barron .....	1	
Beaudesert.....	1	
Beenleigh .....	1	
Blackwater .....	1	
Border .....	1	
Brisbane Central .....	1	
Brisbane Valley.....	1	
Browns Plains .....	1	
Bundaberg North.....	1	
Bundaberg South.....	1	
Caboolture.....	1	
Cairns .....	1	
Callide & Dawson Valleys .....	1	
Caloundra.....	1	
Camp Hill.....	1	
Capalaba.....	1	
Cape and Gulf .....	1	
Cassowary Coast.....	1	
Centenary .....	1	
Central Highlands .....	1	
Central Western .....	1	
Chermside .....	1	

Cleveland .....	1
Coolum.....	1
Coomera.....	1
Dalby.....	1
Darling Downs Central.....	1
Darling Downs North.....	1
Darling Downs South.....	1
Deception Bay.....	1
East Brisbane.....	1
East Moreton.....	1
Fassifern.....	1
Ferny Grove.....	1
Geebung.....	1
Gold Coast North.....	1
Gold Coast South.....	1
Gympie.....	1
Hervey Bay.....	1
Hinchinbrook.....	1
Inala District.....	1
Ipswich Central.....	1
Ipswich East.....	1
Ipswich West.....	1
Keppel.....	1
Leichhardt.....	1
Lockyer.....	1
Logan.....	1
Lower Burdekin.....	1
MacGregor/Rochedale.....	1
Mackay.....	1
Mackay North.....	1
Maleny.....	1
Maroochydore.....	1
Maryborough.....	1
Merrimac.....	1
Morayfield.....	1
Mt Coot-tha.....	1
Mt Gravatt.....	1
Mt Morgan and Dawson Valley.....	1
Mulgrave.....	1
Nambour.....	1
Nerang.....	1
Noosa District.....	1
North Burnett.....	1
North East Brisbane.....	1
North Kennedy.....	1
Northern Tablelands.....	1
Peak Downs.....	1
Pine Rivers North.....	1
Pine Rivers South.....	1
Port Curtis.....	1
Redcliffe.....	1
Rockhampton North.....	1
Rockhampton South.....	1
Ross.....	1
Runcorn.....	1
Sherwood.....	1
South Brisbane.....	1
South Burnett.....	1
South Western Queensland.....	1
Southport.....	1
Stanthorpe.....	1
Sunnybank.....	1
The Gap.....	1
Thuringowa.....	1
Torres Strait.....	1
Townsville.....	1
Warrego.....	1
Warwick.....	1
Western Downs.....	1
Whitsunday.....	1
Windsor.....	1
Woodridge.....	1
Wynnum.....	1

*State Conference Delegate of TAFE Division:*

TAFE Division.....	4
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Direct vote by members of the TAFE Division

*State Conference Delegate from an Area Council:*

Central Queensland Area Council.....	1	Direct vote by members of the Area Council
Metropolitan North and Central Area Council.....	1	
Metropolitan South and East Area Council.....	1	
Metropolitan West Area Council.....	1	
North Queensland Area Council.....	1	
Peninsula Area Council .....	1	
South Coast Beaudesert Area Council .....	1	
South Queensland Area Council.....	1	
Sunshine Coast Area Council .....	1	
Wide Bay Area Council.....	1	

*TAFE Council Representative of a Branch*

Barrier Reef Institute .....	1	Direct vote by members of TAFE Branch
Bayside Institute .....	1	
Bremer Institute .....	1	
Brisbane Central Institute .....	1	
Brisbane Institute .....	1	
Bundaberg Institute.....	1	
Central Queensland Institute .....	1	
Cooloola-Sunshine Institute .....	1	
Far North Institute.....	1	
Gladstone Institute .....	1	
Gold Coast Institute .....	1	
Kangaroo Point Institute .....	1	
Logan Institute .....	1	
Mackay Institute .....	1	
Maryborough/Hervey Bay Institute.....	1	
Mt Gravatt Institute.....	1	
North Point Institute .....	1	
Southbank Institute .....	1	
South Queensland Institute .....	1	
Yeronga Institute.....	1	

*State Council Representative of a Branch:*

Balonne .....	1	Direct vote by members of Branch
Barron .....	1	
Beaudesert.....	1	
Beenleigh .....	1	
Blackwater .....	1	
Border .....	1	
Brisbane Central .....	1	
Brisbane Valley.....	1	
Browns Plains .....	1	
Bundaberg North.....	1	
Bundaberg South.....	1	
Caboolture.....	1	
Cairns .....	1	
Callide & Dawson Valleys .....	1	
Caloundra.....	1	
Camp Hill.....	1	
Capalaba.....	1	
Cape and Gulf .....	1	
Cassowary Coast.....	1	
Centenary .....	1	
Central Highlands .....	1	
Central Western .....	1	
Chermside .....	1	
Cleveland .....	1	
Coolum.....	1	
Coomera.....	1	
Dalby .....	1	
Darling Downs Central .....	1	
Darling Downs North .....	1	
Darling Downs South .....	1	
Deception Bay.....	1	
East Brisbane .....	1	
East Moreton.....	1	
Fassifern .....	1	
Ferny Grove .....	1	
Geebung .....	1	
Gold Coast North.....	1	
Gold Coast South.....	1	
Gympie.....	1	

Hervey Bay .....	1
Hinchinbrook .....	1
Inala District .....	1
Ipswich Central .....	1
Ipswich East .....	1
Ipswich West .....	1
Keppel .....	1
Leichhardt .....	1
Lockyer .....	1
Logan .....	1
Lower Burdekin .....	1
MacGregor/Rochedale .....	1
Mackay .....	1
Mackay North .....	1
Maleny .....	1
Maroochydore .....	1
Maryborough .....	1
Merrimac .....	1
Morayfield .....	1
Mt Coot-tha .....	1
Mt Gravatt .....	1
Mt Morgan and Dawson Valley .....	1
Mulgrave .....	1
Nambour .....	1
Nerang .....	1
Noosa District .....	1
North Burnett .....	1
North East Brisbane .....	1
North Kennedy .....	1
Northern Tablelands .....	1
Peak Downs .....	1
Pine Rivers North .....	1
Pine Rivers South .....	1
Port Curtis .....	1
Redcliffe .....	1
Rockhampton North .....	1
Rockhampton South .....	1
Ross .....	1
Runcorn .....	1
Sherwood .....	1
South Brisbane .....	1
South Burnett .....	1
South Western Queensland .....	1
Southport .....	1
Stanthorpe .....	1
Sunnybank .....	1
The Gap .....	1
Thuringowa .....	1
Torres Strait .....	1
Townsville .....	1
Warrego .....	1
Warwick .....	1
Western Downs .....	1
Whitsunday .....	1
Windsor .....	1
Woodridge .....	1
Wynnum .....	1

*State Council Representative of TAFE Division:*

TAFE Division .....	4
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Direct vote by members of the TAFE Division

**Timing of Elections**

The Rules prescribe that nominations shall be called by advertisement in the "Queensland Teachers' Journal" with the closing date of nominations no earlier than twenty-one days after the date upon which such notice first appears in the Journal. I am advised that the next Journal is to be printed on 25 November 2004. As is quite often the case, a large number of positions remain unfilled after the first calling of nominations and are readvertised in the next available Journal which will be in February 2005. It is not necessary for the Organisation to file further prescribed information in relation to the conduct of elections for any unfilled positions arising from this Decision. The Electoral Commission will have the list for which no nominations have been received from their Electoral Report to readvertise those positions.

**Methods of Election**

I am satisfied that the methods of election are as specified above.

**Conduct of Elections**

I have considered the request, the Act and Rules and I find that the elections being sought are for positions of office within the meaning of the Act and are required to be held under the Rules of the Industrial Organisation.

Under s. 482 of the *Industrial Relations Act 1999*, I am making arrangements for the elections of the above named positions to be conducted by the Electoral Commission of Queensland.

Dated 21 September 2004.

G. SAVILL,  
Industrial Registrar.

Released: 21 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The National Union of Workers Industrial Union of Employees Queensland AND Queensland Chamber of Commerce and Industry Limited,  
Industrial Organisation of Employers (No. B1313 of 2004)**

**FOOD AND DRUG STORE EMPLOYEES’ AWARD – SOUTHERN DIVISION (EASTERN DISTRICT) 2003**

COMMISSIONER BROWN

20 September 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 September 2004, this Commission orders that the said Award be amended as follows as from 1 October 2004:

By deleting from clause 5.4.8 the amount of “\$7.50” and inserting the amount of “\$9.60 in lieu thereof.

Dated 20 September 2004.

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

Operative Date: 1 October 2004  
Amendment – meal allowance  
Released: 22 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**Department of Natural Resources and Mines AND The Queensland Public Sector Union of Employees  
(No. B1300 of 2004)**

**QUEENSLAND PUBLIC SERVICE AWARD – STATE 2003**

COMMISSIONER BROWN

20 September 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 20 September 2004, this Commission orders that the said Award be amended as follows as from 20 September 2004:

By deleting Section 11 of Schedule 3 and inserting the following in lieu thereof:

**“Section 11 – Department of Natural Resources and Mines**

- (a) Ordinary Spread of Hours – Department of Natural Resources and Mines (including Corporate Services Agency): In lieu of the ordinary spread of hours of 9.00 a.m. to 5.00 p.m. Monday to Friday, as prescribed at clause 6.1, the ordinary spread of hours of all Employees engaged on ‘Day Work’ will be 6.00 a.m. to 6.00 p.m. Monday to Friday.
- (b) Magazine Keeper – ‘Magazine employees’ or magazine managers’ based at the centres of Helidon, Bajool, Queerah and Brookhill who are required to reside on site shall be entitled to 10 days’ leave per annum in addition to their annual leave entitlement as compensation for being on call and confined to site. An employee acting in the capacity of a ‘magazine employee’ or ‘magazine manager’ and required to reside on site shall be entitled to *pro rata* entitlement of the 10 day additional leave during the period that the employee relieves or acts in that capacity. The additional 10 days’ leave is not recreation leave and does not attract 17 1/2% loading.”.

Dated 20 September 2004.

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

Operative Date: 20 September 2004  
Amendment – Schedule 3  
Released: 22 September 2004

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 125 – application for amendment***The Australian Workers' Union of Employees, Queensland AND Bureau of Sugar Experiment Stations  
(No. B1673 of 2003)****BUREAU OF SUGAR EXPERIMENT STATIONS FIELD SECTOR EMPLOYEES' AWARD – STATE 2003**

COMMISSIONER BECHLY

2 August 2004

## AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 2 August 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.7 (Termination of Employment), 4.8 (Introduction of Changes) and 4.9 (Redundancy) and inserting the following in lieu thereof:

**“4.7 Termination of employment****4.7.1 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.

**4.7.2 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 2 years' continuous service with the employer shall be entitled to an additional week's notice.

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

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

(d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

(e) The period of notice in 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.

**4.7.3 Notice of termination by employee**

The notice to termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

**4.7.4 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.

**4.8 Introduction of changes****4.8.1 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.

**4.8.2 Employer's duty to consult over change**

(a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the

time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).

- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.8.1.
- (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.

#### **4.9 Redundancy**

##### *4.9.1 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 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

##### *4.9.2 Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.9.1 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 4.7.
- (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.

##### *4.9.3 Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
  - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.9.3, '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.

##### *4.9.4 Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, 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.

##### *4.9.5 Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, 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.

4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.7 *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.

4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.9 *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.

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

Clause 4.9 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.

4.9.11 *Employees exempted*

Clause 4.9 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.

4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 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.

4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
- (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or

- (ii) where the employee rejects an offer of employment with the transferee:
  - (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 transferor; and
  - (B) which recognises the period of continuous service which the employee had with the transferor and any prior transferor to be continuous service of the employee with the transferee.
- (b) The Commission may amend clause 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.9.14 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.”.

Dated 2 August 2004.

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

Operative Date: 1 December 2003  
Amendment – TCR Provisions  
Released: 22 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers’ Union of Employees, Queensland AND Australian Sugar Milling Association, Queensland,  
Union of Employers (No. B1673 of 2003)**

**SUGAR INDUSTRY AWARD – STATE**

COMMISSIONER BECHLY

2 August 2004

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 2 August 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

1. By deleting clause 2.4 (Termination of Employment) of Division 2 and inserting the following in lieu thereof:

**“2.4 Termination of Employment**

**A. Termination of Employment**

*Statement of Employment*

(1) 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.

*Termination by Employer*

(2) (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 2 years’ continuous service with the employer shall be entitled to an additional week’s notice.

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

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

(d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee’s employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee’s employment contract.

(e) The period of notice in 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.

*Notice of Termination by Employee*

- (3) 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 (d) of the 'Termination by Employer' clause.

*Time Off During Notice Period*

- (4) 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.

**B. Introduction of Changes***Employer's Duty to Notify*

- (5) (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.

*Employer's Duty to Consult over Change*

- (6) (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 the 'Employer's Duty to Notify' clause.
- (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.

**C. Redundancy***Consultation Before Terminations*

- (7) (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 (a) of the 'Consultation before Termination' clause and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

*Transfer to Lower Paid Duties*

- (8) (a) Where an employee is transferred to lower paid duties for reasons set out in the 'Consultation Before Terminations' clause 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 Section A – Termination of Employment.
- (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.

*Transmission of Business*

- (9) (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 the 'Transmission of Business' clause, '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.

*Time Off During Notice Period*

- (10) (a) Where a decision has been made to terminate an employee in the circumstances outlined in (a) of the 'Consultation Before Terminations' clause, 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.

*Notice to Centrelink*

- (11) Where a decision has been made to terminate employees in the circumstances outlined in the 'Consultation Before Terminations' clause, 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.

*Severance Pay*

- (12) (a) In addition to the period of notice prescribed for ordinary termination in (a) of the 'Termination by Employer' clause, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in (a) of the 'Consultation Before Terminations' clause, 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.

*Superannuation Benefits*

- (13) 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.

*Employee Leaving During Notice*

- (14) An employee whose employment is terminated for reasons set out in (a) of the 'Consultation Before Terminations' clause, 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.

*Alternative Employment*

- (15) 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.

*Employees with Less Than One Year's Service*

- (16) Section C – **Redundancy** 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.

*Employees Exempted*

- (17) Section C – **Redundancy** 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), except where such employees are:
  - (i) engaged on a series of consecutive contracts; and
  - (ii) where the period of actual service covered by the series of contracts totals in excess of 12 months. For the purpose of this subclause the continuity of an employee's service with an employer is taken not to be broken by a period between fixed term contracts which is equal to or less than 8 weeks; or
- (c) to casual employees
- (d) to apprentices including apprentices who are retained in employment for one fixed term contract after the completion of their apprenticeship.

*Employers Exempted*

- (18) (a) Subject to an order of the Commission, in a particular redundancy case, Section C – **Redundancy** 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.

*Exemption Where Transmission of Business*

- (19) (a) The provisions of the 'Severance Pay' clause 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 (a)(ii) of the 'Exemption Where Transmission of Business' clause if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

*Incapacity to Pay*

- (20) 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."

2. By deleting clause 37.(2) of Division 2 and inserting the following in lieu thereof:

**“(2) Termination of Employment, Introduction of Changes and Redundancy**

**A. Termination of Employment**

*Statement of Employment*

- (1) 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.

*Termination by Employer*

- (2) (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 2 years' continuous service with the employer shall be entitled to an additional week's notice.

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

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

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

- (e) The period of notice in 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.

*Notice of Termination by Employee*

- (3) 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 (d) of the 'Termination by Employer' clause.

*Time Off During Notice Period*

- (4) 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.

**B. Introduction of Changes**

*Employer's Duty to Notify*

- (5) (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.

*Employer's Duty to Consult over Change*

- (6) (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 the 'Employer's Duty to Notify' clause.

- (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.

**C. Redundancy***Consultation Before Terminations*

- (7) (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 (a) of the 'Consultation before Termination' clause 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.

*Transfer to Lower Paid Duties*

- (8) (a) Where an employee is transferred to lower paid duties for reasons set out in the 'Consultation Before Terminations' clause 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 Section A – Termination of employment.
- (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.

*Transmission of Business*

- (9) (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In the 'Transmission of Business' clause, '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.

*Time Off During Notice Period*

- (10)(a) Where a decision has been made to terminate an employee in the circumstances outlined in (a) of the 'Consultation Before Terminations' clause, 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.

*Notice to Centrelink*

- (11) Where a decision has been made to terminate employees in the circumstances outlined in the 'Consultation Before Terminations' clause, 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.

*Severance Pay*

- (12)(a) In addition to the period of notice prescribed for ordinary termination in (a) of the 'Termination by Employer' clause, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in (a) of the 'Consultation Before Terminations' clause, 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.

*Superannuation Benefits*

- (13) 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.

*Employee Leaving During Notice*

- (14) An employee whose employment is terminated for reasons set out in (a) of the 'Consultation Before Terminations' clause, 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.

*Employment*

- (15) 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.

*Employees with Less Than One Year's Service*

- (16) Section C – **Redundancy** 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.

*Employees Exempted*

- (17) Section C – **Redundancy** shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to seasonal employees; or
- (c) to employees engaged for a specific period or task(s), except where such employees are:
- (i) engaged on a series of consecutive contracts; and
- (ii) where the period of actual service covered by the series of contracts totals in excess of 12 months. For the purpose of this subclause the continuity of an employee's service with an employer is taken not to be broken by a period between fixed term contracts which is equal to or less than 8 weeks; or
- (d) to casual employees
- (e) to apprentices including apprentices who are retained in employment for one fixed term contract after the completion of their apprenticeship

*Employers Exempted*

- (18) (a) Subject to an order of the Commission, in a particular redundancy case, Section C – **Redundancy** 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.

*Exemption Where Transmission of Business*

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

*Incapacity to Pay*

- (20) 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.”.

Dated 2 August 2004.

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

Operative Date: 1 December 2003  
Amendment – TCR Provisions  
Released: 22 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers’ Union of Employees, Queensland AND Australian Sugar Milling Association, Queensland, Union of Employers  
(No. B1673 of 2003)**

**SUGAR CANE TESTERS AWARD – STATE 2003**

COMMISSIONER BECHLY

AMENDMENT

2 August 2004

THIS matter coming on for hearing before the Commission at Brisbane on 2 August 2004, this Commission orders that the said Award be amended as follows as from 1 December 2003:

By deleting clauses 4.8 (Termination of Employment), 4.9 (Introduction of Changes) and 4.10 (Redundancy) and inserting the following in lieu thereof:

**“4.8 Termination of employment**

4.8.1 *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.

4.8.2 *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 2 years’ continuous service with the employer shall be entitled to an additional week’s notice.

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

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

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee’s employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's employment contract.

- (e) The period of notice in 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.

#### 4.8.3 *Notice of termination by employee*

The notice to termination required to be given by an employee shall be one week, or payment forfeited in lieu thereof.

#### 4.8.4 *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.

### **4.9 Introduction of changes**

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

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union 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.

#### 4.9.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (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.

### **4.10 Redundancy**

#### 4.10.1 *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 4.10.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

#### 4.10.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.10.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
  - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
  - (iii) any other amounts payable under the employee's employment contract.

4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of 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 4.10.3, '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.

4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.10.5 *Notice to Centrelink*

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

4.10.6 *Severance pay*

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

4.10.7 *Superannuation benefits*

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

- (a) 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.

4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(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.

4.10.9 *Alternative employment*

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

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

Clause 4.10 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

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

4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per 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.

4.10.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of 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 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.10.14 *Incapacity to pay*

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

Dated 2 August 2004.

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

Operative Date: 1 December 2003  
Amendment – TCR Provisions  
Released: 22 September 2004

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**The Australian Workers' Union of Employees, Queensland AND Department of Industrial Relations  
(No. B1590 of 2003)**

**CONSERVATION, PARKS AND WILDLIFE EMPLOYEES' AWARD – STATE GOVERNMENT 2003**

COMMISSIONER BECHLY

15 September 2004

AMENDMENT  
(Correction of error)

WHEREAS an error occurred in the Amendment of the abovementioned Award as published in the *Queensland Government Industrial Gazette* of 3 September 2004, Vol. 177, No. 1, pages 75-78, this Commission orders that the following correction be made to be effective as from 1 December 2003:

By renumbering items "1" and "2" as items "2" and "3" and inserting a new item "1" as follows:

"1. By deleting PART 4 of clause 1.2 and inserting the following in lieu thereof:

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

Employment categories .....	4.1
Reporting for duty .....	4.2
Mixed functions .....	4.3
Probationary employment .....	4.4
Casual employment .....	4.5
Part-time employment .....	4.6
Trainees .....	4.7
Abandonment of employment .....	4.8
Anti-discrimination .....	4.9
Termination of employment .....	4.10
Redundancy .....	4.11
Introduction of change .....	4.12
Procedures to implement facilitative award provisions .....	4.13’ ”.

Dated 15 September 2004.

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

Operative Date: 1 December 2003  
New Award – TCR Provisions C.O.E  
Released: 22 September 2004

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