

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

DISABILITY SUPPORT WORKERS AWARD - STATE 2003

Following the Declaration of the General Ruling in the 2011 State Wage Case (matter numbers B/2011/17 and B/2011/19), the Disability Support Workers Award - State 2003 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 Disability Support Workers Award - State 2003 as at 1 September 2011.

Dated 1 December 2011.

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

DISABILITY SUPPORT WORKERS AWARD - STATE 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Disability Support Workers Award - State 2003.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 14 July 2003.

1.4 Coverage

1.4.1 This Award applies to all disability organisations (employers) and their employees for whom classifications and rates of pay are prescribed by this Award. The employees shall be engaged in the provision of primary or personal care, or general or support duties in disability services, accommodation or supported accommodation, life style support which would include workplace and study environment and independent living centres and assistance services, support services and housing, temporary accommodation, support and respite care or independent living centres and persons providing in-home assistance, and to contractors and/or subcontractors to the said disability organisations and their employees.

1.4.2 Employees and employers shall be exempt from Part 5 and Part 6 of this Award, and clause 7.6 of this Award, for all time whilst employees are performing work that falls within the definition of "live in arrangement" as defined in clause 1.5.

- 1.4.3 This Award shall not cover employees of the Crown.
- 1.4.4 The Australian Workers' Union of Employees, Queensland shall have the right to represent under this Award the industrial interest of employees covered in the Deed of Agreement which was filed in the Australian Industrial Relations Commission in Case Number 20476 of 1991.
- 1.4.5 This Award shall not cover employees covered by the Blue Care Enterprise Award - State 2004.
- 1.4.6 This Award shall not cover employees covered by the Lifeline Community Care Queensland Enterprise Award - State 2005.

1.5 Definitions

- 1.5.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.5.2 "Australian Qualifications Framework (AQF)" refers to the national system of recognition for the issue of vocational credentials.
- 1.5.3 "Commission" means the Queensland Industrial Relations Commission.
- 1.5.4 "Continuous Shift Work Employee" means an employee who is engaged on continuous Shift Work and whose hours of work are regularly rotated in a shift roster covering 24 hours per day over 7 days per week.
- 1.5.5 "Live in arrangement" means an arrangement where an employee is required to live in the same premises as a client for a period in excess of 68 consecutive hours, and is responsible for, or provides one or a combination of home-aide, handyperson, personal care duties, and support for the client in their home life. An employee must be provided with full board and lodging whilst required to live in the same premises as the client in order to fall within this definition of 'live in arrangement'.

No employee shall suffer a reduction in their terms and conditions of employment as a result of the introduction of clause 1.5.5 in the Award. This definition of 'live in arrangement' shall operate on a trial basis for a period of 12 months, and the parties to the Award will jointly report back to the Queensland Industrial Relations Commission during this period if necessary, but no later than 12 months.

- 1.5.6 "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.
- 1.5.7 "Union" means The Australian Workers' Union of Employees, Queensland.

1.6 Area of operation

For the purpose of this Award the Divisions and Districts are as follows:

1.6.1 Divisions

Northern Division - That portion of the State along or north of a line commencing at the junction of the sea-coast with the parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State.

Mackay Division - That portion of the State within the following boundaries:

Commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea-coast; then by the sea-coast northerly to the point of commencement.

Southern Division - That portion of the State not included in the Northern or Mackay Divisions.

1.6.2 Districts

(a) Northern Division:

Eastern District - That portion of the Northern Division along or east of 144 degrees 30 minutes of east longitude.

Western District - The remainder of the Northern Division.

(b) Southern Division:

Eastern District - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; then by that meridian of longitude due north to 25 degrees of south latitude; then by that parallel of latitude due west to 140 degrees of east longitude; then by that parallel of longitude due north to the boundary of the Mackay Division.

Western District - The remainder of the Southern Division.

1.7 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.4 and their employers, 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 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 Grievance and dispute settling procedures

- 3.1.1 The parties agree to the principle of "Natural Justice" for all employees. A formalised grievance process is available to all employees to ensure they are treated fairly and equitably.
- 3.1.2 It is the aim of both parties to ensure that grievances are resolved as quickly as possible and as close to the source of the grievance as possible.
- 3.1.3 Employee(s) should, in the first instance, seek to resolve any grievance/dispute with their supervisor. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.4 If the grievance involves allegations of unlawful discrimination and or sexual harassment, the employee should refer the matter in accordance with the policy of the workplace. Where the workplace does not have a policy for this matter, the following procedure should be used.

If the grievance involves allegations of unlawful discrimination and or sexual harassment 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 3.1.7.

- 3.1.5 Conversely, supervisors should seek to resolve any grievance/dispute with the employee(s) concerned.
- 3.1.6 If the employee(s) and supervisor are unable to resolve the grievance/dispute, the matter shall be referred to the next level of management.
- 3.1.7 If the matter is not resolved at Stage 1, the employee(s) may report the issue to their nominated representative. Where the grievance/dispute is proceeded with, the nominated representative and the employee(s) will discuss the issue with the employee's manager in order to seek a resolution.
- 3.1.8 If not resolved at Stage 2, the issue will be referred to the Commission for resolution.
- 3.1.9 The process contained in Stages 1 and 2 should be completed within 7 days of the issue being raised at Stage 1. The above procedure is not intended to preclude ultimate access by either party to the Commission for conciliation or arbitration purposes.

3.1.10 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.

3.1.11 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.

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

4.1 Contract of employment

4.1.1 Each employee shall be engaged only on the following basis:

- (a) as a full-time employee;
- (b) as a part-time employee;
- (c) as a casual employee;
- (d) as a fixed term employee.

4.1.2 An employee, other than a casual upon commencement may be engaged for a probationary period of up to 3 months.

A probationary review shall be completed by the employer mid-way through the probationary period, where feedback on the work performance of the probationary employee will be given. Where areas of unsatisfactory work performance are identified, the probationary employee will be made aware of these, the standard that is required of the probationary employee, and the dates by which satisfactory performance is required to be achieved by the probationary employee.

4.1.3 An employee may be required to work from a number of different workplaces as a term of their engagement.

4.1.4 More than one engagement

- (a) All employees shall be employed as full-time or part-time or casual employees or a combination of part-time and casual if determined under clause 4.1.4 (c) and shall be paid at the relevant classification level for those positions.
- (b) At the time of engagement an employer shall inform each employee as to the terms of their engagement and in particular whether they are full-time, part-time or casual employee. This can be amended by mutual agreement.
- (c) Part-time employees may also be engaged on a casual basis for duties in a separate engagement provided that such engagement satisfies the criteria in clause 4.1.4(d):
- (d) The criteria that need to be satisfied is as follows:
 - (i) subject to mutual agreement between the employer and employee;
 - (ii) that the work required to be performed in the separate engagement is not within the usual job description of the employee concerned;
 - (iii) does not interfere with the employee's original contract of employment;
 - (iv) not designed to avoid overtime obligations;
 - (v) that the separate engagement enables the employee to obtain additional hours and/or remuneration.
- (e) In respect to clause 4.1.4(c) above, the additional hours obtained under the separate contract of employment, shall be aggregated as one period as part of the 38 hour week.

4.1.5 Full-time employee

An employee not specifically engaged on part-time or casual basis shall be a full-time employee entitled to weekly benefits.

4.1.6 Part-time employee

- (a) A part-time employee is a person engaged to work on a regular basis.

- (b) The hours of a part-time employee shall be less than an average of 38 hours per week, and with a minimum daily engagement of 2 consecutive hours.
- (c) A part-time employee shall be paid for each hour worked during ordinary working hours 1/38th of the weekly rate prescribed by this award.
- (d) A part-time employee shall be entitled to the payment of the ordinary hours of work, in accordance with the Award, on a proportional basis. Such employees shall be entitled to *pro-rata* allowances where applicable under the Award.
- (e) The ordinary working hours of a part-time employee may be changed by mutual agreement between the employee and the employer or by the employer giving the employee 3 days' notice, or in the case of an emergency by the employer giving an employee one hour's notice. Clause 4.1.6(e) applies to meet the short-term requirements of either party.
- (f) Overtime shall be paid when the ordinary hours worked by a part-time employee exceeds 38 hours in any week or 76 hours in any fortnight or 10 hours on any one day. A part-time employee shall be entitled to *pro-rata* annual leave, sick leave, long service leave, bereavement leave, jury service and public holidays.

4.1.7 *Casual employee*

- (a) A casual employee for working ordinary time shall be paid 1/38th of the weekly rate prescribed by this Award plus a loading of 23% in lieu of annual leave and sick leave.
- (b) Payment for casual employees working overtime or on public holidays are as specified in this Award.
- (c) Casual employees shall be paid for a minimum of 2 hours for each period of employment:

Provided that where the client requires only one hour or less on any one day, by mutual agreement in writing between the employer and employee a minimum of one hour shall be paid.

4.1.8 *Fixed-term employee*

- (a) An employee may be engaged on a fixed-term contract, or on a fixed-project contract.
- (b) A fixed-term contract operates for a specific period of time, as agreed in writing between the parties prior to engagement. At the end of the specified period, the contract and the employment of the individual is terminated.
- (c) A fixed-project contract operates for the duration of a specified work task, or range of tasks, as agreed between the parties prior to engagement. Once the task(s) is completed, the contract and the employment of the individual is terminated.

4.2 Rural and isolated special arrangements

- 4.2.1 In situations where people with disabilities are being assisted in rural or isolated communities, locales or situations, by agreement in writing, part-time employees may be rostered to work up to 12 out of each 14 day cycle.
- 4.2.2 In specific situations where isolation, distance and other hardships prevail, and subject to an agreement in writing between the employer and employee, other alternative arrangements may be entered into.

4.3 Duties within skill, competency and training

- 4.3.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this agreement provided that such duties are designed to promote.
- 4.3.2 An employer may direct an employee to carry out such duties and use the equipment as may be required provided that the employee has been properly trained in the use of the equipment.
- 4.3.3 Any direction issued by an employer pursuant to clauses 4.3.1 and 4.3.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.4 Higher duties

- 4.4.1 An employee who is called upon by the employer to perform the duties of another employee in a higher

classification under this Award for 5 consecutive working days or more shall be paid for the period for which duties are assumed at a rate of not less than the minimum rate prescribed for the higher classification:

Provided that in cases where the minimum rate of the higher classification is the same as the relieving employee's current salary, the relieving employee shall be paid at the higher classification at the first salary level above their classification salary.

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 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

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

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

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

4.6 Termination of employment

4.6.1 Statement of employment

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

4.6.2 Termination by employer

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

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

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

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

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

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

- (i) the ordinary working hours to be worked by the employee; and

- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.6.2.

4.6.4 *Time off during notice period*

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

4.7 Introduction of changes

4.7.1 *Employer's duty to notify*

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

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

4.7.2 *Employer's duty to consult over change*

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

4.8 Redundancy

4.8.1 *Consultation before terminations*

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

terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (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 this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.8.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.8.4 *Time off during notice period*

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

4.8.5 *Notice to Centrelink*

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

4.8.6 *Severance pay*

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

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil

1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

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

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

4.8.7 *Superannuation benefits*

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

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

4.8.8 *Employee leaving during notice*

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

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

4.8.9 *Alternative employment*

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

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

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

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

(b) A 'company' shall be defined as:

- (i) a company and the entities it controls; or
- (ii) a company and its related company or related companies; or
- (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.8.13 *Exemption where transmission of business*

(a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:

- (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
- (ii) where the employee rejects an offer of employment with the transmittee:

(A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

(B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

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

4.8.14 *Incapacity to pay*

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

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Definition of classifications

5.1.1 *Level 1*

- (a) An employee at Level 1 works under close supervision/direction, and involves undertaking routine activities which require practical application of basic skills. The position shall support people with disabilities who need assistance in a living/community/work situation.
- (b) The work functions and tasks shall be clearly defined activities that support people with disabilities in personal care, hygiene, cooking, cleaning, personal budgeting, shopping, etc. An employee may work as part of a team to meet the support needs of people with disabilities. This position will require taking time to get to know individual people with disabilities. Support and training in learning the work role will be provided.
- (c) This position works and makes decisions within defined guidelines and procedures, and assistance and/or support is readily available in dealing with unexpected situations and/or when problems occur. Work shall include the provision of personal care assistance as a major role.
- (d) Employees shall only be engaged for up to 3 months at this level, and may be engaged for a probationary period during this time.
- (e) An employee at this level possesses no qualifications or has not demonstrated the competency standards requirements of Wage Level 2.

5.1.2 *Level 2*

- (a) An employee at Level 2 has satisfied Level 1 criteria and works under direction and undertakes a range of activities requiring the application of acquired skills and knowledge.
- (b) The work functions and tasks shall be defined through routines, methods, standards, and procedures that support and assist people with disabilities in a range of personal care and/or support tasks. This position may include working as a part of a team to meet the support needs of people with disabilities to assist them in their living/community/work environment and/or may extend to generic services, and may also encompass any one or more of the functions encompassed in Level 1.

- (c) The position includes responsibility for accurate written and verbal communications. Work and decision making is predominantly within defined guidelines and procedures. However, initiative is required to respond to immediate crises, with assistance to be sought for situations which are outside of defined guidelines and procedure.
- (d) The employee at this level may provide information in developing individual/future plans and requires accountability for outcomes within defined guidelines and procedures.
- (e) Level 2 shall include employees who possess and are required to utilise the competencies achieved either through formal or informal assessment or who possess and are required to utilise the appropriate certification for a qualification with an AQF Level 2 outcome relevant to the industry.

5.1.3 *Level 3*

- (a) An employee at Level 3 shall mean an employee performing at a higher level of responsibility, will have relevant technical experience, knowledge and/or training, which may be specialised or of a broad spectrum, and which may encompass any one or more of the functions encompassed at Levels 1 or 2.
- (b) An employee at this level shall work under general directions and/or guidelines and be able to work from complex instructions and procedures, in supporting people with disabilities in living/community/at work, etc.
- (c) The position requires the ability to apply technical skills that relate directly to and resolve around providing support and assistance to, people with disabilities. This position requires a high level of written and verbal communications and interpersonal skills. The ability to identify and solve problems/situations within the guidelines of the service is required. Assistance can be found in a range of service documentation and from management support.
- (d) An employee at this level may participate in developing individual/future plans for people with disabilities, and may have accountability for outcomes.
- (e) This position may require initiative and independent decision making to respond to immediate crises, and to support employees at Levels 1 and 2 to respond to situations/problems for which there are no guidelines or defined procedures. While employees at this level are expected to use their own judgement, assistance can be found in a range of service documentation and from management support. This position may be involved in the training and orientation of other staff and volunteers.
- (f) Level 3 shall include employees who possess and are required to utilise the competencies achieved either through formal or informal assessment or who possess and are required to utilise the appropriate certification for a qualification with an AQF Level 3 outcome relevant to the industry.

5.1.4 *Level 4*

- (a) An employee at Level 4 is required to demonstrate a high level of responsibility and autonomy with extensive experience, knowledge, training and technical skills which may be specialised or of a broad spectrum.
- (b) The position requires work to be undertaken within general direction and guidelines, and from complex instructions and procedures. The position may require extensive responsibilities for the day to day personal, primary or domestic service and support provided to people with disabilities. This position may work as part of a team which may include a Team leader role to meet the support of people with disabilities.
- (c) This position requires a high level of initiative in decision making and problem solving, especially in vulnerable and volatile situations with assistance being sought from management support. An employee at this level may participate in developing individual/futures plans for people with disabilities, and there is accountability for outcomes.
- (d) The position encompasses any one or more functions encompassed under Levels 1, 2 and 3.
- (e) Level 4 shall include employees who possess and are required to utilise the competencies achieved either through formal or informal assessment or who possess and are required to utilise the appropriate certification for a qualification with an AQF Level 4 outcome relevant to the industry.

5.2 Progression within and between levels

5.2.1 Progression from one level to the next level shall be dependent upon the employee being appointed.

5.2.2 Subject to clauses 5.2.3 and 5.2.4 an employee shall not move from one paypoint to the next paypoint within the classification level until:

- (a) In the case of a weekly employee such employee has received such salary/wage for a period of 1976 hours;
- (b) In the case of a part-time and casual employee, when such employee has received such salary/wage for a period of 12 months and has worked for the equivalent of 800 hours;
- (c) Notwithstanding anything contained in clauses 5.2.2(a) and 5.2.2(b) no employee shall be entitled to receive salary payment/wage level movements by virtue of this Award if after undergoing a formal counselling process in accordance with this Award, it was deemed that their performance was not satisfactory.

5.2.3 A Disability Support Worker who holds a Certificate III in Disability Work or the equivalent, and who has less than 1976 hours experience in the case of a weekly employee, or less than a period of 12 months and the equivalent of 800 hours in the case of a part-time or casual employee shall be appointed to Level 3.1.

5.2.4 A Disability Support Worker who holds a Certificate III in Disability Work or equivalent, on completion of 1976 hours experience in the case of a weekly employee, or a period of 12 months and the equivalent of 800 hours in the case of a part-time or casual employee shall be appointed to Level 3.2. Such employees shall progress to Level 3.3 in accordance with clause 5.2.2.

5.3 Classifications and wage rates

5.3.1 Disability support worker

	Rate per week \$
Level 1	
Up to 3 months	785.20
Level 2	
Paypoint 1	796.10
Paypoint 2	806.80
Paypoint 3	817.60
Level 3	
Paypoint 1	837.90
Paypoint 2	852.00
Paypoint 3	866.50
Level 4	
Paypoint 1	881.10
Paypoint 2	895.50
Paypoint 3	910.10

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2011 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, 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.

5.3.2 District allowance

Employees employed outside the Eastern District of the Southern Division shall be paid the following amounts in addition to the rates of wages prescribed in clause 5.3.1 for being employed within that District:

	Per Week \$
Northern Division, Eastern District	1.05
Northern Division, Western District	3.25
Mackay Division...	.90
Southern Division Western District	1.05

5.4 Allowances

5.4.1 *Weekend allowance*

All time worked by all employees, not being overtime within the meaning of clause 6.6 (Overtime), between midnight Friday and midnight Sunday shall be paid at the rate time and a-half.

5.4.2 *Early or late work allowance*

- (a) An amount of 15% per hour in addition to their ordinary rates shall be paid to employees for all hours worked after 6.00 p.m. and before 6.00 a.m.
- (b) This extra early or late work allowance shall not apply to work performed on Saturday or, Sunday and public holidays where extra payments apply for such work.
- (c) Sleepover is not deemed to be work performed in determining payment of early or late work allowance.

5.4.3 *Travelling allowance*

All employees who are required to use their own vehicles in their course of their employment shall receive the following flat travelling allowance where they are required to travel on more than one occasion on any one day. By agreement in writing between the employer and employee, the employee may request that the travelling allowance be not paid for taxation purpose.

up to 1600cc	45.4 cents per kilometre
1601cc to 2600cc	51.6 cents per kilometre
Over 2600cc	53.5 cents per kilometre

If an employee is required to travel in excess of 200km per week, the employer and employee will determine by mutual agreement an acceptable travelling allowance.

Any disagreement in determining this allowance shall be resolved in accordance with clause 3.1.

5.4.4 *On-call allowance*

- (a) On-call shall mean a written instruction to an employee to remain at the employee's residence or to otherwise be immediately contactable by telephone or paging system outside the employee's normal hours of duty in case of a call out requiring an immediate return to duty.
- (b) When an employee is required to be on-call and the means of contact is to be by telephone, the employer shall:
 - (i) Where the employee does not already have a telephone, pay the cost of such installation;
 - (ii) Where the employee pays or contributes towards the payment of the rental of such telephone, pay the employee one half of the rental costs.
- (c) An employee shall be reimbursed the cost of all telephone calls made on behalf of the employer as a result of out of hours contact.
- (d) An employee rostered to be on-call shall receive an additional amount as follows:
 - (i) \$18.81 for each 24 hour period or part thereof when the on-call period is between rostered shifts of ordinary hours Monday to Friday inclusive.
 - (ii) \$28.26 for each 24 hour period or part thereof when the on-call period is on a Saturday.
 - (iii) \$32.95 for each 24 hour period or part thereof when the on-call period is on a Sunday, public holiday or a day when the employee is rostered off duty.
- (e) Where an employee is recalled to work, the employee shall be paid in accordance with clause 6.6 (Overtime).

5.4.5 *Sleepover*

- (a) Where an employee is required to sleep over at the workplace for a period not exceeding 8 hours an allowance of \$54.94 shall be paid in respect to each instance. All board and lodgings shall be provided free of charge to an employee in respect of each such instance.
- (b) In the event of the employee being required to perform active duties during this period, payment will be as follows:

- (i) Payment up to the next quarter of an hour per episode of duty at ordinary time, for up to the first hour.
- (ii) Payment up to the next quarter of an hour per episode of duty at overtime, for any time over the first hour.
- (c) Where possible, additional ordinary hours of work shall be worked by the employee either before or after the sleepover.

5.5 Payment of wages

- 5.5.1 Unless there is an express contract to the contrary, wages shall be paid fortnightly. The payment of wages shall be by electronic funds transfer or in exceptional circumstances, by cheque.
- 5.5.2 Wages shall be paid during working hours on a week day not being more than 4 working days following the end of the pay period, except where exceptional circumstances exist. The pay day selected, once agreed, must not be changed without the agreement of a majority of the employees.
- 5.5.3 Upon termination of employment, wages due to an employee shall be paid to the employee on the day of such termination or forwarded to the employee by electronic funds transfer within 3 working days, or as mutually agreed by the employer and employee.
- 5.5.4 Casual employees shall be paid on the same day as all other employees.

5.6 Superannuation

- 5.6.1 The superannuation provisions for all employees covered by this Award shall be in accordance with the *Superannuation Guarantee Act 1992*.
- 5.6.2 The following approved funds will be offered to employees:
 - (a) Sunsuper.
 - (b) Any other approved occupational scheme made available by the employer for the employee's consideration.

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

6.1 Hours of work

- 6.1.1 The ordinary hours of work for employees (other than casual and part-time employees) shall be an average of 38 hours per week to be worked on one of the following ways:
 - (a) 38 hours within a work cycle not exceeding 7 consecutive days.
 - (b) 76 hours within a work cycle not exceeding 14 consecutive days.
 - (c) 114 hours within a work cycle not exceeding 21 consecutive days.
 - (d) 152 hours within a work cycle not exceeding 28 consecutive days.

6.2 Operation of a 38 hour week

- 6.2.1 The ordinary hours of work, exclusive of meal times, shall be worked between the hours of 6.00 a.m. to 8.00 p.m. Monday to Sunday inclusive and shall not exceed 10 ordinary hours on any one day.
- 6.2.2 The ordinary starting and finishing times of an employee or employees may be staggered, provided that there is agreement between the employer and the majority of employees directly affected.
- 6.2.3 Full-time and part-time employees shall be rostered to work up to 10 out of each 14 day cycle. Within each 14 day cycle an employee will be given 4 days off of which no less than 2 whole days shall be consecutive:
 - (a) 2 periods comprising 2 days each or
 - (b) 3 consecutive days and one stand alone day
 - (c) One period of 4 consecutive days.
- 6.2.4 All work done by the employee on a rostered day off is to be deemed overtime and to be paid for at the appropriate overtime rate of pay in the prescribed weekly rate.

6.2.5 *Weekend work*

Subject to clause 5.4.1, any arrangements of hours which include Saturday or Sunday as ordinary hours shall be subject to an agreement between the employer and the employee directly affected.

6.3 Working of a 38 hour week

6.3.1 Subject to the provisions of clause 6.3, the ordinary hours of work may exceed 8 on any day, thus enabling more than one work day to be taken off during a particular work cycle.

6.3.2 Notwithstanding any other provision in clause 6.3, where the arrangement of ordinary hours of work provides for a rostered day off, those rostered days off shall be banked. The rostered days off so banked shall be taken at a time mutually agreed.

Rostered days off held in credit at the date of any termination of the employee shall be paid in full as wages.

6.3.3 Where practicable, a rostered day off shall either be banked or otherwise arranged so as not to fall on days on which an employee is required to attend training.

6.3.4 Where such rostered days off 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.

6.3.5 Each day of paid leave taken (not including annual leave, long service leave) and any public holiday occurring during that cycle of 4 weeks shall be regarded as a day worked for accrual purposes.

6.4 Meal breaks

6.4.1 All employees who are required to work for more than 6 continuous ordinary hours shall be entitled to a meal break of not less than 30 minutes.

6.4.2 Such meal breaks shall be taken at such times as will not interfere with the continuity of work where continuity is necessary.

6.4.3 Notwithstanding the above, where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program they shall be paid for the duration of the meal period at the ordinary rate of pay.

6.4.4 However, an employee may elect to take an unpaid meal break as prescribed above after the meal period. If the employee so elects not to have a meal break, all ordinary hours after the meal period shall be paid at the ordinary rate of pay.

6.4.5 Any employee who is required to continue working for more than 2 hours beyond the ordinary ceasing time shall be provided with an adequate meal by the employer or paid an amount of \$12.10 in lieu thereof:

Provided that where an employee has provided their own meal because of receipt of notice to work overtime and such overtime is not worked, they shall be paid \$12.10 for any meal so provided.

6.5 Rest pauses

6.5.1 All employees covered by this Award who work a minimum of 4 consecutive ordinary hours shall be entitled to a rest pause of 10 minutes' duration in the employer's time.

6.5.2 Employees covered by this Award who work a minimum of 8 consecutive ordinary hours on any one day shall be entitled to a rest pause of 10 minutes' duration in the first and second half of the day.

6.5.3 Such rest pauses shall be taken at such times as will not interfere with the continuity of work where continuity is necessary.

6.5.4 By agreement between the employer and employee/s, the rest pauses may be combined into one break of 20 minutes.

6.6 Overtime

6.6.1 Overtime shall only be worked with prior approval of the employer provided that in an emergency overtime may be worked without prior approval.

6.6.2 *Entitlement to payment for overtime*

- (a) A full-time employee shall be entitled to overtime where the employee works more than 152 hours in any 28 day period or where the employee works more than 10 hours in any one day or where the employee works outside of the spread of ordinary hours on weekends in accordance with clause 6.2.
- (b) A part-time employee shall be entitled to overtime where they work in excess of their prescribed hours of duty provided that overtime shall not be paid where the employer and employee have agreed to a temporary amendment of working hours under the arrangements specified in clause 4.1.6 in which case overtime shall apply for work in excess of the mutually agreed amended working hours. A part-time employee shall be entitled to overtime if they work in excess of 38 hours in any one week or greater than 10 hours in any one day.
- (c) A casual employee shall be entitled to overtime where they work outside of the ordinary spread of hours specified in clause 6.2.1 and/or where they work more than 38 hours in any week or where the employee works more than 10 hours in any day.
- (d) Shift employees shall be paid at the rate of double time for all overtime worked.

6.6.3 All time worked in excess of the ordinary working hours or outside of the spread of hours shall be deemed to be overtime and shall be paid for at the rate of time and a-half for the first 3 hours on any one day and double time thereafter.

6.6.4 For the purpose of clause 6.6 work in excess of the ordinary working hours shall be deemed to be work in excess of the maximum daily hours in clause 6.2 or a maximum of 76 hours in each fortnightly period.

6.6.5 Subject to mutual agreement in writing between the employer and the employee, an employee may be compensated for working overtime in lieu of payment by being allowed time off, taken at the rate of time worked for time taken:

Provided that an employee shall be required to clear accumulated time off in lieu within 3 months of the overtime being performed. If the employer is unable to release the employee accordingly, or at the time of termination for any reason by either party, then the employee shall be paid for the overtime worked at the appropriate overtime rate.

6.6.6 Subject to prior approval by the employer, an employee may be granted time off notwithstanding that such time has not been worked as overtime in accordance with clause 6.6.2(a). The employer shall pay the employee's salary as if the employee worked ordinary hours during such time off:

Provided that the period of time off shall be made up in accordance with clause 6.6 through authorised overtime worked, within 4 weeks of the time off being taken, or the employees pay shall be reduced by the amount of such time off taken.

6.6.7 An employee who works so much overtime between the termination of ordinary work on one day and the commencement of 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 6.6.7, 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 instructions of the employer such employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until released from duty for such period and the employee shall be entitled to be absent until receiving 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of clause 6.6.7 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 or continuous shift worker does not report for duty; or
- (c) where a shift is worked by arrangement between the employees themselves.

6.7 Shift Work

6.7.1 The ordinary working hours of continuous shift workers shall not exceed an average of 38 per week, in a work cycle.

Not more than 10 hours shall be worked on any one shift at ordinary rates except where there is agreement as outlined in clause 6.7.2.

6.7.2 The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees at least 7 days before the commencement of the day on which the roster commences:

Provided however that a roster may be altered at any time to enable the service of the organisation to be carried on in an emergency or when another employee is absent from duty.

6.7.3 *Shift penalty*

An amount of 15% per shift in addition to ordinary rates shall be paid to afternoon and night shift workers who are working on a shift roster, where the greater part of the Shift Work is performed between the hours of 4.00 p.m and 8.00 a.m. This extra shift rate shall not apply to Shift Work performed on Saturday and Sunday where the weekend allowance shall apply and where an employee works on a public holiday.

6.7.4 *Crib break*

Shift workers, shall be allowed 30 minutes for a paid meal break during each full shift 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 a meal break.

6.7.5 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 for Continuous Shift Work Employees as defined in clause 1.5.3.

(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 7.1.5) 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.

(c) Where an employee requests that their annual leave is paid in accordance with their normal pay cycle, in lieu of being paid in advance, such arrangement may be made by mutual agreement.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due, to, the employee's pay calculated in accordance with clause 7.1.5, for 4 weeks and also ordinary pay for any public holiday occurring during such period of 4 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 the employee's pay for the period of the employee's employment if the employee is an employee to whom clause 7.1.1 (a) applies and 1/12th of the employee's pay for the period of the employee's employment if the employee is an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.5.

7.1.5 *Calculation of annual leave pay*

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

(a) Shift workers - Subject to clause 7.1.5(b) the rate of wages 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 public holiday shifts.

(b) All employees - Subject to the provision of clause 7.1.5(b), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:

- (i) The employees ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates).
- (ii) A further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(b)(i).
- (c) The provisions of clause 7.1.5(b) shall not apply to the following:
 - (i) any period or periods of annual leave exceeding:
 - 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week. The additional 5 days leave will be *pro rata* to the time worked on such arrangement; or
 - 4 weeks in any other case.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer:

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

7.2.2 Employee must give notice

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

7.2.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give their employer a 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's 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;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

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

7.2.5 Workers' compensation

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

7.3 Bereavement leave

An employee (other than a short term casual employee) shall, on the death within Australia of a member of their immediate family, be entitled to leave up to and including the day of the funeral of such relation, and such leave shall be

for a period up to a maximum of 3 days without loss of pay. Proof of such death shall be furnished by the employee only where required by the employer.

Provided that an employee shall be entitled to a maximum of 3 days leave without loss of pay on each occasion and on the production of satisfactory evidence of the death outside of Australia of a member of their immediate family and where such employee travels outside of Australia to attend the funeral.

For the purpose of clause 7.3, the term immediate family includes:

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

7.4 Long service leave

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

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Public holidays

7.6.1 Subject to clause 7.6.9 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 shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under *Holidays Acts 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 shall 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 rate prescribed for such work with a minimum of 4 hours.

7.6.3 Annual Show

Moreover, all work done by an employee in a district specified from time to time by the Minister, by notification published in the *Gazette* or the *Queensland Government 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 principle city or town, as specified in such notification, of such district, shall be paid for at the rate of double time and a-half.

7.6.4 All time worked on any of the aforesaid holidays outside the ordinary starting and ceasing times prescribed by this Award for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the Award for such time when worked outside the ordinary starting and ceasing times on a ordinary working day.

7.6.5 Employees required to work on any of the aforesaid holidays shall be paid for a minimum of 4 hours work at double time and a-half.

7.6.6 *Stand Down*

Any and every employee who, having been dismissed or stood down by the employer during the month of December in any year, shall be re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall be employed by that employer for a continuous period of 2 weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by the employer (at the rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of dismissal or standing down to and including the date of re-employment as aforesaid.

7.6.7 *Holidays in lieu*

Should any of the holidays mentioned in clause 7.6 fall on an employee's rostered day off, such employee shall receive another one or 2 days off as the case may be in lieu thereof, or one or 2 days shall be added to the employee's annual leave, or alternatively, one or 2 days' wages at ordinary rates shall be paid in addition to the weekly wage.

7.6.8 *Part-time employees*

A part-time employee who usually works on a day of the week on which a public holiday falls and is not required to work on that day, shall be paid for the hours which would normally have been worked on that day.

7.6.9 *Substitution*

Notwithstanding the provisions of clause 7.6, the employer and the majority of employees involved may agree, and subject to statutory limitations, other working days may be substituted for the public holidays specified in clause 7.6:

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

7.7 Jury service

7.7.1 A weekly or part-time employee required to attend for jury service during their ordinary hours of work 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 amount of wages they would have received in respect of their ordinary time they would have worked had they not been on jury service.

7.7.2 An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. Further the employee shall give the employer documentary proof of their attendance, the duration of such attendance and the amount received in respect to such jury service.

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

No provisions inserted in this Award relevant to this Part.

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

No provisions inserted in this Award relevant to this Part.

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 Posting of award

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

11.4 Savings clause

No employee shall have their conditions of employment altered to their detriment by reason of the coming into operation of this Award.

11.5 Reserved matters

Salary Benefits

Dated 22 May 2003.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 14 July 2003