

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 698 - reprint of award

BOWEN COKE WORKS AWARD 2005

Following the Declaration of the General Ruling for Overtime Meal Allowance (matter numbers B/2010/34 and B/2010/38), the Bowen Coke Works Award 2005 is hereby reprinted, pursuant to s. 698 of the *Industrial Relations Act 1999*.

I hereby certify that the Award contained herein is a true and correct copy of the Bowen Coke Works Award 2005 as at 1 January 2011.

Dated 1 March 2011.

[L.S.] G.D. Savill
Industrial Registrar

BOWEN COKE WORKS AWARD 2005

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Bowen Coke Works Award 2005.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 1 February 2005.

1.4 Award coverage

1.4.1 This Award applies exclusively to Bowen Coke Pty Ltd, Bowen, Queensland and to its employees.

1.5 Definitions

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

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

1.5.3 "Union" means The Australian Workers' Union of Employees, Queensland; the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland; or The Electrical Trades Union of Employees of Australia, Queensland Branch.

1.6 Parties bound

This Award is legally binding on the employer and employees as prescribed by clause 1.4, the Unions and their members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

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

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultative mechanisms and procedures in the workplace

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

3.2 Grievance and dispute settling procedure

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

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.

- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

4.1 Employment categories

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

- (a) Full-time;
- (b) Part-time (as prescribed in clause 4.3); and
- (c) Casual (as prescribed in clause 4.4).

4.2 Full-time employment

Full-time employee means a person who is engaged to work on a full-time basis.

4.3 Part-time employment

4.3.1 Part-time employment is defined as an employee who is engaged for lesser number of hours than constitute full-time employment under this Award; of a minimum number of hours, being 15 per week; of a maximum number of hours, being 38 per week; of a minimum number of consecutive hours, being 3 per day; of a regular number of ordinary hours per week; and any work performed by a part-time employee outside of the ordinary rostered hours to be paid as overtime.

4.3.2 Any variations to work patterns are to be in accordance with Award provisions for full-time employees.

4.3.3 Part-time employees are to be paid on a *pro rata* basis (proportionate to the number of hours worked) for wages and employment conditions as specified in this Award for full-time employment for the same kind of work.

4.3.4 All other conditions for part-time employment other than those specified above, shall be those that apply to full-time employment.

4.3.5 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with this Award.

Where an employee and the employer agree, part-time employment may be converted to full-time and vice versa on a permanent basis or for a specified period of time. If such as employee transfers from full-time to part-time (or vice versa) all accrued Award and legislative entitlements shall be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

4.4 Casual employment

A casual employee is an employee who is engaged as such and employed by the hour for a period of not more than 32 ordinary hours in any one week.

A casual employee shall be paid at the rate of 1/38th of the ordinary classification rate under which the employee is employed. An additional amount of 25% shall be paid for all ordinary hours worked only.

A casual employee who works in excess of the ordinary daily or weekly hours prescribed in the contract of employment shall be paid in accordance with clause 6.4.

Clause 4.4 has been inserted as a result of an application to make this Award arising from the decision of the Full Bench of the Commission on 30 June 2004 (and published at (2004) 176 QGIG 479) to move to declare Industrial Agreements obsolete. Given the origin of clause 4.4 the provisions contained within it are not to be used as a precedent for any other matter whatsoever.

4.5 Anti-discrimination

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

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

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

4.5.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

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

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

4.6 Termination of employment

4.6.1 *Termination by the employer*

(a) In order to terminate the employment of an employee the employer shall give the following notice:

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

(b) In addition to the notice in clause 4.6.1(a), employees over 45 years of age at the time of giving of notice and with not less than 2 years' continuous service, 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) The period of notice in clause 4.6.1 shall not apply to casual employees nor in the case of dismissal for misconduct (including dishonesty, intoxication or wilful disobedience) or other grounds that justify instant dismissal.

4.6.2 *Notice of termination by employee*

(a) Two days' notice of termination is required to be given by the employee to the employer.

(b) If an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate for the period of notice.

4.6.3 *Casual employees*

No notice is required to be given by the employer or the employee to terminate the hourly contract of employment of a casual employee.

4.7 Introduction of changes

4.7.1 *Employer's duty to notify*

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

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

4.7.2 *Employer's duty to consult over change*

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

4.8 Redundancy

4.8.1 *Consultation before terminations*

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

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

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.8.1, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and

penalties; and

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

4.8.3 *Transmission of business*

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

4.8.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.8.5 *Notice to Centrelink*

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

4.8.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.1(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

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

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

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

4.8.7 *Superannuation benefits*

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

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

4.8.8 *Employee leaving during notice*

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

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.8.9 *Alternative employment*

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

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

Clause 4.8 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

4.8.12 *Employers exempted*

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

4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of clause 4.8.13 into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:

- (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
- (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

(b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.6.14 *Incapacity to pay*

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

4.9 Continuity of service - transfer of calling

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

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Definitions of classifications

- 5.1.1 "Coke production process" - This process consists of discharging, quenching, sizing and loading of coke from ovens and unloading, crushing, blending, batching and weighing of fresh coal to the ovens. The coke production process is a non-continuous process. All tasks are inter-related but are not required to be undertaken sequentially or continuously.
- 5.1.2 "Engineering Employee" means an employee who is engaged in tasks consistent with those contained in the *Engineering Award - State 2002*.
- 5.1.3 "Production Employee" means an employee who is engaged in tasks associated with the coke production process, the loading of coke for transportation from the site and general upkeep and maintenance of all ancillary equipment and surrounds.
- 5.1.4 "Team Leader" means an employee who co-ordinates work which is to be performed by the team of which that employee is a participating member.

5.2 Wage rates

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

	Per week \$
Production employee	658.80
Electrician	728.90
Electrician special class	748.00
Fitter welder	728.90

Note 1: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2010 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.3 Allowances

5.3.1 *Industry allowance* - The base weekly rate of each classification, excepting a production employee, shall be increased by the amount of \$25.50 per week and shall be regarded as part of the wage of the employees

concerned for all purposes.

5.3.2 *Tradespersons allowance* - An additional payment of \$17.95 per week shall be paid to tradespersons only and shall be regarded as part of the wage of the employees concerned for all purposes.

5.3.3 *Experience pay* - The rates of wages set out above shall be increased in accordance with the amounts provided for the respective years of experience as follows:

	Per week \$
After 1 year's continuous experience at the coke works	21.20
After 2 years' continuous experience at the coke works	24.03
After 3 years' continuous experience at the coke works	31.70

These additional payments shall be regarded as part of the wage of the employees concerned for all purposes.

Apprentices will not receive experience payments until completion of indentures. Previous service as an apprentice will be counted for the purpose of determining the appropriate experience payment.

These payments shall be increased from time to time when other M.I.M. establishments operating under State Awards receive increases in experience payments.

5.3.4 *Disability allowance* - A special allowance of \$42.35 per week will be paid in lieu of special conditions and allowance provisions of the respective State Awards applying to the coke works, e.g. dirty work, wet work, height money, confined space, noxious fumes and toxic substances, hot work, handling cement, mixing concrete, and all other allowances with the exception of pit money and working in the rain. This allowance shall be regarded as part of the wage of the employees concerned for all purposes.

In respect to the allowance referred to in the preceding paragraph, such allowance does not include a payment for working in the rain.

5.3.5 *Pit money* - Any employee instructed to clean out the track hopper pit, the pit under the swing hammer mill or the belt take up pits shall be paid 79.45 cents per hour with a minimum payment for 2 hours for all time so engaged.

5.3.6 *Team leaders* - Employees whilst occupying the position of team leader shall be paid the following additional rate:

	Per week \$
When in charge of less than 10 employees	5.95
When in charge of 10 and less than 20 employees	9.10
When in charge of 20 or more employees	11.90

5.3.7 *First aid allowance* - For an employee who holds and keeps valid an appropriate first aid certificate as a first aid attendant an additional \$13.90 per week in which an employee works 3 days or more shall be paid to such employee. It shall be the responsibility of the employee to ensure the certificate remains valid.

5.3.8 *Tool allowance* - All tools of trade shall be supplied by the employer. However where an employee is required to supply their own tools, that employee shall be paid an allowance of:

\$14.50 per week.

5.3.9 *Work in rain allowance* - Where practicable suitable waterproof clothing shall be supplied by the employer to the employees who are required to work in the rain. Notwithstanding the foregoing where in the performance of work an employee gets their clothes wet, the employee shall be paid double rates for all work so performed and such payment shall continue until the employee is able to change into dry clothing or until the employee ceases work, whichever is the earlier.

5.3.10 *Meal allowance* - An employee who is required to continue work after the usual ceasing time shall be paid a meal allowance of \$12.10 after more than one hour's overtime.

If the employee continues to work overtime the employee shall after the completion of each further 4 hours' overtime worked be paid an additional \$12.10.

When employees have provided themselves with customary meals because of receipt of notice of intention to

work overtime the employee shall be entitled to an allowance of \$12.10 for each meal so provided in the event of the work not being performed, or ceasing before the respective meal times.

5.4 Payment of wages

- 5.4.1 When an employee is discharged or leaves the employment, the employee shall be paid all monies due as soon as practicable and, in any case, within 24 hours, excepting where a Sunday or public holiday intervenes, in which case the employee shall be paid such monies not later than noon on the next succeeding working day.
- 5.4.2 If the employee is not so paid the employee shall, for such time as shall elapse between discharge or leaving employment as aforesaid and being paid, be paid at the ordinary rate of wages.
- 5.4.3 Wages shall be paid fortnightly or as otherwise agreed by the parties, by electronic funds transfer directly into the employee's account in any financial institution nominated, which has that facility available:

Provided further that not more than 2 days' pay shall be held in arrears at any time.

5.5 Occupational superannuation

Superannuation conditions and benefits shall be as set out in the Xstrata Superannuation Plan Trust Deed.

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

6.1 Hours of work

6.1.1 Operation of 38 hour week

- (a) Subject to clause 6.1.2 (Implementation of a 38 hour week), and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following basis:
- (i) 38 hours within a cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding 28 days.
- (b) The ordinary hours of work shall not exceed 10 hours per day.
- (c) Where necessary, employees shall commence their ordinary hours and breaks at different times to ensure continuity of service.
- (d) The ordinary starting and finishing times may be altered to suit geographic, safety, climatic or traffic conditions by the employer with the agreement of the majority of employees concerned:
- Provided that any such altered starting and finishing time will not invoke any penalty payment that would not be payable if the Award spread of hours was observed.
- (e) Employees are required to observe the nominated starting and finishing times for the work day, including designated breaks to maximise available working time. Preparation for work and cleaning up of the employee's person shall be in the employee's time.
- (f) Where a rostered day falls on a public holiday, the following day may be taken where practicable in lieu thereof or the employee and the employer may agree to an alternative day off duty as substitution.
- (g) Pay averaging
- Employees shall be entitled to a week's wages in accordance with clauses 5.2 for each week of the cycle.
- (h) The entitlement to a rostered day off on full pay shall be subject to the following:

- (i) Each day of paid leave taken (not including annual leave, long service leave) and any public holiday occurring during any cycle of 4 weeks shall be regarded as a day worked for accrual purposes.
- (ii) An employee who has not worked a complete 4 week cycle in order to accrue a rostered day off shall be paid a *pro rata* amount for credits accrued for each day worked in such cycle payable for the rostered day off (i.e. an amount of 24 minutes for each 8 hour day worked or 2 hours for each 40 hours worked).

For the purposes of clause 6.1.1(h), "worked" includes paid leave referred to in clause 6.1.1(h)(i).

- (i) Sickness on a rostered day off which has resulted from the 19 days month work cycle

Where an employee is sick or injured on their rostered day off the employee shall not be entitled to sick pay nor shall their sick pay entitlement be reduced as a result of the sickness or injury on that day.

- (j) Payment of wages

In the event that an employee by virtue of the arrangement of the employee's ordinary working hours is rostered off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following such pay day.

6.1.2 *Implementation of a 38 hour week*

- (a) The 38 hour week shall be implemented on one of the following basis, most suitable to each location, after consultation with and giving reasonable consideration to the wishes of the employees concerned:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each work cycle; or
 - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.
- (b) Subject to clause 6.1.2, employees may agree that the ordinary hours of work are to exceed 8 on any day, thus enabling more than one work day to be taken off during a particular work cycle.
- (c) Notwithstanding any other provision in clause 6.1.2, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the employee concerned, may agree to accrue up to a maximum of 5 rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.
- (d) Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in each location concerned.

6.1.3 *Procedure for discussions - 38 hour week*

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

6.1.4 A roster setting out the employees' days off duty and starting and finishing times on such days shall be displayed in a place conveniently accessible to employees at least 3 days before the commencement of each week.

6.1.5 Rosters shall provide a minimum of 10 hours break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day.

6.1.6 *Day workers* - The ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:

- (a) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (b) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (c) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (d) 152 hours within a work cycle not exceeding 28 consecutive days.

6.1.7 The ordinary hours of work prescribed may be worked on any 5 consecutive days in the week, Monday to Sunday inclusive, subject to the following:

- (a) the ordinary hours worked on a Saturday or Sunday shall be paid at the appropriate weekend overtime rate specified in clause 6.4;
- (b) any arrangement of hours which includes a Saturday or Sunday as ordinary hours shall be subject to agreement between the employer and the majority of employees concerned.

6.1.8 The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks and rest pauses, between 6.00 a.m. and 6.00 p.m. The spread of hours prescribed herein may be altered as to all or a section of employees provided there is agreement between the employer and the majority of employees in the plant or work section or sections concerned:

Provided further that work done outside the hours of 6.00 a.m. to 6.00 p.m. shall be paid at overtime rates and will be deemed to be part of the ordinary hours of work for the purposes of clause 6.1.8.

6.1.9 *Rostered day off - tradespersons* - There shall be a roster as mutually agreed between the company and the representatives of the Unions concerned to provide one rostered day off in each 4 weekly period in accordance with the coke production roster.

6.1.10 In the case of emergencies or major breakdowns, a rostered day off may be changed by supervision in consultation with the employee or employees concerned. Any day Monday to Friday may be used as an alternative rostered day off such day shall be as mutually agreed between the employee and their supervisor and shall be taken in the same or next work cycle.

6.2 Meal breaks

6.2.1 Employees shall be entitled to a meal break of 30 minutes to be taken at a mutually agreed time, providing such meal break shall commence between the fourth and fifth hour after the normal commencement time.

6.2.2 Shift workers, shall be allowed 30 minutes for crib during each shift of 8 hours to be taken by the employee at such time and in such manner as will not interfere with continuity of work where continuity is necessary. No deduction shall be made from the wages of an employee for crib.

6.2.3 All work done during the recognised meal period shall be paid for at the rate of double time, such payment to continue until a meal break period has commenced:

Provided that (except in cases of emergency) no employee shall be required to work more than 6 hours without a break for a meal. Such meal period to be of the prescribed duration:

Provided further that clause 6.2.3 shall not apply to employees who are required by legislation to maintain constant vigil over plant or equipment when no relief is available.

6.2.4 Employees who are required to continue work after their usual ceasing time shall be entitled to a 30 minute paid crib break after one hour.

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

6.2.6 An employee who is required to return to work to perform overtime between 12.01 a.m. Monday and midnight Friday (other than on public holidays), which work does not continue after the ordinary ceasing time, shall be entitled to a 30 minute crib break after the completion of each 4 hours of overtime worked and no deduction of pay shall be made in respect thereof:

Provided that an employee who is required to report back to work to perform overtime of more than 2 hours, but less than 4 hours prior to the ordinary starting time shall be allowed 30 minutes crib break at the ordinary starting

time for which the employee shall be paid at ordinary rates.

- 6.2.7 An employee who is required to work overtime on any Saturday, Sunday or public holiday, which overtime is outside the scope of that covered by clauses 6.2.1 and 6.2.2, shall, if required to continue to work overtime for more than 9 hours, be allowed 30 minutes for a crib after 9 hours worked. After each further 4 hours of overtime worked, the employee shall be allowed 45 minutes for a crib.
- 6.2.8 No deduction of pay shall be made in respect of any crib break referred to herein.

6.3 Rest pauses

- 6.3.1 Where practicable every employee covered by this Award shall be 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 continuity is necessary:

Provided that where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day, with such 20 minute rest pause and the meal break arranged in such a way that the ordinary working day is broken up into 3 approximately equal working periods. Consent to combine the rest pauses shall not be unreasonably withheld by either party:

Provided further that where there is agreement to combine the rest pauses into one 20 minute rest pause, the time of taking this rest pause may be varied. Consent to vary the time of taking this rest pause shall not be unreasonably withheld by either party.

6.4 Overtime

- 6.4.1 All time worked in excess of that provided for in clause 6.1 or before the ordinary starting time or after the ordinary ceasing time shall be deemed overtime. Each day to stand by itself when overtime is being computed, except where an employee commences overtime on one day and continues to work such overtime into the next day.
- 6.4.2 Any employee called upon to work 2 consecutive shifts shall be paid at overtime rates for the second of such shifts.
- 6.4.3 All overtime, except as hereinafter provided, shall be paid for at one and a-half times the ordinary rate for the first 3 hours, after which double time shall be paid until the ordinary starting time next morning. Overtime rates shall be paid where employees work overtime between 6.00 a.m. and the usual starting time.
- 6.4.4 If employees are called upon to work overtime commencing on Saturday they shall be paid at one and a-half times the ordinary rate for the first 3 hours and double time thereafter with a minimum period of 3 hours' work or payment therefore.
- 6.4.5 All overtime worked by any employee on Sunday shall be paid for at the rate of double time, with a minimum payment of three hours at such overtime rate:

Provided that such minimum payment shall not apply where the overtime immediately precedes or follows ordinary working hours.

- 6.4.6 Where employees are required to report for work between midnight and 6.00 a.m. they shall be paid at the rate of double time for all overtime so worked up to the ordinary starting time Monday to Friday and up to 7.00 a.m. on Saturday.
- 6.4.7 *Working on rostered day off* - An employee, other than a coke worker, who is required to work on their rostered day off, shall be paid for such work at the applicable overtime rate for Saturday.
- 6.4.8 An employee who works so much overtime between the termination of the ordinary work on one day and the commencement of the ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times shall, subject to clause 6.4.8 be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, then the employee shall be paid double rates until released from duty for such period and shall then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 6.4.9 The provisions of clause 6.4.8 shall apply in the case of shift workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

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

6.4.10 When any portion of an hour is worked, the employee shall receive payment in respect of any broken part of an hour to the next highest 1/10th of an hour.

6.4.11 For overtime worked in any calling in or in connection with which more than one shift per day is worked, shift workers shall be paid at the rate of double time.

6.4.12 An employer may require an employee to work reasonable overtime at overtime rates and, where the employee undertakes to work overtime for a specified period or for the completion of a specified job, the employee shall work in accordance with their undertaking unless prevented from doing so by illness, accident, injury or extenuating circumstances.

6.5 Call back

6.5.1 An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises), shall be paid for a minimum of 4 hours' work at the appropriate rate for each time so recalled:

Provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full 4 hours if the job the employee is recalled to perform is completed within a shorter period. Clause 6.5.1 shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside the employee's ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. Overtime worked in the circumstances specified in clause 6.5.1 shall not be regarded as overtime for the purpose of clause 6.4.7 when the actual time worked is less than 3 hours on such recall or on each of such recalls.

6.6 Shift work

6.6.1 *Definitions - afternoon shift, night shift and shift work*

- (a) "Afternoon shift" means any shift finishing after 6.00 p.m. and at or before midnight or where the majority of hours fall between those hours.
- (b) "Night shift" means any shift finishing subsequent to midnight and at or before 8.00 a.m. or where the majority of hours fall between those hours.
- (c) "Shift work" means work done by separate relays of employees working recognised hours, proceeding, during or following the ordinary working hours.

6.6.2 The ordinary working hours for shift workers shall not exceed an average of 38 hours per week, nor 8 hours on any one day:

Provided the ordinary hours of work may be exceeded in any week or weeks subject to the total ordinary hours worked during any roster cycle not exceeding an average of 38.

6.6.3 Not more than 8 hours shall be worked on any one shift at ordinary rates except where there is agreement as outlined in clause 6.6.9. Subject to the requirements of clause 6.6.9, the method of working 8 hour shifts by shift workers shall be as mutually agreed upon between the employer and the employee's representative and/or the Union.

6.6.4 For any afternoon or night shift which has been in operation for not less than 5 afternoons or nights, 15% more than ordinary rates shall be paid. This extra rate shall not apply to shift work performed on Saturdays and/or Sundays where week-end penalty rates apply.

6.6.5 No afternoon or night shift shall be recognised as such unless the employee works not less than 5 successive working afternoons or nights:

Provided that the employee is not absent from work voluntarily.

6.6.6 Where more than one shift of workers is employed they shall be changed if possible in weekly alteration or rotation.

6.6.7 Where an employer refuses to allow a change-over rotation of shifts, afternoon and night shift shall be paid for at

24 cents an hour in addition to the foregoing rates.

- 6.6.8 The number of ordinary working hours for afternoon or night shift workers shall be the same as provided in this Award for day workers.
- 6.6.9 A shift shall consist of not more than 8 hours inclusive of crib time. Where continuous shift work is performed one and a-half times ordinary rates shall be paid from midnight Friday to midnight Sunday. All time worked over 8 hours in any shift shall be paid for at double ordinary rates.
- 6.6.10 Where the ordinary night shift commences prior to midnight on Sunday, the time between the commencement of the ordinary night shift and midnight shall not be deemed to be work done on Sunday, and the ordinary night shift rate shall apply.
- 6.6.11 If a holiday mentioned in clause 7.6 falls on a day on which a shift worker is rostered off, an extra day shall be added to annual leave.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

- 7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of employment be entitled to annual leave on full pay as follows:
 - (a) not less than 5 weeks and if employed on shift work where three shifts per day are worked over a period of 7 days per week; and
 - (b) not less than 4 weeks in any other case.
- 7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.9) shall be paid for by the employer in advance:
 - (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary pay at a rate in excess of the ordinary rate payable under this Award at that excess rate; and
 - (b) in every other case, at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.
- 7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the annual leave to the employee from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due, pay calculated in accordance with clause 7.1.9, for 4 or 5 weeks as the case may be and also ordinary pay for any public holiday occurring during such period of 4 or 5 weeks.
- 7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due, an amount equal to 1/9th of ordinary pay for the period of employment if an employee to whom clause 7.1.1(a) applies, and 1/12th of ordinary pay for the period of employment if an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.9.
- 7.1.5 Reasonable notice, with a minimum period of 14 days, of the commencement of annual leave shall be given to or by the employee unless the employer and employee otherwise agree.
- 7.1.6 Except as hereinafter provided it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.
- 7.1.7 Rostered days off which fall during or adjacent to any period of annual leave will not be debited against such leave.
- 7.1.8 *Annual close down* - Where an employer closes down the plant or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the plant or section or sections concerned, the following provisions shall apply:
 - (a) the employer may stand off for the duration of the close down all employees in the plant or section or sections concerned, and allow to those who are not then qualified for 4 full weeks' leave paid holidays on a proportionate basis;
 - (b) an employee who has then qualified for 4 full weeks' leave, and has also completed further service shall be allowed leave, and shall be paid an amount equal to 1/12th of the ordinary pay for the period of service in excess of 12 months;

- (c) all time during which an employee is stood off without pay for the purpose of clause 7.1.8 shall be deemed to be time of service in the next 12 monthly qualifying period, provided that this shall not apply where the period of employment including the period stood down does not exceed 5 weeks:

Provided that the foregoing conditions shall also apply in the event of annual leave being staggered so that employees entitled to annual leave may be broken into 2 groups which overlap into a close down in accordance with the first paragraph of clause 7.1.8, of not more than 2 working weeks (plus public holidays occurring therein), and employees with a lesser period of service may be stood down as in clause 7.1.8(a).

7.1.9 *Calculation of annual leave pay* - In respect to annual leave entitlement to which clause 7.1 applies, annual leave pay (including any proportionate payments) shall be calculated as follows:

- (a) Shift workers - Subject to clause 7.1.9(c), the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or holiday shifts.
- (b) Team leaders - Subject to clause 7.1.9(c), team leader allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
- (c) All employees - Subject to clause 7.1.9(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
- (i) the employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) team leader allowance or amounts of a like nature; or
 - (iii) a further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.9(c)(i) and 7.1.9(c)(ii).
- (d) Clause 7.1.9(c) shall not apply to the following:
- (i) any periods of annual leave exceeding:
 - (A) 5 weeks in the case of employees concerned in a calling where 3 shifts per day are worked over a period of 7 days per week; or
 - (B) 4 weeks in any other case.
 - (ii) Employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.10 Excepting as to continuous shift workers, an employee engaged as an emergency worker, who makes a specific agreement in writing with the employer to remain in readiness to do overtime work at all hours, shall be allowed one week's additional paid leave exclusive of public holidays.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals and school-based apprentices and trainees, is entitled to not less than 76 hours' sick leave for each completed year of their employment with their employer:

Provided that part-time employees accrue sick leave on a proportional basis.

- (b) This entitlement will accrue at the rate of 8.8 hours' sick leave for each 6 weeks of employment.
- (c) Payment for sick leave will be made based on the number of hours which would have been worked by the employee if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

7.2.2 Employee must give notice

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

7.2.3 *Evidence supporting a claim*

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

7.2.4 *Accumulated sick leave*

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

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

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

7.2.5 *Workers' compensation*

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

7.2.6 Clause 7.2.1 has been inserted as a result of an application to make this Award arising from the decision of the Full Bench of the Commission on 30 June 2004 (and published at (2004) 176 QGIG 479) to move to declare Industrial Agreements obsolete. Given the origin of clause 7.2.1 the provisions contained within it are not to be used as a precedent for any other matter whatsoever.

7.3 Bereavement leave

7.3.1 *Full-time and part-time employees*

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

7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days' unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

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

7.3.4 *Unpaid leave*

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

7.4 Long service leave

7.4.1 All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in

accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

7.4.2 Long service leave in advance

- (a) Long service leave, which would normally be due to an employee upon termination of employment after 7 years' continuous service, but less than 10 years' continuous service, in accordance with clause 7.4, may be taken as long service leave by the employee without the employee terminating their employment with the employer.
- (b) An employee who elects to take long service leave in advance, in accordance with clause 7.4.2(a), and who subsequently terminates their employment, or dies, or has their employment terminated by the employer, shall have their long service leave entitlement on termination reduced by that portion of advance long service leave that employee has taken.
- (c) Payment for the period of long service leave in advance shall be calculated in accordance with the provisions of the Act.

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Public holidays

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

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

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

7.6.2 Labour Day

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

7.6.3 Annual show

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

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

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

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

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

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

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

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

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

(e) Nothing in clause 7.6.4 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

7.6.5 *Double time and a-half*

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

7.6.6 *Stand down*

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

7.6.7 *Substitution*

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

7.7 Jury service

An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.

Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.

Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.

If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.

"Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

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

No provisions inserted in this Award relevant to this Part..

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training

The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this Award, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- 9.1.1 Developing a more highly skilled and flexible workforce;
- 9.1.2 Providing employees with career opportunities through appropriate training to acquire additional skills; and
- 9.1.3 Removing barriers to the use of skills acquired.

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

10.1 Workplace health and safety

The employer shall cause a copy of the *Workplace Health and Safety Act 1995*, Codes of Practice approved under the Act and the *Workplace Health and Safety Regulations 1995*, to be displayed in a conspicuous place so as to be easily read by employees.

10.2 Clothing, safety footwear, safety equipment and wet weather clothing

10.2.1 Each employee, other than casual or part-time employees, on commencement of employment shall be supplied free of charge one pair of safety boots and after one month's employment shall receive 4 sets of work clothes free of charge the choice of such clothes shall be from the following list:

- (a) one pair of overalls; or
- (b) one pair of trousers and one shirt.

10.2.2 Further issues of the articles referred to in clause 10.2 shall be replaced on a one for one basis due to fair wear and tear. Employees will be required to return to the company the articles which are no longer wearable due to fair wear and tear and same will be replaced.

10.2.3 Each employee shall wear safety boots as issued or approved by the company, while on the job.

10.2.4 A winter jacket will be issued free of charge to each employee each 3 years. Such jacket shall be manufactured of a cotton material.

10.2.5 The laundering or repair of all articles is the responsibility of the employee.

10.2.6 If an employee terminates within 4 months of the issue of articles provided in accordance with clause 10.2, the employee shall either return such articles or pay a *pro rata* amount of their cost to the company at the time of issue.

10.2.7 *Safety footwear - casual/part-time employees* - All casual/part-time employees must wear safety boots. The employee can either:

- (a) provide their own approved safety footwear and if so, will be paid an allowance of \$5.60 per week, or
- (b) be provided with appropriate safety footwear by the employer on the proviso that if the employee abandons or terminates their employment then the employer may hold back monies owing to the employee to the value of the safety footwear except if an employee has worked for a total of 12 weeks as a casual then they shall be deemed to own the boots.

10.2.8 Employees will be provided with an initial issue of personal safety equipment necessary to protect their person. In accepting such equipment the employee agrees to care for the equipment and keep it secure. Replacements will be made as dictated by fair wear and tear and on the basis of one for one on the return of worn out goods. Employees are required to wear safety equipment as a condition of employment in designated areas of the plant in accordance with clause 10.1.

10.2.9 Employees, other than casual or part-time, will be issued with a set of wet weather gear upon engagement and

will be responsible for the care and security of such equipment. Replacement will be made as dictated by fair wear and tear and on the basis of one for one on the return of worn out items.

10.3 Bath time

A period of 15 minutes shall be allowed as bath time immediately prior to ceasing time on any working day.

10.4 Wash-up time

A period of 5 minutes shall be allowed for this purpose immediately prior to the time set on each normal working day for the commencement of the meal break.

10.5 Towel and soap provisions

Each Award employee will be supplied with one towel and 18 cakes of soap every 3 months. The soap issue shall consist of solvol and/or pure soap.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

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

11.1.2 Entry procedure

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

11.1.3 Inspection of records

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

employer.

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

11.1.4 *Discussions with employees*

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

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

11.1.5 *Conduct*

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

11.2 Time and wages record

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

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

11.2.2 The time and wages record must also contain:

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

11.2.3 The employer must keep the record for 6 years.

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

11.3 Trade union training leave

11.3.1 A Union delegate or duly elected or appointed Union representative will, upon written application by the Union

to the employer, such application being endorsed by the Union and given to the employer at least 2 months in advance (or such lesser period as mutually agreed between the Union and the employer/s), be granted up to 5 working days' leave (non-cumulative) on ordinary pay each calendar year to attend courses or seminars conducted by the Union or specific training courses approved and accredited by the Union. The scope, content and level of such courses or seminars will be such as to contribute to a better understanding of industrial relations within the employer's operations. Other courses mutually agreed between the Union and an employer, or employers, may be included under clause 11.3.

- 11.3.2 Any written application by the Union seeking release of a delegate or representative to attend a course will include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted.
- 11.3.3 For the purposes of clause 11.3 "ordinary pay" means the ordinary time rate of pay payable to the employee exclusive of any allowance for travelling time and fares.
- 11.3.4 The granting of such leave is subject to the employee having at least 6 months' continuous service with the employer prior to such leave being granted and being the elected Union delegate/representative.
- 11.3.5 Unless otherwise agreed the maximum number of employees of one and the same employer attending a training course or seminar each year will be as follows:
- | | |
|--|---|
| Where the employer employs between 10 - 50 employees | 1 |
| Where the employer employs between 51-100 employees | 2 |
| Where the employer employs over 100 employees | 4 |
- 11.3.6 The granting of such leave is subject to the convenience of the employer so that the operations of the enterprise will not be adversely affected.
- 11.3.7 Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular Union delegate or representative at a particular time (including where the employer might have previously advised of its ability to release such Union delegate or representative) the Union will not unreasonably press its request for the release of that delegate/representative at that time. If the matter is not amicably resolved, it will be processed in accordance with the grievance and dispute settling procedure contained in clause 3.2.
- 11.3.8 In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted by the employer to cover the absence of the employee.
- 11.3.9 Leave granted to attend such training courses will not incur any additional payment or alternate time off if such course coincides with an employee's rostered day off or with any other concessional leave.
- 11.3.10 Such paid leave will not affect other leave granted to employees under this Award.
- 11.3.11 On completion of the course the employee must, upon request, provide to the employer proof of their attendance at the course. Except in the case of sick leave or other authorised leave, non-attendance at a training course will result in the employee not being paid for such time.

11.4 Posting of award

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

11.5 Union encouragement

Preamble

Clause 11.5 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.5.1 Documentation to be provided by employer

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

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

11.5.2 *Union delegates*

- (a) Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.
- (b) The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

Dated 21 April 2005.

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

Operative Date: 21 April 2005
Repeal of Industrial Agreement and New Award - Bowen Coke Works
Award 2005.
Released: 12 May 2005