

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

MINERAL SANDS INDUSTRY AWARD - STATE 2002

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the Mineral Sands Industry Award - State 2002 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 Mineral Sands Industry Award - State 2002 as at 1 September 2010.

Dated 1 November 2010.

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

MINERAL SANDS INDUSTRY AWARD - STATE 2002

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Mineral Sands Industry Award - State 2002.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 20 January 2003.

1.4 Coverage

This Award shall apply throughout the State of Queensland to employers engaged in the mineral sands industry, and to their employees who are employed in or in connection with prospecting for and/or the recovery of and/or the treatment of and/or the processing of and/or the handling and storage of mineral sands.

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 Division -

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

Western District - The remainder of the Northern Division.

(b) Southern Division -

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

3.1 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.

3.1.1 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.

- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, 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.
- 3.1.3 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 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of the Union, be reported to the relevant officer of the Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, 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.
- 3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 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.
- 3.1.9 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.
- 3.1.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

4.1 Employment categories

- 4.1.1 Employees covered by this Award shall be advised in writing of their employment category upon appointment.

Employment categories are:

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

4.2 Casual employees

- 4.2.1 A casual employee is an employee engaged as such under clause 4.1.1 who is employed for less than 32 hours in any one week under this Award.
- 4.2.2 Except where otherwise expressly provided, a casual employee must be engaged for a minimum period of 2 hours work or receive a minimum payment of 2 hours per engagement.
- 4.2.3 A casual employee must be paid for ordinary hours worked at the rate of 1/40th of the full-time rate prescribed in clause 5.2 for the class of work performed plus a loading of 23%.

4.3 Mixed functions

- 4.3.1 Where any person on any one day performs 2 or more classes of work to which a differential rate fixed by any

Award is applicable such person, if employed for more than 4 hours on the class or classes of work carrying a higher rate shall be paid in respect of the whole time during which they work on that day at the same rate which shall be at the highest rate fixed by any Award in respect of any such classes of work, and if employed for 4 hours or less on the class or classes of work which carry a higher rate shall be paid at such highest rate for 4 hours:

Provided that allowances, loadings or other payments such as living-away-from-home allowances, site allowances, leading hands' allowances, allowances for lost time, special disabilities and shift work, and similar allowances shall not be taken into account in the calculation of rates of pay for juniors.

4.4 Multiskilling

In recognition of the operational requirements of the employer to create a more varied and interesting work, it shall be a condition of employment that each employee shall work as required on any work within their competence directly or indirectly connected with the operations of the employer (subject to appropriate training and prevailing statutory requirements) and that each employee shall acquire the skills and learn any other job as directed and shall provide instruction and/or training as appropriate to another employee as required.

4.5 Incidental and peripheral tasks

4.5.1 The parties to this Award:

- (a) Agree that employees may perform a wider range of duties including work that is incidental or peripheral to their main tasks or functions.
- (b) Agree that employees shall perform such work as is reasonable and lawfully required of them by their employer including accepting instruction from authorised personnel.
- (c) Agree that employees shall comply with all reasonable requests to perform any work provided for by the Award.
- (d) Agree that training shall be provided to ensure the quality, accuracy and completion of any job or task assigned to the employee.
- (e) Agree that employees shall not unreasonably impose any limitations or continue to enforce any limitations on supervisors or technical personnel demonstrating the use of new equipment or machinery for the purpose of training employees on the use of such equipment or machinery.

4.6 Anti-discrimination

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

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

4.6.2 Accordingly, in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.6.3 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.

4.6.4 Nothing in clause 4.6 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.

4.7 Termination of employment

4.7.1 *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.

4.7.2 *Termination by employer*

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

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

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

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

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

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

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

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

4.7.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be 2 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 ordinary time rate for the period of notice.

4.7.4 *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.

4.8 Introduction of changes

4.8.1 *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.

4.8.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.8.1.
- (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.

4.9 Redundancy

4.9.1 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 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.9.2 Transfer to lower paid duties

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

4.9.3 Transmission of business

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.9.3, '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.

4.9.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, 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.

4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, 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.

4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.7 *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.

4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.9 *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.

4.9.10 *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.

4.9.11 *Employees exempted*

Clause 4.9 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.

4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 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.

4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 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 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.9.14 *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.

4.10 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 Classification of definitions

5.1.1 "Process operators" shall mean and include employees working on dredges and/or pumping pontoons, other floating plant, spirals, concentrating tables, other wet concentration and/or separation (including pumping) equipment, wet magnetic separators, filters, dryers, consoles, grinding mills, or on other similar processes.

5.2 Wage rates

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

	Award Rate Per Week \$	
Dry mill separation operators	}	632.50
Fibreglass and/or rubber repairmen		
Reverse circulation drill operating crews		630.70
Floating pump operators:		
Under 600 tons sand per hour		619.00
600 tons and up to 1,200 tons sand per hour		629.50
Over 1,200 tons sand per hour		634.70
Buried loader operators		619.00
Senior buried loader operators/feeder unit operators		624.50
Forklift drivers -		
Lifting capacity up to 10,000 lb		618.20
Lifting capacity in excess of 10,000 lb		621.30
Powder monkey		621.30
Process operators		619.00
Weighbridge attendants	}	617.00
Laboratory attendants		
Mechanical drill operators		
Cooks		
Security men		
Plant storekeepers		
Baggers or bagging machine operators	}	608.20
Rehabilitation and nursery hands		
General hand (on fibreglass and/or rubber repair work)		
Prospecting and/or drilling crew	}	605.50
Mechanical drill operators assistants		
Pipe layer		
General hands and employees not elsewhere classified, cook's offsider	}	600.60
Employee driving a vehicle having maker's capacity of -		
1.27t or less		628.90
Over 1.27t but not over 3.04t		632.60
Over 3.04t but under 6.09t		636.50
For each complete 1.01t over 5.08t an extra \$1.47 Provided that no load shall exceed the limit prescribed by or under any Queensland State Act.		
Employee driving articulated vehicle having maker's capacity of -		
Under 9.14t		648.50
9.14t and over, but under 10.16t		649.40
For each complete 1.01t over 9.14t an extra \$1.47 Provided that no load shall exceed the limit prescribed by or		

	Award Rate Per Week \$
under any Queensland State Act. Employees driving double-articulated vehicle having maker's capacity of - 10.16t or less	654.00
For each complete 1.01t over 10.16t an extra \$1.47: Provided that no load shall exceed the limit prescribed by or under any Queensland State Act.	
Employees driving machinery float having maker's capacity of - Under 9.14t	652.70
9.14t and over, but under 10.16t	653.30
For each complete 1.01t over 9.14t an extra \$1.47: Provided that no load shall exceed the limit prescribed by or under any Queensland State Act.	

5.2.2 Juniors

Junior Laboratory Attendants -

	Percentage of adult laboratory attendant rate %
Under 17 years of age	50
17 and under 19 years of age	75
19 years of age and over	100

Other Juniors -

Under 18 years of age - 60% of minimum adult rate;
18 years of age and over - adult wage rate.

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.

Juniors performing adults' work shall be paid at the rate prescribed for the work performed.

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.

5.2.3 Leading hands

Any employee appointed by the employer as a leading hand shall be paid the following in addition to their ordinary Award rate of pay:

- (a) When in charge of less than 10 employees - at the rate of \$24.40 per week.
- (b) When in charge of 10 or more employees - at the rate of \$37.30 per week.

5.3 Allowances

5.3.1 Working in water

Employees who are required to work in water to a depth exceeding 762mm shall be paid \$1.654 per hour, with a minimum payment of \$3.23 in addition to the rates prescribed by this Award.

5.3.2 Shift allowance - afternoon and night shift allowances

- (a) In addition to the rates of pay prescribed by clause 5.2 (Wages) of this Award, employees whilst engaged on afternoon shift and night shift, as established pursuant to clause 6.1 (Hours of Work) of this Award, shall be paid an additional penalty rate for each such shift as follows:

Afternoon shift (from 1/11/2001)	12.5% (or \$9.70 whichever is the greater)
Night shift (from 1/11/2001)	15% (or \$9.70 whichever is the greater)

- (b) For the purposes of this clause:

- (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 falls 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.

- (c) No employee shall as a result of this clause suffer any reduction to their current entitlement to shift allowance.

5.3.3 *Week-end penalties*

- (a) Shift Workers for their ordinary shift of 8 hours performed between midnight Friday and midnight Saturday shall be paid at the rate of time and one-half and between midnight Saturday and midnight Sunday at the rate of double time:

Provided that such rates shall be in substitution for and not cumulative upon the shift allowances provided for in clause 5.3.2 (b)(iii).

- (b) For the purpose of clause 5.3.4(a), any shift starting between 11 p.m. and midnight shall be deemed to commence at midnight.

5.3.4 *End loaders*

Employees operating end-loaders shall be paid the appropriate rates prescribed under the relevant Engine Drivers' Award for the District in which the work is performed, in accordance with the provisions of clause 5.3.4.

5.3.5 *Camp allowance and transportation*

Employees obliged to live in camp shall be paid \$11.00 per day for each day they are obliged to do so:

Provided that an employee who returns home or is otherwise absent from camp for not more than 2 nights during the week but who does not absent themselves from the job shall nevertheless be deemed to live in camp during the week and shall be entitled to the allowance for 5 days, provided that an employee remaining in camp for a week-end shall be paid the allowance for such days:

Provided that if no accommodation is available nor any transportation to the job, an allowance of 42c per day shall be paid when the employee's place of residence is more than 3.3 kilometres from the job by the nearest practicable route: but this provision will not apply where the works are established within the town boundaries.

5.3.6 *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	Adults Per Week	Juniors Per Week
	\$	\$
Northern Division, Eastern District	1.05	
Northern Division, Western District	3.25	1.10
Mackay Division	0.90	
Southern Division, Western District	1.05	0.53

These allowances shall be payable for all purposes of this Award.

5.3.7 *Chain saw*

Employees required to use a chain saw shall be paid 51.55c per hour in addition to their ordinary rate of wages.

5.3.8 *First aid*

A qualified first aid attendant appointed by the employer shall be paid an allowance of \$1.66 per day or shift.

5.4 **Payment of wages**

5.4.1 Wages shall be paid at least fortnightly by electronic fund transfer directly into the employee's account in any financial institution at no cost to the employee:

Provided that where an employee is paid off on a day other than the regular pay day, such payment may in any case be made by cheque. All payments made by cheque shall have exchange added or be free of exchange. Not more than 3 days pay shall be held as back time.

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 this clause.

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 this clause shall preclude an employee from making contributions to a fund in accordance with the provisions thereof.

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

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

5.5.3 *Definitions*

(a) "Approved fund" means a fund approved for the purposes of this Award by the Industrial Conciliation and Arbitration 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" shall mean 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 ('relevant legislation') for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant legislation and complying with the operating standards as prescribed by Regulation made under the relevant legislation. 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" shall mean 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(s) 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 of, or an Agreement approved by, an Industrial Tribunal, whether State or Federal jurisdiction, and already has practical application to the majority of Award employees of that employer.
- (d) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 13.53 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 13.53 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 13.53.
- (f) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.5.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions:

Provided that the making of a deposit, an initial or other contributions subsequent to 29 September 1989, but on a retrospective basis, in respect of any period up to and including 29 September 1989, shall not under any circumstances bring a fund within the meaning of 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.

5.5.5 *Challenge of a fund*

- (a) An eligible employee being a member or a potential member of a fund, as well as an Industrial Union whose registered list of callings incorporates any of the classification/s of employees to whom this Award applies, may by notification of a dispute challenge a fund on the grounds that it does not meet the requirements of this clause.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of this clause, 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 5.5.5(c), (d), (e), (f) and (g) shall be determined by a majority decision of employees.
- (b) Employees to whom these provisions apply who as at the date of this variation are members of an established fund covered by 5.5.5(f) shall have the right by majority decision to choose to have the contributions specified in 5.5.2 paid into a fund as provided for elsewhere in 5.5.5 in lieu of the established fund to which clause 5.5.5(f) has application.
- (c) The initial selection of a fund recognised in clause 5.5.5 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that subclause where the long term

performance of the fund is clearly disappointing.

- (d) Where this provision has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation of this provision:

Provided that the provisions of this clause do not preclude the making at any time of an Industrial Agreement within the terms of clause 5.5.5 (b).

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 5.5.5;
 - (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 all completed application form/s and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with this clause 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 in order to be entitled to the benefit of the contributions prescribed in 5.5.2 hereof.
- (c) Where an employer has complied with the requirements of 5.5.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by them of that form, then that employer shall:
- (i) Advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise their entitlement to the occupational superannuation benefit prescribed by this clause.
 - (ii) In the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form is received by the employer.
 - (iii) In the event that an eligible employee fails to return a completed and signed application form 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 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 Secretary of an Industrial Union of employees whose registered callings incorporate the classification of the eligible employee a copy of each letter forwarded by them to the eligible employee pursuant to clause 5.5.7(c)(i) and 5.5.7(c)(ii).
- (d) Where an employer fails to provide an eligible employee with an application form in accordance with clause 5.5.7(a)(iii) the employer shall be obliged to make contributions as from the date of operation of this clause or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form 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

6.1 Hours of work

6.1.1 Day workers

- (a) Except as provided elsewhere in this clause the ordinary working hours for day workers shall not exceed 8 hours in any one day, or 40 hours in any one week on Mondays to Friday inclusive, subject to the following:
- (b) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks, between 6.00 a.m. and 6.00 p.m:

Provided that the actual ordinary hours of work shall be determined by agreement between an employer and the majority of employees in the plant or work section or sections concerned:

Provided further that work done prior to the spread of hours fixed in accordance with clause 6.1.1 for which overtime rates are payable shall be deemed for the purpose of this clause to be part of the ordinary hours of work.

- (c) The ordinary hours of work prescribed herein shall not exceed 10 on any day. Provided that:

In any arrangement of ordinary hours where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees in the plant or work section or sections concerned; and

- (d) by arrangement between an employer, the Union and the majority of employees in the plant or work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
 - (i) proper health monitoring procedures being introduced;
 - (ii) suitable roster arrangements being made;
 - (iii) proper supervision being provided:

Provided that agreement will not be unreasonably withheld and in the event that agreement cannot be reached the matter will be referred to the Commission for resolution.

6.1.2 Shift workers

The ordinary hours of shift workers shall average 40 per week and shall not exceed 160 hours in 28 consecutive days:

Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the full-time average of 40 ordinary hours is achieved over a period that exceeds 28 consecutive days. Subject to the following conditions, such shift workers shall work at such times as the employer may require. A shift shall consist of not more than 10 hours inclusive of crib time.

Provided that:

- (a) in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to agreement between the employer and the majority of employees

in the plant or work section or sections concerned; and

- (b) by agreement between any employer, the Union and the majority of employees in the plant, work section or sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:
- (i) proper health and monitoring procedures being introduced;
 - (ii) suitable roster arrangements being made; and
 - (iii) proper supervision being provided:

Provided that agreement will not be unreasonably withheld and in the event that agreement cannot be reached the matter will be referred to the Commission for resolution.

6.1.3 *Cooks and cooks' offsidiers*

The ordinary working hours of cooks and cook's offsidiers shall not exceed 40 hours in any one week or 8 hours in any one day within a spread of 12 hours in any day with broken shifts as required, but with no more than 2 breaks per day or shift.

6.2 Meal time

6.2.1 *Day workers*

A meal time of not less than 30 minutes or more than one hour shall be allowed in the employee's time, to be taken between the fourth and sixth hours after the ordinary commencing time.

Employees shall have a recognised time for such meal period which, except when special circumstances arise, may only be altered by 24 hours' prior notice.

6.2.2 *Shift workers*

Shift workers shall be allowed 30 minutes for crib in each shift without deduction of pay. Cribs shall be taken in relays so as not to interfere with the running of the works and shall be given as near as practicable to the middle of the shift.

6.3 Rest pauses

Every employee covered by this Award shall be entitled to a rest pause of 10 minutes duration in the employer's time in the first and second half of their daily work. Such rest pauses shall be taken at such times as will not interfere with continuity of work where continuity is necessary. However, where the majority of employees in a work group agree the rest pause may be combined into a single 20 minute break.

6.4 Overtime

6.4.1 *Day workers*

- (a) All time worked by day workers outside the ordinary hours fixed in accordance with clause 6.1 shall be paid for at the rate of time and a-half for the first 3 hours on any one day Monday to Friday inclusive, and at the rate of double time thereafter:

Provided that overtime worked on a Saturday shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter, with a minimum of 3 hours' work or payment therefore.

- (b) All time worked by day workers on Sundays shall be deemed overtime and paid for at the rate of double time with a minimum of 3 hours' work or payment therefor.
- (c) All time worked by day workers during the ordinary meal time shall be deemed overtime and shall be paid for at the rate of double time. Such payment shall continue until such time as a meal break is given.
- (d) Where an employee is called upon to work for not less than 2 hours after their ordinary ceasing time, they shall be supplied with a meal by the employer or shall be paid \$9.60 in lieu thereof except where the daily working hours have been extended to cover the circumstances of a particular job for a period of not less than one week.

Where an employee has provided a meal and is subsequently not required to work overtime, they shall be paid \$9.60 for the meal provided.

- (e) Where an employee is called upon to work overtime for more than 2 hours after their ordinary ceasing time,

they shall be allowed a meal break of 30 minutes.

An employee who is required to work a further period of at least 4 hours after having been given such a meal break shall be allowed a further break of 30 minutes without deduction of pay:

Provided that the employee is required to continue working after such subsequent break. For such further break the employee shall be provided, free of cost, with a suitable meal, or paid the sum of \$9.60 in lieu thereof.

6.4.2 *Shift workers*

- (a) All time worked by shift workers outside the ordinary hours fixed in accordance with clause 6.1.2 shall be deemed overtime and shall be paid for at the rate of double time: Provided that overtime shall not be payable in circumstances where excess time is worked as a result of mutual agreements between the employees themselves (with the consent of the employer) to exchange all or part of the day or shift.
- (b) Any employee required to work overtime on a Sunday shall be given a minimum of 3 hours' work or payment therefor: Provided that this minimum shall not apply where overtime worked by shift workers is continuous with their shift work.
- (c) Where an employee is called upon to work for more than 2 hours' overtime after their usual ceasing time, they shall be allowed a crib to be taken in such a manner as will not interfere with continuity of work:

Provided that if the overtime continues for at least 4 hours after such crib, the employee shall be allowed a further crib to be taken in such manner as will not interfere with the continuity of work.

- (d) Where an employee is called upon to work for not less than 2 hours after their ordinary ceasing time, they shall be supplied with a meal by the employer or shall be paid \$9.60 in lieu thereof except where the daily working hours have been extended to cover the circumstances of a particular job for a period of not less than one week.

If such overtime continues for a further period of at least 4 hours, the employee shall be supplied with a second meal or shall be paid \$9.60 in lieu thereof.

Where an employee has provided a meal and is subsequently not required to work overtime, they shall be paid \$9.60 for the meal provided.

6.4.3 *Rest period after overtime*

An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not at least 10 consecutive hours off duty between those times shall, subject to clause 6.4.3, 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 released from duty for such period and shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay, for ordinary working time occurring during such absence.

The provisions of clause 6.4.3 shall apply in the case of shift workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

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

6.5 Prospecting work

Notwithstanding any other contrary provisions of clauses 6.1, 6.2 and 5.3.5 when prospecting work is being performed, the following provisions shall apply:

- 6.5.1 The hours of work may be arranged between the employer and the employees concerned, provided that the ordinary working hours of such employees shall be 8 on any day and shall not exceed 40 hours per week or an average of 40 hours per week spread over periods of 2, 3 or 4 weeks as may be agreed.

For work done in excess of these limitations, overtime rates shall apply, on the basis of time and a-half for the first 3 hours on any day and double time thereafter with payment for the re-arranged Saturdays and Sundays at

the appropriate rates.

- 6.5.2 Except where adequate provisioning is made by the employer employees obliged to live in camp shall be paid \$11.00 per day by way of camping allowance.
- 6.5.3 When an employee is sent from their usual place of employment or is engaged for the purpose of being sent on prospecting work which necessitates being away from their usual residence, they shall be conveyed to and from the camp, or pick-up place established for such prospecting work free of charge and shall be paid at ordinary rates for such travelling time up to a maximum of 8 hours.
- 6.5.4 When the prospecting work is being performed at a place away from the camp or pick-up place, the employees shall be paid travelling time one way at ordinary rates.
- 6.5.5 When employees are working off a motor vessel in close proximity to the scene of prospecting operations, no travelling time shall be paid in respect of movement by motor vessel between one prospecting site and another.
- 6.5.6 Where the ordinary full-time hours of work are averaged over periods of 2, 3, or 4 weeks (including Saturdays and Sundays) as provided in clause 6.5.1 hereof, a flat allowance of \$13.47 extra shall be paid for each day or shift worked.

PART 7 - LEAVE OF ABSENCE

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 this provision "year of employment" shall mean and include any year of employment completed on or after 3rd December, 1973.

7.1.2 Such annual leave shall be exclusive of any public leave which may occur during the period of that annual leave and (subject to clause 7.1.3) 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 leave to the employee from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due, 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 if they are an employee to whom clause 7.1.1(a) applies, and 1/12th of their pay for the period of their employment if they are an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.5.

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 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 ½ per cent of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii)

(d) Clause 7.1.5(c) shall not apply to the following:

- (i) 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
- (ii) 4 weeks in any other case.
- (iii) 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.

7.1.6 An employee whose service has been partly as a continuous shift worker and partly as other than a continuous shift worker shall have their entitlement calculated on a proportionate basis. Where a fraction of a day results, such fraction shall not form part of the leave period but shall be discharged by payment only.

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

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

7.1.8 If a public holiday falls on a day on which a continuous or 7 day shift worker is rostered off, they shall be paid an additional day's wages or shall be allowed a day's holiday in lieu thereof at a time as mutually agreed between the employer and the employee concerned.

7.1.9 Notice of termination of service shall not be counted when computing 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 their employer of their 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 their 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 employees shall, on the death of a member of their immediate family or household in Australia, be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

- (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) 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 Annual close down

7.6.1 An employer may close down a plant, or a section or sections thereof for a period of at least 21 consecutive days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster:

Provided that by agreement with the majority of employees concerned, an employer may close down a plant for a period of at least 14 consecutive days including non-working days and grant the balance of annual leave due to the employee by mutual arrangement.

7.7 Public holidays

7.7.1 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.

7.7.2 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.

7.7.3 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 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' work or payment therefor.

7.7.4 Double time and a-half

For the purposes of this provision, 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.

7.7.5 Extra payment for work outside certain hours on public holiday

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.

7.7.6 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

7.8 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 and retraining

9.1.1 The parties to this Award recognise that in order to increase the efficiency productivity and competitiveness of the plant or enterprise, a greater commitment to training and skill development is required. 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 required by the employer;
- (c) removing barriers to the utilisation of skills acquired.

9.1.2 Following proper consultation in accordance with clause 12C (Structural Efficiency) or through the establishment of a joint training body, the employer shall develop a training program consistent with:

- (a) the current and future skill needs of the plant or enterprise;
- (b) the size, structure and nature of the operations of the plant or enterprise;
- (c) the need to develop vocational skills relevant to the plant or enterprise through courses conducted by:
 - (i) accredited educational institutions and providers;
 - (ii) suitable courses provided by the employer.

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

10.1 First aid

The employer shall supply and maintain, and keep readily available for employees at a central position at the works in case of accident, a first aid outfit equipped in accordance with the provisions of the Mines Regulation Acts and Regulations thereunder as amended from time to time.

10.2 Wet weather

10.2.1 All time lost through wet weather shall be paid for, provided the men turn up to work and hold themselves in readiness for work. The supervising officer in charge of the work shall decide whether or not it is too wet to work.

Provided that when employees are prevented by wet weather from following their usual avocation, unless the employees are willing to perform during such wet weather any work the employer may direct them to do, they shall not be entitled to payment for such time lost.

10.2.2 An employee who is required to work in rain heavy enough to wet the clothes of the employee shall at the option of the employer be either provided by the employer with waterproof protective clothing or shall be paid double time for such work. Where double time is payable in accordance with this clause it shall be payable for the period commencing from the start of such work until the employee is able to change into dry clothing or until the employee finishes their work whichever is the earlier.

10.3 Supply of tools

All tools shall be supplied by the employer.

10.4 Goggles

Employees working under this Award shall be provided by the employer with goggles where necessary and where required.

10.5 Sanitary accommodation

Suitable and sufficient sanitary accommodation shall be supplied and sufficient disinfectant, and such accommodation shall be kept clean by the employer.

10.6 Drinking water

A sufficient quantity of uncontaminated water for drinking purposes, and water for washing purposes shall be supplied by the employer, and hot water shall be provided for the mid-day meal, or for morning or afternoon tea.

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 the employee does not want that employee's 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 the Union.

11.3.1 Documentation to be provided by employer

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by 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 20 November 2002.

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

Operative Date: 20 January 2003