The following Agreements have been certified by the Commission:

<table>
<thead>
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<th>Cancellation No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA/2006/253</td>
<td>Queensland Early Childhood Education Certified Agreement 2006</td>
<td>13/9/06</td>
<td>CA64/04</td>
</tr>
</tbody>
</table>

G.D. SAVILL,
Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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G.D. SAVILL,
Industrial Registrar.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industries Industry Act 1999
Industrial Relations (Tribunals) Rules 2000

NOTICE

There are two applications before the Commission (B/2004/1855 and B/2004/1856).
B/2004/1855 is an application to amend the Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2002 and B/2004/1856 is an application to amend the Contract Catering and Industrial Services Award - South Eastern Division 2004.

Both applications are made by the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (the Union) and are, in the main, opposed by The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (the respondent).

The amendments are substantially the same for both applications, save for the numbering within the Awards. Rather than reproduce both amendments, I have determined to insert hereunder the amendments sought for the Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2002:

1. By deleting the title 'Trainees' where it appears in PART 4 of clause 1.2 and inserting the title 'Apprentices and trainees' in lieu thereof.
2. By deleting the title 'Classifications' where it appears in PART 5 of clause 1.2 and inserting the title 'Career path progression and classification criteria' in lieu thereof.
3. By deleting clause 1.3.4 and re-numbering clause 1.3.5 as clause 1.3.4
4. By deleting clause 4.4 and inserting a new clause 4.4 as follows:

'4.4 Apprentices and Trainees

4.4.1 Apprentices

Apprentices may be engaged under this Award in accordance with the Order for Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 162 QGIG 414. Wage rates for Grade 4 of this Award shall be used as the 100% rate for the purposes of calculating a percentage of the Tradesperson's rate.

4.4.2 Trainees

Trainees may be engaged under this Award in accordance with the Order for Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 162 QGIG 414.

No adult trainee shall receive less than the Queensland Minimum Wage.'.

4. By deleting clause 5.1, 5.2 and 5.3 and inserting the following in lieu thereof:

'5.1 Career path progression and classification criteria

5.1.1 Career path progression

The objective of clause 5.1 is to establish a generic framework of wages and conditions for new and existing employees based on the recognition of relevant industry skills and experience, responsibility and/or possession of qualifications.

Implicit in career path progression is the existence of a suitable vacancy to which the employee can be appointed or successfully apply for promotion and that progression is based on work performance rather than tenure.

As a matter of principle, the employer is committed to promotion on the basis of merit that is consistent with equal employment opportunity and affirmative action requirements.

Professional development is not compulsory and will be undertaken in either the employee's or employer's time depending on the circumstances. This is to promote a culture of learning in line with the employer's commitment to training that may utilise nationally accredited qualifications. Specific in-house training programmes that are compulsory, for example, Induction Training, Food Hygiene and Handling for Kitchen Attendents and Supervisors, and training for Supervisors would be undertaken in the employer's time.

To progress to a higher classification level, an employee must be able to demonstrate a competent level of work performance for that classification level. Award classification levels may also be supplemented by employer performance management programmes outlined in Staff Induction Manuals, Staff Handbooks or other like documents that shall be adhered to at all times.
5.1.2 Classification criteria

(a) The employer shall determine an employee's classification relevant to a particular Wage Level in the Award through the following process:

(i) An analysis is to be undertaken to establish the requisite skills and responsibilities for each identified position and a position description written for each position;
(ii) Each position is classified by reference to the classification criteria in accordance with clause 5.1.3 to this Award; and
(iii) Employees are notified in writing of their appointment to a position consistent with the requirements outlined in clause 4.1 to this award.

(b) Classification criteria as outlined in clause 5.1.3 are guidelines to determine the appropriate classification level under the Award and consist of:

(i) Relativities for each Wage Level;
(ii) Broad industry titles/callings, common industry-used titles and/or historical Award classifications (i.e. a Translation Guide that refers to Award classification titles across a number of hospitality Awards);
(iii) Indicative duties that represent where the majority of the employees duties are located (i.e. it is not mandatory that an employee performs every duty in a Wage Level and where it is acknowledged that some duties are only relevant for certain sectors of the hospitality industry);
(iv) Indicative experience and/or qualifications; and
(v) Indicative levels of responsibility.

(c) The characteristics nominated above are the principal guide to classification to a particular Wage Level as they are designed to indicate the level of basic knowledge, comprehension of issues, problem and procedures required, the level of autonomy, accountability supervision/training involved with the position.

(d) The characteristics of a Wage Level must be read as a whole to gain an understanding of the position and the performance requirement. Isolated characteristics should not be used to justify the classification of a position. The key issue to be analysed in properly classifying an employee is the level of initiative, responsibility/accountability, competency and skill that an employee is required to exercise in performing the employee's work within the parameters of the characteristics of the position.

(e) The attributes and skills for each Wage Level are indicative of those required for each Wage Level. They are by no means an exhaustive list of the skills, attributes, duties or tasks included in each position within each Wage Level and employees may be expected to carry out additional duties or tasks as requested, which require skills that are not listed.

(f) It should be noted that some typical duties/skills appear at one Wage Level only while others appear at more that one Wage Level. Because of this, the classification or re-classification of a position needs to be done by reference to the specific characteristics of the Wage Level. As an example, because an employee may be utilising a skill comprehended at a higher Wage Level than that which the employee has been appointed, the employee assumes the level of qualification, initiative, accountability and competence envisaged by the characteristics of the higher Wage Level irrespective of whether the employee holds formal qualifications specified for that higher Wage Level.

(g) Payment for skills required in a particular position and used on a regular basis and not skills/qualifications possessed in an acknowledgement that some employees are over-qualified for the position they will be engaged in.

(h) All employees will be required, in addition to their own task, to carry out tasks and responsibilities of employees at lower Wage Levels. All employees are required to observe the relevant legislative requirements as it applies to their position for example the Liquor Act 1992 and the Gaming Machine Act 1991 (and the employer's interpretation of the Acts that may be outlined in the employer's policy and procedure manuals). The ability to provide excellent customer service, where the customer may be external or internal, underpins all Wage Levels.

(i) Where it is established that a particular set of tasks or callings are not clearly classified in this Award, the parties to the Award will meet to discuss the appropriate Wage Level and pay rates. Any dispute
arising from this shall be followed in accordance with Clause 3.1 Grievance and Dispute Settling Procedure.

5.1.3 Classification levels and Award relativities

(a) Introductory - 78%

Introductory employees shall include the following classifications/callings or combination thereof:

- Employee Grade 1

(i) Indicative experience and/or qualifications

The Introductory Wage Level shall apply to a new employee who enters the industry and who has not demonstrated the competency requirements of Wage Level 1 below.

An employee at this Wage Level will remain at the Wage Level for up to 3 months while training is undertaken to allow the employee to progress to Wage Level 1.

(ii) Indicative level of responsibility

An employee at this Wage Level would require regular supervision as they are a new entrant or have limited experience and who:

- Work under close direction using established routines, methods and procedures with little scope for deviating from these;
- Are not required to provide more than basic judgement and application of basic problem solving skills; and
- Usually operate within a Work Team with very limited authority.

(b) Wage Level 1 - 82%

Wage Level 1 employees shall include the following classifications/callings or combination thereof:

- Food and Beverage Attendant Grade 1
- Kitchen Attendant Grade 1
- Kitchenhand
- Singlehand Cook
- House Attendant Grade 1
- Guest Service Grade 1
- Hospitality Services Grade 1
- Employee Grade 2

(i) Indicative duties

Wage Level 1 shall mean an employee who is engaged in activities such as;

- setting, clearing and cleaning tables and areas of plates, glasses, ashtrays etc;
- general cleaning duties within a kitchen, scullery or food preparation area, including the cleaning of cooking and general utensils and crockery used therein;
- assisting employees who are cooking or who are engaged on food and beverage activities not including service to customers;
- assembly and preparation of ingredients for cooking;
- handling, storing and distributing a variety of goods and hospitality products, including pantry items and linen;
- preparation of salad ingredients and/or distribution to a buffet bar, bistro or other food outlet;
- rubbish removal;
- laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams and working with flat materials;
- collection and delivery of guests personal dry cleaning and laundry, linen and associated material to and from accommodation areas;
- basic maintenance duties; and
• parking guest vehicles.

(ii) Indicative experience and/or qualifications

• Progression towards an AQF 2 qualification relevant to the employer.

(iii) Indicative level of responsibility

An employee at this Wage Level would require regular supervision as they have limited experience and who:

• Work under close direction using established routines, methods and procedures with little scope for deviating from these;
• Are not required to provide more than basic judgement and application of basic problem solving skills; and
• Usually operate within a Work Team with very limited authority.

(c) Wage Level 2 - 88%

Wage Level 2 employees shall include the following classification/callings or combination thereof:

• Food and Beverage Attendant Grade 2*
• Food and Beverage Attendant Grade 2 & 3**
• Employee Grade 3
• Kitchen Attendant Grade 2
• Hospitality Services Grade 2
• House Attendant Grade 2
• Cook - Grade 1
• Leisure Attendant Grade 1
• Guest Service Grade 2
• Storeperson Grade 1
• Doorperson/Security Officer Grade 1
• * Clubs Etc. Employees Award - South East Queensland 2003
• ** Hospitality Industry - Restaurant, Catering and Allied Establishment Award - South Eastern Division 2002

(i) Indicative duties

Wage Level 2 shall mean an employee who is engaged in activities such as:

• selling, supplying (not serving), dispensing or mixing of a range of alcoholic and non-alcoholic beverages liquor store activities including the sale of specialised stock lines and/or takeaway liquor from a bottle shop or other liquor outlet consistent with the Liquor Act 1992 and/or employer policy;
• assisting in the cellar;
• receiving and storing general and perishable goods;
• receipt of monies;
• attending a snack bar, coffee shop or other food and beverage outlet including taking orders and/or serving food and beverages; personalised guest services;
• taking reservations, greeting and seating guests, transferring guests' baggage and or property including delivery duties;
• operation of coin dispensing machine;
• payment of authorised jackpots, not requiring attendance at the device nor maintenance of detailed records;
• undertaking general waiting and butler duties including basic food and beverage services with led records;
• cooking of breakfasts, snacks and other basic meals and food items requiring regular supervision and limited experience;
• specialised non-cooking duties associated with a kitchen or food preparation area;
• servicing accommodation areas and cleaning thereof including assisting with dry-cleaning processes;
driving a passenger or courtesy vehicle;
- cleaning duties using specialised equipment and chemicals;
- undertaking routine repair work and maintenance not generally performed by a tradesperson
- an employee engaged in activities such as internal promotions; and set ups for functions, basic merchandising for promotional activities; door and other minor security duties, bingo or other leisure activities and ushering for shows;
- acting as an assistant instructor or pool attendant including testing pools and spas, setting up equipment, distribution and care of equipment and the taking of bookings, power boat observer; and
- assists with the maintenance of dress standards and good order in the establishment.

(ii) Indicative experience and/or qualifications

- Possession of an AQF 2 qualification or completion of a Traineeship at AQF 2 relevant to the employer.

(iii) Indicative level of responsibility

An employee at this Wage Level would require general supervision and who:

- Receives general instructions usually covering the broader technical aspects of the work and
- Are subject to progress checks, but such checks are usually confined to ensuring in broad terms, satisfactory progress is being made; and
- Has their assignments and work reviewed on completion;
- Although technically competent and well experienced, there may be occasions on which the employee will receive more detailed instructions; and
- Usually operates in a Work Team but may have specified area as of autonomy to perform a range of allocated activities and functions.

(d) Wage Level 3 - 92.4%

Wage Level 3 employees shall include the following classifications/callings or combination thereof:

- Food and Beverage Attendant Grade 3*
- Food and Beverage Attendant Grade 4**
- Employee Grade 4
- Kitchen Attendant Grade 3
- Storeperson Grade 2
- House Attendant Grade 3
- Guest Service Grade 3
- Hospitality Services Grade 3
- Cook - Grade 2
- Leisure Attendant Grade 2
- Handyperson
- Forklift Driver
- Timekeeper/Security Officer Grade 1
  * Clubs Etc. Employees Award - South East Queensland 2003
  ** Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South Eastern Division 2002

(i) Indicative duties

Wage Level 3 shall mean an employee who is engaged in activities such as:

- supplying (not serving) dispensing or mixing of liquor including a range of sophisticated drinks;
- full control of a cellar or liquor store or outlet including the receipt, delivery and recording of goods within such areas;
- cooking a range of meals requiring general supervision including a la carte cooking, grill cooking, deep frying and other cooking activities assigned by a higher level employee including setting up of an on-site kitchen;
- receipt of monies and cash handling;
• attending a wagering terminal (TAB, Keno) or similar electronic gaming terminal (poker machine), holding the appropriate license and who performs duties such as floor payouts, correction of minor gaming device faults and general machine maintenance;
• receiving, storing and distributing goods including the operation of mechanical lifting devices such as forklifts;
• major repair of linen and/or clothing;
• dry cleaning;
• supervision of laundry services;
• taking/directing of classes, tours and leisure activities associated with sporting areas, health and fitness activities and swimming pools; and
• timekeeping of staff, general security including security of keys and supervision of dress standard maintenance and good order in the establishment.

(ii) Indicative experience and/or qualifications

• Possession of an AQF 2 qualification or completion of a Traineeship at AQF 2 and progress towards an AQF 3 qualification relevant to the employer.

(iii) Indicative level of responsibility

An employee at this Wage Level would require general supervision and who:

• Receive general instructions usually covering the broader technical aspects of the work; and
• Are subject to progress checks, but such checks are usually confined to ensuring in broad terms, satisfactory progress is being made; and
• Has their assignments and work reviewed on completion;
• Although technically competent and well experienced, there may be occasions on which the employee will receive more detailed instructions; and
• Usually operates in a Work Team but may have specified area as of autonomy to perform a range of allocated activities and functions.

(e) Wage Level 4 - 100%

Wage Level 4 employees shall include the following classifications/callings or combination thereof:

• Food and Beverage Attendant Grade 4*
• Food and Beverage Attendant Grade 5**
• Bread Baker, Butcher, Cook, Dry Cleaner, Pastrycook, Tailer or other apprenticeship calling
• Commis Chef
• Cook - Grade 3
• Guest Service Grade 4
• Employee Grade 5
• Hospitality Services Grade 4
• Leisure Attendant Grade 3
• * Clubs Etc. Employees Award - South East Queensland 2003
• ** Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South Eastern Division 2002

(i) Indicative duties

Wage Level 4 shall mean an employee who is engaged in activities such as:

• undertaking specialised waiting and butler duties in a fine dining room or restaurant eg. bookings/cashier or maitre’d;
• maintaining and rotating stock and stock balancing;
• engaged in a variety of trade level activities such as cooking, baking, butchering, pastrycooking and/or setting up of an on site kitchen; and
• planning, co-ordinating and implementing leisure activities for guests and patrons.
(ii) Indicative experience and/or qualifications

- Possession of an AQF 3 qualification or completion of an Apprenticeship or Traineeship at AQF 3 or equivalent (such as a City and Guilds qualification) or a qualification with an AQF Level 3 outcome or who possesses a Recognition Certificate issued in accordance with the provisions of the Vocational Education, Training and Employment Act 2002.

(iii) Indicative level of responsibility

An employee at this Wage Level would require limited supervision and who:

- Receives only limited instructions normally confined to a clear statement of objectives;
- Has their work measured in terms of the achievement of stated objectives;
- Is fully competent and very experienced in a technical sense and requires little guidance in the performance of work;
- Operates with autonomy either individually or within a Work Team; and
- Leads or supervises a Work Team

(f) Wage Level 5 - 110%

Wage Level 5 employees shall include the following classifications/callings or combination thereof:

- Cook - Grade 4
- Demi Chef
- Employee Grade 6
- Food and Beverage Supervisor
- Food and Beverage Attendant Grade 6
- Guest Service Supervisor
- Hospitality Services Grade 5
- Relief Duty Supervisor (other than employees covered by the Liquor and Accommodation Industry - Licensed Clubs - Managers and Secretaries - Award - 2002 or Liquor and Accommodation Industry - Hotels, Resorts and Gaming - (Managerial Staff) - Award - 2003 or those employed on contract)

(i) Indicative duties

Wage Level 5 shall mean an employee who is engaged in activities such as:

- a designated duty supervisor who has the responsibility for general operations, including the maintenance of operational standards during the temporary absence of the regular or principal manager, including when the principal manager is rostered off during a particular shift;
- co-ordinating the work of employees engaged in guest service and/or housekeeping;
- being solely responsible for supervision, training and co-ordination of gaming staff and/or food and/or beverage staff and/or house attendant employees and/or other cooks or kitchen employees in a single kitchen establishment where no Wage Level 4 or above cooks are employed; and
- maintenance or service and operational standards, preparation of operational reports and staff rostering.

(ii) Indicative experience and/or qualifications

- Possession of an AQF3 qualification or completion of an Apprenticeship or Traineeship at AQF 3 or equivalent (such as a City and Guilds qualification) or a qualification with an AQF Level 3 outcome or who possesses a Recognition Certificate issued in accordance with the provisions of the Vocational Education, Training and Employment Act 2002 and has progress towards an AQF 4 qualification or higher relevant to the employer.

(iii) Indicative level of responsibility

An employee at this Wage Level would require remote supervision and who:

- Demonstrates understanding of a broad knowledge base incorporating some theoretical concepts;
- Apply solutions to a defined range of unpredictable problems;
• Identify, analyse and evaluate information from a variety of sources;
• Identify and apply skill and knowledge to a variety of contexts with some depth in some areas;
• Take responsibility for their own outputs in relation to a specified human resource standards; and
• Provides 'hands on' supervisory direction for a Work Team usually on site.

(g) Wage Level 6 - 115%

Wage Level 6 employees shall include the following classifications/calling or combination thereof:

• Cook Grade 5 - Head Chef
• Chef de Partie
• Duty Supervisor (other than employees covered by the Liquor and Accommodation Industry - Licensed Clubs - Managers and Secretaries - Award - 2002 or Liquor and Accommodation Industry - Hotels, Resorts and Gaming - (Managerial Staff) - Award - 2003 or those employed on contract)

(i) Indicative duties

Wage Level 6 shall mean an employee who is engaged in activities such as:

• duties of a Duty Supervisor, who has the responsibility for administrative and accounting activities and responsibility for the maintenance of service and operational standards as required by a Duty Manager;
• an employee that has general and specialised duties including supervision or training of other kitchen staff, ordering and stock control;
• solely responsible for other cooks and other kitchen employees in the kitchens;
• an employee who has the responsibility for a safe or counting room, liaise with Accounting staff and Duty Managers, solely responsible for takings and floats, ordering of coin, banking of takings (from all outlets), maintain and process payroll, dissection of wages, administration of superannuation, payroll tax and other payroll records, keep all records, change and maintain audit trails; and
• an employee who has responsibility for the full supervision of personnel and functions associated with the accounting and cash management functions, accurate reporting and submission of statutory terms, ensure all accounting taxation and administration functions are in compliance with legislative requirements.

(ii) Indicative experience and/or qualifications

• Possession of an AQF 4 qualification or higher relevant to the employer.

(iii) Indicative level of responsibility

An employee at this Wage Level would require remote supervision and who:

• Demonstrates understanding of a broad knowledge base incorporating some theoretical concepts;
• Apply solutions to a defined range of unpredictable problems;
• Identify, analyse and evaluate information from a variety of sources;
• Identify and apply skill and knowledge to a variety of contexts with some depth in some areas;
• Take responsibility for their own outputs in relation to specified human resource standards; and
• Provides 'hands on' supervisory direction for a Work Team usually on site.

5.2 Wage rates

5.2.1 Adults - The minimum wage rates to be paid shall be as follows:

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2004 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage
adjustments. (Disputed cases are to be referred to the Vice President). This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to the certified agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.2.2 Adults - The minimum wage rates to be paid as from 3 April 2005 shall be as follows:

<table>
<thead>
<tr>
<th>Wage Level</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory</td>
<td>484.40</td>
</tr>
<tr>
<td>Wage Level 1</td>
<td>501.10</td>
</tr>
<tr>
<td>Wage Level 2</td>
<td>526.20</td>
</tr>
<tr>
<td>Wage Level 3</td>
<td>544.50</td>
</tr>
<tr>
<td>Wage Level 4</td>
<td>578.20</td>
</tr>
<tr>
<td>Wage Level 5</td>
<td>619.90</td>
</tr>
<tr>
<td>Wage Level 6</td>
<td>638.80</td>
</tr>
</tbody>
</table>

5.3 Junior employees

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

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 17 years of age</td>
<td>55%</td>
</tr>
<tr>
<td>17 and under 18 years of age</td>
<td>65%</td>
</tr>
<tr>
<td>18 and under 19 years of age</td>
<td>75%</td>
</tr>
<tr>
<td>19 and under 20 years of age</td>
<td>85%</td>
</tr>
</tbody>
</table>

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

Junior employees on reaching the age of 18 years, may be employed in the sale of liquor. However, where such a junior is employed, the adult Award rate for the work being performed shall be paid.

An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of the junior employee. If a birth certificate is required, the cost shall be borne by the employer.”.

Primary positions put by Union and Respondent

The following contained within the application from the Union best describes the rationale for the applications:

“(a) The purpose of this application is to achieve the following:

• As far as possible, introduce a generic framework of wages, relativities and conditions across the hospitality industry in State jurisdiction;

• Eliminate existing anomalies and interpretation issues in the classification structure and in particular those anomalies associated with the concept of 'Approved Level of Training';

• Develop a qualification framework incorporating Nationally recognised qualifications;

• Incorporate apprenticeship and traineeship provisions and appropriate exit rates.

(b) The existing classification structures in hospitality-related State awards are generally very similar although the descriptions of the indicative duties performed, levels of experience and/or qualifications and levels of responsibility for each Wage Level are often vague or non-existent. This application seeks to remedy these situations by introducing as far as possible, a generic framework of wages, relativities and conditions across the hospitality industry in State jurisdiction.
Such applications recognise the need for consistency especially given the number of employees who work for Group Apprenticeship organisations and labour hire organisations where the transfer of employees at short notice across award boundaries is extremely common.

To achieve this aim, complementary applications will be made by this organisation in LHMU hospitality awards with complementary applications expected with The Australian Workers' Union of Employees, Queensland (AWU) hospitality awards.

It would be appropriate therefore that all hospitality applications be dealt with by the same Commissioner. Related applications in the form of B792, B869 and B870 of 2004 are already before the Commission with a Report Back for B869 and B970 of 2004 next scheduled for 27 January 2005. It would be appropriate for these applications to also be scheduled into the new grouping as well.

The Department of Industrial Relations, Department of Employment and Training and most major industrial organisations have for some time experienced considerable difficulties with the concept of 'Approved Level of Training' which underpins progression arrangements in all hospitality-based awards. This term from a definitional perspective relies on guidelines issued by Tourism Training Australia/Queensland and courses accredited by the Australian Hospitality Review Panel. These guidelines and both organisations no longer exist with the whole concept being redundant for some considerable period of time.

National qualifications have been introduced and revised formal training perspective in an on-going fashion for some considerable time. Current State-based hospitality Awards do not recognise these current and emerging qualifications nor do they recognise the most commonly used access point namely through apprenticeships and traineeships.

Considerable discussions have occurred between the Department of Employment and Training, Department of Industrial Relations and peak employer and employee organisations with the view to rectifying commonly acknowledged anomalies as outlined above.

Given the size of the hospitality industry and its worth to the Queensland economy, it is clearly not in the public interest to allow these anomalies to continue.

This application is primarily but not totally opposed by the respondent.

The respondent initially states that the Awards referred to in the Union's claim which had been varied on 23 August 2005, "did not change the rates of pay at all. This application before this Commission is totally opposite to those variations, in that, this application will vary the actual award rates of pay and we say substantially at certain levels.". [Final Submission of the Respondent - p. 2].

What is not being opposed by the respondent, generally, is as follows:

- The correction of anomalies relating to the "appropriate level of training".
- Inserting into the award apprentices and trainees and clarifying their progression and classification structures.
- "Consent" amendments made by other employer organisations with the Union in the previously mentioned Awards.
- The belief that elements of the Award need to be clarified in order to assist correct interpretation for all parties.

The primary elements of the respondent's opposition to the application are:

- Common outcomes across industry should not be granted as there is a marked difference between a restaurant and/or a café on the one hand and a hotel and/or club on the other.
- The cost impost would impact more upon restaurants/cafes than upon hotels/clubs. However, the respondent was adamant that it was not conducting an "incapacity to pay" response.

Other elements of concern for the respondent include a belief that:

- The application is a "work value" application.
No substantial changes have occurred to work practices in the restaurant and catering section of the hospitality industry for the past 10-15 years.

The Commission should be cognisant of a decision of Commissioner Bougoure in *Australian Liquor, Hospitality and Miscellaneous Workers’ Union, Queensland Branch, Union of Employees v The Restaurant and Caterers Employees Association of Queensland Industrial Organisation of Employers and Others* 153 QGIG 380.

Employees working within restaurants and cafés do not require the same level of skills as do employees in hotels and clubs. Such differences relate to:

The serving of alcohol in hotels. This duty is secondary within restaurants and cafés.

Hotel employees operate gaming machines, TABs and Keno and work in detached bottle shops often under no direct supervision.

Restaurants/cafés offer a "softer" working environment than do hotels/clubs.

In summary, what is being sought is that classifications 2 and 3 within the Awards become one classification and that the relativities (as per the C10 classification within the Engineering Award - State 2002) within the Awards be as follows:

<table>
<thead>
<tr>
<th>Level</th>
<th>Relative Rate</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory</td>
<td>78%</td>
<td>Different from the existing rates -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(previously the Introductory Rate was 73%)</td>
</tr>
<tr>
<td>Level 1</td>
<td>82%</td>
<td>Different from the existing rates -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(previously Level 1 was 78.9%)</td>
</tr>
<tr>
<td>Level 2</td>
<td>88%</td>
<td>Different from the existing rates -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(previously Level 2 was 82% and Level 3 was 87.4%)</td>
</tr>
<tr>
<td>Level 3</td>
<td>92.4%</td>
<td>The same as existing rates</td>
</tr>
<tr>
<td>Level 4</td>
<td>100%</td>
<td>The same as existing rates</td>
</tr>
<tr>
<td>Level 5</td>
<td>110%</td>
<td>Different from the existing rate -</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(previously Level 6 was 105%)</td>
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<tr>
<td>Level 6</td>
<td>115%</td>
<td>Different from the existing rate -</td>
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<td></td>
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<td>(previously Level 7 was 110%)</td>
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**Applicant’s Witness Evidence**

Mr K. Krebs (Manager of Compliance Unit of the Department of Employment and Training) gave evidence under an "Attendance Notice to Give Evidence" issued at the request of the Union.

Mr Krebs described his public service role as encompassing:

Enforcement arrangements with the *Vocational Education, Training and Employment Act 2000* where it overlaps with other legislation including the *Industrial Relations Act 1999*.

Investigation of complaints associated with apprenticeships and traineeships.

The integration of industrial relations arrangements to accommodate some of the various training programs.

Where new apprenticeships or traineeships eventuate, Mr Krebs is obliged to ascertain a complementary wage rate to match the particular qualifications.

In all, Mr Krebs had accumulated some 34 years of experience within the Department of Employment and Training.

Mr Krebs has also worked both on secondment and as an employee with various employee organisations, always performing similar duties. Mr Krebs has also held positions on various ITABs (Industry Training Advisory boards) over the years.

Mr Krebs stated that the Awards in question made reference to training bodies which no longer existed. This caused all parties to the Awards considerable difficulty. Reference was also made to the fact that the Awards were deficient in terms of appropriate definitions of terms. An example of this included a lack of common understanding as to what the "serving of alcohol" meant and what constituted a "sophisticated drink".

The most problematic area surrounded determining whether an employee fitted within the Level 2 or Level 3 category. Mr Krebs went on to comment:
"It's one of the worst classification structures I've seen in all my years in the industrial system."

The difficulty lay in the use of similar wording within each classification. To Mr Krebs, this created an enormous amount of difficulty for employers and employees in determining into which category an employee fitted.

When queries arose from those within the industry in this regard, the Department personnel often advised the employer to pay the higher rate in order to protect themselves against any wage claim.

Mr Krebs stated that the other hospitality awards to which earlier reference had been made and which had been approved by the Commission with the consent of the parties, contained the same type of clauses sought in these applications.

A further issue of concern centred upon the issue associated with the appropriate level of training and junior employees. Whilst matters have been consented to between the parties, an example of the type of confusion attempted to be resolved in this matter include the following:

Clause 1.3 **Definitions** of the *Hospitality Industry - Restaurant, Catering and Allied Establishment Award - South-Eastern division 2002* states at clause 1.3.4 -

"Junior employee" means those employees under the age of twenty-one years;
Provided that employees engaged and/or employed to sell, serve or in any way distribute liquor shall not be regarded as a junior employee.

Clause 5.3 **Junior employees** states, *inter alia*, that:

... 
"An employee aged 18 years who is engaged to dispense and/or sell alcoholic beverages shall be paid either a minimum rate of $318.50 per week or the appropriate junior rate, whichever is the higher...".

Further anomalies were highlighted by Mr Krebs. One related to a Food and Beverage Attendant Grade 5 who is described as "an employee who has completed an apprenticeship in waiting". There is no such apprenticeship.

In terms of labour movement generally within the hospitality industry, Mr Krebs pointed out that employees within this industry often moved between the café and restaurant environment and that of clubs and hotels. Specifically, Mr Krebs stated:

"The [current anomalies within the Award] affect every employee in the industry. But I suppose also where - and I suppose this is where the commonality side of it came into it - the Department deals with group training organisations. They are singularly the largest employer of apprentices in Queensland. Collectively, they employ some 25 per cent of all apprentices in Queensland. The nature of group training organisations are that they will have people train through a series of host employers. So it would be quite common, for example, for the young apprentice or somebody from a labour hire company - same concept - where they might spend a week here in café and restaurant, the next they're in a motel. The week after, they're in a club."

The consequence of the above, is that employers and employees do not know which is the applicable wage rate. Mr Krebs referred to the Department receiving "hundreds and hundreds" of complaints concerning these issues.

Another complicating issue was the reference to "appropriate level of training" mentioned throughout the Award. The Award definition of this refers one to e.g. Tourism Training Australia - a body which has ceased to exist. Post 1991, a further accreditation body was mentioned in the Award which also has ceased to exist. Mr Krebs' preference was that there be no reference to a training body *per se* but rather there should be reliance upon the use of qualifications as well as the inherent indicative tasks with a connection of those to the broad structure within the Australian Qualifications Framework (AQF) standards (which is the current applicable body of reference). Mr Krebs believed the advantage of this course of action is that the AQF system is nationally recognised with all State and Federal Governments "signing off" on its terms. Were there to be any change to this system, it would involve all of those parties thereby according that process some degree of surety.

Mr Krebs submitted, in response to a question from the Union advocate on the proposed amendments contained within the Awards, that:

"Well, I think that they go a long way to rid the industry of all the anomalies that we've mentioned, things about junior rates and so on, clarifying different levels, tying up tasks, if you like, with the current language in the training
system and the current qualifications that are there being accessed by a whole range of people. It also gives some form of linkages for those who've done traineeships or - because at the moment if you do a traineeship, you're not mentioned in the award so you typically are engaged under the Training Wage Award - State, then you come back to the award and you've really got no clearly defined place. These applications seek to fix that so you've got a place in the sun when you've finished your qualifications. It also deals with multiple pathways. So, we know for instance there are a number of - particularly in food and beverage most employees don't do qualifications. They will just do the work. They'll get some experience.

Under cross-examination from the respondent, Mr Krebs was asked to expand upon what he viewed as the anomalies which existed under the Awards in question. The respondent queried Mr Krebs' view on his perceived lack of "common understanding in relation to the serving of alcohol" and used, for example, the position of Food and Beverage Attendant Grade 2.

Mr Krebs explained the difficulty associated with this descriptor by stating that one would first have to establish what was meant by "supplying" alcohol. It could relate to an employee within a restaurant pouring beer, or to a waitress in the same restaurant distributing the alcohol to clients. It could relate to an employee taking the top off a "stubby" or the top off a bottle of wine, to then pouring such alcohol.

Responding to questions regarding the supervisory level built into a Level 3 employee, Mr Krebs believed form his knowledge of the industry that in a restaurant, for example, a head waiter might be employed, but then beyond that all employees would be grouped together. As he stated, there was no "elongated structure".

The respondent agreed that it was for those within the hospitality industry to sort out the differences between Levels 2 and 3 [Transcript p. 116, line 1], however, the respondent did state that if there was an element of supervisory duties, then that employee would be classified as a Level 3 employee.

The respondent agreed with Mr Krebs, that save for relativities within the Awards, there was agreement between the parties on all other issues and the respondent parties had input into the wording of all other clauses.

At the end of this cross-examination, it became evident, and the respondent agree, that there was no debate around any descriptors within the various levels; that the debate centred wholly around the question of relativities (i.e. compressing two classification levels into one) and the cost impact on employers because the more generic level proposed drew one level into a higher wage bracket.

Mr Krebs' belief that the applications did not fit into the category of "work value" applications, nor were they claimed to be so. He explained that in determining to eliminate obvious anomalies within the Awards, the appropriate course to take encompassed utilising the AQF standards as the common denominator which took into account:

- Generic levels of responsibility;
- Generic levels of autonomy;
- Generic levels of decision-making, amongst other things.

As well, the employer bodies had the same degree of input and involvement into the establishment of these standards.

Mr Krebs explained that it was the café/restaurant industry which was out of line with the industry generally. It was not a question of "leap-frogging" (as had been suggested by the respondent), but rather a question of being in conformity with the remainder of the industry. Further, Mr Krebs stated that the reality of the applications was that employees were being put into proper classifications "based upon their skills and responsibilities under the AQF arrangements not under work value". [Transcript p. 150, lines 18-20]

There was considerable cross-examination around the question of disseminating the differences between the café/restaurant industry and that of hotels and clubs.

Mr Krebs agreed that for clubs and hotels, they could subsidise the money they made from the provision of meals through gaming.

Mr Seib [Principal Information Officer with the Central Information Unit, Industrial Relations Services, Department of Industrial Relations] gave evidence under the same "Attendance Notice to Give Evidence" as did Mr Krebs. The major role for Mr Seib within the Department was to "provide information and advice to officers of Industrial Relations
Mr Seib referred to a range of discussions in 2003 being held between "Clubs Queensland" and the Union for the purpose of making applications to vary the hospitality awards. In relation to these applications, Mr Seib stated:

"...the anomalies we're chiefly concerned with under this award are the issues of - under the Food and Beverage Scheme, that grades 2 and 3 employees and, to an extent, grade 4, the issue of the appropriate level of training not being sufficient to enable us to give clear and accurate information to certain types of functions, or duties carried out by individuals. For instance, the definition of appropriate level of training refers to an organisation that, to my knowledge, my understanding, I've been informed doesn't exist and hasn't existed for a number of years.".  [Transcript p. 159, lines 18-29].

Mr Seib continued:

"I suppose the effects are that it creates confusion and people who aren't familiar with Industrial Relations, like the type of people who ring Wageline and employers and employees, it creates a deal of confusion and they want to know with certainty what classification or grade they should be paid at or being paid, so it creates a situation where the Department, in the advisory area, can only give at times general advice and in the compliance area it maybe prevents action being taken for non compliance.".  [Transcript p. 159, lines 40-49].

In the last 12 months, Mr Seib said that there had been 439 complaints received and investigated by the Inspectorate.

When cross-examined as to the type of problems associated with determining Level 2 and Level 3 employees, Mr Seib responded by saying that the only real difference within the Awards at those levels was that relating to "appropriate level of training". Because of the abyss in this area of the Award, appropriate classification was almost impossible.

As a rule of thumb, Mr Seib stated that when enquiries were made of the Department as to correct classification levels, were an employee to have received some sort of training, they would probably be classified as a Level 3, and a lack of training would be more indicative of a Level 2 classification.

Mr Seib agreed that while skill levels across the hospitality industry would be similar, a wider array of skills might be evident for an employee working in a club.

The advocate for the respondent questioned Mr Seib around the principles which pertained to a "work value" case. Mr Seib did not believe that there had been substantial changes in work practices within the café/restaurant industry over the last 10 years.

Mr Seib reiterated the position of the Department to the extent that "we are primarily interested in people being paid commensurate with the relevant classifications under an award, so it's straight-out their entitlement under an award".  [Transcript p. 193, lines 43-45]

Mr Seib's responses to questions from the respondent advocate on the issue of defining "sophisticated drinks", "appropriate level of training", within the Awards was similar to those of Mr Krebs. There is no need to reiterate all of the questions and responses in this regard.

**Respondent's Witness Evidence**

**Mr Visser** is currently the Chief Executive Officer of The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers trading as Restaurant and Caterers Queensland.

Mr Visser states:

"In my current role I am required to represent the interests of employers in the food service industry specifically within the business regulatory environment, according to the information provided by members of the association, particularly on matters affecting the viability and sustainability of their businesses.".

Mr Visser surveyed the respondent members as to the proposed amendments to the Awards and he claims that it was the overwhelming view of those members that the actual increase in wages would seriously threaten the viability of many businesses and result in a "substantial reduction in employment".  [Statement of James Visser - point 10]
Mr Visser highlighted two areas where he believed his members’ businesses are different to others within the hospitality industry generally. These were in the areas of the restrictions placed on many of these businesses to sell alcohol together with the inability to conduct gaming operations and the second factor related to the service of food being much more labour intensive than was the service of liquor or gaming resulting in proportionally higher wage costs for businesses covered under the Restaurant and Catering Awards, compared with the industry generally.

Mr Bill Stewart operates two businesses. One business is situated within the Brisbane Botanical Gardens and the other is a restaurant and function centre.

Mr Stewart's views were similar to those of Mr Visser to the extent that an increase in wage rates for his employees would have a severe impact on his business and result in a reduction in staff numbers.

Mr Chris Brewster is the proprietor of a bar, restaurant and function centre operating in the city area of Brisbane.

Mr Brewster drew the distinction between hotel/clubs and restaurants stating that the most notable distinction was that hotels and clubs subsidise their operations through gambling revenue generated from poker machines, Keno and TABs in the main.

Mr Brewster stated that the "labour to income output" in that "more money can be drawn from the bar or bottle shop over a set period of time than will ever be made through the production of meals in a restaurant".

Also within this context, Mr Brewster stated that higher wages were often paid to chefs and restaurants often had a more expansive kitchen with food costs being higher than one might expect elsewhere.

Mr Brewster said that wages as opposed to gross turnover represented 34% of his business. He states that in hotels it is about 16-18% and in clubs between about 9-12%.

In his particular industry, the price for functions is set for the ensuing 12 months, and any increase in wage rates will mean that prices have to rise. As well, within his establishment, Mr Brewster says that about 70-80% of his employees are casual employees and most have no intention of making a career out of this industry.

Mr Richard Saad operates a café within a major Brisbane suburban shopping centre.

Mr Saad believed that were the amendments to the Awards to be successful, then it would have a critical impact upon his business and threaten the employment of his staff and that of he and his wife.

90% of income received in that business is derived from the food that is served to customers.

Final Submissions of the Parties

The Union

In its final submissions, the Union highlighted the following points for consideration by the Commission:

- Two areas for consideration have arisen with all parties involved in the hospitality State awards over the last 15 years. These are:
  - The integration of skill-related arrangements into awards; and
  - Attempts to rationalise or create State sector specific hospitality awards.

- Skill-related career paths were first introduced in the late 1980's and early 1990's with the Federal Hotels Award setting the standard.

- The "approved level of training" element contained within the Awards is now the Australian Qualifications Training Framework. Current references within the Awards to training bodies are redundant.

- Almost identical classifications frameworks were systematically introduced into all Queensland hospitality awards (with minor differences discrete to that particular sector).

- To achieve the rationalisation of the State sector specific awards, matters should, in the Union's view, be considered. These are:
The rescission of the café and restaurant awards to create hospitality awards and fast food industry awards, and

"Unsuccessful attempts to have a single State-wide Hospitality award in the early 1990's, which accidentally imported language from various drafts and as a result, discrepancies into the Hospitality awards. For example, juniors serving alcohol.”.

- Mr Krebs' and Mr Seib's evidence highlighted the problems associated with the correct interpretation of the Awards.
- The hospitality award reviews were undertaken at the request of the Department.
- Wageline had identified a number of award problems. These were:
  - "Approved level of training".
  - Some classifications are based on training outcomes which have never existed in Queensland.
  - The Apprenticeship in Waiting to which reference is made in the Awards, does not exist.
  - There is a level within the Food and Beverage Attendant classification in the *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division* but there is "little to no material facts" to differentiate them from other hospitality award classifications.
  - The training advisory and regulatory bodies, Tourism Training Australia and the Australian Hospitality Review Panel, referred to within the Awards do not exist.
  - The national training system has evolved considerably but the Awards have not kept pace with that system.
  - "The classification structures do not accommodate for persons who have completed traineeships, persons with institutional, overseas or interstate qualifications or as with the majority of hospitality employees, those who have acquired industry skills informally through work or other means yet carry the same level of responsibility as those with formal qualifications.".
  - No common understanding of certain terms contained within the Award - i.e. serving and dispensing of particular products such as alcohol and the level of supervision required at various wage levels.
  - Different wage levels contain the same indicative task descriptors thereby causing further confusion for both employees and employers. [e.g. Food and Beverage Attendants Levels 2 and 3 performing waiting and kitchen operations duties in the *Hospitality Industry - Restaurant, Catering and Allied Establishments etc awards*].
  - "Wage rates for juniors and adults across industry differ and are discriminatory despite employees performing identical duties.”.
  - "The wage rates across the hospitality sector are not aligned much to the frustration of labour hire companies and Group Training Organisations who regularly shift employees across the various sectors of the industry.”.
  - The hospitality award review process has taken more than 2 years and has involved all relevant industrial parties.
  - The outcome of this review was consented to by the parties in matters B/2004/1853 [Accommodation Industry (Other Than Hotels) Award - South-Eastern Division 2003]; B/2004/1852 [Clubs etc Employees’ Award - South-East Queensland 2003]; B/2004/1854 [Hotels, Resorts and Accommodation Industry Award - South-Eastern Division 2002].
- The wage rates being sought in these amendments are as follows:

In the *Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2002*, the Food and Beverage Attendants rates are compressed to produce a 6 level structure rather than a 7 level structure. This would make the Award consistent with all other hospitality awards.
The new Level 1 Food and Beverage Attendant rate would be the same as the current Level 2 rate, with all current Level 2 and 3 employees receiving the Level 3 rate and all other levels remaining the same.

"The perceived wage increase is quarantined to existing level 1 and 2 Food and Beverage Attendant employees only and more specifically so to waiters and kitchen hands consistent with other hospitality awards". [Submissions of the Union - point 17(a)]

In the Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2002 and the Contract Catering and Industrial Services Award - South-Eastern Division 2004, wage rates for Level 5 and 6 cooks are to be increased from 105% to 110% and 110% to 115% respectively consistent with the other hospitality awards.

• To support its claim that the wage increase is justified, the Union set out the following:

  "a. Wage increases are minimal and not significant in real terms as the 2 (two) sectors have the capacity to pay for any increase;
  b. The integrity of the Australian Qualifications Training Framework (AQTF);
  c. Hospitality qualifications are common to all sectors;
  d. Decisions of the Queensland Industrial Relations Commission in relation to Pay Equity and in particular, the Dental Assistants case; and
  e. The need for consistency across Hospitality sectors and one (1) classification structure and rates across the hospitality industry rather than an individual sector."

The Union states that the appropriate level of training intended for Level 1 is the AQF 1 level and the rates being sought "are consistent with other new entrants to the industry with the same level of experience and/or qualification". [Submissions of the Union - point 21]

The compression of rates of pay for Level 1 and Level 2 into Level 3 amounts to $25.10 per week for existing Level 2 employees and there is no increase in the rates payable for Level 3 employees.

Submissions made with regard to cooks within this industry highlight that most cooks are paid above the Award rate (this view is supported by evidence drawn from both the applicant and the respondent during this hearing).

The Union addressed the respondent's submission that, whilst not pursuing an incapacity to pay case, the respondent stated that many of its members would find the proposed increase problematic for them. To this end, the Union submitted a research paper entitled "Australian Council of Trade Unions (ACTU) Research Paper February 2004". [Submissions of the Union - point 20 Exhibit "D"]

The Research Paper showed that the café and restaurant industry is one of the three most Award dependant industries. The Research Paper highlighted that, within this industry, there had been a strong growth in profits. It was submitted that "Despite this, the growth in productivity and output exceeds the growth in real wages for award workers. In particular, we refer to table 1.1 of the Research Paper which reveals that although there has been an 82.1% increase in profits for the sector, there has only been an 8.8% increase in wages. Clearly, employees working in the cafes and restaurants sector are well overdue for a pay increase.". [Submissions of the Union - point 22]

Reference was also made to a decision emanating from the Australian Industrial Relations Commission Australian Liquor, Hospitality and Miscellaneous Workers Union v Wilson Parking Australia 1992 Pty Ltd and Others PR952679 wherein it was stated:

"The Commission is bound to act according to equity, good conscience and the substantial merits of the case when deciding whether to vary an award. The Commission must perform their functions in a way that ensures a safety net of fair minimum wages and conditions of employment is maintained by referring to the following:

a. the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;

b. economic factors, including levels of productivity and inflation, and desirability of attaining a high level of employment."
Further, the Union says that Deputy President Lacy also "took into account the need to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and to assist in reducing youth unemployment, through appropriate wage provisions". [Submissions of the Union - point 26]

It was submitted by the Union that it is common knowledge within the hospitality industry that recruitment and retention problems exist in the sector. Indeed, respondent witnesses attested to such. Many employees are engaged on a casual basis and few seek a career within the industry because as the Union asserts, "wages are low and do not reflect the demands of the industry". [Submissions of the Union - point 27]

The Union questioned the bona fides of the survey to which reference had been made by the respondent. They state that the survey sought to convey that wage increases were sought at all levels within the Awards. This is not the case.

The evidence of respondent witnesses highlighted that clubs and hotels receive much of their income from gambling machines and cafes and restaurants, whilst being different to clubs and hotels, have increased their prices of food and drinks to cover increased costs. Certainly, respondent witnesses sought to distinguish one part of the industry (café and restaurants) from the other (clubs and hotels).

In relation to the respondent's submissions concerning cost imposts which would be placed upon café and restaurant owners were the classifications in question to be condensed, the Union referred the Commission to a Queensland Industrial Relations Commission decision (The Australian Workers' Union of Employees, Queensland (AWU) v Queensland Cane Growers' Association Union of Employers and Another 134 QGIG 647) wherein the Commission had deferred a wage increase to sugar industry employees because the industry was experiencing a substantial downturn due to a severe drought. Likewise, the Commission was also referred to a decision of the Australian Industrial Relations Commission (Print J1761) regarding the Pastoral Industry Award where it was stated that:

"...it would only be in rare circumstances that an industry could be successful under the incapacity to pay principle. In this respect ... the incapacity to pay arguments should be limited to individual respondents and/or groups of respondents where all members of the group can claim 'very serious or extreme adversity'.".

The Australian Qualifications Training Framework (AQTF/AQF) is linked to a degree to the classification structure within the hospitality awards. There are a series of national training packages under this regime which are based on the following:

"a. Development in consultation with relevant industrial parties, employers, unions and professional bodies including TAFE and other Registered Training Organisations (RTO's);

b. Competency standards derived from functional analysis that reflect major job functions; and

c. Compulsory competency standards that reflect the 'core' of a family of jobs and elective units that are used to reflect variations in job design.". [Submissions of the Applicant - point 35]

Further, the applicant states that:

"Additionally, the AQF provides a common denominator irrespective of industry or qualification in that each AQF level has clearly defined characteristics and requirements including:

a. the breadth, depth, complexity, knowledge and skills required to perform a defined range of activities for each AQF level;

b. application of these skills and knowledge in activities ranging from simple routine and predictable activities through to the mastery of a relevant field of study or area of professional practice;

c. the level of application including developing and applying solutions, analysing and planning, diagnosing, designing and executing judgements; and

d. the degree of supervision and autonomy required in the performance of functions ranging from entry-level participation in work groups under constant supervision through to undertaking comprehensive research on professional theory and practice as part of a Doctoral Degree.". [Submissions of the Applicant - point 37]

The applicant stated that the relevant qualifications for the two hospitality sectors are as follows:

a. Certificate I in Hospitality (Operations);

b. Certificate I in Hospitality (Kitchen Operations);
Cases heard by this Commission *Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees v Australian Dental Association (Queensland Branch) Union of Employers 180 QGIG 929* and *Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees v Children's Services Employers Association Queensland Union of Employers and Others 181 QGIG 568* highlight the linkage between various AQF levels with the wage relativities within the Engineering Industry (e.g. AQFI - 82.4%; AQFII - 87.4%; AQFIII - 100%; AQFIV - 115%; Diploma (V) - 130%).

In highlighting the point that there should be consistency across hospitality sectors, the Union claimed:

- The two (2) applications seek to introduce common minimum wage rates across all sectors of the Hospitality industry, including Federal award rates based on similar work and levels of responsibility and a common qualifications framework.
- Skills acquired in a particular sector are common to all sectors of the hospitality industry. For example, there is no difference in duties or skills for a food and beverage attendant working in a restaurant compared to working in a hotel.
- To allow the current wage inequities to continue is clearly not in the public interest.
- Recognition must also be given to employment volatility and the increasing use of labour hire companies and Group Training Organisations who regularly shift employees across the various sectors of the industry. Therefore, there are different Awards, levels, classifications and pay rates.
- In aligning common base rates, these applications go a long way to relieving the administrative burden for these organisations.
- If the Commission approves the applications, the wage increases are unlikely to impact on employers who are constitutional corporations.
- Although the wage increases will apply to non-corporations, there are very few of these types of employers in the restaurant and catering sector.
- The Australian Workers Union (AWU) is in the process of filing applications in relation to their members under the Hospitality Awards, which reinforces the merit of the LHMU's applications.
- We request that the Commission grant the union's applications and order the proposed variations to the *Hospitality Industry - Restaurant Catering and Allied Establishments Award - South-Eastern Division 2002* and the *Contract Catering and Industrial Services Award - South-Eastern Division 2004*.

**The Respondent**

The respondent reiterated to the Commission that the awards within the hospitality industry which had been altered to include what in essence was included in this claim, did not affect wage rates within those Awards.
The respondent was not opposed to all of the changes identified in these applications.

What was not being opposed was:

The correction of anomalies applicable to references to the "appropriate level of training".

A significant component of the "consent" amendments which had been in the previously granted hospitality awards.

What was being opposed (or highlighted) was:

Reference to tasks or criteria which have no bearing to the type of work performed within this industry (e.g. - power boat operators, fork lift drivers, parking attendants etc…).

The reference by the Union to the type of application being made (i.e. one for the commonality of all awards within this industry) when in fact the application should sit under the umbrella of a "work value" application. This was particularly so because the end result was a substantial alteration to wage rates, relativities and classifications.

The impact upon small business.

The fact that it had been contended that there had been substantial change to work practices within the restaurant and catering sector of the hospitality industry for the last 10-15 years sufficient to warrant the granting of the application.

In summarising its opposition to the claim, the respondent posed the following points:

"What has changed since Commissioner Bougoure's decision in 1996…

There has been no significant change in the skill level of employees in restaurants, cafes and catering businesses to justify an increase in wages;

Employees in restaurants do not have the same requirements for skill as hotel or clubs employees in particular the need to understand the Gaming Act and its regulation and with the responsible conduct of gambling skill, plus liquor sales in (bottle shops) bar-work and accommodation (motels) aspects.

Restaurants are completely different to hotels, offer different services and aim at different markets; and

Any increase will be a severe impost on all employers in the industry and in some cases force closure of business.".

[Final submission of the respondent - pages 4-5]  

Reference was made by the respondent to comments shared by many of its members that the café/restaurant industry was markedly different to other industries within the general hospitality framework.

These differences went to matters such as the provision of alcohol being a primary function within the hotel/club environment whereas within the café/restaurant environment, the provision of alcohol was a secondary function.

**Consideration of Evidence and Conclusion**

The respondent has placed considerable reliance upon a decision of Commissioner Bougoure made in 1996 – namely, *Australian Liquor, Hospitality and Miscellaneous Workers' Union, Queensland Branch, Union of Employees v The Restaurant and Caterers Employees Association of Queensland Industrial Organisation of Employers and Others* 153 QGIG 380.

In that decision, amongst other things, Commissioner Bougoure stated:

"In my view the classification structure should reflect the reality of what actually happens in the work place. In my view it is not appropriate to create a classification structure which reflects the aspirations of unions or employer associations if it is not capable of being understood and implemented in a realistic way in the work place. Having considered the whole of the material before me, I am not satisfied that the levels of skill and responsibility and the environment in which work is performed in hotels and motels are sufficiently similar to justify the general adoption of the classification structure as proposed by the Union for the purposes of the proposed award in Queensland which covers a wide variety of restaurants, cafes and like establishments.".
That decision, written in 1996, is not binding upon the Commission. It relates to a set of circumstances, evidence and submissions peculiar to its own facts and historical timeframe. If anything, the abovementioned commentary assists the applicant in this matter as much as it assists the respondent.

In my view, there is little difference in the submissions made by both parties as to the anomalies contained within the Awards and the degree of confusion caused by such anomalies, amongst other things.

In correcting these anomalies etc., there is a cost impost and, to this end, this is where the difference of opinion lies.

It seems to me that a number of matters need to be considered by the Commission. These matters are as follows, but do not represent an exhaustive listing of the issues to be considered by the Commission.

(1) What is the essence of both the applicant's and respondent's cases?
(2) How should the anomalies and inconsistencies in the Awards be addressed?
(3) What type of application should be made to address these issues? Should the application have arisen under the "work value" principle?
(4) What weight should the Commission give to the range of complaints made by various bodies concerning the appropriate functioning of the Awards in question?
(5) Is there sufficient commonality within the hospitality awards such as to warrant similar Award standards?
(6) What is the significance of the AQTF structure?
(7) The cost of implementing the applications?
(8) Other matters for consideration by the Commission.

Re: (1)

Both parties agreed that the Awards in question require urgent attention. The only real difference between the parties lies in the proposed outcome of the Union which would increase wages for some employees within the industry. The detail of those submissions are contained within the body of this decision.

Re: (2)

There is little question that the Awards under consideration in this decision require immediate rectification. The clear anomalies which require removal from the Awards have already been listed.

Both parties agree that these areas of concern must be addressed.

The only way to rectify these anomalies is to make reference within the Awards to the correct accreditation bodies and to correct references to the type of work actually performed within these industries with the appropriate wage relativities. Those amendments will be made.

Re: (3)

The applications have been made pursuant to s. 125 of the *Industrial Relations Act 1999* which states as follows:

"s. 125 Making, amending and repealing awards

(1) The commission may make, amend or repeal an award to provide, among other things, fair and just employment conditions.

(2) The commission may act under subsection (1) -

(a) of its own initiative; or
(b) on application by -
   (i) the Minister; or
   (ii) an organisation; or
   (iii) an employer; or
   (iv) a person who satisfies the commission that the person is not an officer of, or acting for, an eligible association.

(3) The commission may make an award that -

(a) revokes or amends a decision; or
(b) declares void or amends labour contracts made before or after the commencement of this Act, subject to the conditions and exemptions the commission considers appropriate; or
(c) gives the retrospective effect the commission considers appropriate, or that is consented to by the parties, to the whole or part of an award, but so that, except with the parties' consent, the retrospective effect is not made to operate before the day when the commission first took cognisance of the matter; or
(d) directs a copy of an award be exhibited by the employer in a conspicuous and convenient place on the premises of an employer bound by the award."

The respondent submitted to the Commission the "Interim Statement of Policy" emanating from the State Wage Case 2005.

Within that Interim Statement is reference to Work Value Changes as follows:

"6. Work Value Changes

(a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award structure but also against external classifications to which that structure is related. There must be no likelihood of wage leapfrogging rising out of changes in relative position.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this principle.

(b) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification, or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(c) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the October 1989 State Wage Decision [132 QGIG 1199].

(d) Care should be exercised to ensure the changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this Principle.

(e) Where the tests specified in (a) are met, an assessment will have to be made as to how that alteration should be measured in monetary terms. Such an assessment will normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work.

(f) The expression 'the conditions under which the work is performed' relates to the environment in which the work is done.

(g) The Commission will guard against contrived classifications and over-classification of jobs.

(h) Any changes in the nature of work, skill and responsibility required or the conditions, under which the work is performed, taken into account in assessing an increase under any other Principle of this Interim Statement of Policy, will not be taken into account under this Principle."

The applications have not been made pursuant to the "Work Value Changes" principle. The question to be answered is whether the applications as made are capable of approval under s.125 of the Act. In my view they are.

s. 126(c) Content of awards of the Act states that:

"The commission must ensure an award -"
(b) is stated in plain English and is easy to understand in structure and content;

(c) does not contain provisions that are obsolete or need updating;

...

(g) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces."

What is being sought are amendments to the Awards for the purpose of ensuring that the Awards are understood in structure and content; that they do not contain provisions which are obsolete and/or need updating and that the structure of the Awards suits the efficient performance of the work required to be performed in this particular industry - i.e. the hospitality industry.

The overwhelming evidence is that the content of the Awards must be rectified. It is not in the public interest to permit the Awards to continue in such a dysfunctional manner. Employees are entitled to know what, within the Awards, govern their terms and conditions of employment. Likewise, employers should also be confident that they are applying the Award in a legal and acceptable manner.

The basic rationale for the applications has been accepted by both parties. The area of concern to the respondent is that by subsuming one classification into another, there will be a resultant cost impost on its members.

These applications may legitimately be made pursuant to s. 125 of the Act.

Re: (4)

The evidence given by Messrs Krebs and Mr Seib points to an award structure in both Awards which is dysfunctional. The extent of the dysfunction is contained within the body of this decision where each witness has given evidence. There is no need to reiterate their evidence.

Significant weight must be attributed to the evidence from Government Departmental officers whose role it is to ensure compliance with such Awards.

The degree to which complaints had been made by all parties to the Awards to appropriate Government authorities is indicative of the level of confusion surrounding the appropriate application of the Awards.

Where attempts have been made to correctly interpret the Award, a "rule of thumb" of "best guess" approach has been adopted specifically with regard to the two classification levels under consideration. This approach is contrary to the Act, inappropriate and must cease.

Re: (5)

A significant plank of the respondent's submissions went to what it viewed as the differences between the café/restaurant and hotel/club environments.

For the purpose of understanding the submissions around this point, the following classification descriptors are provided hereunder.

_Hospitality Industry - Restaurant, Catering and Allied Establishments Award - South-Eastern Division 2002_

**PART 5 – WAGES AND WAGE RELATED MATTERS**

5.1 Classifications

5.1.1 Food and Beverage stream:

...

(b) "Food and Beverage Attendant Grade 2" shall mean an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

supplying, dispensing or mixing of liquor;
undertaking of general waiting duties of both food and/or beverages including cleaning of tables and restaurant equipment;
receipt of monies;
selling of specialist stock lines;
attending a snack bar;
engaged on delivery duties;
general receipt and distribution of goods;
taking reservations, greeting and seating guests under general supervision;
assisting in maintenance of dress standards and good order in the establishment;
setting up on site for small parties.

"Food and Beverage Attendant Grade 3" shall mean an employee who has the appropriate level of training and is engaged in any of the following:

supplying, dispensing or mixing of liquor;
undertaking general waiting duties of both food and liquor, including cleaning of tables;
selling of monies;
selling of specialist stock lines;
general security including security of keys and supervision of dress standard maintenance and good order in the establishment;
assisting in the training and supervision of Food & Beverage Attendants of a lower grade;
setting up on site for small parties.

The respondent identified these differences as follows:

(Café/restaurant)
"customer service - i.e. seating, serving and taking drink orders whether alcoholic or not;
an understanding of the responsible service of alcohol requirements;
handling of monies;
cooking and preparations, and
others as outlined in Clause 5.1 of the Award."

(Hotel/club)
"customer service - i.e. seating, serving and taking drink orders whether alcoholic or not;
an understanding of the responsible service of alcohol requirements;
understanding of the responsible gaming laws;
an understanding of accommodation;
an understanding of security;
the possession of a gambling license;
the understanding of the operations of a tab;
the understanding of the operations of keno
handling of monies;
cooking and preparation;
understanding the operations of a bottle shop;
responsibility for parking of patrons vehicles;
fork lift operation."

For its part, the applicant stated that for the last 15 years or so, there have been two primary areas for consideration within the hospitality State Awards. These are:

The integration of skill-related arrangements into awards; and

Attempts to rationalise or create a State sector specific hospitality award. [Submissions of the applicant - point 1]

Since the late 1980's there has been established within the hospitality industry federally, hospitality skill-based-related career paths. Those paths are now underpinned by the AQTF framework.

Evidence has been put to the Commission, that whilst there may be discrete differences between the café/restaurant and hotel/club work environments (at the identified levels) there is considerable movement of employees across the hospitality industry. I accept such evidence as being factual.

As well, it is clear from the indicative tasks itemised above, that there is more common ground than not between the two areas of operation within the hospitality industry. As well, when underpinned by the AQTF framework (which will be discussed later), the conclusion can legitimately be drawn that the level of commonality between the two areas is sufficient to determine that the proposed amendments in effect cover the field and cater for the type of work to be
performed within the stated classifications and that the relativities sought are appropriate when adjudged against the appropriate training program.

Re: (6)


Importantly, the AQF Guidelines also state that:

"The Guidelines contain the main criteria for defining qualifications based on the general characteristics of education and training at each qualification level. These characteristics are expressed principally as learning outcomes. The Guidelines provide common ground for qualifications across the sectors. Differences in approach between the sectors are, in the main, related to the area of authority for learning outcomes, and these are reflected in the Guidelines.

To enable effective implementation, the Framework is supported by:

- Guidelines for cross-sectoral qualifications linkages;
- Principles for the issuance of qualifications and protection of titles, which include provision for the issuance of 'Statements of Attainment' to verify the achievements of a person who has completed part of a qualification; and
- Arrangements for monitoring the implementation of the Framework, through the establishment of the Australian Qualifications Framework Advisory Board.

The AQF should:

- provide nationally consistent recognition of outcomes achieved in post-compulsory education;
- help with developing flexible pathways which assist people to move more easily between the education and training sectors and between those sectors and the labour market by providing the basis for recognition of prior learning, including credit transfer and experience.
- integrate and streamline the requirements of participating providers, employers and employees, individuals and interested organisations;
- offer flexibility to suit the diversity of purposes of education and training;
- encourage individuals to progress through education and training by improving access to qualifications, clearly defining avenues for achievement, and generally contributing to lifelong learning;
- encourage the provision of more and higher quality vocational education and training through qualifications that meet individual, workplace and vocational needs, thus contributing to national economic performance; and
- promote national and international recognition of qualifications offered in Australia.". [ID 3 - page 2]

Characteristics of learning outcomes within the [Australian Qualifications Framework](#) publication state that Certificate II outcomes include:

"Breadth, depth and complexity of knowledge and skills would prepare a person to perform in a range of varied activities or knowledge application where there is a clearly defined range of contexts in which the choice of actions required is usually clear and there is limited complexity in the range of options to be applied. Performance of a prescribed range of functions involving known routines and procedures and some accountability for the quality of outcomes.

Applications may include some complex or non-routine activities involving individual responsibility or autonomy and/or collaboration with others as part of a group or team.".
In my view, there is little option but to follow the course adopted by the applicant. Notwithstanding the merits of the applicant's case, the respondent, while desiring similar outcomes, offers no real means by which the outcomes can be achieved.

**Re: (7)**

The respondent stated that it was not conducting an Incapacity to Pay argument in rejecting the claims made by the Union.

Having said that, the respondent proceeded to explain that its members were rejecting the claim because it would impose a cost impost on them. That would result in a possible reduction in hours for some employees, and, at worst, a closure of businesses.

The Commission is conscious of the fact that the actual impact of this decision will be significantly limited because of the introduction in March 2006 of the Federal Government Work Choices legislation.

The respondent claimed that hotels and clubs could best protect their interests when faced with wage increases by falling back upon monies received from gambling and alcohol sales. Whilst restaurants could rely to some degree upon the sale of alcohol, this was a limited option. The production of food, it is claimed, is far more labour intensive and costly than is the provision of alcohol and gaming facilities. It was conceded that some areas of the café/restaurant industry would not be adversely affected by the granting of the application, however most would be so affected.

The classification levels and responding pay structures should reflect the work actually being performed by employees. To achieve this end, the only realistic proposition posed is that by the Union. For its part, the respondent has indicated its acceptance of the difficulties which exist within the Awards, expresses a desire to have all of the anomalies rectified, does not promote an incapacity to pay argument, but offers no tangible alternative to resolving the dilemma.

Under the circumstances, I grant the applications *in toto*, and order that the Awards in question be amended and effective as from October 27, 2006. The applicant is required to provide to the Registry of the Commission the appropriate draft amendments within fourteen days of the release of this decision.

Order accordingly.

D.A. SWAN, Deputy President.

**Hearing Details:**

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**Appeances:**

Ms A. Threlfall for the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees for the applicant.

Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers for the respondent.

Released: 25 September 2006
DECISION

Mr McDonald (the applicant) filed an application under s. 74 of the Industrial Relations Act 1999 alleging that the termination of his employment on 13 May 2005 was harsh, unjust or unreasonable. Pursuant to a Directions Order of the Commission, the employer Tinbilly Travellers Pty Ltd (the respondent) filed affidavits of witnesses intended to be called at the hearing and it became obvious that the respondent claimed, as a defence, that the applicant and the respondent had executed a Deed of Settlement which operated as a bar to any further proceedings. The Commission directed that a hearing take place to determine the effect of the Deed of Settlement as the applicant has alleged that the Deed was invalid, void and of no effect.

Mr McDonald was employed as the Night Auditor at Tinbilly Travellers (a backpacker hostel). He made a complaint to his Union representative about an underpayment of wages in or about January/February 2005 and this was investigated. It was eventually established that he had been underpaid although the extent of the underpayment was always in dispute. The respondent claimed it was unable to afford to pay a Night Auditor at the rate apparently accepted as being due to a Night Auditor and decided to restructure its business and change the position of Night Auditor to caretaker or something else and altered the job description to include some cleaning duties (among others). What other variations there might have been to the job description does not appear to be in evidence. The position of Night Auditor was no longer required and redundancy was discussed with the applicant who was not prepared to perform any cleaning duties in the new role being offered. The fact that the respondent still operates a front office reception 24 hours a day, 7 days a week does not mean that the position has not been restructured.

A Deed of Settlement was signed. It is appropriate that it be reproduced in full because of the sheer number of objections that have been raised with respect to its effect.

"Without Prejudice"

DEED OF SETTLEMENT

THIS DEED made the Twelfth day of May 2005

BETWEEN: Tinbilly Travellers Pty Ltd trading as Tinbilly Travellers of 462-466 George Street, Brisbane in the State of Queensland hereinafter referred to as Employer;

AND: Peter McDonald of 61 Eighth Avenue Wilston 4051 in the State of Queensland, hereinafter referred to as Employee.

OPERATIVE PROVISIONS:

In consideration of the parties entering into this Deed, it is agreed as follows:-

1. Employer agrees to pay the Employee the sum of Fifteen Thousand and Seventy Three Dollars, 22 Cents ($15,073.22) calculated as per Attachment A hereto. This sum shall be subject to taxes as required by law in the normal course of a redundancy settlement,

2. Employer agrees that such payment to be made within 7 days after the date of the last signature hereon;

3. Employee agrees to accept the above in full and final settlement of all or any costs, claims, expenses or rights of action of any kind whatsoever and howsoever arising and whether arising directly or indirectly out of or in connection with his contract of employment with Employer, its termination or otherwise;

4. Employer and Employee agree that neither party shall henceforth make any comments unfavourable to the other party; by any means or in any circumstances;

5. Employee agrees that this Deed may be pleaded as bar to any action, suit or proceeding commenced or taken at any time by Employee against Employer arising directly or indirectly out of or in connection with his contract of employment with Employer, its termination or otherwise;

6. Save as required by law or any Court of competent jurisdiction or any regulatory authority or professional advisor concerned with any of the terms of this agreement, both Employee and Employer agree to keep the terms of this settlement confidential at all times.

IN WITNESS WHEREOF these presents have been executed on the day and year hereinbefore written.
It is obvious that with the inclusion of the words "Without Prejudice" at the commencement of the Deed and the break-up of the payment in Attachment A that the document was drawn up either carelessly or by untrained personnel. The period of the applicant's employment was only from 13 October 2003 to 12 May 2005, less than 2 years, and could hardly have resulted in the payment of "severance pay" to that extent.

The pay advice, Exhibit 8, shows that the gross amount paid to Mr McDonald was $15,073.22, less tax of $1,634.00 with a net amount of $13,439.22 being deposited to his bank account. Because some of the payment was described as "severance payment", the payment was subject to taxation concessions, borne out by Exhibit 6, on page 3. The payment was made on 13 May 2005, yet in a letter to the respondent on 11 October 2005, Mr McDonald claimed that not one of the amounts mentioned in Annexure A had been paid. Admittedly, the figures in Annexure A do not correspond to the amounts on the Pay Advice but they total the same, the documents have to be read in conjunction with one another and it is clear that the monies nominated in the Deed of Settlement, less tax, were paid. Mr McDonald acknowledges that some monies were paid but was otherwise evasive.

Mr McDonald was unrepresented during the hearing and endeavoured to produce material and evidence to show that the respondent's General Manager was guilty of theft from the respondent. A dispute about wages arose, probably January or early February 2005 and Dugald Woods, the General Manager, wrote a memo dated 9 February 2005 to Mr Harrip, the Financial Controller, in support of the respondent's position. On 11 April 2005, Mr McDonald wrote a letter to the shareholders of the respondent making the theft allegations about "One Particular Executive", in fact the General Manager. The timing of the allegation, made during the wages dispute, might be open to adverse comment but there is no doubt the allegation provided a substantial reason why the relationship of trust and confidence was impaired to such an extent that might justify a termination of employment although the respondent has denied there was any such connection with the decision to restructure. It has also emerged during this hearing that Mr McDonald appeared to be in possession of boxes of the respondent's documents and various emails which they allege he was not entitled to have. All of this might be relevant to some unfair dismissal claim and the doctrine of "after acquired knowledge" but none of it is relevant to the execution of this Deed of Settlement.

Duress:
Mr McDonald has claimed that he signed the Deed of Settlement under duress, or "unconscionable coercion". He is currently employed as a taxi driver. After leaving school, he held the position of Branch Accountant and/or Securities Officer with the National Bank of Australia for 10 years. He is a Justice of the Peace. He trained for 12 months with
Carlton and United Breweries as a Specialist Hotel Manager in various Hotels. He was appointed the Licensee of the Kuraby Hotel, then the Maroochydore Hotel and the Hacienda Hotel. He worked as Night Auditor at the Canberra Rex Hotel (136 rooms). He was licensee of Telford Hotel/Motel Gladstone (58 rooms) where he employed and supervised approximately 100 employees including Night Auditors. He managed the Telford Westland Hotel, Whyalla (56 rooms - 150 employees), the Telford Hotel, Toowoomba (98 rooms-120 employees). He leased and operated the Royal Hotel, Monto (26 rooms). He was employed as Night Auditor of the Bellevue Hotel (98 rooms), then appointed as the Assistant Manager for the Bar and Bistro outlets for both the Brisbane Domestic and International Airport terminals. He worked for 3 years as Night Auditor at the Albert Park Hotel, Spring Hill and while doing that, he was a self-employed Hotel/Pub Broker for a suburban real estate agency. He has also worked as Night Auditor at Olims Hotel, Kangaroo Point, The Abbey Hotel, Roma Street and The Rondavueue(sic), Ann Street. He says he is a highly experienced employee.

He claims that the "duress" and "coercion" arise because, if he didn't sign the Deed of Settlement, he would have to clean their toilets. He was untrained and unprepared to do that inappropriate job. He claimed that the respondent was positioning him to risk immediate dismissal for disobeying a direction. He produced in evidence a notice left on a wall that referred to "Defamation of Character" and its definition. That added to his duress because it made him feel uncomfortable. He conceded that various options were put to him, one that included an AWA which did not meet the "No Disadvantage Test".


"The rationale of the doctrine of economic duress is that the law will not give effect to an apparent consent which was induced by pressure exercised upon one party by another party when the law regards that pressure as illegitimate.

... The proper approach in my opinion is to ask whether any applied pressure induced the victim to enter into the contract and then ask whether that pressure went beyond what the law is prepared to countenance as legitimate? Pressure will be illegitimate if it consists of unlawful threats or amounts to unconscionable conduct. But the categories are not closed. Even overwhelming pressure, not amounting to unconscionable or unlawful conduct, however, will not necessarily constitute economic duress."

Lord Scarman in Universe Tankships of Monrovia v International Transport Workers Federation (1983) 1 AC 366, also cited in Staples, said that to constitute economic duress:

"There must be pressure the practical effect of which is the compulsion or the absence of choice. Compulsion is variously described in the authorities as coercion or the vitiation of consent. The classic case of duress is, however, not the lack of will to submit but the victim's intentional submission arising from the realisation that there is no other practical choice open to him."

In Staples, the case of Commercial Bank of Australia Ltd v Amadio (1982-83) 151 CLR 447 was also cited. Mason J said:

"Historically, courts have exercised jurisdiction to set aside contracts and other dealings on a variety of equitable grounds. They include fraud, misrepresentation, breach of fiduciary duty, undue influence and unconscionable conduct. In one sense they all constitute species of unconscionable conduct on the part of a party who stands to receive a benefit under a transaction which, in the eye of equity, cannot be enforced because to do so would be inconsistent with equity and good conscience. But relief on the ground of 'unconscionable conduct' is usually taken to refer to the class of case in which a party makes unconscientious use of his superior position or bargaining power to the detriment of a party who suffers from some special disability or is placed in some special situation of disadvantage, e.g. a catching bargain with an expectant heir or an unfair contract made by taking advantage of a person who is seriously affected by intoxicating drink."

Mason J said that there must be serious disadvantage vis-à-vis the other party and went on to say about "special disadvantage":

"I qualify the word 'disadvantage' by the adjective 'special' in order to disavow any suggestion that the principle applies whenever there is some difference in the bargaining power of the parties and in order to emphasize that the disabling condition or circumstance is one which seriously affects the ability of the innocent party to make a judgment as to his own best interests, when the other party knows or ought to know of the existence of that condition or circumstance and of its effect on the innocent party."

In Bishop v Ropolo Services Pty Ltd (2006) FCA 592, Madgwick J referred to the judgment of Ryan J in Canturi v Sita Coaches Pty Ltd (2002) 116 FCR 276 where his Honour held that the onus of proof rests with the party alleging duress
and the contravention must be proved on the balance of probabilities. When the matter to be proved involves allegations such as fraud, the following remarks in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 67 ALJR 170 are relevant. Mason CJ, Brennan, Deane and Gaudron JJ said:

"The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary 'where so serious a matter as fraud is to be found'. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to a civil litigation has been guilty of such conduct."

Ryan J in Canturi was considering the meaning of duress in relation to complaints made by two employees of a coach and bus service who claimed to have been deprived of certain more lucrative and congenial classes of work offered by their employer, and which they had long performed, as a direct result of their refusal to sign AWAs. His Honour said:

"In my view, the consensus of the authorities to which I have referred is that duress, in the relevant sense, involves the illegitimate application of pressure to induce a party to enter into an AWA, or to discourage a party from taking that course. What is illegitimate is a question of fact to be decided in the circumstances of each case which may include whether there is an existing relationship of employer and employee or some other relationship of utmost good faith between the parties to the proposed AWA. ….. it is not only pressure which in fact overbear the will of one party so as to result in an AWA being concluded that can amount to duress."

Moore J in the case of Schanka v Employment National (Administration) Pty Ltd (1999) 166 ALR 663 (also cited in Bishop) said that he doubted that the mere fact that an employer offered employment on the basis that an AWA in certain terms must be made is illegitimate pressure. He said it would do no more than place the potential employee in the position of either declining or accepting the employment on those terms. He also said that for the application of pressure to become illegitimate, it must be pressure that is likely to have the effect of denying the exercise of free will if an AWA was made. It also must be intended to have that effect.

It was also pointed out that freedom of contract underpins the legal framework of social intercourse and interaction. Kirby P was cited in the case of Biotechnology Australia Pty Ltd v Pace (1988) 15 NSWLR 130 at 133:

"It is an attribute of a free society, as we know it, that it is generally left to parties themselves to make bargains. It is therefore left to them sometimes to fail to make bargains or to fail to agree on particular terms. Well meaning, paternalistic interference by courts in the market place, unless authorised by statute or clear authority, transfers to the court the economic decisions which our law, properly in my view, normally reserved to parties themselves."

The effect of these cases is that where duress is alleged, Mr McDonald bears the onus of proof on the balance of probabilities and that evidence must be clear, cogent, strong and strict proof, although still on the balance of probabilities, is required. Duress must not be lightly found to have occurred. The conduct alleged to constitute duress must have been illegitimate and likely to have had the effect of denying the exercise of a free will and it must have been intended to have had that effect. The first question to ask is whether any pressure induced Mr McDonald to enter into the Deed and to then ask whether that pressure went beyond what the law is prepared to countenance as legitimate. Unconscionable conduct refers to the unconscientious use of a superior bargaining position to the detriment of a person who suffers from some special disability or is placed in a special situation of disadvantage.

Exhibit 4 was given to Mr McDonald with the Union representative Mr McCullough, present on 29 April and it consisted of options for settlement of back pay and redundancy. Exhibit 6, page 3, contained five options presented to Mr McDonald on 10 May. The first two of those ended up not being options at all but of the other three, the most favourable option was the one that was eventually incorporated into the Deed of Settlement. Mr McDonald had the option of an AWA, to accept the new role or to take the redundancy and sign the Deed. Mr McDonald produced evidence of an email from Ms Scott the respondent's representative to Dugald Woods and Peter Harrip attaching version 3 of an AWA and indicating that it had been pre-approved by the office of the Employment Advocate although he denied that the AWA had been pre-approved. But whether the AWA had been pre-approved was irrelevant.

It was the respondent's case that because the position of Night Auditor had, all of a sudden, become too expensive to maintain, the respondent restructured the business, as it would have been entitled to do in those circumstances, to provide for a person (perhaps without any qualifications) working at night to perform as part of a new job description, duties as a cleaner. There were other duties as well. They no longer needed a Night Auditor. The position title of the new position had not yet been determined. Mr McDonald was not prepared to perform any duties as a cleaner and
claimed that it was unconscionable to require him to clean toilets, that he was untrained to do that and it was an inappropriate job as a clerk. There can be no criticism of that decision but it was his decision and the new position was obviously not intended to be that of a clerk as it had been. The AWA was an option and he was free to reject it as he did. Mr McDonald is a business man and a man of the world. He has operated numerous businesses and been in charge of many staff. He was not in any relationship of special disability. He had a free choice which he exercised.

Mr McDonald claimed duress occurred because he went to the Union about a wages claim as early as January/February. How duress could arise from that was not explained. Negotiations about the alleged underpayment of wages were ongoing and the Deed contained an element of back wages and in fact, a significant amount for back wages.

Whether the redundancy was genuine or not is irrelevant although there is a credible argument that the respondent was entitled to restructure as it did. I am satisfied that the situation in a nutshell was that the employer had decided to restructure the business making the employment of a Night Auditor redundant, redefining the position as something else but had not yet decided upon a title and offered the new position to Mr McDonald. Mr McDonald was also offered a Deed of Settlement which contained items for annual leave, termination pay, severance pay and outstanding wages (although very poorly described). Faced, as he thought, with the alternative of dismissal for refusing to carry out a lawful direction to clean toilets if he had accepted the new position, Mr McDonald chose the Deed. Even if there was something legally lacking about the decision to restructure or the way it was to be achieved, there was no unlawful threat or illegitimate application of pressure on Mr McDonald who freely exercised his right to choose which way he would go. He wanted no part of the restructure. For example, he could have rejected the Deed and accompanying payout and chosen to sue for unfair dismissal and for unpaid wages but he freely accepted the Deed and the money. Mr McCullough confirmed in evidence that the respondent decided to make Mr McDonald's position redundant as part of the settlement.

I am unable to find on the balance of probabilities that there was any duress or unconscionable conduct on the part of the respondent. I am unable to find that anything done or proposed to be done by the respondent constituted illegitimate pressure, compulsion, coercion or unlawful threats. Mr McDonald had other practical choices open to him than to sign the Deed.

**Deed of Settlement:**

Negotiations over the contents of a Deed of Settlement had been ongoing although Mr McCullough had never sighted a Deed. Details of alleged outstanding wages had been in issue since probably January. The Union calculated outstanding wages at $17,360 but based upon a Level 3 classification. The respondent's representative had calculated outstanding wages at $9,262 based upon a Level 2 classification. Mr McDonald has submitted that Annexure A to the Deed makes no sense. It is clear that an amount for outstanding wages was included in the Deed of Settlement because "severance pay" for an employee who had worked for less than 2 years could not have amounted to $13,115.60 as described in Annexure A. Exhibit 6, page 3 which Mr McDonald had access to, shows $10,459 as an "ex gratia" payment and then another amount for severance pay. Mr McDonald criticised the use of the term "ex gratia" but in the light of a contested wages claim, it was not inappropriate to call it an "ex gratia" payment. The use of the term "severance pay" was all encompassing and should not be restricted to award severance pay which it obviously was not.

I am satisfied on the probabilities that on 29 April 2005, Mr Harrrip, Mr McDonald and Mr McCullough, met and discussed wage rates and redundancy options. Mr McCullough confirmed that a Deed was discussed at the meeting. A document with various figures was discussed and the position of Night Auditor being made redundant was also discussed. There is considerable dispute as to what then occurred. However, it is clear and I find that on at least 12 May, the applicant was given the Deed of Settlement and he was provided with 7 days in which to consider his options. Mr McDonald says that it was a lie that he was given 7 days. He also said that the Deed was unexpected but the respondent claims that there were 3 Deeds produced, one on 11 May (which was exhibited) but which contained Mr McDonald's incorrect address subsequently changed on the final Deed. There is an incompatibility in regard to the dates so that the true position is difficult to determine although Mr McDonald concedes that he met with Mr Harrrip at McDonalds restaurant at Milton on 11 May but denies being given the Deed on that day. He agreed that the issue of back wages and redundancy and options for settlement were discussed. What is clear is that Mr McDonald was urged to seek his own legal and financial advice (Mr McDonald agrees that he was told once). He said he rang Mr Harrrip on 12 May to say that he would go ahead with it. He said he took the Deed to a Solicitor's office at Jindalee and had it witnessed by a Justice of the Peace in that office. He returned later with the Deed signed and witnessed and presented a Solicitor's business card. He clearly had the opportunity to obtain legal advice should he have wished to do so and it is not explained why he went to a Solicitor's office and produced the Solicitor's business card if he did not obtain legal advice. He also said that the document was clear and unambiguous and that he didn't need advice.

Mr McDonald claimed in evidence that the Deed did not have a seal and referred to "his contract of employment" as a forgery. He formed this view upon being given the Deed and immediately considered it to be utterly worthless. He believed he could sign it without any impairment to his right to pursue Tregaskis and Woods through the Courts. He described the Deed as invalid, void, illegitimate and unenforceable. Mr Harrrip conceded that when the Deed was handed back to him after having been signed, Mr McDonald had said that the document had not been signed under the
company seal and was invalid. Mr Harrip responded that a seal was not required. However, Mr Harrip's evidence was not disputed by Mr McDonald that they shook hands and Mr McDonald said words to the effect of "Thanks for doing what you've done. You will not see me again". An intention to create a legally binding agreement is a necessary element of any contract. That intention must be gleaned from Mr McDonald's conduct at the time, not from what he now says his intention was. He returned the signed Deed, remarking that it was invalid because of the absence of the seal. Mr Harrip advised him of the correct legal position, i.e. the seal was not necessary and that advice I infer on the probabilities, was accepted by Mr McDonald because of the remarks he then made. He handed over the Deed and the next day the money was in his account. Had he persisted in his previously expressed view to Mr Harrip that the Deed was invalid, Mr Harrip would have been a moron (to use Mr Harrip's own words) to have paid the money and Mr McDonald's subsequent acceptance of the money would have contained an element of dishonesty about it. I am satisfied that it was not until Mr McDonald showed his Union representative the Deed on 16 May that he had a change of heart. The Union representative, when he found out that Mr McDonald had signed the Deed was annoyed. It was not a case of Mr McDonald ringing him to complain about the Deed.

Mr McDonald raised other objections to the Deed. Where it referred to "his contract of employment", he has alleged that the contract referred to, a written document dated 10 October 2003, was a forgery. He said that the words "Without Prejudice" at the commencement of the Deed rendered what followed worthless. He said that the Deed was not signed in accordance with the Corporations Act 2001 he said that it purported to have been signed by "Tinbilly Travellers", a non-entity and he criticised the requirement for his signature to be witnessed by a Justice of the Peace whereas the respondent's signature only had to be witnessed by a witness.

The witness
I am unable to appreciate how this variance would affect the validity of the Deed and Mr McDonald has not enlarged upon his objection.

Absence of a seal
This was raised by Mr McDonald when the Deed was returned but he seems to have resiled somewhat from the claim. He was advised at the time that the seal was not necessary and he may have perhaps since read the provisions of s. 126 of the Corporations Act 2001 which provides that a power to make a contract may be exercised without using a common seal. A Deed is a contract.

"his contract of employment"
This document is dated 10 October 2003 and is in evidence as Exhibit 7. Mr McDonald alleges that his signature is forged and that it has been scanned onto the document. The original of the document has not been produced. The respondent alleges that the original was given to Mr McDonald at the time of signing, Mr McDonald says he has never seen it. The document does reflect that his salary was to be $27,500 per annum. His actual weekly pay was $528.85, bringing the annual amount to $27,500.02. The exhibited document bears a fax date of 28 January 2005 but this could have been in connection with the wages claim although Mr McDonald says even that date is a forgery. Nothing can be gleaned from the document itself.

Because Mr McDonald alleges that the document is a forgery, he bears the onus of proof, on the balance of probabilities but taking into consideration that the evidence upon which such a finding is to be based must be clear, cogent and strict in accordance with the formula cited earlier in the case of Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 67 ALJR 170. Strong evidence is needed. On the whole, I am unable to come to a conclusion on balance that the document is a forgery.

However, assuming that it was a forgery, the term "his contract of employment" as used in the Deed must refer to some contract of employment whether that be written or oral. No other written contract is alleged to exist. An oral contract may be express or implied. No express oral contract is alleged. Therefore the relationship between Mr McDonald and the employer must have been governed by an implied oral contract with the provisions of the applicable award (in either case) governing the wages - Byrne v Australian Airlines Ltd (1995) 61 I.R. 32. An implied oral contract clearly falls within the phrase "his contract of employment". There is just no basis for this objection to the validity of the Deed because of the use of the phrase "his contract of employment", whether the contract be a forgery or not.

"Without Prejudice"
This is clearly an irrelevant and unnecessary addition to the written document. It means nothing in the context in which it has been used. A "without prejudice" statement is made in the course of negotiations for the purpose of settling disputes. This Deed settled the dispute and the addition was inappropriate and unnecessary and without effect. Williams J in Tallerman & Co Pty Ltd v Nathan's Merchandise (Vic) Pty Ltd (1956) 98 CLR 93 described the words "without prejudice" on an acceptance as being "meaningless verbiage which did not affect the validity of the acceptance".
Corporations Act 2001
The Deed is signed by one Director Mr Tregaskis and the applicant read to the Commission s. 127(1)(a), (b) and (c) of the Corporations Act 2001. The section provides:

"(1) A company may execute a document without using a common seal if the document is signed by:

(a) 2 directors of the company; or
(b) a director and a company secretary of the company; or
(c) for a proprietary company that has a sole director who is also the sole company secretary - that director."

Other parts of that section are also relevant. Section 127(1) continues:

"Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the company."

Section 127(4) provides:

"This section does not limit the ways in which a company may execute a document (including a deed)."

So if the full provision is read, its effect is that it does not require the Deed to be signed by two directors of the company (and there are two directors of this company) but if it is signed by 2 directors, there is able to be reliance on those assumptions in s. 129(5).

It then becomes a question of authority to sign on behalf of the company. The Deed itself provides that it is signed "by its authorised officer". That might be a specific indication of actual authority for Mr Tregaskis to sign the document. Moreover, a company may enter into a binding agreement through the medium of an agent. That is permitted by s. 126 of the Corporations Act 2001 which provides:

"(1) A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal."

Mr Tregaskis was in the position of an agent. When the Deed he signed was presented to the respondent's financial controller, the sum stipulated in the Deed, less tax, was paid by the respondent. It can be inferred from that payment, and I do on the probabilities, that Mr Tregaskis had the implied authority, if not the actual authority, to sign the Deed on behalf of the respondent.

Moreover, out of an abundance of caution and acting in response to the mischievous allegations being made by Mr McDonald about the Deed, the respondent passed a resolution on 1 August 2005 which ratified the act of Mr Tregaskis in signing the Deed of Settlement. In the Federal Court in Hewlett-Packard Aust Pty Ltd v Exeed Pty Ltd (2004) FCA 135 48 ACSR 670, a document had been signed by one director only when there was more than one director. Lindgren J held that the purported execution did not meet the terms of s. 127(1) of the Corporations Act 2001. However, it was pointed out that s. 127(4) did not limit the ways in which a company may execute a document but there was no evidence directed to establishing any relevant express or implied authority possessed by the one director. While dealing with the problem in a particular way, his Honour noted that there had later been executed a "deed of confirmation and ratification" which met the terms of s. 127(1). He held that the later Deed was an effective ratification of the original document. He said:

"Generally speaking, ratification is retrospective, ie it is equivalent to original authority, and relates back to the time of the act of the person who purported to act as agent, so that the principal is bound by the act in all respects as if it was done with the principal's previous authority."

The High Court in Commissioner of Taxation v Sara Lee Household & Body Care Pty Ltd (2000) 74 ALJR 1094; 201 CLR 520 held that the general rule where a principal ratifies the earlier act of a person acting as agent without authority, then the ratification relates back to the date of the unauthorised act and the principal is bound as if the agent had had authority at the earlier time, was correct.

There is also the case of Carter & Anor v Schmierer (2003) QSC 35 where a document had been signed by one director only. MacKenzie J came to the conclusion that mere apparent non-compliance with ss. 126 and 127 of the Corporations Act 2001 was not fatal and that the deed of mortgage was effective.
In my view, if the Deed was not executed in accordance with the Corporations Act 2001, Mr Tregaskis executed the Deed as agent for the company. The payment of the money upon presentation of the Deed was evidence of his authority to act on behalf of the company but the ratification resolution of 1 August put the matter beyond doubt.

**Tinbilly Travellers**

Mr McDonald alleged that because "Tinbilly Travellers" was a non-entity, "Tinbilly Travellers" could not sign the Deed. The simple answer is that the Deed is not signed by "Tinbilly Travellers". The Deed is between "Tinbilly Travellers Pty Ltd trading as Tinbilly Travellers". It is obvious that the Deed is signed on behalf of Tinbilly Travellers Pty Ltd. Moreover, evidence has been given that Tinbilly Travellers is a registered business name, operated by Tinbilly Travellers Pty Ltd. In any event and as was submitted by the respondent, if a person looking at the document as a whole would say "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer", as was stated by Devlin L.J in Davies v Elsby Brothers Ltd (1961) 1 W.L.R. 170 at 176. Lord Denning MR in Nittan v Solent Steel (1981) 1 Lloyd's Law Reports at 637 said "We do not allow people to take advantage of a misnomer when everyone knows what was intended".

There is nothing in this objection to the Deed.

**Other Issues:**

In response to the ratification resolution passed by the respondent, the applicant wrote to the respondent under cover of a letter dated 11 October 2005 effectively withdrawing his signature from the Deed. He agreed it was a "tit for tat" exercise. There is no need to go into this argument any more than to say that there is no right to rescind a contract except in a narrow number of instances, none of which apply here.

Mr McDonald alleged that the respondent could not contract out of award entitlements and that the decision in Queensland Motel Employers Association, Industrial Organization of Employers v McDonald (2006) 182 QGIG 136 was authority for that proposition. The simple answer is that what was due under the award had not been determined. The Union alleged that a certain sum was owing, the respondent's representative alleged another sum. There was a dispute as to the amount said to be due. The sum claimed by the Union did not become due until the dispute was determined. The only way that what was due under the award could be established was by way of a hearing. There was a dispute as to what Level of the award applied to Mr McDonald. There is nothing to prevent a compromise of an action in those circumstances. In Wigan v Edwards (1973) 47 ALJR 586 Mason J at 594-5 said:

"A promise to do precisely what the promisor is already bound to do is a sufficient consideration, when it is given by way of a bona fide compromise of a disputed claim, the promisor having asserted that he is not bound to perform the obligation under the pre-existing contract or that he has a cause of action under that contract."

**Conclusion:**

When construing a commercial document in the ordinary way the task is to ascertain and give effect to the intentions of the contracting parties - Blue Moon Grill Pty Ltd v Yorkey's Knob Boating Club Inc (2006) QCA 253. It is provided by the Deed that:

"Employee agrees to accept the above in full and final settlement of all or any costs, claims, expenses or rights of action of any kind whatsoever and howsoever arising and whether arising directly or indirectly out of or in connection with his contract of employment with Employer, its termination or otherwise".

The provision is plain and unambiguous. In Byrne v Australian Airlines Ltd (op.cit) it was pointed out that the claim for wages arose out of a statutory entitlement (the award) as it arises here. The relationship between Mr McDonald and the respondent was governed by a contract of employment and the claim for wages under the award arose, in my view, not directly but indirectly "out of or in connection with" that contract. Unless that interpretation is placed upon the word "indirectly", the word is superfluous and effect should be given to every word in a document - Commonwealth v Baume (1905) 2 CLR 405 at 414. There can be no claim under an award unless there is some sort of a contract.

In my view, the Deed which is also evidence of an oral agreement between Mr McDonald and the respondent to settle certain matters on the payment of money was, and is, fully effective. There is nothing inferior about an oral agreement so that if the Deed has not been correctly signed or is otherwise defective, it evidences an oral agreement on the terms set out. There is no reason why Mr McDonald should not be bound by it. He accepted the monies paid under it.

That brings to an end any claim Mr McDonald might wish to raise about his contract of employment, whether that be underpayment of wages or severance benefits or unfair dismissal. In Pacrim Charters Limited v Taylor (2003) 174 QGIG 1132, Fisher C concluded her judgment in that case by saying:

"Pacrim have been compromised by the actions of Taylor. It has paid out monies on certain terms. Those terms have been breached by Taylor accepting all of the proceeds of the cheque and continuing with his application for
reinstatement. Once a party has accepted monies tendered on clear and unambiguous terms then all parties to the bargain should be certain that the terms have also been accepted.

In my view it is unconscionable for Taylor to seek to pursue his application for reinstatement when he has cashed a cheque tendered upon the basis that it settled outstanding claims between him and Pacrim including the cessation of his employment. It is not in the public interest to allow the application for reinstatement which had in effect been settled to proceed.”.

The respondent also cited Young v Auto Masters (Queensland) Pty Ltd (1995) 149 QGIG 1175 where Bougoure C said:

"... it would be contrary to public interest to permit a party who has entered into a settlement agreement and accepted a substantial financial benefit thereunder to then pursue the original application. In colloquial terms this amounts to 'double dipping' or unjust enrichment and would also be contrary to 'equity, good conscience and the substantial merits of the case'...".

With respect, I concur with the observations of both Commissioners. Both the unfair dismissal claim and the wages claim have been compromised by the Deed and it is against the public interest, the principle that parties are given a "fair go all round", and equity, good conscience and the substantial merits of the case to allow this matter to proceed further.

The Deed provides for a complete defence to this application under s. 74 of the Act. I uphold the Deed. The unfair dismissal application is dismissed.

The respondent foreshadowed an application for costs. If there is to be such an application, it is to be lodged within 14 days when further directions will issue.

B.J. BLADES, Commissioner.

Appearances:
Mr P. McDonald on his own behalf.
Ms R. Scott of the Queensland Motel Employers Association, Industrial Organization of Employers on behalf of the Respondent.

Hearing Details:
2006 13 September
Released: 22 September 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

Crime and Misconduct Commission AND The Queensland Public Sector Union of Employees (A/2006/34)

COMMISSIONER BROWN 21 September 2006

NEW AWARD

THIS matter coming on for hearing before the Commission at Brisbane on 4 August 2006, this Commission awards as follows as from 4 August 2006:

CRIME AND MISCONDUCT COMMISSION EMPLOYEES AWARD - STATE 2006

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Crime and Misconduct Commission Employees Award - State 2006.

1.2 Arrangement

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Salaries Schedule 1
Generic Level Statements Schedule 2

1.3 Date of operation

This Award takes effect from 4 August 2006.

1.4 Award coverage

1.4.1 This Award applies to Employees of the Crime and Misconduct Commission (as defined) whose salaries or rates of pay are fixed by this Award and who are deemed to be Employees for the purposes of Chapter 15 of the Act and to the Crime and Misconduct Commission as the employer in relation to such Employees.

1.4.2 The provisions of the Crime and Misconduct Act 2001 and Regulations made pursuant to this Act apply to Employees where applicable and should be read in conjunction with this Award.

1.4.3 This Award does not apply to Employees covered by any other award or industrial agreement or to Employees of the Crime and Misconduct Commission who continue to be employed under a written contract of employment pursuant to section 254(4) of the Crime and Misconduct Act 2001.

1.5 Definitions

1.5.1 "Act" means the Industrial Relations Act 1999 as amended or replaced from time to time.

1.5.2 "Casual Employee" means an Employee other than a "Part-time Employee" as defined in this Award, who is engaged as such and is paid on an hourly basis to work for less than the ordinary weekly working hours of a full-time Employee.

1.5.3 "Chairperson" means the Chairperson of the Crime and Misconduct Commission appointed under section 229 of the Crime and Misconduct Act 2001 or for the purposes of this Award such other person to whom the Chairperson has delegated specific authorities.

1.5.4 "Classification Level" comprises a number of Paypoints through which Employees will be able to progress.

1.5.5 "Commission" means the Queensland Industrial Relations Commission.

1.5.7 "Employee" for the purpose of this Award means a person employed pursuant to section 254(1) of the Crime and Misconduct Act 2001 who is not employed under a written contract of employment pursuant to section 254(4) of that Act.

1.5.8 "Generic Level Statement" means a broad, concise statement of the duties, skills and responsibilities indicative of a given Classification Level.

1.5.9 "Increment" means for all Employees an increase in salary from one Paypoint to the next highest Paypoint.

1.5.10 "Minister" means the Minister of the Crown appointed to be the Minister for the purposes of the Crime and Misconduct Act 2001.

1.5.11 "Part-time Employee" means an Employee other than a "Casual Employee" as defined in this Award, who is engaged to work regular hours each week and whose ordinary daily working hours are worked continuously inclusive of meal times according to operational requirements. The weekly total of such hours for a permanent Part-time Employee are always less than the ordinary weekly working hours of a full-time Employee.

1.5.12 "Paypoint" means the specific rate of remuneration payable to Employees within a Classification Level.

1.5.13 "Policy" means the policies of the CMC referred to in this Award and adopted by the members of the Crime and Misconduct Commission as constituted pursuant to s.223 of the Crime and Misconduct Act 2001.

1.5.14 "Temporary Employee" means an Employee appointed for a specific period or specified task.

1.5.15 "Union" means The Queensland Public Sector Union of Employees.

1.6 Parties bound

This Award is legally binding on the Employees of the Crime and Misconduct Commission as prescribed by clause 1.5, the Crime and Misconduct Commission, and the Union and its members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.

2.1.2 The consultative processes established in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.

2.1.3 Any proposed genuine agreement reached between an employer and Employee/s is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

2.2 Procedures to implement facilitative Award provisions

Wherever facilitative provisions appear in this Award which allow for determination of the conditions of employment by agreement between the Chairperson and the Union or the Chairperson and the majority of Employees affected, the following procedures shall apply:

(a) Facilitative Award provisions can be negotiated between management and Employees who are directly affected by such proposals or between management and the Union depending upon the particular Award provisions.

(b) Employees may be represented by their local Union delegate/s and shall have the right to be represented by their local Union official/s.

(c) Facilitative Award provisions can only be implemented by agreement.
(d) In determining the outcome from facilitative provisions, neither party should unreasonably withhold agreement.

(e) Agreement is defined as obtaining consent of greater than 50% of Employees directly affected or of the Union depending upon the particular Award provisions.

(f) Where a provision refers to agreement by the majority of Employees affected, all Employees directly affected shall be consulted as a group. Should the consultation process identify Employees with specific concerns which relate to either equity or occupational health and safety issues, such concerns may be catered for on an individual basis subject to operational requirements.

(g) Any agreement reached must be documented, and shall incorporate a review period.

(h) Where the agreement relates to either the working of ordinary hours on other than a Monday to Friday basis, the introduction of Shift Work or change to the shift roster, the Union is to be notified in writing at least one week in advance of agreement being sought.

(i) Where it becomes necessary for any reason to amend a CMC Policy referred to in this Award, the proposed amendments will be forwarded to the Union with a view to obtaining agreement with respect to the amended Policy. In the event that agreement cannot be achieved, either the CMC or the Union can refer the matter to the Commission in accordance with the provisions of clause 3.1 of this Award.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Prevention and settlement of disputes

3.1.1 The objectives of this procedure are the avoidance and resolution of any disputes over matters covered by this agreement, by measures based on the provision of information and explanation, consultation, co-operation and negotiation.

3.1.2 Subject to legislation, while the dispute procedure is being followed, normal work is to continue except in the case of a genuine safety issue. The status quo existing before the emergence of a dispute is to continue whilst the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.

3.1.3 There is a requirement for management to provide relevant information and explanation and consult with the appropriate Employee representatives.

3.1.4 In the event of any disagreement between the parties as to the interpretation or implementation of this Award, the following procedures shall apply:

(a) The matter is to be discussed by the Employee's Union representative and/or the Employee/s concerned (where appropriate) and the immediate supervisor in the first instance. The discussion should take place within 24 hours and the procedure should not extend beyond 7 days.

(b) If the matter is not resolved as per clause 3.1.4(a), it shall be referred by the Union representative and/or the Employee/s to the appropriate management representative who shall arrange a conference of the parties to discuss the matter. This process should not extend beyond 7 days.

(c) If the matter remains unresolved it may be referred to the Chairperson or nominee for discussion and appropriate action. This process should not exceed 14 days.

(d) If the matter is not resolved then it may be referred by either party to the Commission for conciliation.

3.1.5 Nothing contained in this procedure shall prevent the Queensland Government from intervening in respect of matters in dispute, should such action be considered conducive to achieving resolution.

3.2 Employee grievance procedures

3.2.1 The objectives of the procedure are to promote the prompt resolution of grievances by consultation, co-operation and discussion; to reduce the level of disputation; and to promote efficiency, effectiveness and equity in the workplace.

3.2.2 This procedure applies to all industrial matters within the meaning of the Act.
3.2.3 Stage 1: In the first instance the Employee shall inform such Employee's immediate supervisor of the existence of the grievance and they shall attempt to solve the grievance. It is recognised that an Employee may exercise the right to consult such Employee's Union representative during the course of Stage 1.

3.2.4 Stage 2: If the grievance remains unresolved, the Employee shall refer the grievance to the next in line management ("the manager"). The manager will consult with the parties. The Employee may exercise the right to consult or be represented by such Employee's Union representative during the course of Stage 2.

3.2.5 Stage 3: If the grievance is still unresolved, the manager will advise the Chairperson and the aggrieved Employee may submit the matter in writing to the Chairperson if such Employee wishes to pursue the matter further. If desired by either party, the matter shall also be notified to the Union.

The Chairperson shall ensure that:

(a) the aggrieved Employee or such Employee's Union representative has the opportunity to present all aspects of the grievance;

(b) the grievance shall be investigated in a thorough, fair and impartial manner.

The Chairperson may appoint another person to investigate the grievance. The Chairperson may consult with the Union in appointing an investigating Employee. The appointed person shall be other than the Employee's supervisor or manager.

If the matter is notified to the Union, the investigating Employee shall consult with the Union during the course of the investigation. The Chairperson shall advise the Employee initiating the grievance, such Employee's Union representative and any other Employee directly concerned of the determinations made as a result of the investigation of the grievance.

The Chairperson may delegate such Chairperson's grievance resolution powers under clause 3.2 to a nominated representative.

3.2.6 The procedure is to be completed in accordance with the following time frames unless the parties agree otherwise:

Stage 1: Discussions should take place between the Employee and such Employee's supervisor within 24 hours and the procedure shall not extend beyond 7 days.

Stage 2: Not to exceed 7 days.

Stage 3: Not to exceed 14 days.

3.2.7 If the grievance is not settled the matter may be referred to the Commission by the Employee or the Union, as appropriate.

3.2.8 Subject to legislation, while the grievance procedure is being followed, normal work is to continue, except in the case of a genuine safety issue. The status quo existing before the emergence of a grievance or dispute is to continue while the procedure is being followed. No party shall be prejudiced as to the final settlement by the continuation of work.

3.2.9 Where the grievance involves allegations of sexual harassment, an Employee may commence the procedure at Stage 3.

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

4.1 Preservation of existing conditions

No Employee shall suffer any loss of salary or conditions as a result of the making of this Award.
4.2 Termination of employment

4.2.1 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.

4.2.2 Termination by employer

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

<table>
<thead>
<tr>
<th>Period of Continuous Service</th>
<th>Period of Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>1 week</td>
</tr>
<tr>
<td>More than 1 year but not more than 3 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>More than 3 years but not more than 5 years</td>
<td>3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>4 weeks</td>
</tr>
</tbody>
</table>

(b) In addition to the notice in clause 4.2.2(a), Employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.

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

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

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

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

(e) The period of notice in 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.

(f) It is not lawful for the Chairperson to offset notice of termination against any period of annual leave or part thereof.

4.2.3 Notice of termination by Employee

The notice of termination required to be given by an Employee shall be 2 weeks. If an Employee fails to give notice, the employer shall have the right to withhold monies due to the Employee with a maximum amount of 2 weeks pay.

4.2.4 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.

4.3 Introduction of changes

4.3.1 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.

4.3.2 Employer's duty to consult over change

(a) The employer shall consult the Employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on Employees (including the number and categories of Employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).

(b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.3.1.

(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.

4.4 Redundancy

4.4.1 Consultation before terminations

(a) Where 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 4.4.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse affects on the Employees concerned.

(c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the Employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of Employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.4.2 Transfer to lower paid duties

(a) Where an Employee is transferred to lower paid duties for reasons set out in clause 4.4.1, 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 4.2.

(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.
4.4.3 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 4.4.3, "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.

4.4.4 Time off during notice period

(a) Where a decision has been made to terminate an Employee in the circumstances outlined in clause 4.4.1, 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.

4.4.5 Notice to Centrelink

Where a decision has been made to terminate Employees in the circumstances outlined in clause 4.4.1, 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.

4.4.6 Severance pay

(a) In addition to the period of notice prescribed for ordinary termination in clause 4.2.2(a) "Termination by employer", and subject to further order of the Commission, an Employee whose employment is terminated for reasons set out in clause 4.4.1(a) "Consultation before terminations", shall be entitled to the following amounts of severance pay:

<table>
<thead>
<tr>
<th>Period of Continuous Service</th>
<th>Severance Pay (weeks' pay)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>nil</td>
</tr>
<tr>
<td>1 year but not more than 2 years</td>
<td>4</td>
</tr>
<tr>
<td>More than 2 years but not more than 3 years</td>
<td>6</td>
</tr>
<tr>
<td>More than 3 years but not more than 4 years</td>
<td>7</td>
</tr>
<tr>
<td>More than 4 years but not more than 5 years</td>
<td>8</td>
</tr>
<tr>
<td>More than 5 years but not more than 6 years</td>
<td>9</td>
</tr>
<tr>
<td>More than 6 years but not more than 7 years</td>
<td>10</td>
</tr>
<tr>
<td>More than 7 years but not more than 8 years</td>
<td>11</td>
</tr>
<tr>
<td>More than 8 years but not more than 9 years</td>
<td>12</td>
</tr>
<tr>
<td>More than 9 years but not more than 10 years</td>
<td>13</td>
</tr>
<tr>
<td>More than 10 years but not more than 11 years</td>
<td>14</td>
</tr>
<tr>
<td>More than 11 years but not more than 12 years</td>
<td>15</td>
</tr>
<tr>
<td>More than 12 years</td>
<td>16</td>
</tr>
</tbody>
</table>

(b) "Week's 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.
4.4.7 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.

4.4.8 Employee leaving during notice

An Employee whose employment is terminated for reasons set out in clause 4.4.1(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.

4.4.9 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.

4.4.10 Employees with less than one year’s service

Clause 4.4 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.

4.4.11 Employees exempted

Clause 4.4 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

4.4.12 Employers exempted

(a) Subject to an order of the Commission, in a particular redundancy case, clause 4.4 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.

4.4.13 Exemption where transmission of business

(a) The provisions of clause 4.4.6 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 transmisse 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 transmisse; or
(ii) where the Employee rejects an offer of employment with the transmisse:

(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 transmisse.

(b) The Commission may amend clause 4.4.13(a)(ii) if it is satisfied that it would operate unfairly in a particular
case, or in the instance of contrived arrangements.

4.4.14 Incapacity to pay

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

4.4.15 Employees of Queensland Government Departments and Agencies

The provisions of clause 4.4 will not apply to Employees of the Crime and Misconduct Commission to the extent that
the provisions of the redundancy arrangements are contained in the CMC's Policy on Redeployment and Redundancy,
where the policy provides for entitlements that are superior to clause 4.4.

4.5 Probationary employment

4.5.1 Conditions of appointment on probationary service

The conditions of appointment on probationary service of every Employee are those prescribed in the CMC's Policy on Probation existing as at 20 May 2005 and any amendments thereto apply to Employees covered by this Award.

Provided that the CMC's Policy on Probation may not be amended without consultation with the Union.

4.6 Part-time employment

The following conditions apply to Part-time Employees:

(a) The Chairperson or delegate shall, in consultation with the Employee, determine the minimum number of
consecutive hours that the Employee may work or determine a regular pattern for the hours to be worked.

(b) Subject to the provisions contained in clause 4.6, all provisions of this Award applicable to full-time
Employees apply to Part-time Employees on a pro rata basis.

(c) The spread of ordinary hours is the same as that prescribed for a full-time Employee as prescribed in this
Award.

(d) The hourly rate of pay for a Part-time Employee is the same as that for a full-time Employee appointed to, or
directed to assume duty, at the same Classification Level.

(e) A Part-time Employee is eligible for payment of a salary Increment in accordance with the provisions of
clause 5.11 of this Award.

(f) A Part-time Employee is entitled to any applicable allowances on a pro rata basis:

Provided that the following allowances apply in full:

<table>
<thead>
<tr>
<th>Allowance</th>
<th>Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meal allowance</td>
<td>5.13.1</td>
</tr>
<tr>
<td>On-call allowance</td>
<td>5.13.3</td>
</tr>
<tr>
<td>Travelling allowance</td>
<td>8.2</td>
</tr>
</tbody>
</table>

(g) A Part-time Employee who works on a public holiday shall be paid in accordance with clause 7.8.
(h) A Part-time Employee who usually works on a day on which a public holiday falls and who is not required to work on that day shall be paid for the ordinary hours the Employee would normally have worked if that day had not been a holiday.

(i) For work performed within the spread of ordinary hours as prescribed in this Award, and in addition to the number of hours specified to be worked in the work cycle, a Part-time Employee is entitled to payment at the ordinary hourly rate. The additional hours so worked shall be taken into account in the pro rata calculation of all entitlements.

(j) When a Part-time Employee is authorised to work additional hours outside the Spread of Hours prescribed by the Award, the Part-time Employee is eligible for payment of overtime in accordance with the provisions of clause 6.3.

(k) A Part-time Employee may be appointed to more than one position in the Crime and Misconduct Commission provided that the maximum number of ordinary hours for which they are employed shall not exceed 72.5 hours per fortnight.

4.7 Casual Employees

4.7.1 A Casual Employee is paid 23% in addition to the ordinary hourly Award rates of pay for the class of work upon which such Employee is engaged. Each engagement stands alone, with a minimum payment as for 2 hours' work made in respect to each engagement. Where applicable, a Casual Employee is further entitled to the provisions of overtime, weekend penalty rates and payment for work performed on public holidays.

4.7.2 In addition to the provisions of clause 4.7.1, a Casual Employee is further entitled to payment of any applicable Award allowances based pro rata on the number of hours worked in relation to the ordinary hours of the Award classification.

4.7.3 Subject to the provisions of Chapter 2, Part 3, Division 3 of the Act, a Casual Employee shall not be entitled to any other leave provision.

4.7.4 Casual Employees are entitled to Increments in accordance with clause 5.11.

4.8 Recognition of previous service

The conditions prescribed in the CMC's Policy on Recognition of Previous Service existing as at 20 May 2005 and any amendments thereto apply to Employees covered by this Award:

Provided that, in calculating length of service for the purpose of fixing salary, any period of probationary service resulting from unsatisfactory work performance shall not be included, but in calculating such length of service for purposes other than salary, any period of probation which such Employee has served shall be included:

Provided further that the CMC's Policy on Recognition of Previous Service may not be amended without consultation with the Union.

4.9 Anti-discrimination

4.9.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the Anti-Discrimination Act 1991 and the Industrial Relations Act 1999 as amended from time to time, which includes:

(a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade Union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of the above attributes;

(b) sexual harassment; and,

(c) racial and religious vilification.

4.9.2 Accordingly, in fulfilling their obligations under clauses 3.1 and 3.2, the parties to the Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
4.9.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an Employee because the Employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.9.4 Nothing in clause 4.9 is to be taken to affect:

(a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;

(b) an Employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission or the Anti-Discrimination Commission Queensland.

**PART 5 - WAGES AND WAGE RELATED MATTERS**

5.1 **Salaries**

5.1.1 Salaries shall be paid fortnightly and may, at the discretion of the Chairperson, be paid by electronic funds transfer.

5.1.2 The salaries payable to the undermentioned groups of Employees are prescribed in Schedule 1 of this Award.

5.2 **Administrative stream**

The administrative stream comprises those offices, the duties of which apply to the functional areas identified herein, the incumbents of which are required to possess a range of skills appropriate to the stream.

Such functional areas include agency administration, human resource management, finance, customer service, development and implementation of Policy, information and advisory services.

5.3 **Professional stream**

The professional stream comprises offices:

(a) to which are attached a mandatory degree qualification or agreed equivalent as determined by the Chairperson; and

(b) the duties of which reflect:

- a combination of practitioner and/or specialist responsibilities; or
- an identifiable specialisation/management in a profession.

5.4 **Technical stream**

The technical stream comprises offices:

(a) to which are attached a mandatory diploma, advanced diploma or agreed equivalent as determined by the Chairperson; and

(b) the duties of which reflect:

- a combination of practitioner and/or specialist responsibilities providing direct assistance to, but on occasion acting in isolation from, other offices; and/or supervision of offices in other streams.

5.5 **Operational stream**

The operational stream comprises those offices, the duties of which apply to various functional areas, the incumbents of which are required to possess a range of skills appropriate to this stream.

5.6 **Stream allocation**

Allocations to the administrative, professional, technical and operational streams will be determined by the CMC in accordance with Generic Level Statements contained in Schedule 2. Where a new position is created and its allocation cannot be determined the matter may be discussed with the Union.
5.7 Generic Level Statements

Generic Level Statements for all Classification Levels are prescribed in Schedule 2. These statements reflect the degree of complexity and responsibility of duties, skills and knowledge proceeding from the lowest to the highest Classification Levels. Their purpose is to provide an indication as to the Classification Level appropriate to any packaging of duties.

5.8 Work allocation

An Employee having either been appointed or relieving in an office within a Classification Level may be allocated and subsequently reallocated to any office within that particular Classification Level.

5.9 Qualifications

5.9.1 An Employee appointed to the administrative stream who has satisfied assessment requirements for an AQF 3, AQF 4, AQF 5 or AQF 6 qualification acceptable to the Chairperson shall be paid no less than Classification Level 2, Paypoint (1).

5.9.2 An Employee appointed to the administrative stream who has satisfied examination requirements for a degree or other post-secondary qualification acceptable to the Chairperson shall be paid not less than Classification Level 2, Paypoint (7).

5.10 Movement between Classification Levels

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

Provided that this provision shall not apply to movement between levels 1 and 2 of the administrative stream and operational stream where annual Increments will continue to apply in accordance with the relevant provisions of clause 5.11.

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 salary as indicated within the various streams.

(b) New Employees and Employees appointed to level 1 of the technical stream, having obtained the prerequisite qualifications, shall be appointed to the minimum rate prescribed in level 2 of such stream.

(c) New Employees and Employees who were appointed to level 1 of the professional stream having obtained the prerequisite qualifications, shall be appointed to level 2 of such stream and commence at the Paypoints as set out hereunder:

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Paypoint</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 year</td>
<td>(1)</td>
</tr>
<tr>
<td>4 year</td>
<td>(2)</td>
</tr>
<tr>
<td>5 year</td>
<td>(3)</td>
</tr>
</tbody>
</table>

(d) Employees appointed to level 2 of the professional stream, who possess qualifications higher than the minimum prerequisite qualifications e.g. Honours, Masters and Doctorates and who do not possess any relevant work experience, will commence at the Paypoints as set out hereunder:

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Paypoint</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 year</td>
<td>(2)</td>
</tr>
<tr>
<td>5 year</td>
<td>(3)</td>
</tr>
<tr>
<td>6 year</td>
<td>(4)</td>
</tr>
<tr>
<td>7 year</td>
<td>(5)</td>
</tr>
<tr>
<td>8 year</td>
<td>(6)</td>
</tr>
</tbody>
</table>

Where such Employees possess relevant work experience, such experience shall be taken into account in accordance with clause 4.8 in addition to the above in determining starting salary to a maximum of Paypoint (6).

(e) Positions at level 3 within the professional and technical streams shall be created by the Chairperson as necessary upon the value of the work undertaken.
(f) Movement of Employees from level 2 to level 3 within the professional and technical streams shall be subject to:

(i) the Employee concerned having served at least 12 months on the maximum salary prescribed for a level 2 Employee; and

(ii) a recommendation from a review panel that the applicant is worthy of promotion. The merit of the applicant is to be evaluated in relation to the prescribed criteria through 2 or more of the following:

- an assessment of a written application from the applicant;
- an interview of the applicant;
- a certificate from the Assistant Commissioner or Director of the Division or Branch in which the Employee is working or a senior Employee knowledgeable in the Employee's capabilities that the Employee is worthy of promotion based on assessment of the Employee addressing the prescribed criteria.

(g) Subject to clause 5.12, 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.

(h) An external applicant (that is an applicant who is not an Employee) who is appointed to a position may be appointed to any Paypoint within a level, based on recognition of skills, knowledge and abilities.

5.10.2 Prescribed criteria for movement: professional stream

Applicants for movement within the professional stream from level 2 to level 3 shall be assessed by the review panel on the following criteria:

(a) Demonstrated professional expertise in one or more areas of a discipline as shown by:

- detailed knowledge of standard professional tasks;
- examples of modifications to standard procedures and practices and contributions to the development of new techniques and methodologies; and/or
- professional contribution relevant to the discipline at a local level.

(b) Possession of postgraduate qualifications or postgraduate developmental experience through attendance at specialist seminars or in-service presentations relevant to the discipline.

(c) Evidence of recognition by peers, industry or other client groups as shown by one or more of the following (the activities used as evidence will vary with the discipline of the applicant):

- original in-service presentations;
- published papers;
- active involvement in conferences and seminars;
- consultancies;
- recognition as a resource person who collects, collates and imparts knowledge in a particular area;
- preparation of significant internal reports.

(d) Demonstrated levels of performance and innovation through:

- a history of satisfactory performance;
- demonstrated high levels of efficiency and effectiveness;
- demonstrated high level of responsibility and initiative.

5.10.3 Prescribed criteria for movement: technical stream

Applicants for movement within the technical stream from level 2 to level 3 shall be assessed by the review panel on the following criteria:

(a) Demonstrated technical expertise in one or more areas of a discipline as shown by:

- detailed technical knowledge and experience;
- high levels of accuracy and precision in undertaking procedures;
- technical contribution at a local level.
(b) Possession of higher technical qualifications or developmental experience through attendance at specialist seminars or in-service presentations relevant to the discipline.

(c) Evidence of recognition by peers, industry or other client groups as shown by one or more of the following (the activities used as evidence will vary with the discipline of the applicant):

- original in-service presentations;
- published papers;
- active involvement in conferences and seminars;
- consultancies;
- recognition as a resource person who collects, collates and imparts technical knowledge in a particular area;
- preparation of significant internal reports.

(d) Demonstrated levels of performance and innovation through:

- a history of satisfactory performance;
- demonstrated high levels of efficiency and effectiveness;
- demonstrated high level of responsibility and initiative.

5.11 Movement within Classification Levels

5.11.1 Movement within Classification Levels is based on meeting the following requirements:

(a) Except in the case of an Employee who is paid the prescribed basic salary on attaining the age of 21 years or in the case of a promotion, or transfer and promotion from one Classification Level to another, an increase is not to be made to the salary of any Employee until:

(i) in the case of a full-time Employee, the Employee has received a salary at a particular classification and Paypoint for a period of 12 months;

(ii) in the case of a Part-time Employee:

(A) the Employee has received a salary at a particular classification and Paypoint for a period of at least 12 months; and

(B) the Employee has worked 1,200 ordinary hours in such classification;

(iii) in the case of a Casual Employee with 12 months' continuous service with the same employer:

(A) the Employee has received a salary at a particular classification and Paypoint for a period of at least 12 months; and

(B) the Employee has worked 1,200 ordinary hours in such classification.

For the purpose of clause 5.11, continuous service for a Casual Employee ends if the employment is broken by more than 3 months between the end of one employment contract and the start of the next employment contract. Absences from work on public holidays do not break, or contribute to a break, in the continuity of service.

(b) Notwithstanding anything contained elsewhere in this Award, an Employee is not entitled to move to the next salary Increment level by virtue of the Award unless:

(i) in the case of Employees in levels 1 and 2 of the administrative, professional and technical streams and levels 1, 2 and 3 of the operational stream, the conduct, diligence and efficiency of the Employee has been certified by the Chairperson to have been and to be satisfactory;

(ii) in the case of Employees in all other Classification Levels, performance objectives established in accordance with the Commission's performance management system have been achieved as certified by the Chairperson.

(c) If any Increment prescribed by this Award is temporarily withheld from an Employee or there is a refusal to grant an Increment the Employee may lodge a grievance in accordance with clause 3.2.
5.12 Performance of higher duties

Extra remuneration on the conditions prescribed in the CMC's Policy on Relieving and any amendments thereto shall apply to Employees covered by this Award:

Provided that the CMC's Policy on Relieving may not be amended without consultation with the Union.

5.13 Allowances

5.13.1 Overtime meal allowance

The conditions prescribed in the CMC's Policy on Meal Allowances and any amendments thereto apply to Employees covered by this Award:

Provided that the CMC's Policy on Meal Allowances may not be amended without consultation with the Union.

5.13.2 Motor vehicle allowance

The conditions prescribed in the CMC's Policy on Motor Vehicle Allowances and any amendments thereto apply to Employees covered by this Award:

Provided that the CMC's Policy on Motor Vehicle Allowances may not be amended without consultation with the Union.

5.13.3 On call allowances

(a) Where an Employee is instructed to be available on call outside ordinary or rostered working hours, such Employee shall be paid, in addition to their ordinary rate of pay, an allowance based upon the hourly rate of the classification of Professional Officer level 2, Paypoint one in accordance with the following scale:

(i) where the Employee is on call throughout the whole of a rostered day off or a statutory holiday - 95% of the hourly rate in respect of such instances;
(ii) where an Employee is on call during the night only of a rostered day off, an accrued day off or public holiday - 60% of the hourly rate per night; and
(iii) where an Employee is on call on any other night - 47.5% of the hourly rate per night.

For the purpose of calculating the hourly rate, the divisor shall be based upon a 38 hour week and calculated to the nearest 5c.

For the purpose of this provision, a "night" shall be deemed to consist of those hours falling between 5.00pm and 8.00am or mainly between such hours.

(b) Monday to Friday - in the event of an Employee on call being recalled to perform duty, such Employee shall be paid for the time worked at the prescribed overtime rate, such time to be calculated as from home and back to home with a minimum payment of 2 hours.

(c) Saturday, Sunday and public holidays - an Employee performing overtime work on recall on Saturday, Sunday or a public holiday may be paid for such overtime at the appropriate overtime rate with a minimum of 2 hours inclusive of travelling time, in respect of overtime worked on a Saturday or Sunday and 4 hours in respect of overtime worked on a public holiday, or at the Employee's option be granted time off at a mutually convenient time, equivalent to the number of hours worked. Such time to be calculated as from home and back to home:

Provided that an Employee who works overtime on a public holiday and who is granted equivalent time off shall be paid at half the ordinary rate for the time so worked with a minimum of 4 hours:

Provided further that Accrued Time off in lieu shall be taken in periods mutually agreed between the Chairperson and the Employee.

(d) In the event of an Employee on call being requested by the Chairperson or the authorised delegate, to provide advice (without the need to return to the facility), the Employee shall be paid at the prescribed overtime rate for the actual time worked up to a maximum of 2 hours on any one day:
Provided that the Employee will be responsible for the recording of such requests which will require subsequent verification by the Chairperson.

(e) Any overtime payable shall be in addition to the on call allowance.

(f) Where an Employee is recalled to perform work during an off duty period such Employee shall be provided with transport to and from the Employee's home, or be refunded the cost of such transport.

(g) Where practicable the Chairperson shall not require an Employee to be continuously available on call for a period in excess of 6 weeks.

(h) The provisions of clause 6.3.9 shall only apply when an Employee has actually worked in excess of 2 hours inclusive of travelling time on one or more of such recalls.

5.13.4 Uniforms and laundry allowance

Where uniforms are required by the Chairperson to be worn by an Employee, the Employee shall be supplied sufficient and suitable uniforms of good quality as approved by the Chairperson. Uniforms shall be replaced on a fair wear and tear basis.

5.13.5 Payment of allowances

In accordance with clause 5.13, payment of all allowances shall be made to the Employee concerned on the appropriate pay day within 6 weeks following application by the Employee.

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

6.1 Hours of work

6.1.1 Definitions

(a) "Afternoon Shift" means any shift commencing after 10.00 a.m. and at or before 6.00 p.m.

(b) "Continuous Shift Work" means work done by Employees where the hours of work are regularly rotated in accordance with a shift roster covering a 24 hour per day operation over a 7 day week.

(c) "Day Shift" means any shift commencing after 6.00 a.m. and at or before 10.00 a.m.

(d) "Day Work" means work performed other than upon a Shift Work basis.

(e) "Majority of Shift" means the major proportion of ordinary hours worked in any shift where the starting and finishing times occur on different days.

(f) "Night Shift" means any shift commencing after 6.00 p.m. and at or before 12 midnight.

(g) "Shift Work" (other than Continuous Shift Work) means work regularly rotated in accordance with a roster which prescribes 2 or more shifts (day, afternoon or night) per day, but does not cover a 24 hour per day operation over a 7 day week.

(h) "Special Project Work" means, irrespective of the provisions of (a) to (g) above, ordinary work required to be performed over any 24 hour period by Employees in lieu of hours regularly worked, e.g. undertake a special project performing surveillance work for a fixed period. Such Special Project Work shall be performed by mutual agreement with agreement recorded in writing.

6.1.2 Day work

(a) The ordinary hours of duty for Employees under this Award are 36.25 hours per week.

Provided that for Employees engaged solely on telephonist duties the ordinary hours of duty shall be 32.5 hours per week.
(b) Employees whose ordinary weekly hours of duty are 36.25 hours are subject to the variable working hours arrangements in accordance with clause 6.2. However, those Employees engaged on "Special Project Work" shall also be subject to the provisions as set out in clause 6.1.2(c).

(c) Special Project Work

(i) the ordinary hours are not in excess of 36.25 hours per week or 72.5 hours in a two week period or 108.75 hours over a three week period or 145 hours over a four week period as determined by the Chairperson;
(ii) the ordinary hours of work on these special projects can, by agreement with the Employees concerned be worked over any five of the seven days of the week;
(iii) the maximum ordinary hours to be worked on any one day are 12;
(iv) when the majority of work of this nature is carried out between 6.00 a.m. and 6.00 p.m. the ordinary rate of pay will apply;
(v) where the majority of the work of this nature is carried out between 6.00 p.m. and 6.00 a.m. the shift allowance provided for in clause 6.4.2 will apply;
(vi) where the ordinary hours of work of this nature fall on a Saturday or Sunday, the extra payment for weekend work provided for in clause 6.4.3 will apply.

6.2 Variable working hours

6.2.1 Definitions:

For the purposes of variable working hours, the under-mentioned terms have the following meanings:

(a) "Accrued Time" is the amount of time in excess of a Standard Day that an Employee performs ordinary work and/or gets credit for periods of approved leave during the Spread of Hours on an ordinary working day.

(b) "Accrued Time Leave" is an approved absence during the prescribed Core Time, excluding leave as set out in Part 7 of this Award.

(c) "Carryover" is the amount of accumulated Accrued Time or Debit Time which an Employee may carry over to the next Settlement Period.

(d) "Core Time" is the period during the day when all Employees must be available to perform ordinary duty, unless absent on Accrued Time leave or other approved leave, or on a lunch break.

(e) "Debit Time" is the amount of time less than a Standard Day that an Employee performs ordinary work and/or gets credit for periods of approved leave during the Spread of Hours on an ordinary working day.

(f) "Normal Operating Hours" means the hours of operation on any one day within the Spread of Hours (as defined) within which Employees will be authorised to commence and cease duty.

(g) "Settlement Period" is the prescribed period of time specifying a number of consecutive days during which Accrued Time, approved leave, credit for public holidays falling upon normal working days and ordinary work during the Spread of Hours, will be accumulated.

(h) "Spread of Hours" is the time span between the earliest commencing time and the latest ceasing time permissible for ordinary work.

(i) "Standard Day" is the total daily working hours occurring during Standard Hours.

(j) "Standard Hours" are the ordinary hours of duty as prescribed by this Award.

(k) "Variable Periods" are the time spans within the Spread of Hours and outside of the prescribed Core Time when, subject to the requirements of the particular position and the agreement of the Supervisor concerned, an Employee may amend commencing and ceasing times for ordinary work.

6.2.2 Working arrangements:

(a) Employees must at all times obey directions given by their supervisors regarding hours of work during the Spread of Hours. If an Employee feels that there may be ground for complaint arising out of such directions, the Employee may appeal through their supervisor to the Chairperson. The Employee concerned must nevertheless carry out the supervisor's directions until they are countermanded by the Chairperson.
All staff must give first priority to the maintenance of acceptable work flows. There is to be co-operation between Employees and their supervisors in planning Employees' working times in order that resources are available to service the needs of the public and other organisations, and to enable the continuance of inter-office and intra-office communication and services.

An Employee may not be credited for Accrued Time unless work is allocated for the Employee to perform and is performed during such period.

As far as practicable, disputes between Employees regarding Employees' working times will be settled by mutual co-operation between the Employees concerned. However, where such agreement cannot be reached the supervisor's decision will be final.

An Employee who fails to comply with the abovementioned procedures or the conditions prescribed in clause 6.2.3 to the satisfaction of the Chairperson will, upon instructions from the Chairperson, work Standard Hours. Thereafter, time worked outside Standard Hours is not to be credited as working time for the purposes of these arrangements.

It is the responsibility of each supervisor in respect of their section to ensure that, in the implementation of these arrangements, the needs of the Crime and Misconduct Commission and the public are met and that proper supervision is available at all times.

6.2.3 Conditions of employment

(a) The ordinary Spread of Hours is between 7.00 a.m. and 6.00 p.m. inclusive. Unauthorised work performed outside the Spread of Hours does not gain any advantage to the Employee concerned.

(b) The Core Time period is between the hours of 10.00 a.m. to 4.00 p.m. Mondays to Fridays, inclusive.

(c) Variable Periods are between the hours of 7.00 a.m. to 10.00 a.m. and 4.00 p.m. to 6.00 p.m. Mondays to Fridays inclusive.

The starting and ceasing times of Employees are deemed to begin on the hour or at least 15 minute intervals thereafter. Where an Employee begins duty prior to such time, or completes duty after such time, no credit is to be allowed for such periods.

(d) The Normal Operating Hours are between 8.00 a.m. and 5.30 p.m., Monday to Friday, and are the hours within which Employees have a general authorisation to work.

(e) Standard Hours are 9.00 a.m. to 5.00 p.m. Mondays to Fridays inclusive with a lunch break of 45 minutes between 12 noon and 2.00 p.m. A Standard Day is 7 hours 15 minutes.

(f) Maximum Hours - an Employee must not work more than 9 hours 30 minutes (exclusive of meal breaks) during the Spread of Hours, or more than 5 hours between 12.30 p.m. and 6.00 p.m., on any one day.

Any time worked in excess of 9 hours 30 minutes (exclusive of meal breaks) during the Spread of Hours, or more than 5 hours between 12.30 p.m. and 6.00 p.m. on any one day, will not be counted as working time and such additional time worked will not gain any advantage for the Employee concerned:

(g) Lunch Break - all Employees are to take a lunch break of not less than 30 minutes duration to be taken between the 3rd and 6th hour of duty.

Provided that where it is mutually agreed between the employer and the Employee, that in order to maintain the continuity of work, the hours of duty may be inclusive of meal times and no deduction shall be made from the Employee's wages.

Employees are to avoid taking their lunch break at their normal work place if other Employees are continuing to work in the vicinity. If this is impracticable, Employees are to ensure that the needs of those who are working are respected.

(h) Rest Pauses - Employees are entitled to rest pauses subject to the following:

   (i) a total of 10 minutes for an Employee who works for more than 3 hours but less than 6 ordinary hours in any day; or
(ii) a total of 20 minutes for an Employee who works for at least 6 ordinary hours in any day.

Employees are entitled to a rest pause of 10 minutes duration in the employer's time in the first and second half of the working day. Such rest pauses shall be taken at such times as will not interfere with the continuity of work where such continuity is necessary.

(i) Settlement Periods of one month's duration start from a Monday which begins a fortnightly pay period. During each Settlement Period an Employee must accumulate 145 hours by way of time actually worked and/or approved leave during the prescribed Spread of Hours and credit for public holidays which occur upon Mondays to Fridays inclusive. An Employee's Carryover Accrued Time or Debit Time existing at the beginning of a Settlement Period is to be counted when calculating such hours:

An Employee is entitled to carry over prescribed Accrued Time or Debit Time to the next Settlement Period.

(j) Accrued Time and Debit Time accumulate from one working day to the next and subject to the provisions of clause 6.2.3(k), between Settlement Periods.

There is no limit to the amount of Accrued Time that an Employee may accumulate at any time during a Settlement Period.

Employees must not accumulate Debit Time in excess of 4 hours at any time during a Settlement Period.

An Employee who resigns or retires or otherwise ceases duty is to ensure that such Employee possesses no Accrued Time or Debit Time at the time of ceasing duty with the Crime and Misconduct Commission. Except in exceptional circumstances, any such Employee will not receive compensation for Accrued Time existing at the time of such cessation of duty. An Employee possessing a Debit Time at the time of ceasing duty will have a corresponding deduction made from the salary of such Employee.

(k) Carryover - Accrued Time and Debit Time which an Employee has accumulated at the end of a Settlement Period is, subject to the following conditions, be carried over to the beginning of the next Settlement Period and subsequently added to Accrued Time or Debit Time which accumulates during such period.

The maximum Carryover which an Employee is allowed is 29 hours Accrued Time and 4 hours Debit Time.

If at the end of a Settlement Period an Employee's Carryover Accrued Time is in excess of 29 hours, no payment will be made for such excess period, i.e. the time will be forfeited:

Provided that where an Employee certifies that the Employee had planned to reduce Accrued Time to within the abovementioned maximum limit by the end of a Settlement Period and either a specific direction by such Employee's supervisor on short notice to work certain hours or an unforeseen absence on sick leave or other approved leave upon days immediately preceding the end of a Settlement Period prevented the Employee from complying with such maximum limit, the Chairperson may approve a Carryover in excess of the prescribed maximum limit for such Employee.

If at the end of a Settlement Period an Employee's Carryover Debit is in excess of 4 hours such excess period is to be taken without pay (to be deducted during a subsequent fortnightly pay period) unless such Employee furnishes an explanation satisfactory to the Chairperson. An Employee who accumulates a Carryover Debit in excess of 4 hours may be instructed by the Chairperson to work prescribed Standard Hours in accordance with the provisions of clause 6.2.3(d).

(l) An Employee may be granted Accrued Time Leave if:

(i) the Employee has accumulated an equivalent amount of credit at the beginning of the day upon which the period of Accrued Time Leave is required; and
(ii) prior approval of the supervisor has been obtained:

No more than 2 whole days may be taken as Accrued Time Leave during a Settlement Period. Such whole days may be consecutive and may be taken in conjunction with other forms of leave.

In addition, the Employee may take any other amount of Accrued Time Leave of less than a whole day's duration during a Settlement Period.
(m) Saturdays, Sundays and public holidays:

(i) The provisions of clause 6.3 of this Award continue to apply. Any equivalent time off allowed to an Employee is not to be counted in such Employee's Accrued Time, Debit Time or Carryover prior to the time such equivalent time off is actually allowed.

When equivalent time off is taken during the prescribed Core Time, such absences are not deemed to be Accrued Time Leave for the purposes of clause 6.2.3(l) above.

(ii) All Employees are to be credited with a Standard Day for public holidays which occur from Mondays to Fridays inclusive.

(n) Overtime:

(i) Compensation for overtime at the rates prescribed in clause 6.3 is only to be made in respect of time worked outside the prescribed Spread of Hours, or in excess of 9 hours 30 minutes worked during the Spread of Hours in any one day.

(ii) Equivalent time off allowed to an Employee in terms of clause 6.3 of this Award is not to be counted in such Employee's Accrued Time, Debit Time or Carryover prior to the time such equivalent time off is actually allowed.

When equivalent time off is allowed during the prescribed Core Time, such absences are not deemed to be Accrued Time Leave for the purposes of clause 6.2.3(k).

(o) Meal allowance - an Employee who performs authorised overtime for more than one hour after 6.00 p.m. Mondays to Fridays inclusive (other than public holidays) must, in addition to any payment for overtime to which the Employee is entitled, be paid meal money in accordance with clause 5.13.1 and any amendments thereto.

(p) Performance of higher duties - payment of extra remuneration in accordance with the provisions of clause 5.12 of this Award continue to apply:

(i) an Employee is not to be paid extra remuneration for temporarily filling a position during another Employee's absence upon Accrued Time Leave. Any such periods are not counted in assessing the prescribed minimum qualifying period for the payment of extra remuneration;

(ii) where an Employee who is temporarily filling a position is absent upon Accrued Time Leave, such Accrued Time Leave is not deemed to interrupt that period of performance of such duties if such Employee goes back to the same duties on the Employee's return from Accrued Time Leave.

(q) Leave - the provisions of Part 7 of this Award continue to apply.

(r) Travelling time:

(i) Time spent travelling upon authorised duty away from an Employee's headquarters during the Spread of Hours is to be counted as time worked for the purposes of clause 6.2.

(ii) Time spent travelling upon authorised duty outside the Spread of Hours is not to be counted as time worked, but shall be credited to the Employee in accordance with the CMC's Policy on Excess Travelling Time.

Provided that the CMC's Policy on Excess Travelling Time may not be amended without consultation with the Union.

6.3 Overtime

6.3.1 All authorised overtime worked by Employees outside their ordinary Spread of Hours is paid for at the rate of time and a-half for the first 3 hours in any one day and double time for all time worked thereafter.
6.3.2 Provided that all authorised overtime worked on:

(a) Saturday is paid at the rate of time and a-half for the first 3 hours and double time thereafter with a minimum payment as for 2 hours;

(b) Sunday is paid at the rate of double time with a minimum payment as for 2 hours:

Provided further that such minimum payments shall not apply where such overtime is performed immediately preceding and/or following ordinary hours.

6.3.3 Notwithstanding the provisions of clause 6.3, Employees working Shift Work, as defined in accordance with a shift roster covering 2 or more shifts per day, are paid for all overtime at the rate of double time.

6.3.4 Employees shall work reasonable overtime, whenever necessary in the opinion of the Chairperson, but 24 hours' notice shall be given, where practicable, to an Employee required to work overtime.

6.3.5 Overtime is calculated to the nearest quarter of an hour in the total amount of time in respect to which overtime is claimed by the Employee.

6.3.6 An Employee temporarily filling and discharging the full duties of an office at a higher Classification Level for which overtime payments are applicable is subject to the provisions of clause 6.3.1 and shall be paid for authorised overtime at the minimum rate applicable to that higher Classification Level.

6.3.7 Subject to clause 6.3.1, an Employee (other than an Employee on call) having been recalled to perform duty shall be paid for the time worked, with a minimum payment of 2 hours for each call out at the prescribed overtime rate, provided that such minimum payment shall not apply where the overtime is performed immediately preceding and/or is continuous with ordinary hours of duty:

Provided further that should an Employee be called out again within that 2 hour period, no further minimum payment shall apply to that work which shall be separately paid for at the prescribed overtime rates.

6.3.8 Transport costs on recall

Where an Employee is recalled to perform work during an off duty period the Employee shall be provided with transport to and from the Employee's home, or be refunded the cost of such transport.

6.3.9 Fatigue leave

(a) An Employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day so that 10 consecutive hours off duty has not occurred, shall be released after completion of such overtime until 10 consecutive hours off duty occur, without loss of pay for ordinary working time occurring during such absence. If, on the instructions of the Chairperson, such an Employee resumes or continues work without having had 10 consecutive hours off duty, the Employee shall be paid double rates until released from duty for such period, and shall then be entitled to be absent until 10 consecutive hours off duty has occurred, without loss of pay for ordinary working time occurring during such absence.

(b) The provisions of clause 6.3.9 shall apply to Shift Workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

(i) for the purposes of changing shift rosters; or
(ii) when a Shift Worker does not report for duty; or
(iii) where a shift is worked by arrangement between the Employees themselves.

(c) Clause 6.3.9 shall apply to Employees (including those Employees on call) who are recalled to work, where the Employee has actually worked in excess of 2 hours inclusive of travelling time on one or more of such recalls.

6.3.10 Time off in lieu of overtime

Nothing in clause 6.3 prevents an Employee from electing to accrue equivalent time off in lieu of compensation for overtime (TOIL) in accordance with the CMC's Policy on Overtime and TOIL:

Provided that the CMC's Policy on Overtime and TOIL may not be amended without consultation with the Union.
6.4 **Shift work**

6.4.1 **Shift work arrangements**

(a) Shift Work may be introduced to meet operational requirements. Such Shift Work shall be worked in accordance with a roster mutually agreed between the Chairperson and the majority of Employees directly affected and are worked on one of the following bases:

(i) a work cycle not exceeding 7 consecutive days; or
(ii) a work cycle not exceeding 14 consecutive days; or
(iii) a work cycle not exceeding 21 consecutive days; or
(iv) a work cycle not exceeding 28 consecutive days:

Provided that having regard to operational requirements rostered shifts may be mutually exchanged between Employees, provided such exchange occurs within the same pay period.

(b) A roster setting out the Employee's days of duty and starting and finishing times on such days shall be displayed in a place conveniently accessible to Employees at least one work cycle in advance.

(c) Notwithstanding clauses 6.4.1(a) and (b), a Shift Worker shall not perform more than 2 consecutive shifts.

(d) Changes within a roster shall be by agreement between the employer and the Employee concerned, but failing agreement, 24 hours notice of any change in the roster shall be given or double time be paid for the Employee's next shift.

6.4.2 **Shift allowance**

(a) Employees working afternoon or Night Shifts are paid an allowance of 15% per shift for all ordinary time worked in addition to their ordinary salary.

(b) Provided that in respect to the calculations of payments as prescribed by clause 6.4.2, they shall be made upon the Majority of Shift basis in respect of ordinary hours worked where the starting and finishing times occur on different days over the period Monday to Friday, both days inclusive.

These allowances shall not apply to work performed between midnight Friday and midnight Sunday or on public holidays.

6.4.3 **Extra payment for weekend work**

(a) All ordinary time worked between midnight on Friday and midnight on Saturday not being overtime shall be paid for at one and a-half times the ordinary rate and between midnight Saturday and midnight Sunday shall be paid for at the rate of double time.

(b) Provided further that in respect to the calculation of payments as prescribed by clause 6.4.3 such shall be made upon the Majority of Shift basis in respect of ordinary hours worked where the starting and finishing times occur on different days over the period Friday to Monday, both days inclusive.

6.4.4 **Meal breaks and rest pauses**

(a) Meal breaks

All Employees working shifts shall be allowed not less than 30 minutes for a meal break, with such a break being taken at a time which maintains the continuity of work:

Provided that the hours of duty shall be inclusive of meal times with no deduction from the Employee's salary.

Employees authorised to work overtime for more than 1 hour after their normal finishing time shall be entitled to a meal allowance as prescribed in clause 5.13.1:

Provided that a meal of reasonable quality and adequate quantity may be supplied in lieu of the abovementioned meal monies.
(b) Rest pauses

Employees engaged on Shift Work shall be entitled to rest pause(s) in accordance with clause 6.2.3(h).

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every Employee (other than a Casual Employee) covered by this Award is, at the end of each year of employment, entitled to annual leave on full pay of not less than 4 weeks.

7.1.2 Part-time Employees are entitled to annual leave on a pro rata basis.

7.1.3 Annual leave is to be exclusive of any public holiday which may occur during the period of that annual leave.

7.1.4 Unless the Employee shall otherwise agree, the Chairperson shall give the Employee at least 14 days notice of the date from which such Employee's annual leave shall be taken.

7.1.5 If the Employee has not taken all the annual leave the Employee is entitled to as at the date that the Employee ceases employment with the Crime and Misconduct Commission, the Employee is presumed to have taken the leave from the day the termination takes effect (the "termination day").

7.1.6 The Chairperson must immediately pay the Employee for the annual leave not taken as at the termination day, including any public holiday that falls in the period the Employee is presumed to have taken the leave.

7.1.7 If the Employee has been employed for any period of less than 1 year as at the termination day, the Chairperson must pay the Employee proportionate annual leave for the period.

7.1.8 The conditions prescribed in the CMC's Policy on Recreation Leave and any amendments thereto apply to Employees covered by this Award.

Provided that the CMC's Policy on Recreation Leave may not be amended without consultation with the Union.

7.2 Loading on annual leave

7.2.1 A loading calculated as prescribed hereunder shall be paid to Employees on annual leave:

(a) Shift workers - Subject to clause 7.2.1(b) the rate of wage or salary to be paid to a Shift Worker shall be the rate payable for work in ordinary time according to the Employee's roster or projected roster, including Saturday, Sunday, or holiday shifts.

(b) All Employees - Subject to the provisions of clause 7.2.2, in no case shall the payment to an Employee be less than the sum of the following amounts:

(i) the Employee's ordinary wage rate or salary as prescribed by the Award for the period of such leave (excluding shift premiums and weekend penalty rates);
(ii) a further amount calculated at the rate of 17.5% of the amounts referred to in clause 7.2.1(b)(i).

7.2.2 The provisions of clause 7.2.1(b) shall not apply to any period or periods of annual leave exceeding 145 hours per annum.

7.3 Sick leave

7.3.1 Sick leave (leave of absence on account of illness) on full salary will accumulate at the rate of 10 working days for each completed year of service and a proportionate amount for an incomplete year of service.

7.3.2 Sick leave may be taken for part of a day.

7.3.3 Entitlement to sick leave is conditional on the Employee promptly notifying the employer of the Employee's absence and of its expected duration.

7.3.4 An application for sick leave of more than 3 days is to be supported by a medical certificate or any other evidence that is acceptable to the Chairperson.
7.3.5 The conditions prescribed in the CMC's Policy on Sick Leave and any amendments thereto apply to Employees covered by this Award.

Provided that the CMC's Policy on Sick Leave may not be amended without consultation with the Union.

7.4 Bereavement leave

7.4.1 Employees are entitled to at least 2 days bereavement leave on full salary on the death of a member of the Employee's immediate family or household:

"Immediate family" includes:

- the Employee's spouse;
- a child, ex-nuptial child, step-child, adopted-child, foster child, or ex-foster child of the Employee;
- parent, grandparent, grandchild, or sibling of the Employee or spouse of the Employee;
- step-father, step-mother, half-brother, half-sister, step-brother or step-sister of the Employee.

"Spouse" of an Employee includes:

- a former spouse; and
- a de facto spouse, including a spouse of the same sex as the Employee.

7.4.2 Satisfactory proof of the death or funeral arrangements shall be provided by the Employee.

7.4.3 A long-term Casual Employee is entitled to two days' unpaid bereavement leave on the death of a person who bears to that Employee one of the relationships set out in clause 7.4.1.

7.4.4 A "long-term Casual Employee" is a Casual Employee engaged by the Crime and Misconduct Commission on a regular and systematic basis for several periods of employment during a period of at least one year immediately before the Employee seeks an entitlement to bereavement leave.

7.4.5 The conditions prescribed in the CMC's Policy on Bereavement Leave and any amendments thereto apply to Employees covered by this Award:

Provided that the CMC's Policy on Bereavement Leave may not be amended without consultation with the Union.

7.5 Long service leave

7.5.1 Employees who complete 10 years' continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.

7.5.2 After 7 years' continuous service Employees are entitled to a proportionate payment (calculated on a pro rata basis for 7 years' continuous service).

7.5.3 The conditions prescribed in the CMC's Policy on Long Service Leave and any amendments thereto apply to Employees covered by this Award:

Provided that the CMC's Policy on Long Service Leave may not be amended without consultation with the Union.

7.6 Parental Leave

The provisions of the Family Leave (Queensland Public Sector) Award - State 2004 (including carer's leave) apply to and are deemed to form part of this Award.

The entitlements to parental leave include:

- maternity leave;
- spousal leave;
- pre-natal leave;
- pre-adoption leave;
- adoption leave; and
- carer's Leave.
The conditions prescribed in the CMC's Policy on Parental Leave and any amendments thereto apply to Employees covered by this Award.

Provided that the CMC's Policy on Parental Leave may not be amended without consultation with the Union.

7.7 Public holidays

7.7.1 All Employees shall be entitled to payment for rostered ordinary hours to be worked for each of the public holidays referred to in clause 7.7.2 notwithstanding that no work is required to be performed.

7.7.2 (a) All work done by any Employee on the following public holidays is paid for at the rate of double time and a-half with a minimum of 4 hours:

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

(b) Labour Day

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

(ii) Where an Employee actually works on Labour Day, such Employee shall be paid in addition, a payment for the time actually worked between the normal starting and finishing times at one and a-half times the ordinary rates prescribed for such work with a minimum of 4 hours.

(c) Annual show

All work done by Employees in a district specified from time to time by the Minister by notification published in the Gazette on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification, of such district, shall be paid for at the rate of double time and a-half with a minimum of 4 hours. No Employee shall be entitled to receive payment in accordance with clause 7.7.2(c) for work performed on such a day on more than one occasion in each calendar year.

7.7.3 Subject to clause 7.7.1 and 7.7.2(b) an Employee who performs work on any public holiday or any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday, shall at the Employee's option receive time off equivalent to the number of hours worked, with a minimum of 4 hours in lieu of monetary compensation:

Provided that where an Employee elects to take equivalent time off such Employee shall in addition be paid at half the ordinary rate with a minimum of 4 hours.

7.7.4 Substitution

Where there is agreement between the Chairperson and the majority of Employees concerned and subject to statutory limitations, other ordinary working days may be substituted for the public holidays specified in the *Holidays Act 1983*:

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

7.7.5 Employees "rostered off" on public holidays who work in accordance with Shift Work.

All Employees (other than Casual Employees) working in accordance with the provisions of clause 6.4, if rostered off on any public holiday shall be paid an additional day's wage, or by mutual agreement between the Chairperson and the Employee, shall be granted a day's holiday in lieu at a time to be mutually arranged between
the Chairperson and the Employee concerned, or an extra day shall be taken with annual leave, for each such day on which the Employee is rostered off:

Provided that for the purposes of clause 7.7.5 "rostered off" shall mean rostered off on a day of the week which normally forms part of the Employee's ordinary hours:

Provided further that the "additional day's wage", "another day off" or "extra day" added to annual leave shall mean 7.25 hours at ordinary rates.

7.7.6 Where a public holiday as prescribed by clause 7.7 falls upon a Saturday or Sunday and an Employee as part of the Employee's ordinary rostered hours is required to work upon such day, calculations of payment shall be made upon the Majority of Shift basis where the starting and finishing times of such ordinary hours occur on different days.

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

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

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

(b) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all Employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day are entitled to payment for the public holiday or a substituted day's leave.

(c) Where Christmas Day falls on a Saturday or a Sunday and the public holiday is observed on another day, an Employee required to work on Christmas Day (i.e. 25 December) is to be paid at the rate of double time.

(d) Nothing in clause 7.7.7 confers a right to any Employee to payment for a public holiday as well as a substituted day in lieu.

7.7.8 "Concessional day" means any day upon which an Employee is permitted to be absent on full pay without debit to any leave account as a result of a compulsory closure of the Crime and Misconduct Commission over the Christmas/New Year period or such closure or restricted staffing as the Chairperson determines.

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

8.1 Transfer and appointment expenses

These are the expenses that may be paid on behalf of an eligible Employee when appointed to the Crime and Misconduct Commission, including:

- the conveyancing of self, family and effects to the CMC;
- board and lodging;
- other items of expenditure related to taking up duty;

and are prescribed in the CMC's Policy on Appointment Expenses and any amendments thereto:

Provided that the CMC's Policy on Appointment Expenses may not be amended without consultation with the Union.

8.2 Travelling expenses

An eligible Employee who is required to:

- travel on official duty; or
- take up duty away from the Employee's usual place of work to relieve another Employee, or to perform special duty,

is allowed actual and reasonable expenses or allowances for accommodation, meals and incidental expenses necessarily incurred by the Employee.

These are prescribed in the CMC's Policy on Travelling Expenses and any amendments thereto:

Provided that the CMC's Policy on Travelling Expenses may not be amended without consultation with the Union.
8.3 Excess travelling time

The general conditions applicable for the compensation of excess travelling time for an eligible Employee who is required to travel on official business are:

- attending approved seminars and agency courses;
- outside ordinary hours; and
- away from normal headquarters.

These are prescribed in the CMC's Policy on Excess Travelling Time and any amendments thereto:

Provided that the CMC's Policy on Excess Travelling Time may not be amended without consultation with the Union.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Training, learning and development

9.1.1 The parties to this Award recognise that in order to increase efficiency and productivity a greater commitment to learning and development is required.

Accordingly, the parties commit themselves to developing a more highly skilled and flexible workforce and providing Employees with career opportunities through appropriate training to acquire additional skills and knowledge for performance of their duties.

Within the Crime and Misconduct Commission a consultative mechanism and procedures involving representatives of management, Employees and the Union shall be established as determined by the Chairperson.

Following consultation the Chairperson shall develop a learning and development strategy consistent with:

(a) the current and future needs of the CMC;

(b) the need to develop vocational skills relevant to the CMC through courses conducted wherever possible by accredited educational institutions and providers.

Learning and development may be both on-the-job or off-the-job and either internal or external to the organisation.

Learning and development provided should assist Employees in obtaining accredited competencies, knowledge and skills.

All such learning and development should be directed at enabling Employees to enhance skills relevant to duties to be performed. Employees will be expected to attend scheduled learning and development activities.

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

10.1 Workplace health and safety

All provisions of relevant workplace health and safety legislation apply.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Industrial Relations Act 1999. In order to ensure the currency of existing legal requirements parties are advised to refer to Sections 366, 372 and 373 of that Act as amended from time to time.

11.1 Right of entry

11.1.1 Authorised industrial officer

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

11.1.2 Entry procedure

(a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:

(i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
(ii) shows their authorisation upon request.

(b) Clause 11.1.2(a) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.

(c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.

(d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

(a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.

(b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current Employee except if the Employee:

(i) is ineligible to become a member of the authorised industrial officer's Union; or
(ii) has made a written request to the employer that they do not want their record inspected.

(c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.

(d) A person must not coerce an Employee or prospective Employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 Discussions with Employees

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

(a) matters under the Act during working or non-working time; and

(b) any other matter with a member or Employee eligible to become a member of the Union, during non-working time.

11.1.5 Conduct

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

11.2 Time and wages record

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

(a) the Employee's Award classification;

(b) the employer's full name;

(c) the name of the Award under which the Employee is working;
(d) the number of hours worked by the Employee during each day and week, the times at which the Employee started and stopped work, and details of work breaks including meal breaks;

(e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the Employee is paid;

(f) the gross and net wages paid to the Employee;

(g) details of any deductions made from the wages; and

(h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

(a) the Employee's full name and address;

(b) the Employee's date of birth;

(c) details of sick leave credited or approved, and sick leave payments to the Employee;

(d) the date when the Employee became an Employee of the employer;

(e) if appropriate, the date when the Employee ceased employment with the employer; and

(f) if a Casual Employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the Employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by:

(a) an Inspector of the Department of Industrial Relations, in accordance with section 371 of the Act; or

(b) an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.2.5 The Chairperson may specifically exempt those Employees who have been, or who are a class of office from a system for recording starting and finishing times, meal breaks and absences from duty.

11.3 Union delegates

11.3.1 The parties acknowledge the constructive role democratically elected Union delegates undertake in the workplace in relation to Union activities that support and assist members. That role will be formally recognised, accepted and supported.

11.3.2 Employees will be given full access to Union delegates/officials during working hours to discuss any employment matter or seek Union advice, provided that service delivery is not disrupted and work requirements are not unduly affected.

11.3.3 Provided that service delivery and work requirements are not unduly affected, delegates will be provided convenient access to facilities for the purpose of undertaking Union activities. Such facilities include: telephones, computers, e-mail, photocopiers, facsimile machines, storage facilities, meeting rooms and notice boards. It is expected that management and delegates will take a reasonable approach to the responsible use of such facilities for information and communication purposes.

11.3.4 Subject to the relevant Employee's written approval and any confidentiality provisions, delegates may request access to documents and policies related to a member's employment.

11.4 Posting of Award

A true copy of this Award must be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by Employees.
11.5 Union encouragement

11.5.1 The parties recognise the right of individuals to join a Union and will encourage that membership. However, it is also recognised that Union membership remains at the discretion of individuals.

11.5.2 An application for Union membership and information on the Union will be provided to all Employees at the point of engagement.

11.5.3 Information on the Union will be included in induction materials.

11.5.4 Union representative(s) will be provided with the opportunity to discuss Union membership with new Employees.

11.5.5 Where requested by the Union, the Crime and Misconduct Commission will provide payroll deduction facilities for Union subscriptions.

11.6 Industrial relations education leave

11.6.1 Industrial relations education leave is paid time off to acquire knowledge and competencies in industrial relations. Such knowledge and competencies can allow Employees to effectively participate in consultative structures, perform a representative role and further the effective operation of grievance and dispute settlement procedures.

Employees may be granted up to 5 working days (or the equivalent hours) paid time off (non-cumulative) per calendar year, approved by the Chairperson (or delegated authority) of the agency, to attend industrial relations education sessions.

Additional leave, over and above 5 working days non-cumulative (or the equivalent hours) in any one calendar year may be granted where approved structured Employees' training courses involve more than 5 working days (or the equivalent). Such leave will be subject to consultation between the Chairperson (or delegated authority) of the agency, the relevant Union and the Employee.

Upon request and subject to approval by the Chairperson (or delegated authority) of the agency, Employees may be granted paid time off in special circumstances to attend Management Committee Meetings, Union Conferences, and ACTU Congress.

11.6.2 The granting of industrial relations education leave or any additional special leave should not impact adversely on service delivery, work requirements or the effectiveness and efficiency of the agency/work unit concerned. At the same time such leave shall not be unreasonably refused.

11.6.3 At the discretion of the Chairperson, Employees may be granted special leave without pay to undertake work with the Union.

Schedule 1 - Salaries

Section 1 - Administrative stream

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The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2005 Declaration of General Ruling and earlier Safety Net Adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by Employees whose wages and conditions of employment are regulated by this Award which are above the wage rates
prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, and 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.

Schedule 2 - Generic Level Statements

S2.1 Administrative stream

(a) Administrative Officer level 1

Work level description (AO1)

Work at this level usually involves a combination of keyboard, clerical and other duties requiring the application of basic office skills and routines.

Characteristics of the work

Performed under close direction using established routines, methods and procedures with little scope for deviating from these.

Problems can usually be solved by reference to procedures, well documented methods and instructions. Initially direct guidance is given when problems arise. Ready access to advice and assistance is available.

The work may involve giving technical and procedural advice to other staff (for example relating to the operation of office equipment used in the work area). It may require the acquisition of knowledge and specific procedures, instructions, regulations or other requirements relating to general administration (e.g. personnel or finance operations) and/or specific office programs and activities.

Work at this level does not include supervisory responsibilities although more experienced staff may assist new staff by providing guidance and advice.

As individual Employees develop more experience and knowledge they will be required to exercise greater judgement and make decisions in their allocated duties, although these will be confined by instructions, established practices and procedures of written guidelines.

Duties and skills

Work at this level may progressively involve an Employee in a range of activities requiring the use of written and numeric skills, clerical skills, written and verbal communication, equipment skills (e.g. keyboard) and other work skills appropriate to the discipline. These skills should be readily transferable between organisations.

Entry to this level is either by commencement of a traineeship or through selection based on standardised vocational testing.

(b) Administrative Officer level 2.

Work level description (AO2)

Work at this level usually encompasses a range or combination of administrative activities and operations which require the application of skills and experience in administrative/clerical work and a general knowledge of the work to be performed.

The work will involve achieving clearly defined and established outcomes and/or basic problem solving within guidelines and contributing knowledge or skills or information specific to the work of the agency.

Characteristics of the work

Work is usually performed under close supervision and may involve undertaking a range of duties requiring judgement, liaison and communication within an agency and with other interested parties.
The solution of problems may require the exercising of basic judgement, although knowledge required to perform work is usually related to precedents, guidelines, procedures, regulations and instructions and from senior staff. It may require some knowledge and application of specific procedures, instructions, regulations or other requirements relating to general administration and activities.

Work at this level does not include supervisory responsibilities although more experienced staff may assist new staff by providing guidance and advice.

**Duties and skills**

Knowledge required to perform work is usually related to guidelines, instructions and procedures relevant to the function of the level.

Familiarity with the functions of related work areas and of relationships between organisational elements may be required.

At this level, basic resolution of problems by reference to established procedures may be required.

Work at this level may involve an Employee in a range of activities requiring the use of written and numeric skills, clerical skills, written and verbal communication, equipment skills (e.g. keyboard) and other work skills appropriate to the discipline. These skills should be readily transferable between organisations.

The minimum skills required for entry to this level are as defined in the traineeship curriculum or through standardised vocational testing.

(c) **Administrative Officer level 3**

**Work level description (AO3)**

Work at this level usually requires relevant experience combined with a broad knowledge of the office's functions and activities and a sound knowledge of the major activity performed within the work area. The work may include preparing preliminary reports, papers and correspondence which usually relate to a specific organisational function or discipline, providing or interpreting information for clients or other interested parties and general administrative support to senior officers.

Supervisory responsibilities may involve some complex operational work and may involve assisting with, or reviewing the work undertaken by, subordinates or team members.

Scope exists for exercising initiative in the application of established work practices and procedures although this level may require expertise to resolve issues within a day-to-day environment for which there may not be clearly established procedures.

Effective judgement and work organisation skills are required which have been acquired through previous experience, demonstrated capacity or post secondary education or partial completion of same.

**Characteristics of the work**

Work is usually performed under general direction and may involve preparing papers, briefing notes, correspondence or other written material.

Decisions made or delegations exercised at this level may have an impact on the relevant agency's operations, but are normally of limited procedural or administrative importance.

Work at this level may include responsibility for training, involvement in working with staff to develop work performance, planning and co-ordinating tasks and work flow.

**Duties and skills**

Work at this level requires a sound knowledge of the activities usually performed within the work area and their impact upon the activities of other organisations.

Supervisory responsibilities include on-the-job training and staff assessment and performance counselling in relation to the work area. This level usually requires the application of personnel-related functions such as orientation of staff,
staff attendance and recommendation of leave arrangements, written and verbal communication, interpretation and 
liaison skills to solve basic problems together with interpersonal skills to deal with non-routine matters and analytical 
abilities appropriate to the work area.

(d) Administrative Officer level 4

Work level description (AO4)

Work at this level is usually performed in relation to established priorities, task methodology and work practices to 
achieve results in line with the corporate goals of the office.

The work may include preparing papers and reports, drafting complex correspondence for senior officers, undertaking 
activities of a specialist or detailed nature, assisting in the preparation of procedural guidelines, providing, interpreting 
and analysing information for clients or other interested parties, exercising specific process responsibilities, and 
overseeing and co-ordinating the work of subordinate staff.

Work at this level includes supervision of a work group, small work area or office within the total organisational 
structure and co-ordination of a range of office functions.

Characteristics of the work

Work is performed under general direction as to work priorities and may be of a technical or professional, project, 
procedural or processing nature, or a combination of these.

Direction exercised over work performed at this level may be less direct than at lower levels and is usually related to 
task methodologies and work practices. Staff would be expected to set priorities and to monitor work flow in the area 
of responsibility.

The work at this level requires the application of knowledge usually gained through previous experience in the 
discipline or from post secondary or tertiary study. The work may require the co-ordination of a range of office 
functions and the exercising of judgement and/or delegated authority in areas where precedents or procedures are not 
clearly defined.

Independent action may be exercised at this level, particularly in local office situations, for example, developing local 
procedures, management strategies and guidelines.

Any decisions taken or delegations exercised would be limited by the application of rules, regulations, guidelines or 
procedures.

The extent of supervisory responsibility would depend on the operational work of the area and factors such as work 
priorities, complexity of the work and the number of subordinate staff.

Duties and skills

Work performed at this level will require the ability to supervise staff, set priorities, monitor work flow and develop 
local strategies or work practices.

This may include responsibility for the development of appropriate training programs related to group development, 
application of equal employment opportunity, industrial relations principles and an awareness of occupational health 
and safety guidelines and principles. Staff assessment and counselling may involve providing advice in relation to 
personal and career development relating to work requirements.

Liaison and communication skills and the capacity to negotiate may be required, particularly for activities involving 
liaison or communication with clients or other interested groups.

Work at this level requires general knowledge of the office's operations, combined with a specialist knowledge of major 
activities within the work area.

In program, activity or service delivery areas staff should have the knowledge to interpret and apply standard policies, 
specific procedures and regulations or other guideline material to specific situations. They should be able to 
disseminate information about the office's operations particularly in relation to Policy aspects or program, activity or 
service delivery to clients.
Work at this level may require the ability to investigate, interpret or evaluate information where legislation, regulations, instructions or procedural guidelines do not give adequate or specific answers.

(e) Administrative Officer level 5

Work level description (AO5)

Work at this level may include a variety of functions as follows:

(i) managing the operations of a discrete organisational element, program or activity; or
(ii) the operations of an organisational element which is part of a larger office within the total organisational structure; or
(iii) under limited direction in relation to priorities and work practices, providing administrative support to a particular program, activity or administrative function and consultancy service to external organisations; or
(iv) providing subject matter expertise or Policy advice across a range of programs or activities undertaken by the agency.

Work at this level may include the preparation of documentation for complex correspondence purposes and for decision by senior officers.

Responsibilities may include liaison and co-ordination within and across functions including office representation and overseeing and co-ordinating the work of other staff assisting in this area.

Work at this level may include operation within a number of specialist or multi-disciplinary teams or independently.

Characteristics of the work

Work is usually performed under limited direction as to work priorities and the detailed conduct of the task.

Direction exercised over work performance at this level includes, depending on the functional role required, the provision of advice, guidance and/or direction in relation to a project, detailed processing, and other work practices.

Independent action may be exercised within constraints set by senior management.

Any decision taken or delegation exercised tends to be governed by the application of rules, regulations or office operating instructions or procedures. While such decisions may impact on office operations and resources, they are usually limited to the specific work area involved.

Managerial responsibilities would usually depend on the specific activities undertaken. Staff at this level would be expected to set and achieve priorities, monitor work flow and/or manage staffing resources to meet objectives.

Duties and skills

Work at this level requires a knowledge of office operations and the ability to interpret legislation, regulations and other guideline material relating to the operations and functions of the work area.

Work at this level may require:

(i) the ability to investigate, analyse, interpret or evaluate information for the guidance of staff or clients, or undertake research in relation to technical matters;

(ii) well developed liaison and communication skills and the ability to negotiate with clients or other interested parties, within parameters decided by senior management;

(iii) significant managerial ability, including the ability to supervise staff, set priorities, monitor work flow, develop local strategies, procedures and work practices, and allocate resources.

This includes demonstrated personnel management skills, the ability to apply equal employment opportunity principles and procedures and industrial relations principles and occupational health and safety guidelines.
Responsibility for the identification of training needs and the development of appropriate training programs for the work unit may be undertaken at this level.

S2.2 Professional stream

(a) Professional Officer level 1

*Work level description (PO1)*

Work at this level is restricted to those Employees who have met any minimum entry requirements plus the education requirements for acceptance into an appropriate tertiary institution.

Appointment to this level is solely for the purpose of fulfilling prerequisite education and/or training prior to appointment to the substantive grade (degree) in the professional stream.

A requirement at this level is the successful completion of the educational or training requirements of the particular professional group.

Appointees to this level may be enrolled as a full-time or part-time student, and if part-time, may be required to do work associated with the relevant profession, but at a level and under a degree of supervision appropriate to the skills held. This may include some work normally which would be carried out by level 2 (i.e. practising) professional, provided such work is verified or validated by a qualified and experienced professional Employee.

*Characteristics of the work*

Work within this level is performed under close supervision following standard routines, methods and procedures with little scope for deviation, or the exercise of initiative or judgment.

The routines, methods and procedures to be followed are at a level consistent with skills acquired. Initially direct guidance is given when problems arise.

Skills and knowledge will be acquired and demonstrated on a progressive basis consistent with the formal and informal training undertaken.

Positions at this level have no supervisory responsibility, although more experienced staff may be expected to assist new staff by providing basic advice and guidance.

*Duties and skills*

This level recognises that duties and skills will increase in complexity as the Employee moves through the education and training phase.

Employees at this level usually perform repetitive tasks which are fully prescribed and are usually performed in response to standardised instructions or requests.

Employees at this level may undertake a combination of routine clerical, analysis, preparatory and operative duties requiring the application of basic skills and routines.

(b) Professional Officer level 2

*Work level description (PO2)*

Positions at this level consist of Employees with a minimum of a degree qualification or agreed equivalent and who are identified as belonging to the generic groupings listed in the definition statement.

Mandatory qualifications exist for entry to this level with an expectation of the application of professional knowledge gained through formal studies.

Positions at this level involve the delivery of basic professional services which are in support of agency objectives.

*Characteristics of the work*

Work is initially performed under close supervision by a more experienced professional, however, this supervision is expected to reduce as experience increases. Guidance is always close at hand.
The solution of problems may require the exercise of professional judgement through the selection and application of procedures, methods and standards, however, guidance from senior staff is readily available.

Employees at this level may operate individually or as a member of a project team within a work group.

Positions at this level generally have no supervisory responsibilities although more experienced Employees may assist new Employees by providing guidance and advice.

Possession of the mandatory tertiary qualification and experience is required for positions within this level.

Additionally, knowledge of basic practices and procedures relevant to the discipline is required. Professional judgement may be exercised within prescribed areas, however, the provision of results are subject to verification and validation.

Duties and skills

Positions at this level may involve an Employee in a range of activities including the analysis and interpretation of findings as they relate to the elements of the work. They could also include the preparation of reports incorporating recommendations on basic operations.

Employees at this level perform non-repetitive tasks, governed by established procedures, specific guidelines and standardised instructions.

Employees shall have obtained professional knowledge as indicated by successful completion of the appropriate three year undergraduate degree or diploma and be able to apply theoretical aspects of the relevant discipline to basic problems or minor phases of broader assignments.

(c) Professional Officer level 3

Work level description (PO3)

This level usually requires professional expertise in one or more areas of a discipline. Detailed knowledge of standard professional tasks is required with scope existing for exercising initiative in the application of established work practices and procedures.

At this level some supervisory responsibility of subordinate staff may be required. The degree of supervision is variable depending on the assignment or project.

Employees will be required to progressively obtain greater specialised knowledge through postgraduate qualifications or postgraduate developmental experience through attendance at specialist seminars and achieve higher level of outcomes under reducing professional direction.

Characteristics of the work

Work is usually performed under general guidance with the general quality of output monitored by superiors. However, the technical content of the work is not normally subject to direct supervision. Guidance may be given in reviewing work programs or on unusual features of an assignment.

Employees are expected to exercise initiative in the application of professional practices either as a member (in some situations as leader) or a specialist professional in multi-disciplinary teams or independently and may deputise for the professional head of a small work unit.

Employees at this level may have supervisory responsibilities for technical staff, if required, together with responsibilities for training and development of subordinate professional staff within the discipline.

Duties and skills

Work at this level requires the undertaking of more complex activities and the selection and application based on professional judgement of new and existing techniques and methodologies.

Employees may carry out research under professional supervision and may be expected to contribute to the advances of the techniques used.
Supervisory responsibilities include on-the-job training, staff assessment and performance counselling in relation to subordinates with the discipline or para professionals, as well as authority for the verification and validation of work results of supervised staff.

Duties also include the responsibility for varied professional assignments, requiring knowledge of either a broad or specialised field. Problems would be addressed by the use of combinations of standard procedures and/or modifications of standard procedures.

S2.3 Technical stream

(a) Technical Officer level 1

Work level description (TO1)

Work at this level is restricted to those Employees who have met any minimum entry requirements plus the education requirements for acceptance into the appropriate tertiary institution.

Appointment to this level is solely for the purpose of fulfilling prerequisite education and/or training prior to appointment to the substantive grade in the technical stream.

A requirement at this level is the successful completion of the educational or training requirements of the particular technical group.

Appointees to this level may be enrolled as a full-time or part-time student, and if part-time, may be required to do work associated with the relevant occupation, but at a level and under a degree of supervision appropriate to the skills held. This may include some work which normally would be carried out by level 2 (i.e. practising) technical officer, provided such work is verified or validated by a qualified and experienced technical Employee.

Characteristics of the work

Work within this level is performed under close supervision following standard routines, methods and procedures with little scope for deviation, or the exercise of initiative or judgment.

The routines, methods and procedures to be followed are at a level consistent with skills acquired. Initially direct guidance is given when problems arise.

Skills and knowledge will be acquired and demonstrated on a progressive basis consistent with the formal and informal training undertaken. Positions at this level have no supervisory responsibility, although more experienced staff may be expected to assist new staff by providing basic advice and guidance.

Duties and skills

This level recognises that duties and skills will increase in complexity as the Employee moves through the education and training phase.

Employees at this level usually perform repetitive tasks which are fully prescribed and are usually performed in response to standardised instructions or requests.

Employees at this level may undertake a combination of routine clerical, analysis, preparatory and operative duties requiring the application of basic skills and routines.

(b) Technical Officer level 2

Work level description (TO2)

Positions at this level consist of Employees with a minimum of a diploma, advanced diploma, qualification, or agreed equivalent and who are identified as belonging to the generic groupings listed in the definition statement.

Positions at this level involve the delivery of basic technical services which are in support of agency objectives.

Characteristics of the work

Work is initially performed under close supervision by a more experienced professional or technical officer, however, this supervision is expected to reduce as experience increases. Guidance is always close at hand and work outcomes are closely monitored.
The solution of problems may require the exercise of basic technical judgement through the application of standard procedures, methods and standards, however, guidance from senior staff is readily available.

Employees at this level may operate individually under close supervision or as a member of a project team within a work group.

Positions at this level generally have no supervisory responsibilities although more experienced staff may assist new staff by providing guidance and advice.

Knowledge of basic practices and procedures relevant to the discipline is required with the possibility of specialisation in work application.

**Duties and skills**

Positions at this level may involve an Employee in a range of activities including the analysis of findings as they relate to the elements of the work. They could also include the preparation of reports incorporating recommendations on basic technical investigations, tests or measurements.

Employees at this level perform non-repetitive tasks, governed by established procedures, specific guidelines and standardised instructions. Work is generally undertaken under technical guidance of senior staff.

Skills are generally transferable within particular disciplines.

Employees shall be required to have technical knowledge as indicated by successful completion of the appropriate diploma, advanced diploma, qualification and be able to apply theoretical aspects of the relevant discipline to basic problems or minor phases of broader assignments.

(c) **Technical Officer level 3**

**Work level description (TO3)**

Work at this level requires detailed technical knowledge and experience with demonstrated high levels of accuracy and precision. An understanding of the agency's functions, coupled with detailed knowledge of the Unit's operations, practices and procedures is necessary for competent performance.

An Employee may be required to undertake a range of moderately complex tasks and functions or specialisation in a particular discipline may be a feature of work at this level.

**Characteristics of the work**

Work at this level is undertaken autonomously with limited guidance. Guidance is available for complex or unusual problems, research or moderately complex experimental work. However, the contribution of experience to resolve issues on a day to day basis for which there may be no established procedure is a requirement of this level.

Supervision of small work groups and responsibility for quality of output by the group may be a feature of this level.

**Duties and skills**

The determination, conduct and evaluation of standard technical practices and procedures are required at this level. Significant technical responsibility exists for the application of new techniques to moderately complex problems and may be combined with limited specialist research.

Supervisory responsibilities would be limited and would include on-the-job training, staff assessment and performance counselling in relation to subordinates within the discipline.

**S2.4 Operational stream**

(a) **Operational Officer level 1**

**Work level description (OO1)**

Training, both on and off the job, is a dominant feature of this level.
Characteristics of the level

Work at this level is performed under close supervision and direction following standard routines, methods and procedures with little scope for deviation, or the exercise of initiative or judgment in the selection of appropriate means to complete the work assignment. Limited responsibility exists for the final outcome.

The routines, methods and procedures to be followed are at a level consistent with skills acquired. Direct guidance is given when problems arise.

Positions at this level have no supervisory responsibility.

Duties and skills

Employees at this level usually perform repetitive tasks which are fully prescribed and are usually performed in response to standardised instructions or requests. There is only limited scope for interpretation.

(b) Operational Officer level 2

Work level characteristics (OO2)

Positions at this level involve the delivery of operational services whose work routines, methods, and procedures are clearly established and there is limited scope for deviation.

Training, both on and off the job, is often a dominant feature of this level.

Characteristics of the level

Work may initially be performed under close supervision by a more experienced officer, however, this supervision is expected to reduce as experience increases. Employees at this level may operate individually or as a member of a project team within a work group.

Limited discretion is available for the selection of the appropriate means of completing duties or tasks. Guidance is always available and work outcomes may be closely monitored.

Positions at this level may have limited supervisory responsibilities with more experienced staff assisting new staff by providing guidance and advice.

Duties and skills

Positions at this level may involve an Employee in a range of activities including the performance of non-repetitive tasks governed by established procedures, specific guidelines and standardised instructions.

Duties may include field support or regulatory inspection activities and data collection and recording.

Appointees to this level undertake a range of functions requiring the practical application of acquired skills and knowledge.

Technical skills not requiring trade or equivalent qualifications are required in order to safely and effectively operate basic machinery to perform routine and standard functions, and organise duties across a working day to meet regular work load requirements.

(c) Operational Officer level 3

Work level description (OO3)

Appointment to this level requires proven expertise in the particular discipline with demonstrated proficiency in applying established techniques.

An understanding of the agency's functions coupled with detailed knowledge of the work units' operations, practices and procedures is necessary for competent performance.
Characteristics of the level

Employees at this level work under general direction and undertake a range of functions which may require the application of trade based skills and experience or the practical application of a high level of skills.

Employees at this level may operate individually or as a member of a project team within a work group.

Supervision of subordinate Employees within a small discrete work group or function may be a feature of this level.

Assistance is usually available if required when problems occur, although problems are usually resolvable by reference to procedures, documented methods and instructions.

Whilst there is some scope for the exercising of initiative in the application of established work practices and procedures, problems can generally be solved by reference to documented methods and instructions.

Duties and skills

Work at this level requires a sound knowledge of the agency's functions and the requirements of the discipline.

A sound knowledge of the operating procedures is required.

Supervisory responsibilities may include co-ordination of work flow processes, training of subordinate staff, responsibility of quality of output of the workgroup, staff assessment and performance counselling in relation to subordinates.

Knowledge and compliance with regulations, codes and specifications may be required.

Duties at this level may include application of trade based skills or equivalent involving field work, design/modification of equipment, research projects, support services and the collating and analysis of specimens or data.

(d) Operational Officer level 4

Work level description (OO4)

Work at this level requires specialised knowledge within the discipline.

Work is undertaken under limited direction as to work priorities and the detailed conduct of the task.

Employees may be responsible for larger work groups or functions, field groups or district operations.

High levels of initiative in accomplishing objectives may be required to be exercised either on an individual basis or in a multi-disciplinary unit.

Characteristics of the work

Work is performed either independently with guidance from superiors only received for those aspects of work which involve new or sophisticated techniques or relate to areas outside the position's normal span of activity.

There is scope for the exercise of initiative in the application of established work practices and procedures.

Duties and skills

Duties include the supervision of a work group or function, field group or regional operation, with responsibility for the standard of workmanship, completion of work assignments and allocation of resources.

Interpretation of guideline material and documented precedents and the application of judgement may be required in determining solutions to problems.

(e) Operational Officer level 5

Work level description (OO5)

Work at this level requires specialised knowledge of complex though conventional methods and techniques.
High levels of autonomy and initiative may be required to be exhibited in accomplishing objectives and undertaking projects.

Management of large work groups may be a factor.

**Characteristics of the level**

Employees at this level are subject to limited direction and may exercise managerial responsibility for a large and complex work program.

Usually only broad guidance and advice is provided as to operational requirements and deadlines to achieve end results in line with operating goals.

**Duties and skills**

Duties may involve detailed planning, directing, co-ordinating or financial control within budget, material and workforce limitations established by management and the implementation of overall agency policies.

Managerial responsibility includes training of subordinate staff, co-ordination of workflow processes, responsibility for quality of output of the work unit, performance assessment and review, staff counselling, career planning and development, application of equal employment opportunity principles as well as implementing occupational health and safety guidelines and principles.

(f) *Operational Officers levels 6 & 7*

**Work level description (OO6 & OO7)**

Work at this level requires specialised knowledge and may be undertaken autonomously.

These are managerial levels and may include responsibility for large and complex work groups.

**Characteristics of the work**

Responsibilities at these levels will reflect the size and complexity of agency operations and will normally entail significant independence of action in the allocation of resources within constraints imposed by management.

Work is performed under limited direction with a significant degree of discretion permitted within the boundaries of broad guidelines to achieve organisational goals.

**Duties and skills**

Duties at this level reflect the independent operation of the Employee and may involve significant allocation of resources.

Management of work units may include prioritising work, training staff, monitoring of work flow and setting of local strategic plans. Assessment and review of the standard of work of subordinate staff is also a requirement of this level.

Work at this level requires a knowledge and awareness of agency operations as well as detailed knowledge of major activities of the work unit.

The requirement to interpret legislation, regulations and other guidance material relating to the operations and functions of the work area is necessary for adequate performance at this level.

Dated 21 September 2006.


New Award - Crime and Misconduct Commission Employees Award - State 2006

Released: 25 September 2006