

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**NORTH QUEENSLAND BOATING OPERATORS EMPLOYEES AWARD - STATE 2003**

Pursuant to s. 698 of the *Industrial Relations Act 1999* North Queensland Boating Operators Employees Award - State 2003 with all amendments as at 10 December 2009, is hereby reprinted.

I hereby certify that the Award contained herein is a true and correct copy of the North Queensland Boating Operators Employees Award - State 2003 as at 10 December 2009.

Dated 10 December 2009.

G.D. Savill  
Industrial Registrar

**NORTH QUEENSLAND BOATING OPERATORS EMPLOYEES AWARD - STATE 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the North Queensland Boating Operators Employees Award - State 2003.

**1.2 Arrangement**

Subject Matter	Clause No.
<b>PART 1 - APPLICATION AND OPERATION</b>	
Title	1.1
Arrangement	1.2
Application of Award	1.3
Operation of Award	1.4
Parties bound	1.5
Definitions	1.6
<b>PART 2 - FLEXIBILITY</b>	
Enterprise flexibility	2.1
<b>PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION</b>	
Consultation	3.1
Grievance and dispute settling procedure	3.2
<b>PART 4 - EMPLOYER AND EMPLOYEE'S DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS</b>	
Employment categories	4.1
Part-time employment	4.2
Casual employment	4.3
Incidental and peripheral tasks	4.4
Outside employment	4.5
Termination of employment	4.6
Introduction of changes	4.7
Redundancy	4.8
Continuity of service - transfer of calling	4.9
Anti-discrimination	4.10

## PART 5 - WAGES AND WAGE RELATED MATTERS

Wages	5.1
Payment of wages	5.2
Loading for duties outside normal work	5.3
Aggregate wage agreements	5.4
Superannuation	5.5

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

Hours of work	6.1
Weekly roster	6.2
Penalty rates	6.3
Overtime	6.4
Avoidance of physical exhaustion	6.5
Meal breaks	6.6
Rest pauses	6.7

## PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

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

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

Living away from home	8.1
-----------------------	-----

## PART 9 - TRAINING AND RELATED MATTERS

Commitment to training and careers	9.1
------------------------------------	-----

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

Uniforms	10.1
Protective clothing	10.2
Loss of personal effects	10.3
Tools	10.4
Safety	10.5

## PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Right of entry	11.1
Time and wages record	11.2
Union encouragement	11.3
Posting of Award	11.4

Hayles Townsville Cruises Schedule 1

### 1.3 Application of Award

This Award applies to all employers operating vessels, launches and barges (other than vessels equipped for or used in taking fish or other seafood for a commercial purpose) operating north of the 20th parallel of south latitude and to their employees engaged in the classifications specified in clause 5.1.

### 1.4 Operation of Award

This Award takes effect from 24 March 2003.

### 1.5 Parties bound

This Award is binding upon the employees as prescribed by clause 1.4 and their employers and the Seamen's Union of Australasia, Queensland Branch, Union of Employees and The Australian Workers' Union of Employees, Queensland and their members.

## **1.6 Definitions**

- 1.6.1 The "Act" shall be taken to mean the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.6.2 "Commission" means the Queensland Industrial Relations Commission.
- 1.6.3 "Union" means the Seamen's Union of Australasia, Queensland Branch, Union of Employees and The Australian Workers' Union of Employees, Queensland.

## **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 *Industrial Relations Act 1999* and is to have no force or effect until approval is given.

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

### **3.1 Consultation**

- 3.1.1 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries covered by this Award and to enhance the career opportunities and job security of employees in such industries.
- 3.1.2 At each plant or enterprise, an employer, the employees and their relevant Union or Unions commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or Union or Unions for consideration consistent with the objectives of clause 3.1.1 shall be processed through that consultative mechanism and procedures.

### **3.2 Grievance and dispute settling procedure**

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions listed in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of a Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains

unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.

- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

##### **4.1 Employment categories**

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

- (a) full-time;
- (b) part-time (as prescribed in clause 4.2); or
- (c) casual (as prescribed in clause 4.3).

##### **4.2 Part-time employment**

4.2.1 A part-time employee is an employee who:

- (a) is employed for not less than 10 hours per week and for less than 40 ordinary hours per week; and
- (b) is engaged to work on predetermined days of the week for a regular number of hours.

4.2.2 At the time of engagement the employer and the part-time employee will agree in writing on the predetermined days of the week and the regular number of hours.

4.2.3 A part-time employee who works in excess of the ordinary daily or weekly hours prescribed in the Award shall be paid overtime in accordance with clause 6.4.

4.2.4 Any agreed amendment to the number of ordinary hours worked will be recorded in writing.

4.2.5 A part-time employee employed under the provisions of clause 4.2 must be paid for ordinary hours worked at the rate of 1/40th of the weekly rate prescribed for the class of work performed.

4.2.6 A part-time employee will receive proportionate pay and employment conditions to those of full-time employees.

##### **4.3 Casual employment**

4.3.1 The employment of a casual employee may be terminated without notice by either party:

Provided that the minimum payment in clause 4.3.3 applies should the employer terminate the employee.

4.3.2 The rate of pay for casual employees shall be 1/40th of the appropriate full time rate prescribed in clause 5.1, with the addition of the appropriate loading, as prescribed by clause 4.3.

These loadings are payable separately and are not to be compounded:

- (a) 23% for all ordinary hours worked;

- (b) 73% where the rate of pay is prescribed as time and a-half;
- (c) 123% where the rate of pay is prescribed as double time;
- (d) 173% where the rate of pay is prescribed as double time and a-half.

4.3.3 The minimum period of engagement of a casual employee shall be 2 hours.

**4.4 Incidental and peripheral tasks**

- 4.4.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.
- 4.4.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).
- 4.4.3 Any direction issued by an employer pursuant to clauses 4.4.1 and 4.4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

**4.5 Outside employment**

4.5.1 A full-time employee shall not undertake or perform duties for any other employer or operator in connection with the operation or running of any type of vessel operating under this Award.

**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 7 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 7 days.

#### 4.6.4 *Return to place of engagement*

If the employment of any employee is terminated by the employer elsewhere than at the place of engagement for any reason other than misconduct the employer shall be responsible for conveying the employee to the place of engagement where necessary.

4.6.5 The periods of notice in clauses 4.6.3 and 4.6.3 may be waived by agreement between the parties.

#### 4.6.6 *Time off during notice period*

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

### **4.7 Introduction of changes**

#### 4.7.1 *Employer's duty to notify*

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

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

#### 4.7.2 *Employer's duty to consult over change*

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

### **4.8 Redundancy**

#### 4.8.1 *Consultation before terminations*

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

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

#### 4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
  - (i) the ordinary working hours to be worked by the employee; and
  - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
  - (iii) any other amounts payable under the employee's employment contract.

#### 4.8.3 *Transmission of business*

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

#### 4.8.4 *Time off during notice period*

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

#### 4.8.5 *Notice to Centrelink*

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

#### 4.8.6 *Severance pay*

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

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7

More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

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

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

#### 4.8.7 *Superannuation benefits*

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

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

#### 4.8.8 *Employee leaving during notice*

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

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

#### 4.8.9 *Alternative employment*

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

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

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

#### 4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

#### 4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

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

- (i) a company and the entities it controls; or



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

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

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
  - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
  - (ii) where the employee rejects an offer of employment with the transmittee:
    - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the 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.

### **4.10 Anti-discrimination**

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

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

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

4.10.3 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.

4.10.4 Nothing in clause 4.10 is to be taken to affect:

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

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

### **5.1 Wages**

5.1.1 The minimum wage rates payable to employees under this Award shall be as follows:

Classification	Award Rate Per Week \$
Leading Hand	630.70
Boating Attendant/Deckhand	619.80
Host/Hostess	619.80

*Juniors:*

The percentage of minimum adult rate for Junior employees shall be as follows:

	Percentage of appropriate adult rate %
16 years and under 17 years	55
17 years and under 18 years	65
18 years and under 19 years	75
19 years and under 20 years	85
20 years and over	adult rate

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

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2009 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 Payment of wages**

Payment of wages shall be made weekly on a day fixed by mutual agreement between the employer and the employee and such payment shall be made in the employer's time, where mutually agreed payment of wages to each employee will be paid by means of direct credit (electronic funds transfer) into a nominated bank, credit union or building society account to be available on the agreed pay day.

## **5.3 Loading for duties outside normal work**

An amount of \$3.86 per day shall be paid in excess of other wages and allowances to employees, for each day they are required to perform the duties of diving to clean glass bottom boats or to clear obstructions from boats propellers.

## **5.4 Aggregate wage agreements**

5.4.1 Pursuant to agreement between the employer, employees and the relevant Union the wages and conditions of the Award may be packaged to provide an aggregate or loaded weekly wage to apply in lieu of the Award prescription. Such agreements shall be documented in addition to the requirements of clause 11.2.

The agreements will be governed by the following requirements:

- (a) the ordinary working hours may be averaged so as not to exceed 160 hours over a four week cycle;
- (b) the method of calculation shall be determined by the employee's projected rostered hours of work, and shall be projected over a four week cycle;
- (c) the rates for overtime, penalty rates, week-end work and Public Holidays shall be encompassed where appropriate in the aggregate rate;

- (d) any overtime component based on work in excess of ordinary hours shall be identified;
- (e) the provisions for sick, annual and long service leave be identified;
- (f) applicable allowances may be incorporated into the agreed rate;
- (g) the agreement on aggregation may apply to full-time, part-time and casuals, and be averaged out on a weekly basis;
- (h) The overall terms and conditions of employment agreed under such an arrangement must be not less favorable than the provisions of this Award as a whole and the employee shall not be disadvantaged by the agreement; and
- (i) the relevant Union shall not unreasonably oppose any agreement reached between employers and employees.

## 5.5 Superannuation

5.5.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees, as defined in clause 5.5.3(b) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.5.

### 5.5.2 Contributions

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

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

- (b) *Regular Payment* - The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.
- (c) *Minimum level of earnings* - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.
- (d) *Absences from work* - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.
- (e) *Other Contributions* - Nothing in clause 5.5 shall preclude an employee from making contributions to a fund in accordance with the provisions thereof.
- (f) *Cessation of Contributions* - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.
- (g) *No Other Deductions* - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed herein.

### 5.5.3 Definitions

- (a) "Approved Fund" means a fund (as defined in clause 5.5.3(c)) approved for the purposes of clause 5.5 by the Industrial Relations Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.5. 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 for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant Act. In the case of a newly established fund, the term shall include a superannuation fund

that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

- (d) "Ordinary time earnings" for the purposes of clause 5.5 shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading, skill allowances and 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 shall be:*

- (a) Sunsuper
- (b) Any named fund as is agreed to between the relevant employer/Union/s parties to this Award (industrial agreement) and as recorded in an approved industrial agreement.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an industrial tribunal whether State or Federal jurisdiction and already had practical application to the majority of award employees of that employers.
- (d) As to employees who belong to the religious fellowship known as the Brethren, who hold a certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any fund nominated by the employer and approved by the Brethren.
- (e) Any Fund agreed between an employer and an employee who holds a certificate issued pursuant to section 115 of the Act where membership of a fund cited in this Award would be in conflict with the conscientious beliefs of that employee in terms of section 115 of the Act.
- (f) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.5.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contribution.
- (g) 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.
  - (i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file;
  - (ii) A person must not coerce someone else to make an agreement;
  - (iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (time and wage records) of the Act; and
  - (iv) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure in clause 3.2.

#### 5.5.5 *Challenge of a Fund*

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

#### 5.5.6 *Fund Selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses 5.5.4(c), (d), (e) (f) and (g)

shall be determined by a majority decision of employees.

- (b) Employees who are members of an established fund covered by clause 5.5.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.5.2 paid into a fund as provided for elsewhere in clause 5.5.4 in lieu of the established fund to which clause 5.5.4(f) has application.
- (c) The initial selection of a fund recognised in clause 5.5.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long-term performance of the fund is clearly disappointing.
- (d) Where clause 5.5 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.

#### 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 employees entitlement to occupational superannuation;
  - (ii) Consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5.4;
  - (iii) Take all reasonable steps to ensure that upon the determination of an appropriate fund, each eligible employee receives, completes, signs and returns the necessary application form/s provided by the employer, to enable that employee to become a member of the fund; and
  - (iv) Submit all completed application form/s and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.5 shall:
  - (i) complete and sign the necessary application forms to enable that employee to become a member of that Fund; and
  - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 5.5.2.
- (c) Where an employer has complied with the requirements of clause 5.5.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employee of that form, then that employer shall:
  - (i) Advise an eligible employee in writing of the non-receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.5;
  - (ii) In the event that an eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form/s is 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/s is a pre-requisite to the payment of any occupational superannuation contributions; and
  - (iv) At the same time as advising the eligible employee pursuant to clause 5.5.7(c)(iii) submit both to the chief industrial inspector, Brisbane and to the secretary of the Union whose registered callings incorporate the classification of the eligible employee a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.5.7(c)(i) and 5.5.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.5.7(a)(iii) the employer shall be obliged to make contributions as from the date of operation of clause 5.5 or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form/s within 28 days of

being provided with the application form/s by the employer. Where an eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of 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 5.5.4, had they been paid on the due dates.

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

#### 5.5.9 *Exemptions*

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

- (i) Incapacity to pay the costs associated with its implementation; or
- (ii) Any special or compelling circumstances peculiar to the business of the employer.

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

#### **6.1 Hours of work**

6.1.1 The ordinary working hours of all employees shall not exceed 8 in any one day or 40 in any one week to be worked on 5 days of the week. The 2 rostered days off shall be consecutive wherever possible.

6.1.2 The ordinary daily working hours shall be worked continuously as required:

Provided that by agreement between the employer and the relevant Union the ordinary working hours may be averaged so as to not exceed 160 hours over a four week cycle.

#### **6.2 Weekly roster**

6.2.1 A weekly roster posted before 5.00 p.m. each Friday shall be exhibited in a conspicuous place accessible to all employees and this roster shall remain in force for one week notwithstanding anything previously specified in this Award.

6.2.2 Each employee shall be rostered off 2 days per week between Monday and Sunday inclusive with such rostered days off to be consecutive where practicable.

6.2.3 Should a full-time or part-time employee be required to work on a rostered day off, such employee shall be paid at overtime rates with a minimum period of 4 hours, excepting that on public holidays payment shall be at 2 1/2 times the ordinary rate.

#### **6.3 Penalty rates**

##### 6.3.1 *Week-end penalty*

All ordinary time worked by employees on a Saturday or Sunday shall be paid for at the rate of time and a-half the ordinary rate for work performed on those days.

#### **6.4 Overtime**

6.4.1 If an employee is required to work more than 8 hours in any one day, or 40 hours in any one week, or on either of the employees 2 rostered days off, then such additional time shall be considered overtime.

6.4.2 Overtime shall be paid for at the rate of time and one-half the ordinary rate specified in clause 5.1 for the first 3 hours and double the ordinary rate for time worked thereafter.

6.4.3 An employee who works so much overtime between the termination of the employee's ordinary work on the one day and the commencement of the employee's ordinary work on the next day that the employee has not had at

least 10 consecutive hours off duty between those times shall, subject to clause 6.4.3, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instructions of the employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty the employee shall be paid double time until the employee is released from duty for such period, and the employee shall then be entitled to be absent until the employee has had 10 consecutive hours off duty, without loss of pay for ordinary working time occurring during such absence.

## **6.5 Avoidance of physical exhaustion**

6.5.1 An employee who has been on duty continuously, including meal breaks for more than 18 hours shall not be required by the employer to continue duty until the employee has had, for the purpose of a rest a period of 10 hours off duty.

For the purpose of clause 6.5.1, continuity of an employee's duty shall not be regarded as broken, either by meal breaks taken or by any other period the employee is allowed off duty unless the duration of such period is 7 hours or more. Except on Saturday, Sunday or a Public Holiday, in computing a break of duty in relation to clause 6.5.1, time off duty before the finishing time shall not count.

6.5.2 Should an employee work at the request of the employer after the employee has been on duty continuously, including meal breaks, for more than 18 hours, the employee shall be entitled to be paid at the rate of double time for the period of such duty in addition to any other payment due to him, until such time as the 10 hours respite from duty commences.

## **6.6 Meal breaks**

6.6.1 All employees shall be allowed time for a meal not later than 6 hours after their ordinary starting time each day:

Provided that the time allowed for such meal shall be not less than half an hour.

Provided further that the actual time for a meal may be amended by agreement between the employee and the master concerned to suit the operational requirements of the particular vessel on each day.

6.6.2 *Meals or meal allowances during overtime* - An employee who is called upon to continue work after their usual ceasing time shall, after working more than one hour after the usual ceasing time, be supplied with a reasonable meal at the employer's expense, or be paid \$9.60 in lieu.

## **6.7 Rest pauses**

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

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

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

## **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 employment be entitled to an annual leave on full pay of 4 weeks.

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 7.1.6) 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 the 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 employees from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due the employee's pay, calculated in accordance with clause 7.1.6, for 4 weeks and also the ordinary pay for any public holiday occurring during such period of 4 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, an amount equal to 1/12 of the employee's pay for the period of their employment calculated in accordance with clause 7.1.6.

7.1.5 Part-time employees shall be entitled to *pro rata* annual leave based upon the number of hours worked per week in the preceding year of employment.

7.1.6 *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 7.1.6(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 7.1.6(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 clause 7.1.6(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
  - (i) The employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and week-end penalty rates);
  - (ii) Leading hand allowance or amounts of a like nature; and
  - (iii) A further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.6(a) and 7.1.6(b).
- (d) Clause 7.1.6(c) does not apply to:
  - (i) any period or periods of annual leave exceeding:
    - five 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;
    - four weeks in any other case; and
  - (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, pieceworkers and school-based apprentices and trainees, is entitled to eight 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 which would have been worked by the employee if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

### *7.2.2 Employee must give notice*



The payment of sick leave is subject to the employee promptly advising 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 reasonably acceptable evidence, about the nature and approximate duration of the illness.

#### 7.2.4 *Accumulated sick leave*

An employee's accumulated sick leave entitlements are preserved when:

- (a) They are 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 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.

### **7.4 Bereavement leave**

7.4.1 An employee (other than a casual) on the death of a member of their immediate family or household in Australia is 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 two ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

#### 7.4.2 *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 7.4.2

#### 7.4.3 The term "*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.

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

### **7.5 Family leave**

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

#### 7.5.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;

(b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.

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

(a) Maternity leave

(b) Parental leave

(c) Adoption leave

(d) Special responsibility leave for the care and support of the employee's immediate family or household.

## **7.6 Public holidays**

7.6.1 An employee who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.

7.6.2 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

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

7.6.3 All employees covered by this Award shall be entitled to be paid a full day's wages for Labor Day (the first Monday in May or other day appointed under the *Holidays Act 1983-1985*, 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 Labor Day, such employee shall be paid a full day's wage for that day and in addition a payment for the time actually worked at the rate of time and a-half with a minimum of 4 hours.

7.6.4 All work done by employees in a district specified from time to time by the Minister by notification published in the *Gazette* of the day appointed under the *Holidays Act 1983-1985*, 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.

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

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

7.6.7 Any employee, with two weeks' or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely Christmas Day, Boxing Day and the 1st January (New Year's Day).

## **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**

### **8.1 Living away from home**

- 8.1.1 Whilst away from the vessel's home port, an employer shall provide the employee with proper meals and accommodation and be responsible for payment of reasonable expenses actually incurred for such meals and accommodation ashore.
- 8.1.2 Whilst at sea, every employee shall be provided with proper meals, attendance, bedding and soap, and be supplied once a week with clean bed linen and twice a week with clean towels. The employer shall be responsible for the laundering of linen and towels.
- 8.1.3 Where it is the employer's responsibility to provide the employee with proper meals and accommodation ashore, and the employer fails to do so the employer shall reimburse the employee for all costs incurred in relation to normal meals and charges incurred for a good standard of accommodation.
- 8.1.4 Tea, sugar, milk and coffee shall be provided on all vessels for employees at the employer's expense.

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

### **9.1 Commitment to training and careers**

- 9.1.1 The parties acknowledge that various degrees of training are provided to employees in the industry, both by internal on the job training and through external training providers.
- 9.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in such cases where this is required.
- 9.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in this industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits from such training.
- 9.1.4 The parties agree to continue discussions on issues raised in relation to training.
- 9.1.5 The parties are committed to promoting the industry as one which has the capacity to provide them with interesting career prospects.

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

### **10.1 Uniforms**

- 10.1.1 Where the employer requires employees to wear a uniform or particular type of dress such uniforms or clothing shall be provided free by the employer.
- 10.1.2 Such uniforms are to be worn at all times whilst on duty and are to be kept in a presentable condition by the employee.
- 10.1.3 Where employees are required to launder their own uniforms an allowance of \$2.50 per week shall be paid.
- 10.1.4 Safety shoes shall be supplied to employees required to load or unload cargo (not including passengers' luggage).

### **10.2 Protective clothing**

10.2.1 Employees shall be provided protective clothing free of cost. The items of wet weather gear issued to individual employees shall be retained by them for their personal use on the vessel on which they are employed and each individual shall be responsible for the care of such items. These items of gear shall only be replaced under the following conditions:

- (a) If the item concerned has been destroyed or rendered unusable, without fault or neglect of the employee in the course of carrying out the employee's duty on the vessel;
- (b) If the item is damaged or stolen without the fault or neglect of the employee whilst aboard the vessel; or
- (c) If the employee has outgrown the item and it is too small for proper use.

### **10.3 Loss of personal effects**

10.3.1 If an employee sustains loss or damage, of or to their personal effects, tools or other equipment by fire, foundering, shipwreck, collision, explosion, stranding or ingress of oil or water, during or in the course of their employment, the employer shall compensate the employee concerned for such loss or damage by a cash payment equivalent to the value of the effects, tools or other equipment so lost or damaged, but any such payment shall not exceed the amount of \$250.00.

### **10.4 Tools**

10.4.1 Where employees are required to provide and use their own tools the employer shall be responsible for the replacement of such tools broken, worn out, lost or stolen in the course of employment.

### **10.5 Safety**

10.5.1 The employer shall inform the employee of all necessary and relevant safety requirements.

10.5.2 Safety equipment shall be supplied by the employer as necessary and the employee shall use all such equipment so provided.

10.5.3 Any deliberate breach of specified safety rules and/or procedures could result in the immediate termination of employment.

## **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 relevant 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 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 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 records, 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 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 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 ceased work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund

11.2.2 *The time and wages record must also contain:*

- (a) the employee's full name and address;
- (b) the employee's date of birth;

- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

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

### **11.3 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 The relevant Unions for under this Award are:

The Seamen's Union of Australasia, Queensland Branch, Union of Employees	Boating Attendants/Deckhand
The Australian Workers' Union of Employees, Queensland	Host/Hostess

11.3.2 *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.

11.3.3 *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.

11.3.4 *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.

### **Posting of Award**

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

## **SCHEDULE 1 Hayles Townsville Cruises**

### **S1 Loading and Discharging Cargo and Supplies (other than Ships Stores)**

An employee of Hayles Townsville Cruises engaged in manually loading or discharging cargo, other than ships' stores, shall be paid in addition to the employee's wages, the following payments:

	Per Week
Townsville - Magnetic Island	\$53.00

Provided in relation to Townsville - Magnetic Island only, employees shall be paid 1/5 of the weekly rate for each day of duty with the exception of the day of the voyage to Palm Island when the following shall apply:

Employees shall be paid the amount of \$28.92 for each voyage they undertake to Palm Island:

Provided that the amount of \$28.92 for each voyage shall be reduced to \$14.47 for each voyage when the cargo is totally roll on, roll off.

Dated 30 January 2003

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

Operative Date: 24 March 2003