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No. 10

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000*

NOTICE

The following Agreement has been terminated by the Commission:	Date terminated
CA/2002/485 Department of Primary Industries - Queensland Boating and Fisheries Patrol - Terms and Conditions - Certified Agreement 2002	22/9/08

G.D. SAVILL,
Industrial Registrar.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003 - s. 550 appeal to Commission

Tony Luxton AND Q-COMP (WC/2008/33)

COMMISSIONER ASBURY

29 September 2008

Appeal against decision of Q-COMP Review Unit - *Workers' Compensation and Rehabilitation Act 2003* s. 32(1) - Meaning of injury - Work related injury to left knee - Consequence of work related injury to left knee that it will give way on occasion and without warning - Subsequent injury to right knee outside of employment - Whether subsequent injury to right knee outside of employment arises out of employment because of earlier work related injury - Case law - Finding that subsequent injury outside of employment did not flow as a direct consequence of work related injury - Appeal dismissed.

DECISION

1. Overview

This is an appeal under s. 550 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) by Mr Tony Luxton, against a decision of the Q-COMP Review Unit to reject his application for compensation. Mr Luxton sought compensation for an injury to his right knee which occurred outside of the workplace. It is contended for Mr Luxton that the injury arose out of Mr Luxton's employment because it occurred as a consequence of an earlier injury to his left knee which arose during the course of his employment.

2. Agreed Facts

Relevant facts were agreed between the parties and neither party sought to call evidence. These agreed facts are as follows:

1. The appellant (Mr Luxton) commenced employment with Oakmoore Pty Ltd as an engineering apprentice in December 2000.
2. On or about 30 September 2004 Mr Luxton suffered an injury to his left knee arising out of, or in the course of his employment, and his employment was a significant contributing factor to the injury (the first left knee injury).
3. On or about 20 October 2004 Mr Luxton lodged an application for compensation pursuant to the Act with WorkCover Queensland in relation to the first left knee injury.
4. That application for compensation was accepted by WorkCover Queensland and compensation has been paid for the first left knee injury.
5. The first left knee injury was diagnosed as a soft tissue injury to the left knee.
6. On or about 31 May 2006 Mr Luxton suffered an injury to his left knee arising out of, or in the course of his employment, and his employment was a significant contributing factor to the injury (the second left knee injury).
7. Mr Luxton lodged an application for compensation pursuant to the Act with WorkCover Queensland in relation to the second left knee injury.
8. That application for compensation was accepted by WorkCover Queensland and compensation has been paid for the second left knee injury.
9. The second left knee injury was diagnosed as a medial meniscus tear and minor peroneal nerve entrapment in the left lower leg.
10. In or about February 2007 Mr Luxton suffered an injury to his left knee arising out of, or in the course of his employment, and his employment was a significant contributing factor to the injury (the third left knee injury).
11. Mr Luxton lodged an application for compensation pursuant to the Act with WorkCover Queensland in relation to the third left knee injury.
12. That application for compensation was accepted by WorkCover Queensland and compensation has been paid for the third left knee injury.
13. One of the consequences of Mr Luxton's work related left knee injury is that his left knee will on occasion and without warning give way.
14. On or about 14 January 2008 Mr Luxton was climbing some stairs at his brother's house. At the time Mr Luxton was not engaged in any employment duties.
15. As Mr Luxton was walking up the stairs and in the process of raising his right leg to step on to the next step, his left knee gave way.
16. This caused Mr Luxton's right foot to suddenly drop and impact the stairs with the ball of his foot with consequent hyper-extension of his right knee.
17. As a consequence of that impact and the hyper-extension of his knee Mr Luxton suffered personal injury to his right knee, particulars of which are as follows:
 - (a) an osteochondral impaction injury at the medial femoral condyle, but with no bone fragment, measuring 12 mm in diameter;
 - (b) associated subchondral oedema deep to the lesion and also at the medial tibial condyle;
 - (c) subtle medial meniscal fibrillation, with extrusion; and
 - (d) subtle horizontal superior surface tear in the body and anterior horn of the lateral meniscus with an anterior meniscal cyst 12 mm.
18. On or about 17 January 2008 Mr Luxton advised WorkCover Queensland that he had sustained an injury to his right knee in the manner described in paragraphs 12 to 14 above and consequently applied pursuant to the Act for compensation to be paid in relation to his right knee injury.
19. On or about 7 February 2008 Mr Luxton underwent an MRI of his right knee and a report was prepared by Dr Elizabeth Carter of Queensland X-Ray as to the results of the MRI.
20. The report states that the MRI revealed the following damage to Mr Luxton's right knee:

- (a) an osteochondral impaction injury at the medial femoral condyle, but with no bone fragment, measuring 12 mm in diameter;
 - (b) associated subchondral oedema deep to the lesion and also at the medial tibial condyle;
 - (c) subtle medial meniscal fibrillation with extrusion and degenerative change at the medial tibiofemoral compartment;
 - (d) subtle horizontal superior surface tear in the body and anterior horn of the lateral meniscus with an anterior meniscal cyst 12 mm; and
 - (e) chondromalacia patellae.
21. At the time that Mr Luxton sustained the injury to his right knee he was waiting for an operation to be carried out on his left knee.
 22. Mr Luxton has subsequently undergone two operations on his left knee on 6 March and 25 July 2008, both funded by WorkCover.

It was also conceded by Counsel for Q-COMP that there is no dispute about the first element of s. 32(1) of the Act, in that Mr Luxton sustained a personal injury to his right knee on or about 14 January 2008.

3. The issue for determination

The issue for determination in this appeal is whether the injury to Mr Luxton's right knee (the secondary injury) arose out of employment, because it flowed from a prior injury which occurred during the course of employment, and was accepted as compensable under the Act. Counsel for both parties in this appeal were of the view that the determination of this issue depended on the application of the decision of President Hall in *WorkCover Queensland v Ward* (2001) 168 QGIG 28 (*Ward*), and whether or not, on the facts, the present case can be distinguished.

4. Submissions for Mr Luxton

It was submitted for Mr Luxton that in *Ward* President Hall held that for a secondary injury to arise out of employment, that injury must flow inexorably from the prior accepted injury, without the intervention of another event. It was also submitted that the words "arising out of" merely involve some causal or consequential relationship between the employment and the injury and do not require a direct or proximate relationship which would be necessary if the phrase used were "caused by": *Lackey v WorkCover Queensland* (2000) 165 QGIG 22 (*Lackey*).

Mr Luxton's injury did not arise during the course of his employment as he was not conducting employment duties at the time it occurred. However, it was an injury arising out of employment, and as that term does not require a direct and proximate relationship to employment, the fact that Mr Luxton was not performing employment duties at the time it occurred does not disqualify his application.

It was submitted that the facts in *Ward* can be distinguished from those in the present case. It was not the act of climbing the stairs which caused Mr Luxton's left knee to give way. One of the consequences of Mr Luxton's work related left knee injury is that his left knee will on occasion and without warning give way. The giving way of Mr Luxton's left knee was a consequence of his accepted left knee injury, and the injury to Mr Luxton's right knee flowed inexorably from that consequence.

The term "inexorably" was used by President Hall in *Ward* (supra at 28) who held in that case that an injury was not compensable because it was not an immediate consequence of an injury which had been accepted as one which was. Counsel for Mr Luxton tendered a definition of the term "inexorable" from the Oxford Dictionary as follows:

"Incapable of being persuaded by entreaty; not to be moved from one's purpose or determination; relentless, rigidly severe."

It was further submitted that in *Ward* the reason the worker injured his hand was that his ankle gave way and when he began to fall he reached out to grab on to a piece of the garage he was erecting at the time, and cut his finger. It seems that the act of reaching out to stop the fall was seen as an intervening event by the Industrial Court and it was on this basis that the claim was rejected. In the present case, there was no separate fall or reaching out for an object to stem a fall or a separate blow to the right knee. Rather, the direct and inexorable consequence of Mr Luxton's left knee giving way when it did, while Mr Luxton was climbing the stairs with his right foot raised, was that his right foot dropped causing the ball of his foot to impact the stairs and his right knee to hyper-extend, thus causing injury.

According to the submission of Counsel for Mr Luxton, it was not a conscious or deliberate placing of the right foot down by Mr Luxton that caused the impact and hyper-extension resulting in the injury. It was not the act of climbing the stairs that caused Mr Luxton's left knee to give way. The giving way was a known and recorded consequence of the accepted left knee injury that could, and did, on this occasion occur suddenly and without warning. Counsel for Mr

Luxton also submitted that a further point of distinction between the facts in *Ward* (supra) and those in the present case, is that when the second injury occurred, Mr Ward was no longer a worker for the purposes of the Act, but was working for himself and was engaging in an employment type activity. In the present case, Mr Luxton was engaging in an every day activity which one has to undertake - walking along - as opposed to an active choice to undertake some type of work-related activity such as climbing a ladder.

Ward could be further distinguished on the basis that a period of some 18 months had elapsed between the first and the second injury. In the present case, Mr Luxton had sustained three injuries to his left knee and there was ongoing locking and giving way of the knee. Further, Mr Luxton was waiting for an operation on his left knee when the injury to his right knee occurred. Thus, Mr Luxton's injury was not finalised, as opposed to Mr Ward's, whose ankle was finalised at the point he was injured. Counsel for Mr Luxton submitted that to be covered by the definition of "injury" under the Act, it is not necessary that the left knee be further injured. Rather, the relevant injury has to be linked back to the same event, namely the three previous left knee injuries.

In response to a question from the Commission, Counsel for Mr Luxton said that the injury in *Ward* had been resolved to the extent that was provided by WorkCover channels. It was also contended that circumstances where a worker had been assessed as having a permanent impairment and then was injured eighteen months later while engaging in a totally different work activity, could be distinguished from those in Mr Luxton's case. Mr Luxton had an injured left knee and was awaiting surgery when he suffered an injury to his right knee, and that injury had been sustained while Mr Luxton was simply walking along.

5. Submissions for Q-COMP

It was submitted for Q-COMP that the decision in *Ward* states the law, which the Commission as presently constituted is bound to follow. It was also submitted that the facts in *Ward* cannot be distinguished from the present one. In *Ward*, President Hall dealt with a similar factual scenario in that Mr Ward had an accepted claim involving an injury to his ankle whilst employed. This claim went to the Medical Assessment Tribunal and was finalised, with Mr Ward being assessed as having sustained a permanent partial disability to his ankle. About three months later, while he was self-employed, Mr Ward suffered a further injury to his finger, sustained while he was working on a ladder. Mr Ward claimed that his weakened ankle gave way and in an effort to save himself from falling, he reached out to the piece of garage he was erecting and in doing so, cut his finger.

A similar argument was raised by Mr Ward to that of Mr Luxton in the present case - that is, because his weakened ankle resulted from the accepted work related injury, the secondary injury might properly be said to have occurred while Mr Ward was a worker.

This argument was rejected by President Hall in *Ward* who held that the injury to Mr Ward's finger was not the immediate consequence of the injury to his left ankle, and did not flow inexorably without the intervention of another event, from what had happened to the ankle. It was also submitted that it is difficult to find grounds upon which President Hall's decision in *Ward* can be factually distinguished from the present case, and that the distinctions attempted to be made by Counsel for Mr Luxton are artificial. In *Ward* the original injury occurred in June 1998 and the second injury in November 1999, a difference of some 17 months. In the present case the injury to Mr Luxton's left knee occurred in May 2006 and the injury to the right knee occurred in January 2008, a difference of some 18 months. There is a similar time frame between the injuries in both cases.

Mr Ward's secondary injury occurred in circumstances where he was self-employed and would therefore have no entitlement to workers' compensation benefits unless the secondary injury could be linked to the first compensable injury. In the present case, the secondary injury occurred at Mr Luxton's brother's residence at a time when he was not carrying out any employment related duties. Therefore, Mr Luxton does not have any entitlement to compensation unless the secondary injury can be linked back to the original work-related injury.

In *Ward* the secondary injury occurred in circumstances where Mr Ward was climbing a ladder and he alleged his ankle gave way and it was his ankle giving way which caused him to cut his finger in attempting to save himself from falling. In the present case, Mr Luxton was going down some stairs when he alleges that his left knee gave way causing him to fall and suffer an injury to his right knee. The argument that Mr Ward's ankle gave way as a result of an accepted injury, rather than as a result of the act of climbing a ladder, is the same argument as Mr Luxton seeks to make in the present case. The present case is indistinguishable from that in *Ward*, and the argument raised on behalf of Mr Luxton was rejected by President Hall in that case.

As was the case in *Ward*, Mr Luxton's fall on the stairs was an intervening event which caused an injury to an already degenerate knee. The injury to Mr Luxton's right knee was not an immediate consequence of the injury to his left knee. It clearly did not flow inexorably without the intervention of another event (the fall on the stairs) from what happened to the left knee.

6. Relevant case law

There are a number of cases considering the issue of whether an injury sustained in circumstances where the injured person is not a "worker" within the terms of the Act, arises out of employment, because it flowed from an earlier injury which was compensable under the Act. To determine the present appeal it is necessary to examine those cases in some detail.

The facts in *WorkCover Queensland v Damien Charles Ward* (2001) 168 QGIG 28 were as follows. In June 1998, while employed, the respondent, Mr Ward, sustained an ankle injury which was accepted by WorkCover. Mr Ward's injury was assessed by a medical tribunal at some time prior to 24 August 1999, and it was determined that he had sustained a permanent partial disability to his ankle. About three months later, on 22 November 1999, while self-employed, Mr Ward was injured when he fell from a ladder, and cut his finger as he reached out to a piece of garage that he was erecting. President Hall noted that the fall occurred when Mr Ward's weakened ankle, which he had suffered as a result of the earlier accepted injury, had given way. It was also accepted that when the second injury occurred, Mr Ward was not a "worker" as defined under the Act as it then stood.

In order to establish that the injury on 22 November 1999 could be said to have arisen when Mr Ward was a worker, it was necessary for him to establish that the injury was a personal injury: "arising out of, or in the course of, employment, if the employment is a significant contributing factor to the injury" as was provided in the definition of injury contained in s. 34 of the then Act. That definition is in identical terms to the definition of injury contained in s. 32(1) of the present Act.

It was submitted for Mr Ward that the fall which caused the injury on 22 November 1999, was caused by the weakened ankle, which was the result of the injury in the course of Mr Ward's employment. President Hall held that the injury to Mr Ward's finger was not the immediate consequence of the injury to his ankle, and did not: "flow inexorably without the intervention of another event, from what happened to the ankle": *Ward* (supra at 28). It is clear from the context in which the term "immediate" is used in President Hall's decision in *Ward* (supra at 28), and from the other cases referred to in that decision, that it is not intended to place a requirement for a temporal relationship between the two injuries, or the employment and the later disputed injury. Rather, the term "immediate" is used in the context of a requirement that there be no other intervening event between the two injuries so that the secondary injury is a direct consequence of the first accepted injury, thereby maintaining the necessary connection with employment.

In reaching his decision in *Ward*, President Hall distinguished the case of *Lackey v WorkCover Queensland* (2000) 165 QGIG 22. In that case, Ms Lackey was injured on 17 December 1996, when she lost her footing and hit her thigh on a steel table leg. Ms Lackey suffered bruising which became very painful, and her claim for benefits under the then Act was allowed. Ms Lackey subsequently sought a damages certificate in respect of psychological injury. President Hall observed in that case that it was common ground that Ms Lackey did not suffer a psychological injury contemporaneously with the injury to her leg, and that she had developed an anxiety condition since that injury. President Hall noted that there had been some amendments to the definition of "injury" in the period during which the events giving rise to Ms Lackey's claim for compensation occurred. However, Ms Lackey's case was considered in light of a definition which made it necessary for Ms Lackey to show that the anxiety condition arose out of or in the course of her employment, and that the employment was the major significant factor causing the injury.

The President went on to accept the proposition that the term "arising out of" is wider than that posited by the words "caused by" and that the former phrase, while involving some causal or consequential relationship between the employment and the injury, does not require the direct or proximate relationship which would be necessary if the phrase used were "caused by". The President held that the assertion that an injury with no temporal connection with employment could not be said to arise out of employment, was plainly wrong. The President also held that to insist on a temporal as well as a causal nexus with employment was to revert to an old formula which required that an injury arise "out of and in the course of employment" rather than "out of or in the course of employment" (emphasis added).

President Hall found that factors such as pain, physical disability, alterations to family life, absence of the opportunity to go to work and to socialise at work, the feeling of being left high and dry by doctors by lack of diagnosis and treatment and the treatment meted out by WorkCover, were all immediate consequences of either physical injury to Ms Lackey's leg or financial consequences flowing from that physical injury. These stressors, to which Ms Lackey's anxiety, frustration and anger were attributable, had resulted in Ms Lackey developing an anxiety disorder. As a result the stressors were caused by and arose out of the injury to Ms Lackey's leg. The President also said that there was a physical injury before Ms Lackey separated from her employment, and all of the factors which had occurred since, had flowed from that injury.

The principles established in these cases are:

- The term "arising out of" is wider than the term "caused by";
- The term "arising out of" requires some causal or consequential relationship between the employment and the injury;
- The term "arising out of, or in the course of, employment" does not require a temporal nexus between the employment and the injury;
- To establish that an injury sustained in circumstances where the injured person is not a worker for the purposes of the Act, and after an earlier injury which was accepted as compensable, arose "out of ... employment", the later injury (secondary) must flow as a direct consequence from the first injury; and
- The connection between the accepted injury and the secondary injury must be such that there is no intervening event, so that the necessary direct connection between the first accepted injury and the secondary injury, is not broken.

The use of the term "inexorable" in *Ward* (supra at 28) is illustrative of the requirement for a direct connection between the secondary injury and employment, through the earlier accepted injury, which has not been broken by any intervening circumstances or events.

7. Conclusions

I do not accept that there is a basis for distinguishing the present case from *Ward*. It is irrelevant that at the time of the injury subject of the present appeal, Mr Luxton was still in the employment of Oakmoore Pty Ltd, the same employer which had employed him at the point of his earlier compensable injuries and that Mr Ward was self-employed at the time his secondary injury occurred. The relevant fact is that Mr Luxton was not a worker for the purpose of the Act when he sustained the secondary injury, unless that secondary injury had the necessary connection to employment, because it could be tied back to the earlier injury which did arise in the course of employment. In this sense, as submitted by Mr O'Neill for Q-COMP, the factual scenario in the present case is identical to that in *Ward*. It is also the case that if the relevant connection between secondary injury and the previous accepted left knee injury exists, it would be equally irrelevant to Mr Luxton's claim if he had ceased employment with Oakmoore Pty Ltd before suffering the right knee injury.

I do not accept that the facts in Mr Luxton's case and those in *Ward* can be distinguished on the basis that when the injury occurred Mr Luxton was engaging in the everyday activity of climbing some stairs, and Mr Ward was self-employed and had climbed a ladder, presumably while engaged on some commercial activity. Nothing in the decision in *Ward* turns on the context in which Mr Ward was climbing a ladder. It is apparent that the outcome would have been the same even if Mr Ward was climbing a ladder to repair something at his own home or for reasons other than being self-employed and working on a job for commercial gain. In both *Ward* and the present case, the relevant injury occurred outside of employment unless the necessary connection with employment could be made by way of an earlier injury which did arise in the course of employment. The purpose being pursued when the injury occurs, is in this context, irrelevant.

There is no basis for distinguishing the facts in Mr Luxton's case from those in *Ward* on the ground that Mr Luxton had an unresolved left knee injury which had been accepted as compensable and was awaiting surgery, or that Mr Luxton's left knee will on occasion, and without warning, give way. It is clear from the decision in *Ward* that at the point Mr Ward sustained the injury to his finger, he had a weakened ankle and that this ankle had given way. It is also clear that Mr Ward had been assessed as suffering a permanent partial disability to this ankle. On the face of the decision, there was no argument in that case that the injury occurred for some other reason, and it seems that Mr Ward's version of events in relation to why he fell from the ladder was accepted. Therefore, at the time that their injuries were sustained, both Mr Luxton and Mr Ward were impaired as a result of a previous injury which had been accepted as compensable under the Act.

It is arguable that there is a basis for a distinction between the facts in this case and those in *Ward* because of the manner in which Mr Luxton's injury occurred. Counsel for Q-COMP described the manner in which the injury occurred as "a fall" and contended that this was an intervening event so that the secondary injury to Mr Luxton's right knee was not the immediate consequence of the earlier accepted injury to his left knee.

Counsel for Mr Luxton did not contend that Mr Luxton fell. Further, Counsel for Mr Luxton contended that it was not the act of climbing the stairs which caused Mr Luxton's left knee to give way. Rather, it was submitted that the giving way of Mr Luxton's left knee was simply a consequence of his accepted left knee injury, and the injury to his right knee flowed inexorably from that consequence. The extension of this submission, is that there was no intervening event between the accepted left knee injury and the secondary injury to Mr Luxton's right knee. This was contrasted with the facts in *Ward* where there was an intervening event, namely Mr Ward falling and reaching out with his hand to stop the

fall, thereby sustaining an injury. According to Counsel for Mr Luxton, the intervening event in *Ward* was reaching out to try to stop a fall, and it was this which caused the Industrial Court to reject his claim. In the present case, there was no separate fall or reaching out on the part of Mr Luxton.

I accept that it is not clear from the agreed facts in this case that Mr Luxton fell. What is stated in the agreed facts is that Mr Luxton's left knee gave way while he was walking up a flight of stairs and while he was in the process of raising his right leg to step onto the next step. This caused Mr Luxton's right foot to suddenly drop and impact the stairs with the ball of his foot, with consequent hyper-extension of his right knee. The agreed facts also state that as a consequence of that impact and the hyper-extension, Mr Luxton suffered personal injury to his right knee.

However, I do not accept that this argument provides a basis for distinguishing *Ward*. There is nothing in the decision in *Ward* that establishes that the act of climbing a ladder caused Mr Ward's ankle to give way. What is clear is that Mr Ward had a weakened ankle which gave way while he was working on a ladder. Further, there is nothing to suggest that the grabbing of the garage was the intervening event rather than the fall itself. In the present case, Mr Luxton's weakened left knee gave way, and whether or not what then occurred could be described as a fall, the giving way of the left knee caused his right foot to impact with the stairs so that he sustained an injury to his left knee.

There is nothing in *Ward* to suggest that the act of falling from the ladder or the act of grabbing the garage were conscious or deliberate. Neither is it relevant that Mr Ward may have consciously climbed a ladder. Presumably Mr Luxton climbing the stairs was also a conscious act. In both cases there was an event. In Mr Ward's case it was a fall or grabbing at something when he fell as a result of a weakened ankle giving way, or both. In Mr Luxton's case his right foot impacted with a step when his injured left knee gave way. There is no relevant distinction. I am also of the view that there is no basis for a distinction to be made between an injury occurring when a person reached out to grab something while falling, and an injury occurring when a person's foot impacted on stairs resulting in a hyper-extended knee. There is nothing in the decision in *Ward* to suggest that the fall and resulting grabbing of the garage roof were two separate events or that the outcome would have been any different had Mr Ward simply injured himself by falling directly to the ground without grabbing anything. In both *Ward* and the present case, the injured person was affected by a previous work related injury and in both cases there was an intervening event between the work related injury and the second injury, so that the second injury did not flow from the first one.

I have great sympathy for Mr Luxton's situation. But for the injury to his left knee, which did arise out of, or in the course of employment, he would not have sustained an injury to his right knee while engaging in the perfectly legitimate and unremarkable activity of walking up a flight of stairs. However, I accept Q-COMP's argument that on the face of the decision of President Hall in *Ward*, and the facts set out in that decision, there can be no distinction drawn in the present case. Mr Luxton's injury did not arise out of employment as required by s. 32(1) of the Act. The appeal is dismissed. I Order accordingly.

IC ASBURY, Commissioner.

Hearing Details:
2008 5 August

Appearances:
Mr M. Horvath, instructed by Shine Lawyers for the Appellant.
Mr P.B. O'Neill, instructed by Q-COMP for the Respondent.

Released: 29 September 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Environmental Protection Agency AND The Australian Workers' Union of Employees and Anor (A/2008/6)

CONSERVATION, PARKS AND WILDLIFE EMPLOYEES' AWARD - STATE GOVERNMENT 2003

DEPUTY PRESIDENT SWAN

29 September 2008

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 29 September 2008 this Commission orders that the said Award be amended as follows as from 29 September 2008:

1. By adding the following at the end of PART 5 of clause 1.2:

Recognition of service

5.8

2. By deleting clause 5.3.2 and inserting the following in lieu thereof:

5.3.2 Movement between classification levels

Movement between Classification Levels will be based on appointment on merit to advertised vacancies:

Provided further that:

- (a) Every employee upon attaining the age of 21 years shall be paid except on promotion or otherwise prescribed the specific age 21 wage as indicated within the various streams.
- (b) An employee promoted to a position at a higher Classification Level within the same stream shall be appointed to Paypoint 1 of that higher Classification Level unless the conditions as outlined in clause 5.5 apply.

3. By deleting clause 5.5 and inserting the following in lieu thereof:

5.5 Performance of higher duties

- 5.5.1 Where an employee is required to relieve another employee on a Classification Level at a higher rate of pay than their substantive level, the employee shall be paid a higher duties allowance which shall consist of the relevant percentage of the difference between the wage of the employee and the wage of the higher position if the period of performing such relieving work is 5 days or more and approved by the employer.

When an employee is performing higher duties within the same stream as determined by this Award, the employee shall be paid at the first Paypoint of the higher Classification Level of the position being relieved.

- 5.5.2 The period/s that an employee relieves in a higher Classification Level is to be recognised as service for the purpose of determining the Paypoint and increment date if appointed permanently to a higher Classification Level, if the following conditions are satisfied:

- (a) the relieving was at the same or at a higher level to the Classification Level to which the employee has been appointed; and
- (b) the employee has met the performance objectives of the higher Classification Level at which the employee relieved.

- 5.5.3 The relieving period/s which are to be recognised as service for the purpose of determining the Paypoint and increment date of an employee who is subsequently appointed to a higher Classification Level are either:

- (a) all continuous relieving service immediately preceding appointment; or
- (b) non-continuous relieving service for a period which aggregates in total a period of 12 months or more within the immediately preceding 24 calendar months.

- 5.5.4 Where an employee has qualified for a higher Paypoint of the higher Classification Level through previous relieving, the employee shall be appointed at the higher Paypoint, provided that the employee has relieved at that higher Classification Level within the 12 months immediately preceding the appointment.

4. By inserting a new clause 5.8 as follows:

5.8 Recognition of service

The period/s that an employee temporarily relieves in a higher or equal Classification Level under the Queensland Public Service Award - State 2003 or the Employees of Queensland Government Departments (Other Than Public Servants) Award - State 2003 is to be recognised as service when reverting back to the employee's substantive level, if the following conditions are satisfied:

- (a) the relieving was at the same or at a higher level to the Classification Level to which the employee has been appointed under the Conservation, Parks and Wildlife Employees' Award - State Government 2003; and

- (b) the employee has met the performance objectives of the higher Classification Level at which the employee relieved.

Dated 29 September 2008.

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

Operative Date: 29 September 2008
Amendment - Performance of higher duties
Released: 30 September 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Teachers Union of Employees AND Department of Education, Training and the Arts (A/2007/15)

SENIOR COLLEGE TEACHERS' AWARD - STATE 2003

COMMISSIONER ASBURY

15 September 2008

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 15 September 2008 this Commission orders that the said Award be amended as follows as from 15 September 2008:

1. By deleting the titles and Schedule numbers from the end of clause 1.2 and inserting the following in lieu thereof:

SCHEDULES

Non-attendance time and associated conditions	SCHEDULE 1
Professional development/release to industry conditions	SCHEDULE 2
Teaching Qualifications Committee	SCHEDULE 3
Employment of Tutors	SCHEDULE 4
Salaries	SCHEDULE 5

2. By deleting the words "Department of Employment and Training" where they twice appear in clause 1.3 and inserting the words "Department of Education, Training and the Arts" in lieu thereof in each instance.
3. By deleting the words "Training and Employment Act 2000" from clause 1.3 and inserting the words "Vocational Education, Training and Employment Act 2000" in lieu thereof.
4. By deleting the words, "Public Service Act 1996" from clause 1.4 and inserting the words "Public Service Act 2008" in lieu thereof.
5. By deleting the words "Training and Employment Act 2000" from clause 1.4 and inserting the words "Vocational Education, Training and Employment Act 2000" in lieu thereof.
6. By deleting the words "Training and Employment Act 2000" from clause 1.7.5 and inserting the words "Vocational Education, Training and Employment Act 2000" in lieu thereof.
7. By deleting the words "Department of Employment and Training" from clause 1.7.7 and inserting the words "Department of Education, Training and the Arts" in lieu thereof.
8. By adding the words "Leading Vocational Teachers" after the word "Teachers" in the second sentence of clause 1.7.10.
9. By deleting clause 1.7.11 and inserting the following in lieu thereof:

1.7.11 "Fixed-Term Employee" means an employee engaged as a Teacher, Leading Vocational Teacher or Educational Administrator to meet temporary circumstances for a specified period not exceeding 12 months. Where such a need continues to exist for an engagement beyond 12 months a Permanent, Full-Time Teacher, Leading

Vocational Teacher or Educational Administrator appointment shall be made except where mutually agreed by the relevant parties to this Award.

10. By renumbering the existing clauses 1.7.15 to 1.7.24 as clauses 1.7.16 to 1.7.25 respectively and inserting a new clause 1.7.15 as follows:

1.7.15 "Leading Vocational Teacher" means a person appointed as such and who undertakes a leadership role in addition to performing teaching functions and duties."

11. By adding the words "Leading Vocational Teacher, Principal Teacher or Tutor" after the word "Teacher" in renumbered clause 1.7.16.

12. By adding the words "Leading Vocational Teacher" after the word "Teacher" in renumbered clause 1.7.17.

13. By deleting the words "Public Service Act 1996" from renumbered clause 1.7.17 and inserting the words "Public Service Act 2008" in lieu thereof.

14. By deleting the words "section 34 of the Public Service Act 1996" from clause 4.3.1 and inserting the words "section 53/54 of the Public Service Act 2008" in lieu thereof.

15. By deleting clause 4.3.2 and inserting the following in lieu thereof:

4.3.2 Fixed-term employees shall be paid in accordance with their experience and qualifications as a Teacher, Leading Vocational Teacher, Educational Administrator or Tutor as specified in clause 5.2 and Schedule 5 for the relevant classification and hours of engagement of this Award.

16. By deleting the word and figure "Schedule 6" from clause 4.4.2(a) and inserting the word and figure "Schedule 5" in lieu thereof.

17. By deleting the word and figure "Schedule 6" from clause 4.4.2(d) and inserting the word and figure "Schedule 5" in lieu thereof.

18. By deleting the words "by the Public Service Commissioner pursuant to section 34 of the Public Service Act 1996" from clause 4.6.2 and inserting the words "pursuant to section 53/54 of the Public Service Act 2008" in lieu thereof.

19. By deleting the second paragraph of clause 4.6.8 and inserting the following in lieu thereof:

Recognition of previous service shall be given to all employees as prescribed in a Directive relating to Recognition of Previous Service issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

20. By deleting clause 5.1.2(c).

21. By deleting the word and figure "Schedule 4" from clause 5.1.3 and inserting the word and figure "Schedule 3" in lieu thereof.

22. By deleting clause 5.2 and inserting the following in lieu thereof:

5.2 Salaries

5.2.1 Tutors

(a) The scale of minimum salaries that shall apply to Tutors is as listed in Schedule 5 of this Award.

(b) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.

(c) A Tutor shall have qualifications at least equal to the level of the course or courses to which they are assigned.

(d) A Tutor's commencing classification will be consistent with the provisions of Schedule 4 of this Award.

(e) A Tutor may be required to conduct tutorial classes of a minimum of one hour duration. The accepted Tutor/student ratio is 1 to 15 but this can be amended by the Work Team and a representative of management after due consideration has been given to the following guidelines:

- consultation with management, members of staff and unions;
- awareness of safety hazards or risks to students;
- limitations in accommodation and/or equipment;
- students with disabilities and/or learning difficulties;
- compliance with the Workplace Health and Safety Act 1995;
- conduct of special access programs, community education and compensatory programs;
- mode of delivery.

The amendment should be reported to the Institute Consultative Committee.

(f) The decision to introduce/vary the use of Tutors in the presentation of a course will be made by the Work Team and a representative of management through a process of consultation.

(g) Tutors can conduct tutorials only on work that has been previously covered by a Teacher or other Educational Delivery Staff or by using another mode of delivery.

(h) Tutors performing higher duties as a Teacher shall be paid a higher duties allowance in accordance with the provisions of Schedule 4 to this Award.

5.2.2 *Teachers*

(a) The scale of minimum salaries that shall apply to Teachers is as listed in Schedule 5 of this Award.

(b) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.

(c) Subject to the approval by the Chief Executive of individual appointments, the following minimum conditions shall apply to the appointment of Teachers:

- (i) A Teacher appointed with base trade vocational or equivalent qualifications and a minimum of 5 years post trade training industrial experience or 9 years full-time industrial experience shall commence at Step 3 of the scale.
- (ii) A Teacher appointed with vocational qualifications higher than those in clause 5.2.2(c)(i), that is, not less than diploma level and up to and including degree level, and 5 years post trade training industrial experience shall commence at Step 3 of the scale.
- (iii) A Teacher with an approved teaching qualification and a minimum of 5 years post trade training industrial and/or teaching experience shall commence at Step 3 of the scale.
- (iv) A Teacher with an approved teaching qualification, base trade vocational or equivalent qualifications at less than diploma level, and a minimum of 5 years post trade training industrial and/or teaching experience shall commence at Step 3 of the scale.
- (v) A Teacher appointed with a vocational qualification at bachelor degree level, plus additional qualifications at not less than diploma level, and 5 years post trade training industrial experience shall commence at Step 3 of the scale.
- (vi) A Teacher with an approved teaching qualification in addition to vocational qualifications higher than those in clause 5.1.2(c)(i), that is, not less than diploma level and up to and including degree level, and 5 years post trade training industrial/teaching experience shall be appointed at no less than Step 4 of the scale.

(vii) A Teacher without an approved teaching qualification shall not progress beyond Step 4.

(viii) A Teacher with an approved teaching qualification and less than 5 years post trade training industrial/teaching experience shall be appointed in line with the qualifications specified in clauses

5.2.2(c)(ii), (iii) or (iv), but shall serve the balance of the 5 year period, excluding years accrued since current appointment, on Step 4 of the scale before progressing.

(ix) A Teacher with an approved teaching qualification, a vocational qualification at bachelor degree level plus additional higher qualifications and 5 years post trade training industrial and/or teaching experience shall commence at Step 5 of the scale.

(d) Recognition of previous teaching experience - Recognition of teaching experience up to Step 9 on the scale is dependent upon the applicant holding an approved teaching qualification and having post qualification teaching experience in an approved educational institution.

5.2.3 *Leading Vocational Teachers*

(a) The scale of minimum salaries that shall apply to Leading Vocational Teachers is as listed in Schedule 5 of this Award.

(b) Teachers on Step 9 of the salary scale shall progress to Leading Vocational Teacher Step 1 provided that they sign an undertaking to perform additional duties and have completed at least 12 months on Step 9. Progression to Leading Vocational Teacher Step 1 will take effect from the date of signing/acceptance of the undertaking that specifies the additional duty(s).

(c) Progression to Steps 2 and 3 of Leading Vocational Teacher will be by annual increments subject only to clause 5.2.3(f).

(d) The additional duties expected of a Leading Vocational Teacher may include:

- Performance of high level duties of a critical nature to the business provided that these duties are not those expected of Associate Directors or those on the Educational Administrator Level;
- Teacher plus team leadership;
- International projects/business;
- Industry liaison work;
- Work in industry;
- Leadership in teaching practice;
- Accountability (delegation of financial or staffing);
- Performance, planning and review;
- Mentoring (teachers/tutors);
- Marketing (development of promotional strategies);
- Programming.

(e) The list of additional duties is meant to be indicative only and does not provide an exhaustive list.

(f) Should a Leading Vocational Teacher fail to meet their undertaking they shall be made subject to a review of their duties and classification. Such a review may consider a re-allocation of duties or a removal of the Leading Vocational Teacher classification whereby the employee may return to Step 9.

(g) There will be no quotas to limit the number of Leading Vocational Teachers.

(h) Detailed guidelines for the operation of Leading Vocational Teachers may be developed by the parties to this Award from time to time.

5.2.4 *Principal teachers*

(a) No new appointments will be made to Principal Teacher. Current employees engaged as Principal Teachers will continue to be paid in accordance with this level until such time as they leave their teaching engagements with TAFE Queensland.

(b) Principal Teachers who have transitioned to the Leading Vocational Teacher position will be required to perform additional duty(s) but shall not be required to sign an undertaking.

(c) The scale of minimum salaries that shall apply to Principal Teachers is as listed in Schedule 5 of this Award.

- (d) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.

5.2.5 *Educational administrators*

- (a) The scale of minimum salaries that shall apply to Associate Director/Programme Manager is as listed in Schedule 5 of this Award.
- (b) The positions of Associate Director/Programme Manager within Institutes shall be determined by the employer having regard to the functions and duties to be performed, the level of supervision and other relevant work value considerations.

5.2.6 *Increments*

Notwithstanding anything contained in this Award, no employee shall be entitled to receive any increase in salary by virtue of this Award if the conduct, diligence, and general efficiency of such employee shall have been certified to be unsatisfactory by the Chief Executive.

If any increase prescribed by this Award is withheld from or refused to be granted to any employee, such employee shall be given an opportunity to show cause to the Chief Executive why such increase should not be withheld.

5.2.7 The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

23. By deleting clause 5.3 and inserting the following in lieu thereof:

5.3 Allowances

- 5.3.1 *Overtime meal allowance* - Employees required to work beyond their normal programmed working hours and the working of such time does not allow them to return to their homes or lodgings for a meal shall be paid the allowance prescribed in a Directive relating to Overtime Meal Allowances issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.
- 5.3.2 *Locality allowance* - The conditions and entitlements of locality allowances paid to employees who are appointed to work at named centres are prescribed in a Directive relating to Locality Allowances issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.
- 5.3.3 *Performance of higher duties* - The conditions for the payment of higher duties when an employee assumes the duties and responsibilities of a higher classification level are prescribed in a Directive relating to Higher Duties issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

Provided that the extra remuneration prescribed by the Higher Duties Directive shall be paid to the classes of employees referred to in the application clause of the Directive who fill the office temporarily for more than 3 working days.

24. By adding the words "Leading Vocational Teachers" after the word "Teachers" in clause 6.1.2.

25. By adding the words "Leading Vocational Teacher" after the word "Teacher" in clause 6.1.6.

26. By deleting the word and figure "Schedule 2" from clause 6.3.1 and inserting the word and figure "Schedule 1" in lieu thereof.

27. By deleting the words "in Directive 3/01 Parental Leave, as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 7.2 and inserting the words "in a Directive relating to Paid Parental Leave issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
28. By deleting the words "under Directive 9/01 Bereavement Leave, as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 7.3.5 and inserting the words "in a Directive relating to Bereavement Leave issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
29. By deleting the words "under Directive 8/01 Sick Leave, as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 7.4.2 and inserting the words "in a Directive relating to Sick Leave issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
30. By deleting the words "under Directive 1/01 Long Service Leave, as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 7.5.3 and inserting the words "in a Directive relating to Long Service Leave issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
31. By deleting the words "under Directive 8/00 'Transfer and Appointment Expenses', as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 8.1.1 and inserting the words "in a Directive relating to Transfer and Appointment Expenses issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
32. By deleting the words "under Directive 1/02 'Travelling and Relieving Expenses', as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 8.2.1 and inserting the words "in a Directive relating to Domestic Travelling and Relieving Expenses issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
33. By deleting the words "in Directive 1/02 'Travelling and Relieving Expenses' and Directive 13/01 'Motor Vehicle Allowances', as issued and amended by the Minister for Industrial Relations under section 34 of the Public Service Act 1996" from clause 8.2.2 and inserting the words "in Directives relating to Domestic Travelling and Relieving Expenses and Motor Vehicle Allowances issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
34. By inserting the words "Leading Vocational Teachers" after the words "Permanent Teachers" in clause 9.2.1.
35. By deleting the word and figure "Schedule 3" from clause 9.2.2 and inserting the word and figure "Schedule 2" in lieu thereof.
36. By deleting the words "Ministerial Directive 12/01 Attendance - Recording, Reporting and Public Holidays" from clause 11.2.5 and inserting the words "the Directive relating to Attendance - Recording, Reporting and Public Holidays issued by the Industrial Relations Minister under section 54 of the Public Service Act 2008" in lieu thereof.
37. By deleting Schedule 1 and renumbering existing Schedules 2 to 6 as Schedules 1 to 5 respectively.
38. By adding the words "Leading Vocational Teachers" after the words "Permanent Teachers" in the first sentence of clause 2 of renumbered Schedule 2.
39. By deleting clause 4 of renumbered Schedule 2 and inserting the following in lieu thereof:

4. Conditions

Permanent Teachers, Leading Vocational Teachers, Principal Teachers and Tutors will not have loss of salary or loss of other entitlements such as sick leave, annual leave, non-attendance time, long service leave, leave loading and/or superannuation entitlements during professional development:

Provided that this does not preclude Permanent Teachers, Leading Vocational Teachers, Principal Teachers and Tutors from undertaking, on their own volition, professional development/release to industry activities during any periods of leave or non-attendance time.

While on release to industry staff members will work the normal hours of the industry concerned and will follow the same conditions as co-workers. TAFE Queensland will meet all related expenses associated with the program and will ensure workers' compensation, professional indemnity, personal injury and property damage cover for staff members on release to industry.

TAFE Queensland may direct Teachers, Leading Vocational Teachers, Principal Teachers and Tutors to attend particular staff development activities.

Approval of professional development activities will be in accord with authorities as set down in the Departmental Delegations Manual, Department of Education, Training and the Arts. Professional development, including release to industry will only be approved where an appropriate activity or industry placement is available.

TAFE Queensland has a separate policy in relation to Release to Industry for Teachers, Leading Vocational Teachers, Principal Teachers and Tutors.

40. By deleting the Appointment Criteria clause of renumbered Schedule 3 and inserting the following in lieu thereof:

APPOINTMENT CRITERIA

The Teaching Qualifications Committee will recommend to the Chief Executive general guidelines on qualifications and/or experience requirements for initial appointment of teaching staff, and their appropriate entry point to the particular salary scale.

The Secretary will maintain a file of significant factors in decisions and will prepare an annual summary report to Committee members and the Chief Executive of such decisions.

41. By renumbering the clause reference "S5" as "S4" wherever it appears in renumbered Schedule 4.

42. By deleting the word and figure "Schedule 6" and inserting the word and figure "Schedule 5" in lieu thereof in renumbered clause S4.6.1(a) of renumbered Schedule 4.

43. By deleting renumbered clause S4.8.3 of renumbered Schedule 4 and inserting the following in lieu thereof:

S4.8.3 A casual Tutor shall be paid the hourly rate as prescribed by this Award as follows:

Hours/Day	Hourly rate
	\$
8.00 a.m. to 6.00 p.m. Monday to Friday	29.73
Before 8.00 a.m. or after 6.00 p.m. Monday to Friday and on Saturdays	44.60
Sundays	59.46
Public holidays	74.33

The above rates of pay in this award incorporate adjustments from the *TAFE Queensland Educational Staff Sub-Agency Certified Agreement 2003* as at 1 August 2005. The rates of pay in this award are intended to include the arbitrated wage adjustment payment under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

44. By deleting renumbered Schedule 5 and inserting the following in lieu thereof:

SCHEDULE 5 - SALARIES

The following scale of minimum salaries will apply to Tutors, Teachers, Leading Vocational Teachers, Principal Teachers and Educational Administrators:

TUTORS

Classification	Per fortnight	Per annum
Step 1	\$1463.50	\$38,181
Step 2	\$1509.30	\$39,376
Step 3	\$1568.80	\$40,928
Step 4	\$1629.80	\$42,520
Step 5	\$1699.50	\$44,338

TEACHERS

Classification	Per fortnight	Per annum
Step 3	\$1954.80	\$50,999
Step 4	\$2039.40	\$53,206
Step 5	\$2124.00	\$55,413
Step 6	\$2210.00	\$57,657
Step 7	\$2297.70	\$59,945
Step 8	\$2385.00	\$62,222
Step 9	\$2473.10	\$64,521

LEADING VOCATIONAL TEACHERS

Classification	Per fortnight	Per annum
LVT-1	\$2531.20	\$66,036
LVT -2	\$2590.10	\$67,573
LVT -3	\$2648.40	\$69,094

PRINCIPAL TEACHERS

Classification	Per fortnight	Per annum
PT1-1	\$2706.70	\$70,615
PT1-2	\$2765.60	\$72,152
PT1-3	\$2823.80	\$73,670

EDUCATIONAL ADMINISTRATORS

Classification	Per fortnight	Per annum
EAL1	\$2882.10	\$75,191
EAL2	\$2958.00	\$77,171
EAL3	\$3034.10	\$79,157
EAL4	\$3115.80	\$81,288
EAL5	\$3198.60	\$83,448
EAL6	\$3375.10	\$88,053

The above rates of pay in this Award incorporate adjustments from the *TAFE Educational Staff Sub-Agency - Certified Agreement 2003* at 1 August 2005. The rates of pay in this Award are intended to include the arbitrated wage adjustment payment under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

Dated 15 September 2008.

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

Operative Date: 15 September 2008
Amendment - Salaries and various
Released: 1 October 2008

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Queensland Teachers Union of Employees AND Department of Education, Training and the Arts (A/2007/14)

TAFE TEACHERS' AWARD - STATE 2003

COMMISSIONER ASBURY

15 September 2008

AMENDMENT

This matter coming on for hearing before the Commission at Brisbane on 15 September 2008 this Commission orders that the said Award be amended as follows as from 15 September 2008:

1. By deleting the titles and Schedule numbers from the end of clause 1.2 and inserting the following in lieu thereof:

SCHEDULES

Non-attendance time and associated conditions	SCHEDULE 1
Professional development/release to industry conditions	SCHEDULE 2
Teaching Qualifications Committee	SCHEDULE 3
Employment of Tutors	SCHEDULE 4
Salaries	SCHEDULE 5

2. By deleting the words "Department of Employment and Training" where they twice appear in clause 1.3 and inserting the words "Department of Education, Training and the Arts" in lieu thereof in each instance.
3. By deleting the words, "Public Service Act 1996" from clause 1.4 and inserting the words "Public Service Act 2008" in lieu thereof.
4. By deleting the words "Training and Employment Act 2000" from clause 1.4 and inserting the words "Vocational Education, Training and Employment Act 2000" in lieu thereof.
5. By deleting the words "associated functions" from clause 1.7.4. and inserting the words "Associated Functions" in lieu thereof.
6. By deleting the words "Department of Employment and Training" from clause 1.7.6 and inserting the words "Department of Education, Training and the Arts" in lieu thereof.
7. By adding the words "Leading Vocational Teachers" after the word "Teachers" in the second sentence of clause 1.7.9.
8. By deleting clause 1.7.10 and inserting the following in lieu thereof:
- 1.7.10 "Fixed-Term Employee" means an employee engaged as a Teacher, Leading Vocational Teacher or Educational Administrator to meet temporary circumstances for a specified period not exceeding 12 months. Where such a need continues to exist for an engagement beyond 12 months a Permanent, Full-Time Teacher, Leading Vocational Teacher or Educational Administrator appointment shall be made except where mutually agreed by the relevant parties to this Award.
9. By deleting the words "Training and Employment Act 2000" from clause 1.7.13 and inserting the words "Vocational Education, Training and Employment Act 2000" in lieu thereof.

10. By renumbering the existing clauses 1.7.15 to 1.7.24 as clauses 1.7.16 to 1.7.25 respectively and inserting a new clause 1.7.15 as follows:

1.7.15 "Leading Vocational Teacher" means a person appointed as such and who undertakes a leadership role in addition to performing teaching functions and duties."

11. By adding the words "Leading Vocational Teacher" after the words "Permanent Teacher" in renumbered clause 1.7.16.

12. By adding the words "Leading Vocational Teacher" after the word "Teacher" in renumbered clause 1.7.17.

13. By deleting the words "Public Service Act 1996" from renumbered clause 1.7.17 and inserting the words "Public Service Act 2008" in lieu thereof.

14. By deleting the words, "section 34 of the Public Service Act 1996" from clause 4.3.1 and inserting the words, "section 53/54 of the Public Service Act 2008" in lieu thereof.

15. By deleting clause 4.3.2 and inserting the following in lieu thereof:

4.3.2 Fixed-Term Employees shall be paid in accordance with their experience and qualifications as a Teacher, Leading Vocational Teacher, Educational Administrator or Tutor as specified in clause 5.1 and Schedule 5 for the relevant classification and hours of engagement of this Award.

16. By deleting the word and figure "Schedule 6" from clause 4.4.2(a) and inserting the word and figure "Schedule 5" in lieu thereof.

17. By deleting the word and figure "Schedule 6" from clause 4.4.2(d) and inserting the word and figure "Schedule 5" in lieu thereof.

18. By deleting clause 4.6.3(b) and inserting the following in lieu thereof:

(b) Recognition of previous service shall be given to all employees as prescribed in a Directive relating to Recognition of Previous Service issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

19. By deleting the words "by the Public Service Commissioner or the Minister for Industrial Relations pursuant to section 34 of the Public Service Act 1996" in clause 4.8.15 and inserting the words "pursuant to section 53/54 of the Public Service Act 2008" in lieu thereof.

20. By deleting clause 5.1 and inserting the following in lieu thereof:

5.1 Salaries

5.1.1 Tutors

(a) The scale of minimum salaries that shall apply to Tutors is as listed in Schedule 5 of this Award.

(b) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.

(c) A Tutor shall have qualifications at least equal to the level of the course or courses to which they are assigned.

(d) A Tutor's commencing classification will be consistent with the provisions of Schedule 4 of this Award.

(e) A Tutor may be required to conduct tutorial classes of a minimum of one hour duration. The accepted Tutor/student ratio is 1 to 15 but this can be amended by the Work Team and a representative of management after due consideration has been given to the following guidelines:

- consultation with management, members of staff and unions;
- awareness of safety hazards or risks to students;
- limitations in accommodation and/or equipment;
- students with disabilities and/or learning difficulties;

- compliance with the Workplace Health and Safety Act 1995;
- conduct of special access programs, community education and compensatory programs;
- mode of delivery.

The amendment should be reported to the Institute Consultative Committee.

- (f) The decision to introduce/vary the use of Tutors in the presentation of a course will be made by the Work Team and a representative of management through a process of consultation.
- (g) Tutors can conduct tutorials only on work that has been previously covered by a Teacher or other Educational Delivery Staff or by using another mode of delivery.
- (h) Tutors performing higher duties as a Teacher shall be paid a higher duties allowance in accordance with the provisions of Schedule 4 to this Award.

5.1.2 *Teachers*

- (a) The scale of minimum salaries that shall apply to Teachers is as listed in Schedule 5 of this Award.
- (b) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.
- (c) Subject to the approval by the Chief Executive of individual appointments, the following minimum conditions shall apply to the appointment of Teachers:
 - (i) A Teacher appointed with base trade vocational or equivalent qualifications and a minimum of 5 years post trade training industrial experience or 9 years full-time industrial experience shall commence at Step 3 of the scale.
 - (ii) A Teacher appointed with vocational qualifications higher than those in clause 5.1.2(c)(i), that is, not less than diploma level and up to and including degree level, and 5 years post trade training industrial experience shall commence at Step 3 of the scale.
 - (iii) A Teacher with an approved teaching qualification and a minimum of 5 years post trade training industrial and/or teaching experience shall commence at Step 3 of the scale.
 - (iv) A Teacher with an approved teaching qualification, base trade vocational or equivalent qualifications at less than diploma level, and a minimum of 5 years post trade training industrial and/or teaching experience shall commence at Step 3 of the scale.
 - (v) A Teacher appointed with a vocational qualification at bachelor degree level, plus additional qualifications at not less than diploma level, and 5 years post trade training industrial experience shall commence at Step 3 of the scale.
 - (vi) A Teacher with an approved teaching qualification in addition to vocational qualifications higher than those in clause 5.1.2(c)(i), that is, not less than diploma level and up to and including degree level, and 5 years post trade training industrial/teaching experience shall be appointed at no less than Step 4 of the scale.
 - (vii) A Teacher without an approved teaching qualification shall not progress beyond Step 4.
 - (viii) A Teacher with an approved teaching qualification and less than 5 years post trade training industrial/teaching experience shall be appointed in line with the qualifications specified in clauses 5.1.2(c)(ii), (iii) or (iv), but shall serve the balance of the 5 year period, excluding years accrued since current appointment, on Step 4 of the scale before progressing.
 - (ix) A Teacher with an approved teaching qualification, a vocational qualification at bachelor degree level plus additional higher qualifications and 5 years post trade training industrial and/or teaching experience shall commence at Step 5 of the scale.

- (d) Recognition of previous teaching experience - Recognition of teaching experience up to Step 9 on the scale is dependent upon the applicant holding an approved teaching qualification and having post qualification teaching experience in an approved educational institution.

5.1.3 *Leading Vocational Teachers*

- (a) The scale of minimum salaries that shall apply to Leading Vocational Teachers is as listed in Schedule 5 of this Award.
- (b) Teachers on Step 9 of the salary scale shall progress to Leading Vocational Teacher Step 1 provided that they sign an undertaking to perform additional duties and have completed at least 12 months on Step 9. Progression to Leading Vocational Teacher Step 1 will take effect from the date of signing/acceptance of the undertaking that specifies the additional duty(s).
- (c) Progression to Steps 2 and 3 of Leading Vocational Teacher will be by annual increments subject only to clause 5.1.3(f).
- (d) The additional duties expected of a Leading Vocational Teacher may include:
- Performance of high level duties of a critical nature to the business provided that these duties are not those expected of Associate Directors or those on the Educational Administrator Level;
 - Teacher plus team leadership;
 - International projects/business;
 - Industry liaison work;
 - Work in industry;
 - Leadership in teaching practice;
 - Accountability (delegation of financial or staffing);
 - Performance, planning and review;
 - Mentoring (teachers/tutors);
 - Marketing (development of promotional strategies);
 - Programming.
- (e) The list of additional duties is meant to be indicative only and does not provide an exhaustive list.
- (f) Should a Leading Vocational Teacher fail to meet their undertaking they shall be made subject to a review of their duties and classification. Such a review may consider a re-allocation of duties or a removal of the Leading Vocational Teacher classification whereby the employee may return to Step 9.
- (g) There will be no quotas to limit the number of Leading Vocational Teachers.
- (h) Detailed guidelines for the operation of Leading Vocational Teachers may be developed by the parties to this Award from time to time.

5.1.4 *Principal teachers*

- (a) No new appointments will be made to Principal Teacher. Current employees engaged as Principal Teachers will continue to be paid in accordance with this level until such time as they leave their teaching engagements with TAFE Queensland.
- (b) Principal Teachers who have transitioned to the Leading Vocational Teacher position will be required to perform additional duty(s), but shall not be required to sign an undertaking.
- (c) The scale of minimum salaries that shall apply to Principal Teachers is as listed in Schedule 5 of this Award.
- (d) Except as otherwise provided in this Award, progression from one salary step to a higher salary step shall be by annual increments.

5.1.5 *Educational administrators*

- (a) The scale of minimum salaries that shall apply to Associate Director/Programme Manager is as listed in Schedule 5 of this Award.

- (b) The positions of Associate Director/Programme Manager within Institutes shall be determined by the employer having regard to the functions and duties to be performed, the level of supervision and other relevant work value considerations.

5.1.6 *Increments*

Notwithstanding anything contained in this Award, no employee shall be entitled to receive any increase in salary by virtue of this Award if the conduct, diligence, and general efficiency of such employee shall have been certified to be unsatisfactory by the Chief Executive.

If any increase prescribed by this Award is withheld from or refused to be granted to any employee, such employee shall be given an opportunity to show cause to the Chief Executive why such increase should not be withheld.

5.1.7 The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

21. By deleting clause 5.2.2(c).

22. By deleting clause 5.3 and inserting the following in lieu thereof:

5.3 Allowances

5.3.1 *Overtime meal allowance* - Employees required to work beyond their normal programmed working hours and the working of such time does not allow them to return to their homes or lodgings for a meal shall be paid the allowance prescribed in a Directive relating to Overtime Meal Allowances issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

5.3.2 *Locality allowance* - The conditions and entitlements of locality allowances paid to employees who are appointed to work at named centres are prescribed in a Directive relating to Locality Allowances issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

5.3.3 *Performance of higher duties* - The conditions for the payment of higher duties when an employee assumes the duties and responsibilities of a higher classification level are prescribed in a Directive relating to Higher Duties issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*.

Provided that the extra remuneration prescribed by the Higher Duties Directive shall be paid to the classes of employees referred to in the application clause of the Directive who fill the office temporarily for more than 3 working days.

23. By deleting clause 6.1.1(a) and inserting the following in lieu thereof:

- (a) Teachers, Leading Vocational Teachers, Principal Teachers and Tutors shall be required to be in attendance at an Institute or engaged in Institute related work for a maximum of 32 hours per week.

24. By deleting clause 6.1.3 and inserting the following in lieu thereof:

6.1.3 Principal Teachers, Teachers, Leading Vocational Teachers and Tutors engaged in teaching/tutorial shall work according to a program which shall entail a maximum of 5 days Institute attendance.

- (a) Hours engaged in teaching shall not exceed 21 hours per week.

- (b) Within the ordinary weekly attendance hours, Teachers, Leading Vocational Teachers and Principal Teachers shall be entitled to 8 hours for Associated Functions and 3 hours for Incidental Duties based on 21 hours teaching per week.
- (c) Where teaching staff are programmed for more than 3 hours on Incidental Duties a corresponding proportional reduction is to be made to teaching and associated function time.
25. By inserting the words "Leading Vocational Teacher" after the word "Teacher" in clause 6.1.5.
26. By deleting the word and figure "Schedule 2" from clause 6.3 and inserting the word and figure "Schedule 1" in lieu thereof.
27. By deleting the words "in Directive 3/01 'Parental Leave', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 7.2 and inserting the words "in a Directive relating to *Paid Parental Leave* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
28. By deleting the words "under Directive 9/01 'Bereavement Leave', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 7.3.5 and inserting the words "in a Directive relating to *Bereavement Leave* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
29. By deleting the words "under Directive 8/01 'Sick Leave', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 7.4.2 and inserting the words "in a Directive relating to *Sick Leave* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
30. By deleting the words "under Directive 1/01 'Long Service Leave', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 7.5.3 and inserting the words "in a Directive relating to *Long Service Leave* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
31. By deleting the words "under Directive 8/00 'Transfer and Appointment Expenses', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 8.1.1 and inserting the words "in a Directive relating to *Transfer and Appointment Expenses* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
32. By deleting the words "under Directive 1/02 'Travelling and Relieving Expenses', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 8.2.1 and inserting the words "in a Directive relating to *Domestic Travelling and Relieving Expenses* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
33. By deleting the words "in Directive 1/02 'Travelling and Relieving Expenses' and Directive 13/01 'Motor Vehicle Allowances', as issued and amended by the Minister for Industrial Relations under section 34 of the *Public Service Act 1996*" from clause 8.2.2 and inserting the words "in Directives relating to *Domestic Travelling and Relieving Expenses* and *Motor Vehicle Allowances* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
34. By inserting the words "Leading Vocational Teachers" after the words "Permanent Teachers" in clause 9.2.1.
35. By deleting the word and figure "Schedule 3" from clause 9.2.2 and inserting the word and figure "Schedule 2" in lieu thereof.
36. By deleting the words "Ministerial Directive 12/01 'Attendance - Recording, Reporting and Public Holidays'" from clause 11.2.5 and inserting the words "the Directive relating to *Attendance - Recording, Reporting and Public Holidays* issued by the Industrial Relations Minister under section 54 of the *Public Service Act 2008*" in lieu thereof.
37. By deleting Schedule 1 and renumbering existing Schedules 2 to 6 as Schedules 1 to 5 respectively.
38. By adding the words "Leading Vocational Teacher" after the words "Permanent Teachers" in the first sentence of clause 2 of renumbered Schedule 2.

39. By deleting clause 4 of renumbered Schedule 2 and inserting the following in lieu thereof:

4. Conditions

Permanent Teachers, Leading Vocational Teachers, Principal Teachers and Tutors will not have loss of salary or loss of other entitlements such as sick leave, annual leave, non-attendance time, long service leave, leave loading and/or superannuation entitlements during professional development:

Provided that this does not preclude Permanent Teachers, Leading Vocational Teachers, Principal Teachers and Tutors from undertaking, on their own volition, professional development/release to industry activities during any periods of leave or non-attendance time.

While on release to industry staff members will work the normal hours of the industry concerned and will follow the same conditions as co-workers. TAFE Queensland will meet all related expenses associated with the program and will ensure workers' compensation, professional indemnity, personal injury and property damage cover for staff members on release to industry.

TAFE Queensland may direct Teachers, Leading Vocational Teachers, Principal Teachers and Tutors to attend particular staff development activities.

Approval of professional development activities will be in accord with authorities as set down in the Departmental Delegations Manual, Department of Education, Training and the Arts. Professional development, including release to industry will only be approved where an appropriate activity or industry placement is available.

TAFE Queensland has a separate policy in relation to Release to Industry for Teachers, Leading Vocational Teachers, Principal Teachers and Tutors.

40. By deleting the Appointment Criteria clause of renumbered Schedule 3 and inserting the following in lieu thereof:

APPOINTMENT CRITERIA

The Teaching Qualifications Committee will recommend to the Chief Executive general guidelines on qualifications and/or experience requirements for initial appointment of teaching staff, and their appropriate entry point to the particular salary scale.

The Secretary will maintain a file of significant factors in decisions and will prepare an annual summary report to Committee members and the Chief Executive of such decisions.

41. By renumbering the clause reference "S5" wherever it appears as "S4" in renumbered Schedule 4.

42. By deleting the word and figure "Schedule 6" from renumbered clause S4.6.1(a) of renumbered Schedule 4 and inserting the word and figure "Schedule 5" in lieu thereof.

43. By deleting renumbered clause S4.8.4 of renumbered Schedule 4 and inserting the following in lieu thereof:

S4.8.4 A casual Tutor shall be paid the hourly rate as prescribed by this Award as follows:

Hours/Day	Hourly rate
	\$
8.00 a.m. to 6.00 p.m. Monday to Friday	29.73
Before 8.00 a.m. or after 6.00 p.m. Monday to Friday and on Saturdays	44.60
Sundays	59.46
Public holidays	74.33

The above rates of pay in this award incorporate adjustments from the *TAFE Queensland Educational Staff Sub-Agency Certified Agreement 2003* as at 1 August 2005. The rates of pay in this award are intended to include the arbitrated wage adjustment payment under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to

give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

44. By deleting renumbered Schedule 5 and inserting the following in lieu thereof:

SCHEDULE 5 - Salaries

The following scale of minimum salaries will apply to Tutors, Teachers, Leading Vocational Teachers, Principal Teachers and Educational Administrators:

TUTORS

Classification	Per fortnight	Per annum
Step 1	\$1463.50	\$38,181
Step 2	\$1509.30	\$39,376
Step 3	\$1568.80	\$40,928
Step 4	\$1629.80	\$42,520
Step 5	\$1699.50	\$44,338

TEACHERS

Classification	Per fortnight	Per annum
Step 3	\$1954.80	\$50,999
Step 4	\$2039.40	\$53,206
Step 5	\$2124.00	\$55,413
Step 6	\$2210.00	\$57,657
Step 7	\$2297.70	\$59,945
Step 8	\$2385.00	\$62,222
Step 9	\$2473.10	\$64,521

LEADING VOCATIONAL TEACHERS

Classification	Per fortnight	Per annum
LVT-1	\$2531.20	\$66,036
LVT -2	\$2590.10	\$67,573
LVT -3	\$2648.40	\$69,094

PRINCIPAL TEACHERS

Classification	Per fortnight	Per annum
PT1-1	\$2706.70	\$70,615
PT1-2	\$2765.60	\$72,152
PT1-3	\$2823.80	\$73,670

EDUCATIONAL ADMINISTRATORS

Classification	Per fortnight	Per annum
EAL1	\$2882.10	\$75,191
EAL2	\$2958.00	\$77,171
EAL3	\$3034.10	\$79,157
EAL4	\$3115.80	\$81,288
EAL5	\$3198.60	\$83,448
EAL6	\$3375.10	\$88,053

The above rates of pay in this Award incorporate adjustments from the *TAFE Educational Staff Sub-Agency Certified Agreement 2003* at 1 August 2005. The rates of pay in this Award are intended to include the arbitrated wage

adjustment payment under the 1 September 2008 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

Dated 15 September 2008.

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

Operative Date: 15 September 2008
Amendment - Salaries and various
Released: 1 October 2008

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