

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

E.S. RANDLE & CO. PTY LTD AWARD - STATE 2004

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the E.S. Randle & Co. Pty Ltd Award - State 2004 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 E.S. Randle & Co. Pty Ltd Award - State 2004 as at 1 September 2010.

Dated 1 November 2010.

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

E.S. RANDLE & CO. PTY LTD AWARD - STATE 2004

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the E.S. Randle & Co. Pty Ltd Award - State 2004.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 1 September 2004.

1.4 Award coverage

This Award applies to all employees engaged in or in connection with or incidental to the mooring and unmooring of ships or vessels who are employed by E.S. Randle & Co. Pty Ltd, and to the employer, E.S Randle & Co Pty Ltd within the State of Queensland.

1.5 Definitions

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

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

1.5.3 "Union" means The Australian Workers' Union of Employees, Queensland.

1.6 Parties bound

This Award is legally binding on the employer E.S. Randle & Co. Pty Ltd and employees as prescribed by clause 1.4, the Union and its members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

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

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultative mechanisms and procedures in the workplace

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

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 a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation

made by the Commission with a view to the prompt settlement of the dispute.

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

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

4.1 Employment categories

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

- (a) Full-time;
- (b) Part-time (as prescribed in clause 4.2); and
- (c) Casual (as prescribed in clause 4.3).

4.2 Part-time employment

4.2.1 Part-time employees may be engaged on the following terms:

- (a) A part-time employee means a weekly employee who is engaged to work on a pre-determined days of the week for a regular number of hours, being more than 16 but less than 32 hours per week. Except, as hereinafter provided, all conditions provided for weekly full-time employees shall apply to part-time employees.
- (b) Part-time employees shall be paid an hourly rate equal to 1/38th of the weekly rate prescribed by this Award for the classification under which they are engaged.
- (c) A part-time employee who works outside the ordinary hours of work of 8.00 a.m. to 5.00 p.m., or in excess of the ordinary daily or weekly hours prescribed in the contract of employment shall be paid overtime in accordance with clause 6.4.
- (d) Part-time employees shall be entitled to receive pro rata entitlements to annual leave, sick leave, bereavement leave and long service leave, in accordance with the provisions contained in this Award.
- (d) Part-time employees shall be entitled to receive payment for ordinary hours they would have otherwise worked on any public holiday on which they would have been ordinarily rostered for duty.

4.3 Casual employment

- 4.3.1 "Casual Employee" means an employee, other than a "Part-time Employee" as defined herein, who is engaged as such and paid on an hourly basis to work, for less than 38 hours per week.
- 4.3.2 Casual employees are to be paid an additional 23% loading on the full-time hourly rate with a minimum of 2 hours' continuous work or payment therefore in respect of each engagement.
- 4.3.3 Casual employees are entitled to all penalties and allowances payable under the Award including weekend rates.
- 4.3.4 A casual employee who works outside the ordinary hours of work of 8.00 a.m. to 5.00 p.m. or in excess of 8 hours on any day, or 38 hours in any week shall be paid overtime in accordance with clause 6.4.

4.4 Incidental or peripheral tasks

- 4.4.1 The employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence, and training consistent with the classification structure of this Award provided that such duties are not designed to promote de-skilling.
- 4.4.2 The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

4.4.3 Any direction issued by the employer pursuant to the clauses 4.4.1 and 4.4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.5 Anti-discrimination

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

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

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

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

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

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

4.6 Termination of employment

4.6.1 *Statement of employment*

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

4.6.2 *Termination by employer*

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

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

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

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

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

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

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and

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

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.6.3 *Notice of termination by employee*

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

4.6.4 *Time off during notice period*

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

4.7 Introduction of changes

4.7.1 *Employer's duty to notify*

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

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

4.7.2 *Employer's duty to consult over change*

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

4.8 Redundancy

4.8.1 *Consultation before terminations*

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

are likely to be carried out:

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

4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
 - (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.8.3 *Transmission of business*

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

4.8.4 *Time off during notice period*

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

4.8.5 *Notice to Centrelink*

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

4.8.6 *Severance pay*

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

Period of Continuous Service

Severance Pay
(weeks' pay)

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

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

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

4.8.7 *Superannuation benefits*

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

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

4.8.8 *Employee leaving during notice*

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

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

4.8.9 *Alternative employment*

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

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

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

4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours

on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

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

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

4.8.13 *Exemption where transmission of business*

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

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

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

4.8.14 *Incapacity to pay*

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

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 Classifications and wage rates

The minimum rates of wages payable to full-time employees shall be:

	Per week
	\$
Employees engaged in mooring and unmooring of ships and vessels	644.80
All other employees not elsewhere classified	616.80

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

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

5.2 Queensland Minimum Wage

5.2.1 No Adult employee shall be paid less than the Queensland Minimum Wage.

5.2.2 The Queensland minimum wage for a full-time adult employee is \$448.40 per week.

5.2.3 Part-time or casual employees will continue to receive the wage rates determined under the casual and part-time clauses of the Award.

5.2.4 Application of Queensland minimum wage rates calculation:

(a) The Queensland minimum wage:

(i) applies to all work in ordinary hours;

(ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this Award; and

(iii) is inclusive of the arbitrated Safety Net Adjustments provided by the Declaration of General Ruling operative from 1 September 2002 and all the previous Safety Net and State Wage Adjustments.

5.3 Allowances

5.3.1 Travel allowance

All employees shall be paid a flat allowance of \$44.80 per week to be paid on a *pro rata* basis of \$6.47 per day as compensation for having to travel to and from the place of work. Casual employees shall be paid this allowance of \$6.47 for each engagement.

In addition to the allowance prescribed by clause 5.3.1, the employer shall be responsible for making payment for any toll fee that may be incurred by the employee crossing the Gateway Bridge in the course of the employee's employment.

Employees who are instructed to report for work at a stipulated time and who report for work at such time, but for whom work is not available within 30 minutes of the said stipulated time shall be paid ordinary rates from the said stipulated time with a minimum payment as for 2 hours.

5.3.2 Shift penalties

For work done at any time during a shift (other than a day shift) the ordinary rate of pay shall be increased by 15% per shift, pursuant to clause 6.5.

An "Afternoon Shift" is defined as a shift commencing at or after 12 noon and before 6.00 p.m.

A "Night Shift" is defined as a shift commencing at or after 6.00 p.m. and before 6.00 a.m.

Provided that this extra shift rate shall not apply to shift work performed on a Saturday and Sunday where weekend rates apply as described in clause 6.6.

All ordinary time worked on Saturday and Sunday by employees as provided by clause 6.5, not being overtime within the meaning of clause 6.1 shall be paid for at the rate of time and a-half the ordinary rate between midnight Friday and midnight Sunday.

5.4 Payment of wages

5.4.1 Except upon termination of employment all wages and allowances shall be paid weekly.

5.4.2 Payment of wages shall be made at the discretion of the employer by one of the following means:

(i) Cash

(ii) Cheque

(iii) Direct Credit (E.F.T.) into a nominated Bank or Building Society.

(iv) Where an employee is paid in cash, payment for work performed during such a pay cycle shall not be held by the employer for a period in excess of two days.

5.5 Superannuation

5.5.1 Application - In addition to the rates of pay prescribed by this Award eligible employees, as defined herein, shall be entitled to Occupational Superannuation Benefits, subject to the provisions of clause 5.5.

5.5.2 Contributions

(a) 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%.

(b) Regular payment - The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the Approved Fund Trust Deed.

(c) Minimum level of earnings - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.

(d) 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.

(e) Other contributions - Nothing in clause 5.5 shall preclude an employee from making contributions to a Fund in accordance with the provisions thereof.

(f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.

(g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the Fund other than the remission of contributions as prescribed in clause 5.5.

5.5.3 Definitions

(a) "Approved Fund" means a Fund approved for the purposes of this Award by the Commission as one to which Occupational Superannuation contributions may be made by an employer on behalf of an employee, as required by this Award. Such approved Fund may be individually named or may be identified by naming a particular class or category.

(b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.5.2 effective from the commencement of that qualifying period.

(c) "Fund" means a Superannuation Fund as defined in the Occupational Superannuation Standards Act 1987 and satisfying the Superannuation Fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by Regulations made under that Act. In the case of a newly established Fund, the term shall include a Superannuation Fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

(d) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and traveling time allowances or any other extraneous payments of a like nature.

5.5.4 Approved funds

For the purposes of this Award an Approved Fund shall be:

(a) Sunsuper.

- (b) Any named Fund as is agreed to between the relevant employer/Union parties to this Award.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award of, or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction, and already has practical application to the majority of award employees of that employer.
- (d) (In an appropriate case). As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any Fund nominated by the employer and approved by the Brethren.
- (e) (In an appropriate case). Any Fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a Fund cited in an Award would be in conflict with the conscientious beliefs of that employee in terms of section 115.
- (f) In relation to any particular employer, any other established Fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.5.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions:

Provided that the making of a deposit, an initial or other contributions subsequent to 29 September 1989, but on a retrospective basis, in respect of any period up to and including 29 September 1989, shall not under any circumstances bring a Fund within the meaning of clause 5.5.4. The mere signing and submission of any nomination for membership documents to Trustees of a Fund prior to 29 September 1989 does not bring a Fund within the meaning of clause 5.5.4.

5.5.5 *Challenge of a Fund*

- (a) An eligible employee being a member or a potential member of a Fund, as well as the Union, may by notification of a dispute challenge a Fund on the grounds that it does not meet the requirements of clause 5.5.
- (b) Notwithstanding that the Commission determines that a particular Fund does not meet the requirements of clause 5.5, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that Fund as having met the requirements or part thereof of clause 5.5.2 up to and including the date of that determination.
- (c) In the event of any dispute over whether any Fund complies with the requirements of clause 5.5, the onus of proof shall rest upon the employer.

5.5.6 *Fund selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one Approved Fund. Such Fund, other than a Fund referred to in clauses 5.5.4(c), (d), (e) and (f), shall be determined by a majority decision of employees.
- (b) Employees to whom clause 5.5.6 applies who as at the date of this Award are members of an established Fund covered by clause 5.5.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.5.2 paid into a Fund as provided for elsewhere in clause 5.5.4 in lieu of the established Fund to which clause 5.5.4(f) has application.
- (c) The initial selection of a Fund recognised in clause 5.5.4 shall not preclude a subsequent decision by the majority of employees in favour of another Fund recognised under 5.5.4 where the long term performance of the Fund is clearly disappointing.

Where clause 5.5.6 has been utilised and as a result another approved Fund is determined, access to a further re-appraisal of the Fund for the purpose of favouring yet another Fund shall not be available until a period of 3 years has elapsed after that utilisation of clause 5.5.6.

5.5.7 *Enrolment*

- (a) Each employer to whom clause 5.5 applies shall as soon as practicable as to both current and future eligible employees:
 - (i) notify each employee of the employee's entitlement to occupational superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5.4;

- (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund each eligible employee, receives, completes, signs and returns the necessary application forms provided by the employer to enable that employee to become a member of the fund; and
 - (iv) submit all completed application form/s and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.5 shall:
- (i) complete and sign the necessary application forms to enable that employee to become a member of that fund; and
 - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 5.5.2.
- (c) Where an employer has complied with the requirements of clause 5.5.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employee of that form, then that employer shall:
- (i) Advise an eligible employee in writing of the no receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.5.
 - (ii) In the event that an eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form/s is/are received by the employer.
 - (iii) In the event that an eligible employee fails to return a completed and signed application form/s within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form/s is/are a pre-requisite to the payment of any occupational superannuation contributions.
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.5.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Secretary of the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.5.7(c)(i) and (iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.5.7(a)(iii) the employer shall be obliged to make contributions as from the date of operation of this Award or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where an eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of paragraph (c) hereof shall apply.

(e) Unpaid contributions

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.5.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.5.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.5.4, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.5 excepting that resort to this provision shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant Fund.

5.5.8 *Record keeping*

The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the, approved fund in similar form to time and wages records required to be kept in accordance with section 366 of the Act, and shall have such records available for inspection by an Industrial Inspector or Officer of the Union, authorised pursuant to section 373 of that Act.

5.5.9 *Exemptions*

An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.5 in the following circumstances:

- (a) incapacity to pay the costs associated with its implementation, or
- (b) any special or compelling circumstances peculiar to the business of the employer.

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

6.1 Hours of work

6.1.1 Hours for day workers

- (a) Subject to clause 6.1.2 (Implementation), 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 work cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 21 consecutive days; or
 - (iii) 152 hours within a work cycle not exceeding 28 consecutive days.

(b) The ordinary hours of work shall be Monday to Sunday inclusive.

- (c) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks between 8.00 a.m. and 5.00 p.m. The spread of hours prescribed herein may be altered as to all or a section of employees:

Provided there is agreement between the employer and the majority of employees concerned:

Provided further that work done outside the hours of 8.00 a.m. to 5.00 p.m. shall be paid at overtime rates and will be deemed to be part of the ordinary hours of work for the purposes of clause 6.1.1.

- (d) The ordinary hours of work prescribed herein shall not exceed 10 hours on any day:

Provided that where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned:

Provided further that by arrangement between an employer, the Union and the majority of employees in the work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- (i) the employer and the employees concerned being guided by the Occupational Health and Safety Provisions of the ACTU Code of Conduct on 12hour shifts;
 - (ii) proper health monitoring procedures being introduced;
 - (iii) suitable roster arrangements being made; and
 - (iv) proper supervision being provided.
- (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) The ordinary starting and finishing times of various groups of employees or individual employees, may be staggered, provided that there is agreement between the employer and the majority of employees concerned.

6.1.2 Implementation

- (a) The 38 hour week shall be implemented on one of the following bases, most suitable to the particular business, 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 workday off during that cycle.

Subject to the provisions of clause 6.1, 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.

- (b) Notwithstanding any other provision in clause 6.1, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees 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.
- (c) Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in the business concerned.

6.1.3 *Procedures for enterprise grade discussions*

- (a) The employer and all employees in each establishment shall consult over the most appropriate means of implementing and working a 38 hour week.
- (b) The objective of such consultation shall be to reach agreement on the method of implementing and working the 38 hour week in accordance with clause 6.1.2.
- (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 organization.
- (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 or worked 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, utilizing the foregoing provisions of clause 6.1, including clause 6.1.3(e).
- (g) Emergencies - The employer shall have the right to change the roster in emergency circumstances arising from causes outside of the employer's control which involve the possibility of physical danger to employees or plant.

6.2 **Meal breaks**

6.2.1 *Day work* - All employees shall be entitled to a meal break of not less than one-half hour to be taken between the fourth and sixth hours from their ordinary starting time each day.

Except as hereinafter provided double time shall be paid for all work done during meal breaks and thereafter until a meal break is taken.

Employees performing ordinary work in excess of 8 hours and up to 10 hours per day shall be entitled to a meal break of not less than one-half hour and not more than one hour to be taken at or about the fifth hour from the ordinary starting time each day.

The duration of the meal break having been determined as the recognised meal break in accordance with clause 6.2.1 may be altered by either the mutual agreement between the employer and the employees or by the employer in the case of a situation requiring continuity of the work on the project or program:

Provided that:

- (a) the time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations;
- (b) an employer may stagger the time of taking a meal and rest break to meet operational requirements.

6.2.2 *Shift work* - Shift workers shall be allowed 30 minutes for crib without loss of pay to be taken in such manner as not to interfere with the continuity of the work.

6.2.3 *Overtime* - Any employees who are required to continue work after their normal or rostered ceasing time shall be entitled to a 30 minute crib break after 2 hours or after one hour if overtime continues beyond 6.00 p.m.

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

6.2.4 *Meal breaks during week-end overtime* - Any employee required to work overtime on a Saturday or Sunday or their equivalent beyond the fifth hour of such overtime shall be entitled to an unpaid meal break of 30 minutes.

Should an employee be required to continue such overtime beyond 9 hours, there shall be an entitlement to a further break of 30 minutes for which no deduction of pay shall be made.

After each further 4 hours of overtime, the employee shall be entitled to a 45 minute break for which no deduction of pay shall be made, provided that the employee is required to continue working thereafter.

6.3 Rest pauses

Where practicable every employee covered by this Award shall be entitled to a rest pause of 10 minutes duration in the employers time in the first and second half of the working day. Such rest pauses shall be taken at such time as will not interfere with the continuity of work where continuity is necessary:

Provided that where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day, with such 20 minute rest pause and the meal break arranged in such a way that the ordinary working day is broken up into three approximately equal working periods.

Consent to combine the rest pause shall not be unreasonably withheld by either party.

6.4 Overtime

6.4.1 All time worked in excess of 38 hours per week shall be deemed to be overtime.

6.4.2 All time worked outside the ordinary hours of 8.00 a.m. to 5.00 p.m. shall be deemed to be overtime except in the case of bona fide shift work as described in clause 6.5.

6.4.3 All overtime worked shall be recorded on time sheets on the day following the day that such overtime is worked, and payment for any overtime worked shall be subject to such recording being claimed, adjusted, and made at the next ensuing date of payment of such employee.

6.4.4 Except as hereinafter provided all authorised worked performed outside the normal starting and ceasing times as prescribed by roster established pursuant to clause 6.1 shall be deemed to be overtime and shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

6.4.5 *Shift work* - All authorised overtime performed by shift workers shall be paid for at the rate of double time for all time worked.

6.4.6 *Holidays* - All time worked on the public holidays set out in clause 7.6 of this Award outside the ordinary working hours specified in this Award, prescribed by a roster or usually worked on the day of the cycle on which the holiday is kept, shall be paid for at double the rate prescribed by this Award for overtime when worked outside such working hours on an ordinary working day.

6.4.7 *Call back or recall to duty* - When an employee is recalled to perform duty after completion of the employee's normal or prescribed hours or after completion of the employee's rostered shift and having left the job site or on a rostered day off shall be paid for a minimum of 2 hours work at the appropriate overtime rate. Except in the case of unforeseen circumstances the employee shall not be required to work the full 2 hours if the job for which the employee has been recalled is completed within a shorter period.

Clause 6.4.7 shall not apply in cases where it is customary for an employee to return to the job site out of hours to perform a specific task where standard overtime rates would apply.

Overtime worked in the circumstances specified in clause 6.4.7 shall not be regarded as overtime for the purposes of clause 6.4.5 where actual work is less than 2 hours on such recall or on such recalls.

Provided further that where employees are called out, work between midnight and 6.00 a.m. shall be paid at the rate of double time for all time so worked up to the ordinary starting time Monday to Friday and up to 7.00 a.m. Saturday with a minimum of 4 hours.

6.4.8 *Rest pause after performing overtime duty* - An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between these times shall, subject to clause 6.4.8, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during an absence. If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until the employee is released from such duty for such period and the employee shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of clause 6.4.8 shall apply in the case of shift workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

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

6.4.9 An employee called upon to work overtime for more than one and a-half hours after the ordinary ceasing time without receiving notice of such overtime on the previous day shall be paid an allowance of \$9.60 for a meal or shall be supplied by the employer with a reasonable meal in lieu of such payment, in respect of each meal break allowed during such overtime as provided for in clause 6.2.2.

6.4.10 Where an employee has provided themselves with customary meals after receiving notice to work certain overtime they shall be paid the relevant meal allowance of \$9.60 for each meal so provided in the event that the overtime work is not performed or ceases before the notified time of conclusion of work which such time of conclusion would, but for the giving of prior notice, have involved payment of one or more meal allowances.

6.5 Shift work

6.5.1 Hours for shift workers

(a) The ordinary working hours of continuous shift workers and shift workers whose work is connected with or incidental to any continuous process shall average 38 hours per week inclusive of crib time and shall not exceed 152 hours in 28 consecutive days:

Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 hours is achieved over a period which exceeds 28 consecutive days. Subject to the following conditions, such shift workers shall work at such times as the employer may require.

For the purposes of this Award:

A "Day Shift" shall commence at or after 6.00 a.m. and before 12 noon;

An "Afternoon Shift" shall commence at or after 12 noon and before 6.00 p.m.

A "Night Shift" shall commence at or after 6.00 p.m. and before 6.00 a.m.

"Continuous Shift Work" means work that is continuous for 24 hours per day for an unbroken period of one lunar month, or 28 days, except in the case of floods or breakdowns or shutting down for holidays:

Provided that by mutual consent provision may be made for the rotation of shifts.

(b) A shift shall consist of not more than 10 hours inclusive of crib time.

Provided that:

- (i) in any arrangement of ordinary working hours where the ordinary working are to exceed 8 on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the work section or sections concerned; and
- (ii) by agreement between an employer, the Union and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
 - (A) the employer and the employees concerned being guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 hours shifts;

- (B) proper health and monitoring procedures being introduced;
- (C) suitable roster arrangements being made; and
- (D) proper supervision being provided.

(iii) except at the regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

6.5.2 *Hours* - other than continuous shift workers - Clause 6.5.2 shall apply to shift workers not upon continuous work as herein before described. Subject to clause 6.1.2 the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (a) 38 hours within a period not exceeding 7 consecutive days; or
- (b) 76 hours within a period not exceeding 21 consecutive days;
- (c) 114 hours within a period not exceeding 21 consecutive days; or
- (d) 152 hours within a period not exceeding 28 consecutive days.
- (e) The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than 5 hours without a break for a meal. Except at a regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.
- (f) Provided that:
 - (i) the ordinary hours of work prescribed herein shall not exceed 10 hours on any day;
 - (ii) in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees in the work section or sections concerned; and
 - (iii) by agreement between an employer, the union concerned and the majority of employees in the work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
 - (A) the employer and the employees concerned being guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 hours shifts;
 - (B) proper health and monitoring procedures being introduced;
 - (C) suitable roster arrangements being made; and
 - (D) proper supervision being provided.

6.6 Weekend work

All time worked on weekends shall be paid as follows:

- (a) between midnight Friday and midnight Saturday - at the rate of one and a-half times the ordinary rate for the first 3 hours the double time thereafter, with a minimum of 2 hours; and
- (b) between midnight Saturday and midnight Sunday - at the rate of double-time with a minimum of 2 hours work or payment therefore.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of their employment be entitled to annual leave on full pay as follows:

- (a) not less than 5 weeks if employed on shift work where three shifts per day are worked over a period of 7 days per week; and
- (b) not less than 4 weeks in any other case.

7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.4) shall be paid by the employer in advance:

- (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary pay at the rate in excess of the ordinary rate payable under this Award at that excess rate: and
- (b) in every other case at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall forthwith pay to the employee in addition to all other amounts due to the employee, the employee's pay calculated in accordance with clause 7.1.7 for 4 or 5 weeks as the case may be and also the employee's ordinary pay for any public holiday occurring during such period of 4 or 5 weeks.

7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid in addition to all other amounts due to them, an amount equal to 1/9th of their pay for the period of their employment if they are an employee to whom clause 7.1.1(a) applies, and 1/12th of their pay for the period of their employment, if they are an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.7.

7.1.5 One month's notice (or such other period as may be agreed) of the commencement of annual leave shall be given by an employee to their employer or by the employer to the employee.

7.1.6 Except as hereinbefore provided, it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.1.7 *Calculation of annual leave pay*

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

- (a) Shift workers - Subject to clause 7.1.7(c) the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster; including Saturday, Sunday or holiday shifts.
- (b) Leading hands, etc. - Subject to clause 7.1.7(c), leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
- (c) All employees - Subject to the provisions of clause 7.1.7(d), in no case shall the payment by an Employer to an employee be less than the sum of the following amounts:
 - (i) the employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) leading hand allowance or amounts of a like nature;
 - (iii) a further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.7(c)(i) and (ii).
- (d) The provisions of clause 7.1.7(c) shall not apply to the following:
 - (i) any period or periods of annual leave exceeding:
 - (A) 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week;
 - (B) 4 weeks in any other case.
 - (ii) employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.
- (e) Reasonable notice of the commencement of annual leave shall be given to the employee.
- (f) Except as hereinbefore provided it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.2 Sick leave

7.2.1 Entitlement

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

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

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

7.2.2 Employee must give notice

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

7.2.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give 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; and
- (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

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 one year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

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

7.3.4 *Unpaid leave*

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

7.4 **Long service leave**

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

7.5 **Family leave**

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

7.5.1 It is to be noted that:

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

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

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

7.6 **Public holidays**

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

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

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

7.6.2 *Labour Day*

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

7.6.3 *Annual show*

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

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

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

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

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

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

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

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

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

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

7.6.5 *Double time and a-half*

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

7.6.6 *Stand down*

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

7.6.7 *Substitution*

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

7.7 Jury service

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

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

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

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

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

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

No provisions inserted in this Award relevant to this Part.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

The parties acknowledge that varying degrees of training are provided to employees in the establishment, both via internal, on-the-job and through external training.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in 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 the establishment and the parties agreed to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

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

10.1 Transport to hospital

Where employees are injured seriously, or fall seriously ill at their work the employer shall provide means of getting them to the nearest hospital or pay expenses of transmission to hospital.

10.2 First aid kit

An up to date St. Johns Ambulance first aid kit shall be supplied by the employer so that such kit is immediately accessible to the employees whilst they are performing these duties.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

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

11.1.2 Entry procedure

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

11.1.3 Inspection of records

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

11.1.4 *Discussions with employees*

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

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

11.1.5 *Conduct*

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

11.2 Time and wages record

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

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

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and

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

11.2.3 The employer must keep the record for 6 years.

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

11.3 Trade Union training leave

11.3.1 Upon written application by an employee to an employer such application being endorsed by the Union and giving to the employer at least one month's notice, such employee shall be granted up to 5 working days leave (non-cumulative) on ordinary pay each calendar year to attend courses and seminars conducted by the Union.

11.3.2 For the purposes of clause 11.3 'ordinary pay' means at the ordinary weekly rate paid to the employee exclusive of any allowance for travelling time and fares or shift work.

11.3.3 The granting of such leave shall be subject to the following conditions:

(a) An employee must have at least 12 months uninterrupted service with an employer prior to such leave being granted.

(b) Clause 11.3 shall not apply to an employer with less than 10 full-time employees bound by this Award.

(c) The maximum number of employees of one and the same employer attending a course or seminar at the same time will be as follows:

Where the employer employs from 10 to 100 employees 2

Where the employer employs over 200 employees 4

Provided that where the employer has more than one place of employment in Queensland, then the formula above shall apply to the number of employees employed in or from each individual place of employment.

(d) The granting of such leave shall be subject to the convenience of the employer and so that the operations of the employer will not be unduly affected.

(e) The scope, content and grade of the course shall be such as to contribute to a better understanding of industrial relations within the employer's operations.

(f) In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee.

(g) Leave granted to attend courses will not incur additional payment if such course coincided with the employee's day off in 38 hour week working arrangements or with any other concessional leave.

(h) Such paid leave will not affect other leave granted to employees under this Award.

11.4 Posting of Award

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

11.5 Union encouragement

Preamble

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

11.5.1 Documentation to be provided by employer

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

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

11.5.2 *Union delegates*

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

Dated 28 September 2004.

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

Operative Date: 1 September 2004
Repeal of Industrial Agreement and New Award -
E.S. Randle & Co. Pty Ltd Award - State 2004
Released: 18 November 2004