

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130 - award review

FISHERY EMPLOYEES' AWARD - STATE 2003

(Matter A/2010/114)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

28 May 2012

AWARD REVIEW

After reviewing the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 28 May 2012.

FISHERY EMPLOYEES' AWARD - STATE 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Fishery Employees' Award - State 2012.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 28 May 2012.

1.4 Award coverage

1.4.1 This Award applies to employees engaged in the marketing, handling, or cleaning of fish throughout the State of Queensland.

1.4.2 This Award shall not apply to employees covered by any other Award.

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 "Freezing" means the cold storage rooms only, and shall not include the airlocks or ante-rooms.

1.5.4 "Market Hands" means persons other than shop hands and engine-drivers.

1.5.5 "Mutual Agreement" means an agreement entered into between the Fish Board or any other employer and the Union.

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

1.6 Area of operation

For the purposes 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 Division:

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

Western District - The remainder of the Northern Division 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 To ensure productivity and efficiency in the workplace, a Consultation Committee shall be established and continued, to discuss at workplace level all aspects of the company's operation, equipment, procedures, and occupational health and safety matters.

3.1.2 The Committee shall be comprised of equal numbers of management and employees from the workplace or a section, plus the Union organiser who shall be invited to attend. The minimum number of employee or management representatives from either an area or the workplace shall be 2.

- 3.1.3 The Committee shall meet regularly at suitable intervals, such as at the beginning of a season or every 2, 3 or 4 months, or more often if required by a party indicating such in writing to the other parties by giving one week's notice.
- 3.1.4 The outcome of the Committee of discussions shall be displayed on the employee's notice board within 2 days after each meeting.

3.2 Grievance and dispute settling procedure

- 3.2.1 The objectives of clause 3.2 shall be to avoid and/or settle disputes by the resolution of issues through measures based on consultation, co-operation, and discussion and to avoid interruption to the performance of work and consequential loss of production and wages.
- 3.2.2 Through these methods all issues should be identified and resolved in accordance with the procedure as set out in this clause.

Procedure -

- (a) In the first instance any issue shall be discussed between the immediate supervisor and the employee/s, in attendance with, if appropriate, the employee's duly accredited workplace Union representative.
- (b) If the issue is not resolved in the first step, the issue shall be discussed between the workplace Union representative and the next level of management or nominated representative of the company.
- (c) If the grievance involves allegations of unlawful discrimination by a supervisor the employee and/or the Union's Representative 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 and/or the Union's representative may proceed directly to the process outlined.
- (d) If the issue cannot be resolved by people at the workplace, an official of the Union shall be advised.
- (e) Any issue which cannot be resolved after the following procedure prescribed above may be referred by either party to the Commission.
- (f) Without prejudice to either party, whilst the above procedure is being followed, work shall continue normally, except in a case of a genuine safety issue, and neither party shall unduly delay the procedure.
- (g) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.
- 3.2.3 This dispute avoidance procedure shall not prejudice either party exercising their rights before the Commission.

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

4.1 Employment categories

- 4.1.1 Employees, other than casual employees, covered by this Award shall be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time;
- (b) casual (as prescribed in clause 4.2).

4.1.2 Minimum of work for reporting

Unless an employee is notified by ordinary ceasing time any day that their services will not be required on the following day, such employee, on turning up to work, shall be provided with a minimum of 4 hours' work or on starting work on any one day shall be provided with a minimum of 4 hours' work.

4.2 Casual employment

- 4.2.1 A casual worker means any person who is employed for less than 40 hours in any one week.
- 4.2.2 Casual workers shall be paid at the rate of 23% per hour in excess of the full-time rate of pay.

4.3 Transfer from full-time to casual rates

4.3.1 When a full-time employee has been employed for at least one week, their engagement and wages rate may be altered from that of a full-time worker to that of a casual worker, upon the employer giving them one week's notice of the intention to terminate their full-time engagement.

4.3.2 If an employee has been employed by the same employer for a period of more than 6 consecutive days (exclusive of Sundays) they shall be paid in respect of any portion of a week at the commencement or termination of their employment a sum proportionate to the week's wage.

4.4 Incidental or peripheral tasks

4.4.1 Employees shall perform work as required by the employer provided that such work is reasonably within that employer's limits of skills, competence and training:

4.4.2 Employees shall use tools and equipment as required by the employer subject to appropriate training having been given.

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* as amended from time to time, which includes:

(a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality 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 organization, pursuing matters of discrimination, including by application to the Australian Human Rights 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 two days. 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 two days.

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 4.9.1 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 4.7.
- (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 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 4.9 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 that employs 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.

4.8.13 *Exemption where transmission of business*

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

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

(ii) where the employee rejects an offer of employment with the transmittee:

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

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

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

4.8.14 *Incapacity to pay*

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

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 **Wage rates**

5.1.1 The minimum rates of wages payable to the following classes of employees in the Southern Division Eastern District shall be:

Classification	Award Rate Per Week \$
Market Working Foreman	681.90
Market Cashier	658.10
Cold Storage Hands	627.70
Market Clerks	658.10
Fish Cleaners	}
Fish Filleters	}
General Market Hands	}
And all others not elsewhere classified	627.70
Drivers of motor vehicles of carrying capacity:	
1.27t or less	650.70
Over 1.27 t but not over 3.04 t	654.40
Over 3.04 t but under 6.09 t	658.30

For each complete 1.01 tonnes over 5.01 tonnes an extra \$1.35:

No load shall exceed the limit prescribed by or under any Queensland State Act.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2011 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.1.2 *Junior clerks*

	Percentage of minimum adult rate for the appropriate Division or District %
16 to 18 years of age	52.5

5.1.3 *Youths - other than junior clerks*

	Percentage of minimum adult rate for the appropriate Division or District %
Under 17 years of age	55
17 and under 18 years of age	65

5.1.4 Youths 18 years of age and over who perform the ordinary duties of an adult shall be paid not less than the full Award rate for the class of work on which they are engaged.

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

5.1.6 *Divisional and district parities*

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

Adults	Per Week \$
Northern Division, Eastern District	1.05
Northern Division, Western District	3.25
Mackay Division	0.90
Southern Division, Western District	1.05

5.2 Allowances

5.2.1 Employees required to operate a fork lift in addition to normal duties shall be paid an additional 87.95 cents per hour for all operating time with a minimum of \$1.76 on any one day.

5.2.2 *Container allowance*

Where employees are engaged in the physical packing and/or unpacking and checking of containers for export/import from cold storage, the following additional allowance shall be paid:

(a) Packing and/or unpacking \$2.41 per container.

(b) Checking \$6.83 per container.

5.2.3 *Early work allowance*

When the shop is opened before 8 a.m. those employees starting work before the ordinary hours shall be paid 50c per week extra for any week in which they are engaged on early work.

5.3 Payment of wages

- 5.3.1 All full-time employees shall be paid every Wednesday in working hours, otherwise ordinary rates shall be paid for waiting.
- 5.3.2 Where practicable and where mutually agreed between the employer and the employee, wages may be paid by electronic funds transfer into that employee's nominated bank or building society account.
- 5.3.3 Casual hands on day shifts who complete their work between the hours of 9.00 a.m. and 5.00 p.m. shall be paid within 30 minutes of their services being dispensed with. Casual hands who complete their work between the hours of 5.00 p.m. and 9.00 a.m. shall be paid after 9.00 a.m. the following morning within 30 minutes of application.

5.4 Superannuation

5.4.1 *Local Government Employees*

Local Governments, Local Government Entities and their employees subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and the *Local Government (Operations) Regulation 2010*.

Provided that Local Governments and their Entities employing persons defined as being 'non-contributory members of the LG Super Scheme' pursuant to s223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that must be made to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect of such employees.

5.4.2 *Non Local Government Employees*

- (a) *Application* - In addition to any other entitlement pursuant to this Award, all eligible employees not otherwise subject to clause 5.4.1 shall be entitled to have superannuation payments made by the employer into an approved occupational superannuation fund in accordance with the provisions of clause 5.4.2.

(b) *Definitions and eligibility*

- (i) "The approved fund" shall mean:

(A) The Australian Rural Industries Superannuation Fund known as "AUSTSAFE" established by a Deed of Trust dated 31 day of August, 1988 and Rules thereto as amended.

(B) 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 5.4.3 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 this provision. 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 this provision.

- (ii) "Eligible employee" for clause 5.4.2 shall mean any relevant employee, who is not otherwise employed by a Local Government or Local Government Entity for which the LG Super Scheme applies, having served 4 calendar weeks in employment (*pro rata* in the case of a casual employee), who shall have occupational superannuation payments paid by the employer retrospective to the date of commencement of employment.

- (iii) "Ordinary time earnings" shall mean and include:

(A) the full-time pay for ordinary hours worked, including any overaward payments;

(B) any "all purpose" allowances or amounts including leading hand allowance; and

(C) shift allowances, and additional amounts paid for shift work and ordinary time worked on Saturdays and Sundays.

(c) *Contributions*

- (i) 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%.

- (ii) Contributions for casual employees shall be on the same basis as full-time employees, or *pro rata* if less than a full week is worked, including casual loading.
- (iii) The employer may suspend for the applicable period contributions made on behalf of an employee if the employee is absent from the workplace other than for annual leave, long service leave, or workers compensation for a period of not more than 26 weeks.
- (iv) No additional amount shall be paid by the employer for the establishment, administration, management or any other changes in connection with the fund.
- (v) The employer shall remit contributions to the approved fund on a monthly basis.
- (vi) Eligible employees may personally contribute additional amounts to the fund in addition to the minimum employer contributions as set out in clause 5.4.2(c)(i) by way of voluntary contribution, and the employer shall (at the employee's written request) make arrangements for authorised deductions from the employee's pay to be forwarded to the administrators of the fund.
- (vii) The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.
 - (A) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
 - (B) A person must not coerce someone else to make an agreement.
 - (C) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.
 - (D) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.2.

(d) *General*

Nothing in clause 5.4.2 shall act to diminish the rights and responsibilities of the trustees of the fund as set out in accordance with the Deed of Trust and rules thereto as amended.

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

6.1 Hours of work

The ordinary full-time working hours shall not exceed 40 (exclusive of meal hours) and the times of starting and ceasing work shall be arranged by agreement in writing between the parties to this Award.

6.2 Shift work

- 6.2.1 (a) Afternoon and night shift allowances - In addition to the rates of pay prescribed by clause 5.1 of this Award, employees whilst engaged on afternoon shift and night shift, shall be paid an additional penalty rate for each such shift as follows, where 2 or more shifts are worked in any period of 24 hours:
 - (i) Afternoon shift 12.5% (or \$9.70 whichever is the greater)
 - (ii) Night shift 15% (or \$9.70 whichever is the greater)
- (b) For the purposes of clause 6.2:
 - (i) 'Afternoon shift' shall mean any shift finishing after 6.00 p.m. and at or before midnight;
 - (ii) 'Night shift' shall mean any shift finishing after midnight and at or before 8.00 a.m. or where the majority of hours worked in the shift fall between midnight and 8.00 a.m.;

- (iii) The percentage which is quoted shall be the amount which is payable for each shift in addition to the employee's ordinary time wage rate; and
 - (iv) An allowance shall only apply where the operational requirements are such that 2 or more shifts operate within a period of 24 hours.
- (c) No employee shall as a result of this clause suffer any reduction to their current entitlement to shift allowance.

6.3 Meal breaks

- 6.3.1 All employees other than those subject to clause 6.5 of this Award shall be allowed not less than 30 minutes and not more than one hour for a meal which shall be in the employee's time and shall be commenced not later than during the fifth hour from ordinary commencing time.
- 6.3.2 Where more than one shift is worked per day an unbroken 30 minutes shall be allowed for a meal in the employer's time during each shift in such a manner as not to interfere with the continuity of work.

6.4 Rest pauses

- 6.4.1 All employees shall be entitled to a rest pause of 10 minutes' duration in the first and second half of their daily work: Such rest pauses shall be taken at such times as will not interfere with the continuity of work where continuity is necessary.
- 6.4.2 Employees who are working in a temperature not above 25 degrees Fahrenheit shall be allowed 4 periods of 10 minutes each day in addition to the recognised smokos, but such extra periods shall be so arranged that sufficient employees remain in the department to carry on the work:
- 6.4.3 Rest pauses shall not be eliminated, but where agreed between the employer and the majority of employees in a section or a department, and subject to this local agreement being ratified by the branch secretary of the Union, periods of work may be re-arranged so that there is less disruption to certain work by moving and/or combining the rest pauses.

6.5 Overtime

- 6.5.1 All time worked in excess of the ordinary working hours of the ordinary working day or before the ordinary starting time and after the ordinary ceasing time as set out in the written agreement referred to in clause 6.1, shall be deemed overtime and shall be paid as follows.
- 6.5.2 Persons engaged in work at which one shift per day only is employed - at the rate of time and a-half for the first 3 hours, and double time thereafter:

Provided that if employees are called upon to work overtime commencing on Saturday morning, they shall be paid at one and a-half times the ordinary rate for the first 8 hours, and double time thereafter.
- 6.5.3 Persons engaged in work at which more than one shift per day is employed - at the rate of double time.
- 6.5.4 All time worked on Sundays shall be paid for at the rate of double time.
- 6.5.5 Any casual worker working more than 8 hours on any one day shall be paid overtime for the time worked in excess of 8 hours, though the work may have been performed in different shifts.
- 6.5.6 All work done during the recognised meal period shall be paid for at the rate of double time such payment to continue until a meal period has commenced. Such meal period shall be of the prescribed duration.
- 6.5.7 Any employee who is required to continue working for more than one hour after their ordinary ceasing time shall be allowed 30 minutes for a meal (in the employer's time) after the first hour worked, and also, 30 minutes after each further 4 hours worked, provided work is to continue thereafter.
- 6.5.8 Any employee who is called upon to work overtime for more than one hour after their ordinary ceasing time shall be paid an allowance of \$12.10 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 for during such overtime as elsewhere prescribed for in clause 6.5.

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.

For the purposes of clause 7.1 "year of employment" shall mean and include any completed year of employment.

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

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

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 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, in the case of 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.

Reasonable notice shall be given to each employee of such annual leave becoming due.

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

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 weekend 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:
 - (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; or
 - (B) 4 weeks in any other case;

- (ii) Employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.2 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 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 the employer a doctor's certificate, or other reasonably acceptable 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;
- (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 employees

Full-time shall, on the death of a member of their immediate family or household, 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.

- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.3.2

7.3.3 "Immediate family" includes:

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

7.3.4 An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household 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.

Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 – Administration of the *Local Government (Operations) Regulation 2010*.

7.5 Family leave

The provisions of the *Family Leave Award 2003* 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 2003*;
- (b) a copy of the *Family Leave Award 2003* is required to be displayed in accordance with section 697 of the Act.

7.5.2 The *Family Leave Award 2003* also provides for the terms and conditions of leave associated with:

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

7.6 Public holidays

7.6.1 All work done by any employee on:

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

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

7.6.2 *Labour Day*

All employees covered by this Award shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under 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

shall be paid a full day's wage for that day and in addition a payment for the time actually worked by them at one and a-half times the ordinary rate 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 *Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural and/or industrial show held at the principal city or town as specified in such notification of such district, shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

No employee shall be entitled to receive more than one day per year as show day.

7.6.4 Double time and a-half

For the purposes of clause 7.6, where the rate of wages is a full-time rate, "double time and a-half" shall mean one and one-half day's wages in addition to the prescribed full-time rate, or *pro rata* if there is more or less than a day.

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.

7.6.5 Stand down

Any and every employee who, having been dismissed or stood down by their employer during the month of December in any year shall be re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall 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 ordinary 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.

7.7 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 Commitment to training

9.1.1 The parties to this Award acknowledge that varying degrees of training are provided to employees in the Fishing and Seafood Industry via both internal on-the-job training and also through external training facilities. To this end, the parties through consultation at all levels shall develop a training program consistent with:

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

9.1.2 Accordingly, the parties commit themselves to:

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills;
- (c) developing co-ordinated training programs designed to cater for the new broadbanded Grading Structure with career-path advancement; and
- (d) removing barriers to the utilisation of skills acquired.

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

10.1 Amenities

The employer shall provide for employees all necessary sanitary accommodation, change room, and lockers for employees, and a sufficient supply of boiling water at meal times.

10.2 Clothing, equipment and tools

10.2.1 The employer shall supply waterproof canvas aprons and overalls to employees when necessary. The Market Hands employed washing down shall be provided with watertight boots.

10.2.2 All tools shall be supplied by the employer.

10.3 Occupational health and safety

10.3.1 All Freezing chamber employees working outside the Freezing chamber shall be allowed 15 minutes for cooling down before re-entering the Freezing chamber. Clause 10.3.1 shall not apply to shop storemen.

10.3.2 Under present method of handling no trucker or wheeler shall wheel more than 6 40-lb. trays in any one load.

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) 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 Justice and Attorney-General, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.3 Union encouragement

Clause 11.3 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.3.1 Documentation to be provided by employer

At the point of engagement, 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.

11.3.2 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.

Dated 28 May 2012.

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

Operative Date: 28 May 2012