

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

DIVERSIONAL THERAPISTS AWARD - STATE 2003

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the *Diversional Therapists 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 *Diversional Therapists Award - State 2003* as at 1 September 2010.

Dated 1 November 2010.

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

DIVERSIONAL THERAPISTS AWARD - STATE 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the *Diversional Therapists Award - State 2003*.

1.2 Arrangement

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1.3 Award coverage

1.3.1 This Award applies throughout the State of Queensland to employees employed as diversional therapists and for whom classifications and rates of pay are prescribed by this Award and to their employers, in the provision of activities which are designed to enhance the psychological, spiritual, social and physical well being of individual aged persons accommodated in nursing homes, hostels, retirement villages and garden settlements:

Provided that this Award does not apply to:

- (a) Members of religious orders.
- (b) Employees covered by the Nurses' Aged Care Interim Award - State who shall be deemed to include employees who do not possess an Associate Diploma or higher qualification in diversional therapy or similar, and who develop and/or provide nursing and therapeutic activities for residents and whose work is immediately supervised by a Registered Nurse.

- (c) Furthermore persons employed at the date of this Award pursuant to the Nurses' Aged Care Interim Award - State performing work which may be encompassed by this Award shall not be transferred to this Award except by mutual consent.
- (d) Qualified Recreational Officer who holds an Associate Diploma in recreation or leisure studies higher qualification.
- (e) Unqualified Recreational Officer, at the time of the making of this Award, who held a position of recreational officer.
- (f) Employees covered by the Blue Care Enterprise Award - State 2004.

1.4 Area of operation

For the purposes of this Award, the Divisions and Districts shall be as follows:

1.4.1 Divisions

For the purposes of this Award the following divisions shall apply:

(a) Northern Division

That portion of the State North of a line commencing at the junction of the 21st parallel of south latitude with the sea-coast; then by that parallel of latitude due west to 147 degrees of east longitude; then by that degree of east 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, including all islands north of the 21st parallel of south latitude which are within the State of Queensland.

(b) 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 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; and including all islands situated between the 21st and 22nd parallels of south latitude and within the State of Queensland.

(c) Southern Division

That portion of the State not included in the Northern or Mackay Divisions and excluding that area within the following boundaries:

Commencing at Point Danger and bounded thence by the Southern boundary of the State westerly to 151 degrees of east longitude; then by meridian of longitude bearing true north to 24 degrees 30 minutes of south latitude thence by that parallel of latitude bearing true east to the sea-coast; and then by the sea-coast southerly to the point of commencement.

1.4.2 Districts

For the purposes of this Award the following districts shall apply:

(a) Northern Division Eastern District

That portion of the above area along or east of 144 degrees 30 minutes of east longitude.

Western District

That portion of the above area west of 144 degrees 30 minutes of east longitude, including Thursday Island.

(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; thence by that meridian of longitude due north to 25 degrees of south latitude; thence by that parallel of latitude due west to 147 degrees of east longitude; thence by that meridian of longitude due north to the southern boundary of the Mackay Division.

Western District

The remainder of the Southern Division.

1.5 Date of operation

This Award takes effect and has the force of law from 6 October 2003.

1.6 Definitions

For the purpose of this Award:

- 1.6.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.6.2 "Casual Employee" means an Employee engaged as such for not more than 76 hours in any fortnight and who is employed by the hour with a minimum of 2 hours pay or payment therefore for each engagement.
- 1.6.3 "Commission" means the Queensland Industrial Relations Commission.
- 1.6.4 "Employee" includes any person employed by the employer but shall not include members of a Religious Order participating in the work of the employer under a contract for services between the employer and that person, or the Church or an Order.
- 1.6.5 "Level" means the skill and wages grade to which an Employee is assigned, and shall also include any one or more functions defined in any lower level of any if required.
- 1.6.6 "Occupational Superannuation Fund" means the appropriate Fund referred to in clause 5.8 (Occupational Superannuation).
- 1.6.7 "Union" means The Australian Workers' Union of Employees, Queensland.

1.7 Parties bound

This Award is legally binding upon the Employees as prescribed by clause 1.3 and their employers, and The Australian Workers' Union of Employees, Queensland and its members.

PART 2 - TERMS AND CONDITIONS OF EMPLOYMENT

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 development of effective ongoing participation/consultative practices is important in the process of award restructuring and can lead to advantages for both the employer and Employees. It is therefore desirable that participative/consultative mechanisms, established at the local level be continued.
 - (a) Consultative mechanisms/practices shall be implemented where agreement exists between employers and Employees.
 - (b) The form, structure and method of implementing consultative mechanisms/practices shall be as determined at the local level through negotiations between the employer, Employees and the Union consistent with agreed consultative models, provided however that the Union shall be represented in the consultative process by a duly elected job representative.

- (c) The Union agrees that at the local level where agreed consultative mechanisms/practices are in place to allow through the consultative process the application of designated Award conditions in a more flexible manner. The Union shall be party to any agreement where the Employees genuinely agree.
- (d) The process of consultative practices is a mechanism through which employers can be involved in and positively contribute towards managements' decision making process. All decisions are encouraged to be reached through consultative mechanisms/practices, however, managerial prerogative is acknowledged.

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 and are specified herein. 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 the Union, be reported to the relevant officer of the 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 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 defined in clause 4.3); or

(c) casual (as defined in clause 1.6.2).

4.2 Multi-skilling

In recognition of the operational and efficiency requirements of the employer, and to create more varied, and interesting work, it shall be a condition of employment, subject to appropriate training and competency, that each Employee shall be available to work as required on any work within the Employee's skill, competence and training consistent with the classification structure of this Award (subject to prevailing statutory requirements) and that each Employee shall acquire the skills and learn any other job as directed and shall provide instruction and or training as appropriate to another Employee as required.

Any directions issued by an employer pursuant to the provisions of clause 4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.3 Part-time employees

4.3.1 "Part-time Employee" means an Employee, other than a "Casual Employee" as defined in clause 1.6.2, who is engaged to work rostered regular hours each fortnight with a minimum engagement of 15 hours per fortnight. Such roster shall show the starting and ceasing times and the days upon which an Employee is engaged to work as well as the number of hours to be worked each fortnight.

4.3.2 The ordinary daily working hours shall be worked continuously, excluding meal breaks, and shall not be less than 3 hours or more than 8 hours on any day.

4.3.3 A part-time Employee shall be paid the hourly rate prescribed by the Award and in addition shall be entitled to a *pro rata* payment of an allowance where appropriate.

4.3.4 A part-time Employee shall be entitled to *pro rata* annual leave, sick leave, long service leave, bereavement leave and all public holidays on the same basis as full-time Employees on which the Employee would have otherwise worked in accordance with clause 4.3.1. When a public holiday occurs during a period of the Employee's annual leave, there shall be added to the Employee's annual leave an extra day for each such day so occurring.

4.3.5 A part-time Employee who works more than the ordinary hours prescribed in clause 6.1, shall be paid overtime in accordance with clause 6.3.

4.3.6 Subject to the provisions contained in clause 4.3, all other provisions of the Award relevant to full-time Employees shall apply to part-time Employees.

4.3.7 The employer will advise all Employees, upon engagement, that in the event of changed resident utilisation or services it becomes necessary for the employer to reduce the working hours of part-time Employees who have completed one year's service, or less than one year's service, with that employer, one week's notice shall be provided and a further week for each subsequent year of service, provided that no employer shall be required to give more than 4 weeks' notice of the intended reduction in working hours.

4.4 Anti-discrimination

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

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

(b) sexual harassment; and

(c) racial and religious vilification.

4.4.2 Accordingly in fulfilling their obligations under the grievance and disputes 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.

4.4.3 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.

4.4.4 Nothing in clause 4.4 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.

4.5 Termination of employment

4.5.1 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.

4.5.2 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.

4.5.3 Notice of termination by employee

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

4.5.4 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.

4.6 Introduction of changes

4.6.1 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.

4.6.2 *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 4.6.1.
- (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.

4.7 **Redundancy**

4.7.1 *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 4.7.1(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.

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.7.1 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 4.5.
- (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.

4.7.3 *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 transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.

- (b) In clause 4.7.3, '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.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, 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.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, 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.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(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.

4.7.7 *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.

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(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.

4.7.9 *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.

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

Clause 4.7 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.

4.7.11 *Employees exempted*

Clause 4.7 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.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 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.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 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 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *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.

4.8 Trainees

Trainees are engaged under this Award, except as varied from time to time by the Order for *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

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

Employees covered by this Award are to be classified into one of the following classification and wage levels and remunerated accordingly:

5.1.1 *"Level One"* - This level applies to an Employee appointed on probation who has no experience or qualifications in diversional therapy and who undertakes accredited training (where available) in workplace health and safety, workplace communication, conditions of employment, training and career path opportunities, work and document procedures, workplace equity and anti-discrimination and quality control/assurance.

An Employee at this level performs routine duties to the level of their training in the aged care industry and performs:

- (a) simple, repetitive tasks;
- (b) exercises minimal judgement;
- (c) works under continuous supervision.

An Employee shall remain at this level until competent in the skill areas above or until the Employee has worked full-time for 6 months.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- Care and maintenance of resources e.g. - equipment, plants, pets.
- Assist in daily programs e.g. - setting up required equipment.
- Assist clients participation in programs.

5.1.2 *"Level Two, Step 1"* - This level applies to an Employee who:

- (a) demonstrates competencies above Level One or continues employment after 6 months probation;
- (b) may be undertaking some training assessment for current competencies from an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework.

An Employee performs work above the skills of Level One and within the limits of their training and experience to:

- (i) perform tasks under routine direction in accordance with strictly defined procedures;
- (ii) exercise limited discretion within defined procedures;
- (iii) apply basic quality control and assurance requirements.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- Assist clients and the program organisers in group and individual general programs.

- Identifies clients basic needs and displays tactile awareness.
- Assist program organiser in running general Diversional Therapy programs.
- Identify and assist clients with basic needs to participate in both group and individual general diversion therapy programs.
- Identify and assist clients with basic needs to participate in diversional therapy programs.
- Correctly set up equipment and venue for diversional therapy programs.

5.1.3 "*Level Two, Step 2*" - This level applies to an Employee who:

- (a) Demonstrates competence above those of Level Two, Step 1;
- (b) May have completed or be assessed for current competencies equivalent to 40% of whole off-the-job training modules and the relevant on-the-job skills from an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework. The Employee may be undertaking further training.

An Employee performs work above the skills of Level Two, Step 1, within the limits of their training and experience to:

- (i) perform tasks under general direction in accordance with defined procedures;
- (ii) exercise limited discretion within procedures;
- (iii) apply quality control and assurance requirements.

The following are examples of skills or activities characteristic of this Level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- Conduct general diversional therapy programs for groups and individuals.
- Identify and cater for clients diversional therapy needs in relation to their disability, interests and social history.
- Undertake office duties and public contact in relation to diversional therapy programs.

5.1.4 "*Level Three, Step 1*" - This level applies to an Employee who:

- (a) Demonstrates competence in skills above those of Level Two, Step 2;
- (b) Has completed or been assessed for current competencies equivalent to 71% or whole off-the-job training modules and the relevant on-the-job skills form an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework. The Employee may be undertaking further training.

An Employee performs work above the skills of Level Two, Step 2 within the limits of their training an experience to:

- (i) work from complex instructions and procedures;
- (ii) understand and apply quality control techniques and procedures and be accountable and responsible for their output and/or work areas;
- (iii) co-ordinate work in a team environment or work individually, without direct supervision;
- (iv) provide training on a periodic basis;
- (v) assist with the provision of support services;
- (vi) exercise well developed levels of communication;
- (vii) perform work under limited supervision either individually or in a team environment.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience.

- Be able to take responsibility for part of the diversional therapy program.
- Be able to execute part of the diversional therapy program.

5.1.5 "Level Three, Step 2" - This level applies to an Employee who:

- (a) demonstrates competence in skills above those of Level Three, Step 1 and has greater responsibility;
- (b) shall have completed or be assessed for current competencies equivalent to 71% of whole off-the-job training modules and the relevant on-the-job skills from an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework. The Employee may be undertaking further training.

An Employee performs work above the skills of Level Three, Step 1 within the limits of their training and experience to:

- (i) work from complex instructions and procedures;
- (ii) understanding and apply quality control techniques and procedures and be accountable and responsible for their output and/or work areas and that of others;
- (iii) co-ordinate work in a team environment or work individually, with only general supervision;
- (iv) plan and provide training on a periodic basis;
- (v) assist with the provision of support services;
- (vi) exercise well developed levels of communication;
- (vii) identify and solve procedural problems;
- (viii) be responsible for assuring the quality/service and productivity of their own work;
- (ix) supervise the work of others; and
- (x) perform lower level tasks.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- Assist in planning general diversional therapy programs for groups and individuals.
- Co-ordinate and organise individual activities for groups and individuals.
- Demonstrates ability to collate data with a view to identifying and responding to clients individual needs.
- Be able to execute part of the diversional therapy program.
- Completes documentation to meet workplace requirements.

5.1.6 "Level Four, Step 1" - This level applies to an Employee who:

- (a) Demonstrates competencies above those of Level Three, Step 2 and has appropriate experience in the field to enable the duties of the position be carried out;
- (b) Shall have completed or be assessed for current competencies equivalent to all training modules and relevant on-the-job skills from an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework. The Employee may be undertaking further training.

An Employee performs work above the skills of Level Three, Step 2 within the limits of their training and experience to:

- (i) be accountable and responsible for workplace output;
- (ii) understand and put in place quality control techniques and procedures and be accountable and responsible for their output and/or work areas and those of others;

- (iii) work without supervision within the operational guidelines of the employer;
- (iv) understands the employer's entire operation;
- (v) plan, develop and establish training according to employer guidelines;
- (vi) exercise well developed levels of communication and analytical skills;
- (vii) undertake specialised work as a diversional therapist and provide para-professional care for clients;
- (viii) supervise the work of others; and
- (ix) perform lower level tasks.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience.

- Ensure the maintenance of documentation as required by legislation.
- Plan diversional therapy program for groups and individuals.
- Organise volunteer programs, provides training for and facilities meetings and support groups.
- Maintain budget records.

5.1.7 "Level Four, Step 2" - This level applies to an Employee who:

- (a) demonstrates competencies above those of Level Four, Step 1;
- (b) shall have completed or be assessed for current competencies equivalent to all training modules and relevant on-the-job skills form an accredited training program in the area of aged care and/or diversional therapy with Certificate IV outcome under the Australian Qualifications Framework. The Employee may be undertaking further training; and
- (c) may have recognised specialist qualifications at Certificate level 3 or 4 in any area of dementia, neurological disorders, intellectual impairment, music, art, massage or another qualification related to the work of diversional therapy.

An Employee performs work above the skills of Level Four Step 1 within the limits of their training and experience to:

- (i) be accountable and responsible for workplace output;
- (ii) understand and put in place quality control techniques and procedures and be accountable and responsible for their output and/or work areas and those of others;
- (iii) work without supervision within the operational guidelines of the employer;
- (iv) understands the employer's entire operation;
- (v) plan, develop and establish training according to employer guidelines;
- (vi) exercise well developed levels of communication and analytical skills;
- (vii) undertake specialised work as a diversional therapist and provide para-professional care for clients;
- (viii)supervise the work of others; and
- (ix) perform lower level tasks.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- develop and conduct diversional therapy programs in specific areas like music therapy, aroma therapy, massage therapy and art therapy.
- develop and conduct diversional therapy programs in specific disability areas like dementia, neurological

disorders, intellectual impairment etc.

5.1.8 *Level Five, Step 1*" - This level applies to an Employee who:

- (a) Demonstrates competencies above those of Level Four, Step 2;
- (b) Shall have completed or be assessed for current competencies equivalent to all training modules and relevant on-the-job skills form an accredited training program in the area of aged care and/or diversional therapy with Diploma outcome under the Australian Qualifications Framework. The Employee may be undertaking further training.

An Employee performs work above the skills of Level Four Step 2 within the limits of their training and experience to:

- (i) be accountable and responsible for workplace output;
- (ii) understand and put in place quality control techniques and procedures and be accountable and responsible for their output and/or work areas and those of others;
- (iii) work without supervision within the operational guidelines of the employer;
- (iv) understand the employer's entire operations;
- (v) plan, develop and establish training according to employer guidelines;
- (vi) exercise high levels of communication and analytical skills;
- (vii) undertake and oversee specialised work as a diversional therapist and provide para-professional care for aged persons;
- (viii) supervise the work of others; and
- (ix) perform lower level tasks.

The following are examples of skills or activities characteristic of this level. An Employee may be required to undertake some or all of these examples and others within the limits of their training and experience:

- Oversee, develop and review diversional therapy program and outcomes.
- Plan, develop and implement workplace documentation.
- Identify and cater for complex needs of clients, volunteers and other Employees.
- Plan, develop and coordinate volunteer participation programs, volunteer training programs and volunteer support systems.

5.2 Wages

5.2.1 The minimum wages payable at the following Levels shall be:

Level	Adults per week \$	Relativity %
Level One	596.60	80
Level Two		
Step 1	625.80	87
Step 2	655.00	94
Level Three		
Step 1	682.00	100
Step 2	698.70	104
Level Four		
Step 1	715.40	108
Step 2	723.70	110
Level Five		

Level	Adults per week \$	Relativity %
Step 1	738.40	114
Level Six		
Leave reserved		

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.

Overaward Payment - "Overaward" payment is defined as the amount in rates of pay which an Employee would receive in excess of the minimum award wage as prescribed in this Award for the classification in which such Employee is engaged which applied immediately prior to the date of operation of this Award:

Provided that this definition shall exclude overtime, shift allowances, penalty rates, expense related allowances, industry allowances, disability allowances, vacation allowances, special rates or allowances, responsibility allowances, or any other ancillary payments of a like nature described by this Award.

5.2.2 The ordinary hourly rate of pay is determined by dividing the appropriate weekly rate prescribed by 38.

5.3 Junior employees

5.3.1 The minimum rates of wages for junior Employees shall be the undermentioned percentages of the appropriate adult level/step rate for the work performed:

	Percentage of Adult Rate
Under 18 years of age	65%
18 and under 19 years of age	75%
Thereafter	100%

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

5.3.2 Proportion of juniors

The proportion of junior Employees to adult Employees employed shall be a minimum of one junior to one adult Employee.

5.4 Payment of wages

All wages shall be paid in full each fortnight by electronic funds transfer (EFT) directly into the Employee's account in any financial institution nominated by the Employee, which has that facility without cost to the Employee or by cheque or cash as arranged at the time of engagement.

Casual work may by mutual consent be paid for as above or at the termination of each engagement:

Provided that payment may be made by EFT directly into the Employee's account in any financial institution nominated by the Employee, which has that facility without cost to the Employee.

When notice of termination of employment has been given by an Employee or an Employee's services have been terminated by an employer, payment of all wages and other monies due shall be made at the Employee's normal place of employment prior to the Employee leaving such place of employment or by EFT into the Employee's account. If an Employee is kept waiting for more than 15 minutes after termination of employment such Employee shall be paid overtime rates for waiting time:

Provided where an Employee is dismissed for misconduct such Employee shall be paid within 24 hours, week-ends and public holidays excluded, from the time of dismissal.

5.5 Progression or Re-classification

Progression through Levels One to Three inclusive shall be automatic subject to the Employee having successfully completed the appropriate training modules associated with the functions encompassed by the higher level.

An Employee failing to obtain the necessary standard of training, experience or skill necessary to advance to Level Two or Three may seek the assistance of The Diversional Therapy Association of Queensland Inc. to negotiate a further training period.

Progression of Employees to, and beyond Level Four and through levels shall be subject to negotiation and assessment which shall include qualifications, additional work experience, length of service and aptitude.

5.6 Savings Clause

No Employee shall suffer a reduction in wages and conditions (including overaward) as a result of the introduction of this Award.

5.7 Allowances

5.7.1 Divisional and district allowances

Adult Employees in the Mackay Division shall be paid 90c per week and adult Employees in the Eastern Division of the Northern Division shall be paid \$1.05 per week in addition to the rates prescribed in clause 5.2.

Adult Employees in the Western District of the Southern Division shall be paid \$1.05 per week and adult Employees in the Western District of the Northern Division shall be paid \$2.20 per week in addition to the rates prescribed for the corresponding Eastern District.

5.7.2 Late work allowance

All Employees who work ordinary hours between 6.00 p.m. and 6.00 a.m. shall be paid \$1.188 per hour so worked. This allowance shall not be paid when an Employee is entitled to receive the Saturday/Sunday rates prescribed by clause 5.7.8.

5.7.3 Uniform and laundry allowance

- (a) Where Employees are required to wear a uniform or any other distinctive type of clothing, such uniform or clothing shall be supplied, maintained, and laundered at the employer's expense, and shall be the property of such employer.
- (b) Where uniforms or clothing are not supplied or laundered by the employer as required by clause 5.7.3 (a), the following allowances shall be paid:
 - (i) Employees who supply their own uniforms or clothing shall receive an allowance at the rate of \$159.00 per annum, which shall be paid on a *pro rata* basis each pay day;
 - (ii) Employees required to launder their own uniforms or clothing shall be paid \$3.70 per fortnight.

5.7.4 "HR" or "LR" Class driver's license

Where an employer requires an Employee to hold a "HR" or "LR" Class driver's license the Employee shall be paid, in addition to the rates of wages prescribed in clause 5.2.1, \$37.40 per fortnight.

5.7.5 Casual employees

A Casual Employee shall be paid the hourly rate prescribed by the Award plus an additional 23% per hour and shall be further entitled to a *pro rata* payment of any applicable allowances.

5.7.6 Meal allowance

Where an Employee who works sufficient overtime to accrue a meal break as provided in clauses 6.3.2 and 6.3.3, such Employee shall be paid the sum of \$9.60 as meal money or as an alternative, the employer shall supply free to such Employee a suitable meal in respect of each meal break provided for herein.

5.7.7 Supervisory allowance

Employees, appointed as supervisors shall be paid, in addition to the prescribed rates, the amount of \$0.5185 per hour.

5.7.8 *Saturday and Sunday rates*

All time worked by Employees within their ordinary working hours as prescribed in clauses 6.1 and 6.2, between midnight Friday and midnight Sunday, shall be paid for at the rate of time and a-half:

Provided that in the case of a Casual Employee, the additional half time payment shall be exclusive of the casual loading.

5.7.9 *On-call duty allowance*

(a) Where an Employee is required to sleep overnight on the employer's premises for a period not exceeding 8 hours, an allowance of \$8.87 shall be paid in respect of each such instance in addition to any other payments.

(b) An Employee on-call shall be provided with at least 4 hours work or payment therefore, for each instance where the Employee is required to remain on-call. Such work shall be performed immediately before or immediately after the on-call period. Any payment prescribed by clause 5.7.9 shall be in addition to any other payments prescribed under this Award:

Provided that by agreement between the employer and Employee a flat allowance of \$31.64 per night can be paid in lieu of any payments prescribed in clauses 5.7.9 (a) and 5.7.9 (b):

Provided further that by agreement between the employer and Employee, the provisions of meals and accommodation free of charge may be substituted in lieu of any payments prescribed in clause 5.7.9.

5.7.10 *Transport*

Where an Employee (other than a casual) is required to use their own transport, the Employee shall be paid a vehicle allowance of \$0.2433 per kilometre.

5.7.11 *Travelling*

An Employee who travels on official business shall be reimbursed reasonable expenses for accommodation, food, conference fees, etc. and incidental expenses.

Such reimbursement shall be by mutual agreement between the employer and Employee and agreed to prior to the expense/s being incurred.

5.8 Superannuation

In addition to the rates of pay prescribed by clauses 5.2 and 5.3 of this Award, all Employees shall be entitled to occupational superannuation provisions as prescribed in clause 5.9.

5.8.1 *Definitions*

(a) "The Fund" means SUNSUPER as well as any other occupational superannuation scheme offered by the employer, and approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

(b) "Contributory wage" means:

- the ordinary weekly rate of pay applicable to each Employee's level/step; or
- the weekly rate of pay prescribed by clauses 5.2 and 5.3; or
- the hourly rate of pay for part-time Employees as prescribed by clause 4.3.3; or
- the hourly rate of pay for Casual Employees as prescribed by clause 5.8.6.

(c) "Eligible Employee" means any Employee who has been employed by the employer during 4 consecutive weeks. On completion of the qualifying period, superannuation contributions shall be made retrospectively to the commencement of that period.

(d) The employer and Employee may agree to have the Employee's superannuation contributions made to an approved superannuation fund, other than those specified in clause 5.9:

(i) Any such agreement must be recorded in writing and signed by the employer and Employee and kept on the Employee's file.

- (ii) A person must not coerce someone else to make an agreement.
- (iii) Such agreement, where made, will continue until such time as the employer and Employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.
- (iv) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.2.

5.8.2 *Freedom of choice*

Each Employee shall be given equal access to information regarding SUNSUPER as well as such other approved occupational superannuation schemes made available by the employer for the Employee's consideration, in order that the Employee is able to make an informed choice as to which occupational superannuation scheme the Employee wishes the employer to contribute the amount specified in clause 5.8.3.

5.8.3 *Contributions*

Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

Provided that in any instance where the amount as calculated above represents less than \$5.00 per fortnight no contribution will be payable by the employer:

Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.

5.8.4 The obligation upon an employer to make occupational superannuation contributions under clause 5.9 shall be in addition to, and distinguishable from, any contributions being made by such an employer in accordance with the rules of any other particular scheme, prior to the commencement of this Award.

5.8.5 *Cessation of contributions*

The employer shall not be required to make any further contributions on behalf of any Employee after the end of the last day from which the Employee's resignation or dismissal becomes effective.

PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEK-END 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 bases:
 - (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 and 5.3 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 bases, 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 Broken shifts may be permitted and shall only be worked where there is mutual agreement between the employer and the Employee. When such shift is rostered a total of 8 hours only shall be worked and each portion of the shift shall be of 4 hours' duration and shall be worked within a spread of 12 hours.

6.1.5 A roster setting out the Employee's 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.

6.1.6 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.

6.2 Other hours by agreement

Notwithstanding the provisions of clause 6.1, Employees may be required to work in accordance with such other hours of work as are mutually agreed upon, in writing, between the employer and the Employee.

6.3 Overtime

6.3.1 (a) All time worked in excess of the ordinary working hours or outside of the spread of hours shall be deemed to be overtime and, except in the case of shift workers, 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. All overtime worked by shift workers shall be paid for at the rate of double time.

Double time shall be paid for all work performed outside of the ordinary working hours or outside of the spread of hours on a Sunday or during a meal period. Such payments shall be in addition to the actual or ordinary weekly wage paid to each Employee.

(b) 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 at the following rate:

(i) the first 3 hours of overtime in any one week may be taken at the rate of time worked for time taken;

(ii) any period in excess of 3 hours overtime in any one week may be taken off at a rate equivalent to the prescribed overtime penalty.

Should overtime in excess of 3 hours be consecutively worked on any one engagement, such excess overtime shall be taken or paid at the rate of double time:

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, then at the time of termination for any reason by either party, the Employee shall be paid for the overtime worked at the appropriate overtime rate.

(c) 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 6.3.1(a).

The employer shall pay the Employee's wages 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 6.3.1 through authorised overtime worked, within 4 weeks of the time off being taken, or the Employee's pay shall be reduced by the amount of such time off taken.

- 6.3.2 Any Employee who is required to begin working 2 hours or more prior to the ordinary starting time shall be allowed 30 minutes for a meal at or before the normal starting time, for which no deduction of pay shall be made.

In the event of an Employee beginning at work prior to the usual starting time without taking the meal break of 30 minutes and continuing working, the Employee shall be regarded as having worked thirty minutes more than the time worked and shall be paid for an extra 30 minutes at the rate of double time.

- 6.3.3 Any Employee who is required to continue working for more than one hour after the ordinary ceasing time shall be allowed 30 minutes for a meal after the first hour worked. A further 45 minute meal break after each additional further 4 hours worked shall be allowed, for which no deduction of pay shall be made.

In the event of an Employee remaining at work after the usual ceasing time without taking the initial meal break of 30 minutes and continuing at work for a period of 3 hours or more, the Employee shall be regarded as having worked 30 minutes more than the time worked and shall be paid for an extra 30 minutes at the rate of double time.

- 6.3.4 *Meal allowance* - Where an Employee who works sufficient overtime to accrue a meal break as provided in clauses 6.3.2 and 6.3.3, such Employee shall be paid the sum of \$9.60 as meal money or as an alternative, the employer shall supply free to such Employee a suitable meal in respect of each meal break.

- 6.3.5 Where an Employee has been previously notified of the requirement to work overtime and such overtime is not then worked, in the event of the Employee having provided a meal as a result thereof, the Employee shall be paid the \$9.60 meal allowance as provided in clause 6.3.4 notwithstanding the fact that no such overtime is worked.

- 6.3.6 Any Employee recalled to work overtime after having left the employer's premises shall be paid for not less than 2 hours at overtime rates in respect of each such recall:

Provided that the provisions of clause 6.3.6 shall not apply where such overtime is worked continuously with ordinary hours of work.

- 6.3.7 When an Employee having worked overtime, finishes work at a time when the usual means of transport is not available, the employer shall provide equivalent safe alternate transport, without cost, to the Employee's residence.

- 6.3.8 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 6.3.8, 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 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.

6.4 Meal breaks

- 6.4.1 Full-time Employees shall be entitled to a daily meal break of not less than 30 minutes nor more than one hour's duration, to be taken between 4 and 6 hours after the commencement of work, or as at any other time as has been mutually agreed between the employer and the majority of Employees.

- 6.4.2 Part-time Employees and Casual Employees who are engaged to work for more than 5 hours a day shall be entitled to a meal break of not less than 30 minutes nor more than one hour's duration.

- 6.4.3 All work performed during a recognised meal break shall be deemed overtime and shall be paid for at the rate of double time. Such rate shall be continued until a break of the usual duration for a meal is allowed.

6.5 Rest pauses

- 6.5.1 Full-time Employees shall receive a rest pause of 10 minutes' duration in the first half and the second half of each day worked.

6.5.2 Part-time and casual employees

Part-time and Casual Employees who work a minimum of 4 consecutive hours, but less than 8 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 8 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

Rest pauses shall be taken in the employer's time and shall be taken at times to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity, in the opinion of the employer is necessary:

Provided that where, at the employer's discretion, having regard to the Employee's health and welfare as well as taking into account peak periods of work load, one rest pause of 20 minutes in the first part of the working day may be substituted.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every full-time and part-time Employee, shall at the end of each calendar year of employment, be entitled to annual leave on full pay as follows:

- (a) Not less than 190 hours if regularly rostered to work on public holidays;
- (b) Not less than 152 hours in any other case.

7.1.2 An Employee whose employment is terminated prior to the expiration of a full year of employment shall be entitled to a *pro rata* equivalent of annual leave as provided for in clause 7.1.1.

7.1.3 Notice of annual leave

Unless otherwise agreed between the employer and Employee, at least 4 weeks' notice prior to the time which the annual leave is to commence, will be given.

7.1.4 Leave may be taken in parts

Annual leave by mutual agreement between the employer and Employee may be taken in one or more parts, provided that 38 hours' entitlement shall be available in single day periods.

7.1.5 Payment of wages when employee is proceeding to annual leave

- (a) Where an Employee is proceeding to annual leave of more than 38 hours' duration, after completing work on a Saturday, Sunday or public holiday, the Employee's entitlements shall be made up to, and include, annual leave entitlements and payments for all work completed on the last week day of duty.
- (b) Employees proceeding to annual leave on a week day (public holidays excluded) shall have their entitlements made up to, and include, payment for all work completed on the day of departure.
- (c) Payment for any work withheld will be available to the Employee, no later than the conclusion of the first day of work after returning from leave. Where pay is customarily made by electronic transfer, any adjustment that is necessary will be made at the next regular pay transfer.

7.1.6 Calculation of annual leave pay

Annual leave pay for full-time and part-time Employees shall be calculated as follows:

- (a) The Employee's ordinary wage rate, as prescribed in clause 5.2 and 5.3, for the period of the annual leave (excluding late work premiums and week-end penalty rates); plus
- (b) allowance/s, if applicable; plus
- (c) uniform allowance, if applicable;

together with a further 17.5% of the amount referred to in clauses 7.1.6 (a) and 7.1.6(b). The 17.5% additional payment shall relate to:

- (i) 152 hours in the case of Employees entitled to 190 hours annual leave, as set out in clause 7.1.1(a); or
- (ii) 152 hours in the case of other Employees.

A part-time Employee shall be entitled to *pro rata* annual leave on the same basis as full-time Employees.

Where a public holiday occurs during a period of the Employee's annual leave, there shall be added to the Employee's annual leave an extra day for each such day so occurring.

7.1.7 Accrual of annual leave

Should an Employee have not taken annual leave as it falls due from time to time, such annual leave, by mutual arrangement, may be accrued for a period not exceeding 2 years. Leave accrued and not taken within a 2 year period will be deemed to have been taken.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every Employee, except casuals, pieceworkers, and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of 7.6 hours' sick leave after each 6 weeks of employment.
- (c) Payment for sick leave will be made based on the ordinary number of hours that 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.
- (f) Part-time Employees accrue sick leave on a proportional basis.

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.

7.3 Bereavement leave

7.3.1 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) 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 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 in clause 7.3.1 or 7.3.2 is insufficient.

7.3.5 The Employee shall be entitled to a maximum of 2 days' leave without loss of pay on each occasion and on the production of satisfactory evidence of the death outside Australia of an Employee's spouse, father or mother, and where such Employee travels outside of Australia to attend the funeral.

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 All work completed by a full-time or part-time Employee on:

- the 1st January;
- the 26th January;
- 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 shall be paid for at the rate of time and a-half with a minimum payment of 4 hours.

7.6.2 Labour Day

All full-time and part-time Employees shall be 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 day) irrespective of the fact that an Employee may not work on that day. However, should an Employee work on that day, in addition to a full day's wage, the Employee shall be paid for all time worked at the rate of time and a-half, with a minimum payment of 4 hours.

Should Labour Day occur during an Employee's period of annual leave, another day on full pay, shall be added to the Employee's annual leave.

Should Labour Day occur on an Employee's rostered day off duty, the Employee shall be paid an additional day's pay, or shall be granted a day's leave on full pay, at a time mutually arranged between the employer and Employee.

7.6.3 *Show day*

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

Provided that where the show is of more than one day's duration the Employees may agree with the employer to substitute another day during the show period in lieu of the day so appointed, in which case the provisions of clause 7.6.3 shall apply to the day so substituted.

Should show day occur during an Employee's period of annual leave, another day on full pay, shall be added to the Employee's annual leave.

Should show day occur on an Employee's rostered day off duty, the Employee shall be paid an additional day's pay, or shall be granted a day's leave on full pay, at a time mutually arranged between the employer and Employee.

7.6.4 *Easter Saturday*

A full-time or part-time Employee whose ordinary hours of work are regularly worked between Monday to Friday inclusive, shall not be entitled to extra payments or benefits provided in clause 7.6.

Should Easter Saturday occur during a full-time or part-time Employee's period of annual leave and the Employee has been regularly rostered to work over a 14 day period, including Saturdays, the Employee shall have another day, on full pay, added to the Employee's annual leave period.

Should Easter Saturday occur on a full-time or part-time Employee's rostered day-off duty, and the Employee has been regularly rostered to work over a 14 day roster period, including Saturdays, the Employee shall be paid an additional day's pay, or shall be granted a day's leave, on full pay, at a time mutually arranged between the employer and Employee.

However, all full-time and part-time Employees who are regularly rostered to work over a 14 day roster period, including Saturdays, shall be paid at the rate of double time and a-half, with a minimum payment for 4 hours' work.

7.6.5 *General*

Casual Employees shall have no entitlement to pay or leave for public holidays, however all work completed by a Casual Employee shall be paid for at the rate of double-time and a-half.

A full-time or part-time Employee who is rostered to work on a day of the week on which a public holiday falls, and who is not required to work on that day, shall be paid for the hours which would otherwise have been worked on that day.

7.6.6 *Equivalent time off in lieu*

Full-time and part-time Employees who work on a prescribed public holiday may be in agreement to perform such work at ordinary rates provided that the Employee is provided with equivalent paid time off equivalent to one day and a-half at a mutually convenient time, or added to the Employee's annual leave.

7.7 Jury service

- (a) 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.
- (b) 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.
- (c) 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.

- (d) 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.
- (e) "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 and careers

The parties acknowledge that various degrees of training are provided to Employees in the industry, both by internal on-the-job training and through external training providers.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in such cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all Employees in this industry and the parties agree to co-operate in encouraging both employers and Employees to avail themselves of the benefits from such training.

The parties agree to continue discussions on issues raised in relation to training.

The parties are committed to encouraging young people to view this industry as one which has the capacity to provide them with an interesting career.

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) 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 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 stopped 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 Union encouragement

Clause 11.3 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.

11.3.1 Documentation to be provided by employer

At the point of engagement, an employer to whom this Award applies 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 the Employee.

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

11.3.2 Union delegates

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.

The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.3.3 Deduction of union fees

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of Union fees for Employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

11.4 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 by Employees.

11.5 Reserved matters

It is agreed that the parties to this Award may raise any matter of substantial merit arising from the introduction and implementation of this Award.

Dated 9 September 2003.

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

Operative Date: 6 October 2003