

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**FERTILIZER INDUSTRY 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 Fertilizer Industry 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 Fertilizer Industry Award - State 2003 as at 1 September 2010.

Dated 1 November 2010.

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

**FERTILIZER INDUSTRY AWARD - STATE 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Fertilizer Industry Award - State 2003.

**1.2 Arrangement**

Subject Matter	Clause No.
PART 1 - APPLICATION AND OPERATION	
Title	1.1
Arrangement	1.2
Date of operation	1.3
Coverage	1.4
Definitions	1.5
Area of operation	1.6
Parties bound	1.7
PART 2 - FLEXIBILITY	
Enterprise flexibility	2.1
PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION	
Consultative mechanisms and procedures in the workplace	3.1
Grievance and dispute settling procedure	3.2
PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS	
Employment categories	4.1
Part-time employment	4.2
Casual employment	4.3
Incidental and peripheral tasks	4.4
Anti-discrimination	4.5
Termination of employment	4.6
Introduction of changes	4.7
Redundancy	4.8
Continuity of service - transfer of calling	4.9

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

Definition of classifications	5.1
Wage rates	5.2
Allowances	5.3
Payment of wages	5.4
Superannuation	5.5

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

Hours of work	6.1
Rest pauses	6.2
Overtime	6.3
Shift work	6.4

**PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

Annual leave	7.1
Sick leave	7.2
Bereavement leave	7.3
Long service leave	7.4
Family leave	7.5
Public holidays	7.6
Jury service	7.7

**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**

Commitment to training	9.1
------------------------	-----

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

Amenities	10.1
Occupational health and safety	10.2
First aid	10.3

**PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS**

Right of entry	11.1
Time and wage records	11.2
Union encouragement	11.3
Posting of award	11.4

Second tier wage approvals Schedule

**1.3 Date of operation**

This Award takes effect from 17 February 2003.

**1.4 Coverage**

This Award applies to employees engaged in or in connection with the manufacture, processing, and/or handling of fertilizer and like products, and to employees engaged in or in connection with the manufacture, processing, and/or handling of chemicals and/or other products and/or by-products manufactured, processed and/or handled by employees in the fertilizer and chemical industry, and to the employers of all such aforementioned employees throughout the State of Queensland.

**1.5 Definitions**

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

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

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

## **1.6 Area of operation**

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

### *1.6.1 Divisions*

Northern Division - That portion of the State along or north of a line commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State.

Mackay Division - That portion of the State within the following boundaries:- Commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea-coast; then by the sea-coast northerly to the point of commencement.

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

### *1.6.2 Districts*

(a) Northern District:

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

Western District - The remainder of the Northern Division.

(b) Southern District:

Eastern District - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; then by that meridian of longitude due north to 25 degrees of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due north to the southern boundary of the Mackay Division.

Western District - The remainder of the Southern Division.

## **1.7 Parties bound**

This Award is legally binding upon the employees as prescribed by clause 1.4 and their employers, and the Union and its members.

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

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

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

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

## **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **3.1 Consultative mechanisms and procedures in the workplace**

3.1.1 The employer, the employees and their relevant Union shall continue to involve consultation procedures appropriate to operations with a view to continuing formal consultative mechanisms. Measures raised by the

employer, employees or the Union for consideration consistent with increasing the efficiency, productivity and international competitiveness of the operations shall be processed through such consultative procedures.

- 3.1.2 Measures raised for consideration consistent with clause 3.1.1 shall include the implementation of any new classification structure, the facilitative provisions contained in this Award and matters concerning training.
- 3.1.3 Any measure designed to increase productivity, flexibility and/or efficiency may be raised by any party.
- 3.1.4 The majority of employees so affected by any proposal for change must genuinely agree to such change.
- 3.1.5 The relevant Union must be a party to such agreement and shall not unreasonably oppose any agreement.
- 3.1.6 Nothing in the above shall limit the rights of any party to seek recourse to arbitration.

## **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 EMPLOYEE'S DUTIES, EMPLOYMENT RELATIONSHIP AND REALTED ARRANGEMENTS**

### **4.1 Employment categories**

- 4.1.1 Employees (other than casuals) 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); or
- (c) casual (as prescribed in clause 4.3).

## **4.2 Part-time employment**

The following provisions shall be applicable to part-time employees:

- 4.2.1 The spread of ordinary hours shall be the same as those prescribed for a full-time employee under the Award.
- 4.2.2 A part-time employee shall be employed for a maximum number of hours per week equivalent to 4/5ths of the total ordinary full-time working hours of a full-time employee.
- 4.2.3 A part-time employee shall be paid at the same hourly rate as a full-time employee would be paid for performing duty in the same Award classification. A part-time employee shall also be entitled to any allowances applicable based *pro rata* on the number of hours worked in relation to the ordinary full-time hours applicable to the Award classification.
- 4.2.4 The public holiday provisions of the Award shall apply, provided that payment shall only be made for hours actually worked:
- Provided further that a part-time employee who usually works 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.
- 4.2.5 Subject to the provisions contained herein, all other provisions of the Award applicable to full-time employees shall apply *pro rata* to a part-time employee.

## **4.3 Casual employment**

- 4.3.1 Casual employees (i.e. persons employed for less than 38 hours in any pay week) shall, whilst so employed, be paid 23% in addition to the rate per hour provided for the class of work in which they are employed (such rate per hour being deemed to be 1/38th of the full-time rate).
- 4.3.2 A casual shall receive a minimum of 3 hours' continuous work. This shall not affect the right of the employer to dismiss any casual employee for malingering, inefficiency, neglect of duty, or misconduct, and in such case, wages shall be paid up to the time of dismissal only.

## **4.4 Incidental and 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 skills, competence and training consistent with the classification structure of this Award, provided that such duties are not designed to promote deskilling.
- 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 clauses 4.4.1 and 4.4.2 shall be consistent with the employer's responsibility 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* 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.

4.5.2 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.

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

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

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

## **4.6 Termination of employment**

### *4.6.1 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 one week. 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(d) for a period of notice of one week.

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

- (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

#### 4.8.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (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)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

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

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

#### 4.8.7 *Superannuation benefits*

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

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

#### 4.8.8 *Employee leaving during notice*

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

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

#### 4.8.9 *Alternative employment*

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

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

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

#### 4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

#### 4.8.12 *Employers exempted*

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

#### 4.8.13 *Exemption where transmission of business*

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

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

For the purposes of clause 5.1 of this Award the following definitions shall apply:

5.1.1 "Day Work Operators - Grade I" means and includes the following classifications of employees:

- (a) Bag preparers and/or branders;
- (b) Plant cleaners;
- (c) General labourers;
- (d) Assistants Receival and Despatch Stores;
- (e) Employees not elsewhere specified.

5.1.2 "Day Work Operators - Grade II" means and includes the following classifications of employees:

- (a) Bag Sewers;
- (b) Bag Fillers;
- (c) Bag Trimmers;
- (d) Bag Tippers;
- (e) Employees Palletising Bagged Fertilizer;
- (f) Employees De-Palletising Bagged Fertilizer;
- (g) Employees Receival and Despatch Stores;
- (h) Service Loading employees.

5.1.3 "Day Work Operators - Grade III" means and includes the following classifications of employees:

- (a) Batching Plant Weighing Machine Operators;
- (b) Materials Handling Machine Operators.

### **5.2 Wage rates**

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

The classification structure expresses the award rate payable, being the combination of the minimum classification rate and a supplementary payment which includes the first and second \$8 per week safety net adjustments. The award rate

includes increases and adjustments arising as a result of the Second Tier, 1st and 2nd structural efficiency payment and Structural Efficiency Adjustment.

Classification	Per Week \$
Production Technician	
<u>Day Work Operators:</u>	
Grade I	616.30
Grade II	620.70
Grade III	625.10

NOTE: 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.

#### 5.2.2 *Leading hand*

A leading hand means an employee who is appointed by the employer to assume any responsibility other than that customary with the ordinary employee, and shall be paid \$26.10 per week in addition to the rate prescribed for the highest paid employee under their direct control or supervision.

#### 5.2.3 *Divisional and District parities*

Employees shall be paid the following amounts in addition to the wage rates prescribed by clause 5.2.1 for the Division or District in which they are located:

Adults	Per Week \$
Northern Division, Eastern District	1.05
Northern Division, Western District	2.20
Mackay Division	0.90
Southern Division, Western District	1.05

These amounts are payable for all purposes of this Award.

### 5.3 Allowances

#### 5.3.1 *Clothes allowance*

Except where clothing is provided by the employer, 82 cents per week clothes allowance shall be paid to employees under this Award.

#### 5.3.2 *Employees cleaning inside acid tanks, etc*

Employees cleaning inside of confined spaces such as acid tanks or other similar normally closed vessels shall be paid \$1.2545 per hour whilst actually so employed, with a minimum payment of \$2.49 per day or shift.

#### 5.3.3 *Employees driving fork lifts*

Employees driving fork lifts shall be paid an allowance of 52.85 cents per hour whilst so employed.

### 5.4 Payment of wages

5.4.1 Payment of wages shall be made at least fortnightly and at the discretion of the employer by one of the following means:

- (a) cash;

(b) cheque; and

(c) payment directly into an employee's nominated bank account, credit union or building society account without cost to the employee.

5.4.2 Payment for work performed during such a pay cycle shall not be held by the employer for a period in excess of 2 days.

5.4.3 *Extra payments for afternoon and night shifts*

All afternoon and night shift workers shall be paid 15 per cent extra per shift in addition to the rates prescribed herein. This extra shift rate shall not apply to shift work performed between midnight Friday and midnight Sunday where extra payments apply to continuous shift work.

## **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 of the trust deed of the fund.

(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 Queensland Industrial Relations 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 satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant 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 travelling time allowances or any other extraneous payments of a like nature.

#### 5.5.4 *For the purposes of this award an approved fund means*

- (a) Sunsuper.
- (b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and as recorded in an approved Industrial Agreement.
- (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 or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which has already had practical application to the majority of award employees of that employer.
- (d) 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) 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 of the Act.
- (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 contribution.

#### 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 the clause, 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), (f) and (g) shall be determined by a majority decision of employees.
- (b) Employees who 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 that clause where the long term performance of the fund is clearly disappointing.
- (d) 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.

#### 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 form/s provided by the employer, to enable that employee to become a member of the fund; and
  - (iv) Submit 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 form/s to enable that employee to become a member of that fund; and
  - (ii) return such form/s to the employer within 28 days of receipt of the application form/s 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/s within 28 days of the receipt by the employer of that form/s, then that employer shall:
- (i) Advise the eligible employee in writing of the non-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 the 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 the completed and signed application form/s is received by the employer.
  - (iii) In the event that the 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 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 Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.5.7(c)(i) and 5.5.7(c)(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 the employee became an eligible employee provided that the 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 the eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of clause 5.5.7(c) shall apply.

#### 5.5.8 *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 5.5.5, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.5 excepting that resort to clause 5.5.8 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.

#### 5.5.9 *Exemptions*

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

- (i) Incapacity to pay the costs associated with its implementation; or
- (ii) 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 Day workers*

- (a) Subject to clause 6.1.3 (Working of the 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 work 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 consecutive days.
- (b) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks and rest pauses, between 6.00 a.m. and 6.00 p.m., Monday to Sunday inclusive. 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 6.00 a.m. to 6.00 p.m. shall be paid at overtime rates and will be deemed to be part of the ordinary hours of work for the purposes of clause 6.1.

- (c) The ordinary hours of work prescribed herein shall not exceed 10 hours on any one 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.

#### *6.1.2 Where shift work is required to be performed, the hours of work for the respective shifts shall be as follows:*

- (a) Day shift - Commencing at 8.00 a.m. and ending at 4.00 p.m. Mondays to Fridays, inclusive.
- (b) Afternoon shift - Commencing at 4.00 p.m. and ending at midnight Mondays to Fridays, inclusive.
- (c) Night shift - Commencing at midnight on Sundays to Thursdays and ending at 8.00 a.m. on the following days.
- (d) By rostering employees off on various days of the week during a particular work cycle, so that each employee has one day off during that cycle.

The working of broken shifts shall not be permitted.

Where more than one shift per day is worked, one half-hour without break shall be allowed for meals in the employer's time during each shift in such a manner as not to interfere with the continuity of work. Day workers shall be allowed not less than one half-hour and not more than one hour for a meal which shall be taken during the 4th and 5th hour of each shift, such time not to count as working time.

#### *6.1.3 Working of the 38 hour week*

- (a) The 38 hour week shall be worked in one of the following ways, most suitable to each employer, 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) 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, where the arrangement or 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.
- (d) Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees.

#### 6.1.4 *Procedures for enterprise level discussions*

- (a) The employer and all employees concerned in each enterprise will consult over the most appropriate means of working a 38 hour week.
- (b) The objective of such consultation is to reach agreement on the method of working the 38 hour week in accordance with clause 6.1.
- (c) The outcome of such consultation must 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 Union or employer organisation.
- (e) Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer has the right to make the final determination as to the method by which the 38-hour week is to be worked from time to time.
- (f) 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 provisions of clause 6.1.

## **6.2 Rest pauses**

- 6.2.1 Where practicable every employee covered by this Award shall be entitled to a rest pause of 10 minutes duration in the employer's time in the 1st and 2nd half of the working day. Such rest pauses shall be taken at such times as will not interfere with the continuity of work where continuity is necessary:

Provided that where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day, with such 20 minute rest pause and the meal break arranged in such a way that the ordinary working day is broken up into 3 equal working periods.

- 6.2.2 Consent to combine the rest pauses shall not be unreasonably withheld by either party.

## **6.3 Overtime**

- 6.3.1 All time worked before or after the ordinary starting and ceasing times or outside the ordinary working hours or in excess of 38 hours per week shall be deemed to be overtime.

- 6.3.2 All overtime, except as hereinafter provided, shall be paid for at one and a-half times the ordinary rate for the first 3 hours, after which double time shall be paid until the ordinary starting time next morning. Time and a-half shall be paid where employees start work between 6 a.m. and the usual starting time:

Provided that if employees are called upon to work overtime commencing on Saturday, they shall be paid at one and a-half times the ordinary rate for the first 3 hours and double time thereafter, with a minimum of 2 hours' work or payment therefor.

- 6.3.3 Overtime worked by shift workers shall be paid for at the rate of double time.

- 6.3.4 All time worked on Sundays, excepting in the case of continuous shift workers for whom Sunday work is a rostered ordinary shift, shall be deemed to be overtime and shall be paid for at the rate of double time, with a minimum of 2 hours' work or payment therefor.

- 6.3.5 Where employees are called out between midnight and 6 a.m. they 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 a.m. on Saturday.

- 6.3.6 All work performed during the ordinary meal break shall be paid for at the rate of double time, and the rate of double time shall continue to be paid until the meal break is taken for which meal break no deduction of pay shall be made.
- 6.3.7 When working overtime for more than 2 hours after the ordinary ceasing time, 30 minutes shall be allowed for crib for which no deduction of pay shall be made.
- 6.3.8 An employee called upon to work for more than 2 hours after the ordinary ceasing time, 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 6.3.7.
- 6.3.9 Where an employee has been previously notified that they are required to work overtime after the ordinary ceasing time and such overtime is not then worked, in the event of the employee having provided themselves with one or more meals as a result thereof, they shall be paid the \$9.60 meal allowance as provided in clause 6.3.8 for each meal so provided.
- 6.3.10 Any 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 they have not at least 10 consecutive hours off duty between those times shall, subject to clause 6.3.10, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instructions of their employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, they shall be paid double rates until they are released from duty for such period and they shall then be entitled to be absent until they have 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence:

Provided that where an employee is recalled to work overtime and actually works not more than 2 hours' overtime, clause 6.3.10 shall not apply:

Provided further that the provisions of clause 6.3.10 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.
  - (c) Where a shift is worked by an arrangement between the employees themselves.
- 6.3.11 If a shift work employee is called upon to work on a day on which they are rostered off, they shall be paid for work on such day at the rate of double time in addition to their full-time rate.

#### 6.3.12 *General Fertilizers Limited*

Notwithstanding the provisions of clause 6.3.11 the following provisions shall apply to employees of General Fertilizers Limited:

- (a) If a continuous shift work employee is called upon to work on any day or shift on which they are normally rostered off duty, they shall be paid at a rate equal to 3 times the rate of pay for ordinary time worked, while they are so employed, and any time so worked less than 2 hours shall count as 2 hours worked for the purposes of calculating their remuneration.
- (b) Provided that clause 6.3.12(a) shall not apply if:
  - (i) The overtime period so worked follows immediately after a rostered shift of duty; or
  - (ii) An employee of the type referred to is either rostered to work an overtime shift, or offered overtime on a shift on which they are normally rostered off duty, such offer of overtime being made 48 hours before they are required to perform the overtime, when the overtime so worked shall be paid at double ordinary rates of pay.

An employee recalled to work shall either be provided with a minimum of 2 hours' work or shall be paid for 2 hours at the appropriate rate in respect of each such recall.

#### 6.3.13 *Time off in lieu of overtime*

Subject to mutual agreement in writing between the employee and the employer, an employee may be compensated for working overtime in lieu of payment, by being allowed time off equivalent to the prescribed penalty rate.

Such time off shall be allowed and taken within 28 days of the overtime being worked, or paid out to the employee.

## **6.4 Shift work**

### *6.4.1 Extra weekend payments for continuous shift work*

Where continuous shift work is regularly performed under this Award, i.e., where 3 shifts per day are worked over a period of 7 days per week, one and a-half times ordinary rates shall be paid for all time worked between midnight Friday and midnight Saturday, and double ordinary rates shall be paid for all time worked between midnight Saturday and midnight Sunday. For all time worked over 8 hours in any shift during these periods, double ordinary rates shall be paid.

Where rosters under this Award permit the night shift to start earlier than midnight on Friday night or Sunday night, the work done between the time of starting the night shift and midnight shall, in the case of Friday night be deemed to be work done on Saturday, and in the case of Sunday night, shall not be deemed to be work done on Sunday.

## **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 an annual leave on full pay as follows:

- (a) Not less than 5 weeks if employed on shift work where 3 shifts per day are worked over a period of 7 days per week;
- (b) Not less than 4 weeks in any other case.

7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.5) shall be paid for by the employer in advance:

- (a) In the case of any and every employee in receipt immediately prior to that holiday of ordinary pay at a rate in excess of the ordinary rate payable under this Award at that excess rate; and
- (b) In every other case at the ordinary rate payable to the employee concerned immediately prior to that holiday 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 holiday to the employee from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.5 for 4 or 5 weeks as the case may be and also their 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 as a shift worker, and 1/12th of their pay for the period of their employment in the case of a day worker, calculated in accordance with clause 7.1.5.

### *7.1.5 Calculation of annual leave pay*

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

- (a) Shift workers - Subject to clause 7.1.5(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 public holiday shifts.
- (b) Leading hands, etc - Subject to clause 7.1.5(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 7.1.5(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 week-end penalty rates);
  - (ii) leading hand allowance or amounts of a like nature;

(iii) a further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).

(d) Clause 7.1.5(c) does not apply to:

(i) any period or periods of annual leave exceeding:

- 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
- 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 8 days' sick leave for each completed year of their employment with their employer.

(b) This entitlement will accrue at the rate of one day's 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 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 their employer a doctor's certificate, or other evidence to the employer's satisfaction, 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*

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 7.6.5, 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);
- Labour Day (the first Monday in May)

- 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 *Annual show*

Moreover, all work done by an employee in a district specified from time to time by the Minister by notification published in the *Gazette* or the *Queensland Government Industrial Gazette* on the day appointed under the *Holidays Act 1983-1985* 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.

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

#### 7.6.3 *Double time and one-half*

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

#### 7.6.4 *Stand down*

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

#### 7.6.5 *Holidays in lieu*

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

Where there is agreement between the majority of employees concerned and the employer, and subject to statutory limitations, other ordinary working days may be substituted for the public holidays specified in clause 7.6:

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

### 7.7 **Jury service**

- (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**

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

## **PART 9 - TRAINING AND RELATED MATTERS**

### **9.1 Training program**

9.1.1 Following proper consultation, the employer shall develop a training policy and programme consistent with:

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise; and
- (c) the need to develop vocational skills relevant to the enterprise and the industry through courses conducted by appropriate educational institutions and training providers.

9.1.2 *Various costs associated with training*

- (a) Where, as a result of consultation, it is agreed by the employer that additional training in accordance with the program developed in accordance with clause 9.1.1 should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

- (b) Any costs associated with standard fees for prescribed courses and textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure:

Provided that reimbursement shall be on an annual basis, subject to the presentation of reports of satisfactory progress.

- (c) Travel costs incurred by an employee undertaking training in accordance with clause 9 which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.

Clauses 9.1.2(a) and (b) shall operate as interim provisions and shall be reviewed after 12 months operation.

9.1.3 *Commitment to training and careers*

The parties commit themselves to continuing and upgrading the training provided to employees.

It is agreed that the parties will co-operate in ensuring that training is maintained and improved.

This training will form the basis of an enhanced career structure in the industry.

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

### **10.1 Amenities**

10.1.1 The employer shall supply at all works necessary change rooms with showers and a sufficient supply of boiling water at meal hours and rest pauses.

10.1.2 Water for drinking and washing purposes shall be supplied and water for drinking purposes shall be boiled water, tank water, well water, or other uncontaminated water. A vessel with a covered top and tap shall be provided for holding such water.

10.1.3 A suitable dining-room and change room shall be supplied for employees adjacent to the works.

10.1.4 Suitable and sufficient sanitary accommodation shall be supplied and shall be kept clean by the employer.

10.1.5 A clock shall be supplied by the employer and installed in a central position in the works.

10.1.6 Where necessary, rubber gloves, rubber aprons, and knee boots shall be supplied to employees working in acids and lime-sulphur solution.

## **10.2 Occupational health and safety**

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.

## **10.3 First aid**

First-aid kits in suitable and secure cases shall be provided at central positions on the works so as to be at all times readily available for the use of employees.

# **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 the 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 authorised industrial officer's 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 authorised industrial officer's 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 authorised industrial officer's 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 full-time, 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 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 an organisation of employees that has the right to represent the industrial interests of the employees concerned.

### 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 each 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 by the employer in a convenient and conspicuous place on the premises of the employer so as to be easily read by the employees.

## **Schedule**

### Second Tier Wage Approvals

Each of the undermentioned employers, so far as they are bound by this Award being a party to a Restructuring and Efficiency Agreement has satisfied the Commission that the wage increase listed herein should be applicable to its employees in the locations shown operative from the date listed. "Ordinary Time" rate of pay for a relevant classification under this Award means the rate prescribed herein for a normal working week (day/hour) exclusive of extraneous payments such as production bonuses, special overtime and penalty rates and allowances for tools, disabilities, shift work, fares and travelling time and payment by results and any other ancillary payments of a like nature.

Employer	Location (Where necessary) Rate Existing as at 1.12.87	Increase in Wage	Operative Date	Approval Date
Grow Force Australia Limited	-	4%	1.12.88	25. 9.89

Dated 18 December 2002.

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

Operative Date: 17 February 2003