

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

NURSERY AWARD - STATE 2003

Following the Declaration of the General Ruling in the 2011 State Wage Case (matter numbers B/2011/17 and B/2011/19), the Nursery Award - State 2003 is hereby reprinted, pursuant to s. 698 of the *Industrial Relations Act 1999*.

I hereby certify that the Award contained herein is a true and correct copy of the Nursery Award - State 2003 as at 1 September 2011.

Dated 1 December 2011.

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

NURSERY AWARD - STATE 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Nursery Award - State 2003.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 29 September 2003.

1.4 Coverage

1.4.1 This Award applies to all employees for whom classifications and rates of pay are herein prescribed and to their employers engaged in the calling of Nursery Employees, Landscape Gardeners and other horticultural callings including Commercial Cut Flower Growing and excepting Market Gardening throughout the State of Queensland.

1.5 Definitions

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

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

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

1.6 Area of operation

For the purpose of this Award, the Divisions and Districts shall be 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 RESOLUTION 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 a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 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 (other than casuals) covered by this Award shall be advised in writing of their employment category upon appointment.

Employment categories are:

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

4.2 Part-time employment

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

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

4.3 Casual employment

- 4.3.1 A casual employee is an employee who is engaged by the hour for a period of less than one week.
- 4.3.2 Casual employees in the wholesale, retail and landscaping, plant hire and turf growing and cutting sections of the industry shall be paid at an hourly rate to be ascertained by dividing the appropriate full-time rate by 38 and adding 23%, with a minimum payment as for 4 hours' work for each engagement.

4.4 Two classes of work

Where any person on any one day performs 2 or more classes of work to which a differential rate fixed by this 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 this Award in respect of any of such classes of work, and if employed for 4 hours or less on the class or classes of work which carry a higher rate, they shall be paid for such highest rate for 4 hours.

4.5 Incidental or peripheral tasks

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

Provided further that employees shall use tools and equipment as required by the employer subject to appropriate training having been given.

- 4.5.2 Any direction issued by the employer pursuant to clause 4.5.1 shall be consistent with the employer's responsibility to provide a safe and healthy working environment.

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 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.

4.7.3 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 amount the employee would have received under clause 4.7.2(d) for a period of notice of 2 days.

4.7.4 The notice periods prescribed in clauses 4.7.2 and 4.7.3 shall not be counted as annual leave.

4.7.5 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 alternate 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 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.

4.9.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.9.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.9.
- (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 (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 4.9.3, '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 transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or

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

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

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

(b) The Commission may amend clause 4.9.13(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 Definition of classifications

5.1.1 *Classification criteria*

(a) The employer shall determine an employee's classification relevant to a particular wage level in the Award through the following process:

(i) An analysis is to be undertaken to establish the requisite skills and responsibilities for each identified position and a position description written for each position;

(ii) Each position is classified by reference to the classification criteria in accordance with clause 5.1.2; and

(b) Classification criteria as outlined in clause 5.1.2 are guidelines to determine the appropriate classification level under the Award and consist of:

(i) relativities for each wage level;

(ii) broad industry titles/callings, common industry-used titles and/or historical Award classifications (i.e. a Translation Guide that refers to award classification titles across a number of hospitality awards);

(iii) indicative duties that represent where the majority of the employees duties are located (i.e. it is not mandatory that an employee performs every duty in a wage level and where it is acknowledged that some duties are only relevant for certain sectors of the nursery or associated industry);

(iv) indicative experience and/or qualifications; and

(v) indicative levels of responsibility.

(c) The characteristics nominated above are the principal guide to classification to a particular wage level as they are designed to indicate the level of basic knowledge, comprehension of issues, problem and procedures required, the level of autonomy, accountability supervision/training involved with the position.

The characteristics of a wage level must be read as a whole to gain an understanding of the position and the performance requirement. Isolated characteristics should not be used to justify the classification of a position. The key issue to be analysed in properly classifying an employee is the level of initiative, responsibility/accountability, competency and skill that an employee is required to exercise in performing the employee's work within the parameters of the characteristics of the position.

The attributes and skills for each wage level are indicative of those required for each wage level. They are by no means an exhaustive list of the skills, attributes, duties or tasks included in each position within each wage level and employees may be expected to carry out additional duties or tasks as requested, which require skills that are not listed.

It should be noted that some typical duties/skills appear at one wage level only while others appear at more than one wage level. Because of this, the classification or re-classification of a position needs to be done by

reference to the specific characteristics of the wage level. As an example, because an employee may be utilising a skill comprehended at a higher wage level than that which the employee has been appointed, the employee assumes the level of qualification, initiative, accountability and competence envisaged by the characteristics of the higher wage level irrespective of whether the employee holds formal qualifications specified for that higher wage level.

Payment for skills required in a particular position and used on a regular basis and not skills/qualifications possessed is an acknowledgement that some employees are over-qualified for the position they will be engaged in.

All employees will be required, in addition to their own task, to carry out tasks and responsibilities of employees at lower wage levels. The ability to provide excellent customer service, where the customer may be external or internal, underpins all wage levels.

Where it is established that a particular set of tasks or callings are not clearly classified in this Award, the parties to the Award will meet to discuss the appropriate wage level and pay rates. Any dispute arising from this shall be followed in accordance with clause 3.1.

5.1.2 *Classification Levels and Award relativities*

(a) Wage Level 1 - 82%

Wage Level 1 employees shall include the following classifications/callings or combination thereof:

- Employee Grade 1

(i) Indicative experience and/or qualifications

Wage Level 1 applies to a new employee who enters the industry and who has not demonstrated the competency requirements of Wage Level 2.

An employee remains at this level until they are capable of effectively performing through assessment or appropriate certification, the tasks required of this function so as to enable them to progress to the next level as a position becomes available.

(ii) Indicative level of responsibility

An employee at this Wage Level would require regular supervision as they are a new entrant or have limited experience and who:

- work under close direction using established routines, methods and procedures with little scope for deviating from these;
- are not required to provide more than basic judgement and application of basic problem solving skills; and
- usually operate within a work team with very limited authority.

(b) Wage Level 2 - 92.4%

Wage Level 2 employees shall include the following classifications/callings or combination thereof:

- Landscape Gardeners Assistant;
- Nurseryhand;
- Packing of plants/flowers for dispatch.

(i) Indicative duties

Wage Level 2 means an employee who is engaged in activities such as:

- laying irrigation or drainage pipes;
- constructing low-profile timber or modular retaining walls;
- laying paving;
- assisting with landscape construction;
- maintaining indoor plants;
- tending nursery plants;

- selling products and services in a retail nursery;
- pruning shrubs and small trees;
- maintaining pressurised irrigation systems;
- applying chemicals under supervision;
- maintaining drainage systems;
- establish turf;
- receive and dispatch plants and other nursery products.

(ii) Indicative experience and/or qualifications

- Possession of an AQF 2 qualification or completion of an apprenticeship or traineeship at AQF 2 relevant to the employer or industry.

(iii) Indicative level of responsibility

An employee at this Wage Level would require general supervision and who:

- receives general instructions usually covering the broader technical aspects of the work; and
- are subject to progress checks, but such checks are usually confined to ensuring in broad terms, satisfactory progress is being made; and
- has their assignments and work reviewed on completion; and
- although technically competent and well experienced, there may be occasions on which the employee will receive more detailed instructions; and
- usually operates in a work team but may have specified area as of autonomy to perform a range of allocated activities and functions.

(c) Wage Level 3 - Tradesperson - 100%

Wage Level 3 employees shall include the following classifications/callings or combination thereof:

- Landscape Gardeners;
- Propagator;
- Nursery Employee.

(i) Indicative duties

Wage Level 3 means an employee who is engaged in activities such as:

providing information on plants and their culture;
 erecting or constructing timber, concrete, brick, block or stone structures and features;
 laying segmental/unit paving;
 install irrigation systems;
 install water features;
 implementing a paving project or retaining wall project;
 preparing and applying chemicals;
 install drainage and extra low voltage wiring systems;
 sample soils and analyse results;
 interact with customers;
 balance register/terminal;
 control plant pests, diseases and disorders;
 transport, handle, store, prepare and apply chemicals;
 operate pressurized irrigation systems.

(ii) Indicative experience and/or qualifications

Possession of an AQF 3 qualification or completion of an apprenticeship or traineeship at AQF 3 relevant to the employer or industry.

(iii) Indicative level of responsibility

An employee at this Wage Level would require general direction and who:

receive general instructions usually covering the broader technical aspects of the work; and

are subject to progress checks, but such checks are usually confined to ensuring in broad terms, satisfactory progress is being made; and
 has their assignments and work reviewed on completion; and
 although technically competent and well experienced, there may be occasions on which the employee will receive more detailed instructions; and
 usually operates in a work team but may have specified area as of autonomy to perform a range of allocated activities and functions.

(d) Wage Level 4 - 115%

Wage Level 4 employees shall include the following classifications/callings or combination thereof:

- Employee grade 4

(i) Indicative duties

Wage Level 4 means an employee who meets the requirements for a tradesperson in Wage Level 3 above and is also engaged in activities such as:

recommending plants and cultural practices;
 supervising landscape project works;
 supervising maintenance of machinery and equipment;
 planning and supervising on-site irrigation installation and construction work;
 preparing a garden design;
 sourcing goods/services and evaluating contractors;
 planning and implementing a chemical use program;
 operating within a budget framework;
 supervising natural area restoration works;
 determine, implement, monitor and/or adjust seasonal irrigation schedules and tasks.

(ii) Indicative experience and/or qualifications

Possession of an AQF 4 qualification or completion of an apprenticeship or traineeship at AQF 3 or equivalent, or a qualification with an AQF Level 3 outcome or who possesses a Recognition Certificate issued in accordance with the provisions of the *Vocational Education, Training and Employment Act 2002*.

(iii) Indicative level of responsibility

An employee at this Wage Level would require limited direction and who:

receives only limited instructions normally confined to a clear statement of objectives; and
 has their work measured in terms of the achievement of stated objectives; and
 is fully competent and very experienced in a technical sense and requires little guidance in the performance of work; and
 operates with autonomy either individually or within a work team; and
 leads or supervises a work team.

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:

Classification	Award rate per week \$
Wage Level 1	626.90
Wage Level 2	670.30
Wage Level 3	705.20
Wage Level 4	767.80

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2011 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay

received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.2.2 *Junior employees*

	Percentage of Wage Level 2 rate
	%
Under 17 years of age	50
17 and under 18 years of age	60
18 and under 19 years of age	75
19 and under 20 years of age	85
Thereafter at the rate for Wage Level 2.	

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

5.2.3 *Leading hands*

Employees appointed as leading hands shall be paid in addition to the prescribed full-time rates:

	Per day
	\$
In charge of 2 to 5 employees	3.34
In charge of 6 to 10 employees	4.17
In charge of more than 11 employees	5.62

Such extra payments shall be treated as part of the full-time wage rate for all purposes of this Award:

Provided that an employee employed as a leading hand for less than a week shall be paid the extra rate for the time actually worked in that capacity with a minimum as for 4 hours on any one day.

5.2.4 *Employees driving tractors*

Employees shall be paid an allowance of 36.85c per hour whilst engaged in driving any tractor above 1000kg kerb weight or any tractor using power take off attachments or other attached implements.

5.2.5 *Employees operating forklifts*

Employees operating forklifts shall be paid 73.7c per hour whilst so engaged in addition to their ordinary rates.

5.2.6 *Packing*

Employees engaged in the task of packing shall be paid an allowance of \$0.32.3 per hour whilst so engaged.

5.2.7 *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 in clause 5.2 for employees employed within that District:

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

5.3 **Payment of wages**

5.3.1 Payment of wages shall be made weekly or fortnightly in the employer's time.

5.3.2 Where practicable, wages may be paid by electronic funds transfer into an employee's nominated bank or building society account or paid by cheque.

5.4 Superannuation

5.4.1 Application

In addition to the rates of pay prescribed by this Award, eligible employees, (as defined in clause 5.4.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.4.

5.4.2 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 clause 5.4.3(a)). Each payment of contributions shall be rounded off to the nearest 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 eligible 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 employees' 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 an eligible employee during any unpaid absences except in the case of absence on workers' compensation.

(e) Other contributions - Nothing in clause 5.4 shall preclude an employee from making contributions to a fund in accordance with the provisions of the trust deed of the fund.

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

(g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed in clause 5.4.

5.4.3 Definitions

(a) "Approved fund" means a fund approved for the purposes of clause 5.4 by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.4. Such approval fund may be individually named or may be identified by naming a particular class or category.

(b) "Eligible employee" means all:

- (i) full-time employees; and
- (ii) casual employees regularly working 8 hours per week or more in any one week; and
- (iii) apprentices or trainees.

(c) "Ordinary time earnings" means 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.

5.4.4 An "Approved Occupational Superannuation Scheme or Fund" shall be:

- (a) Austsafe;
- (b) HortSuper;
- (c) Sunsuper;
- (d) such other Scheme or Fund as agreed to between the relevant employer and Union parties to this Award and recorded in an approved Industrial Agreement; or
- (e) in relation to any particular employer, any other Scheme or Fund to which that employer was already making superannuation contributions on behalf of the employees as at 20 February 1989 and which is approved under the *Occupational Superannuation Standards Act 1987*;
- (f) as to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to s. 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.
- (g) any Fund agreed between an employer and an employee who holds a Certificate issued pursuant to s. 115 of the Act where membership of a Fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of s. 115:

Provided that in the event of any dispute as to whether a Scheme or Fund satisfies the requirements of clause 5.4.4, the onus of proof shall rest with the employer.

5.4.5 The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.

- (a) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
- (b) A person must not coerce someone else to make an agreement.
- (c) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.
- (d) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.1.

5.4.6 *Exemptions*

- (a) An employer may apply to the Commission for exemption from the provisions of clause 5.4 on the grounds of:
 - (i) incapacity to pay the costs associated with its implementation; or
 - (ii) special or compelling circumstances peculiar to the business.
- (b) An employer may apply to the Commission for relief from the specification of funds listed in clause 5.4.4 where employees working under this Award are a distinct minority within the workforce and an undue multiplicity of funds would otherwise result.

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

6.1 Hours of work

6.1.1 Day workers

- (a) Subject to clause 6.1.3 (Working of a 38 hour week) and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following basis:
 - (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or

(iii) 114 hours within a work cycle not exceeding 21 consecutive days; or

(iv) 152 hours within a work cycle not exceeding 28 consecutive days.

6.1.2 The ordinary working hours for employees shall not exceed 10 hours per day to be worked continuously exclusive of meal breaks between the hours of 5.00 a.m. and 7.00 p.m. on any 5 consecutive days between Monday to Sunday inclusive, subject to the following:

(a) Wholesale:

(i) All ordinary hours worked by full-time employees on Saturdays shall be paid for at the rate of time and a quarter.

(ii) All ordinary hours worked by full-time employees on Sundays shall be paid for at the rate of double time.

(iii) Casual employees:

(1) The spread of ordinary working hours for casual employees shall be between 5.00 a.m. and 7.00 p.m., Monday to Sunday inclusive with a minimum payment as for 4 hours work for each engagement.

(2) All time worked by casual employees on Sundays shall be paid for at the rate of double time.

(b) Retail:

(i) All ordinary hours worked by full-time employees on Sundays shall be paid for at the rate of double time.

(ii) Casual employees:

(1) The spread of ordinary working hours for casual employees shall be between 5.00 a.m. and 7.00 p.m., Monday to Sunday inclusive with a minimum payment as for 4 hours work for each agreement.

(2) All time worked by casual employees on Sundays shall be paid for at the rate of double time.

(c) Landscaping, plant hire and turf growing and cutting:

(i) All ordinary hours worked by full-time employees on Saturdays shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

(ii) All ordinary hours worked by full-time employees on Sundays shall be paid for at double time.

(iii) Casual Employees:

(1) The spread of ordinary working hours for casual employees shall be between 5.00 a.m. and 7.00 p.m., Mondays to Sunday inclusive, with a minimum payment as for 4 hours work for each engagement.

(2) All time worked by casual employees on Saturdays shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

(3) All time worked by casual employees on Sundays shall be paid for at the rate of double time.

(d) Any arrangement of hours which includes a Sunday as ordinary hours shall be subject to agreement between the employer and the majority of employees concerned.

(e) All time worked by an employee on their first rostered day off in a week shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter:

Provided further that where an employee is required to work on their second rostered day off, such employer shall be paid for at the rate of double time.

- (f) The ordinary starting and ceasing times of various groups of employees or individual employees, may be staggered provided that there is agreement between the employer and the majority of employees directly affected.

Employees are required to observe the nominated starting and finishing times for work days, including designated breaks to maximise available working time. Preparation for work and cleaning up of the employee's person shall be in the employee's time.

6.1.3 Working of a 38 hour week

- (a) The 38 hour week shall be worked in one of the following ways, most suitable to the particular business, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:
- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each work cycle; or
 - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.
- (b) Subject to the provisions clause 6.1.2, employees may agree that the ordinary hours of work are to exceed 8 on any day, thus enabling more than one work day to be taken off during a particular work cycle.
- (c) Regardless of any other provision in clause 6.1, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned, or an individual employee, may agree to accrue up to a maximum of 6 rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date on which the first rostered day off was accrued, and may be taken as part days off. Consent to accrue rostered days off shall not be unreasonably withheld by either party.

An employee shall be paid the accumulated time off where the employer is unable to release the employee 12 months after the time has accrued or at the time of termination by either party.

- (d) Different methods of working of a 38 hour week may apply to individual employees, groups or sections of employees in the business concerned.

6.1.4 Procedures for enterprise level discussions

- (a) The employer and all employees concerned in each establishment shall consult over the most appropriate means of implementing and working a 38 hour week.
- (b) The objective of such consultation shall be to reach agreement on the method of implementing and working the 38 hour week in accordance with clause 6.1.
- (c) The outcome of such consultation shall be recorded in writing.
- (d) In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their relevant employee or employer organisation.
- (e) Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer shall have the right to make the final determination as to the method by which the 38 hour week to be worked from time to time.
- (f) Upon giving 7 days' notice or such shorter period as may be mutually agreed upon, the method of working the 38 hour week may be altered from time to time, following negotiation between the employer and employees concerned, utilising the foregoing provisions of clause 6.1.

6.2 Meal breaks

- 6.2.1 The time allowed for a meal shall not be less than one half-hour and not more than one hour, and shall be taken between the 3rd and 6th hours after commencing work.

6.2.2 If the meal period prescribed in clause 6.2.1 is worked, it will be paid for at the rate of double time, such payment to continue until a meal period has commenced. Such meal period shall be of the usual duration for ordinary hours of work prescribed by clause 6.1 of this Award.

6.3 Rest pauses

6.3.1 Each 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:

6.3.2 Where there is agreement between the employer and the majority of employees, periods of work can be re-arranged by moving or combining rest pauses so there is less disruption to the daily work.

6.4 Overtime

6.4.1 All time worked in excess of the ordinary weekly working hours or outside the time specified in clause 6.1 or outside the hours specified in the employee's roster shall be deemed overtime and paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

Except where otherwise provided all 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 2 hours' work or payment therefor.

Except where otherwise provided all work done on Sundays shall be deemed overtime and paid for at the rate of double time, with a minimum of 2 hours' work or payment therefor.

6.4.2 Where an employee is required to continue working for more than 2 hours after the ordinary ceasing time, they shall be allowed 30 minutes for a meal after the first hour worked, also 30 minutes after each further 4 hours worked.

6.4.3 Meal allowances

Where an employee is called upon to work overtime for more than 2 hours after the ordinary ceasing time without notice on the previous day of the intention to work overtime, they shall be paid by the employer the sum of \$12.10 as meal money.

Where an employee has provided themselves with customary meals because of receipt of notice to work overtime, in the event of the work not being done or ceasing before the respective meal time, they shall be entitled to an allowance of \$12.10 for each meal so provided.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of their employment be entitled to annual leave on full pay of 152 hours.

For the purposes of clause 7.1 "year of employment" means and includes any year of employment completed on or after 3 December 1973.

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

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

(b) In every other case, at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.

7.1.2 Leave debits

Such leave will be paid and debited on the basis of hours actually taken.

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 to them, their pay, calculated in

accordance with clause 7.1.5, for 152 hours and also their ordinary pay for any public holiday occurring during such period of 152 hours.

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 1/12th of their pay for the period of their employment calculated in accordance with clause 7.1.5.

7.1.5 Calculation of annual leave pay

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

- (a) Shift workers - Subject to clause 7.1.5(c), the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or public holiday shifts.
- (b) Leading hands etc. - Subject to clause 7.1.5(c), leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
- (c) All employees - Subject to the provisions of clause 7.1.5(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
 - (i) The employee's ordinary wage rate as described by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) Leading Hand Allowance or amounts of a like nature;
 - (iii) A further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).
- (d) Clause 7.1.5(c) does not apply:
 - (i) to any period or periods of annual leave:
 - exceeding 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
 - 4 weeks in any other case; or
 - (ii) to 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 Rostered days off arising from the implementation of the 38 hour week

An employee shall not derive any additional benefit for rostered days off falling within a period of annual leave.

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

7.1.8 Except as provided in clause 7.1.4 it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of 7.6 hours' sick leave after each 6 weeks of employment.
- (c) Payment for sick leave will be made based on the ordinary number of hours which would have been worked if the employee were not absent on sick leave.
- (d) Sick Leave may be taken for part of a day.

(e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

(f) Part-time employees accrue sick leave on a proportional basis.

7.2.2 Employee must give notice

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

7.2.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence to the employer's satisfaction, about the nature and approximate duration of the illness.

7.2.4 Accumulated sick leave

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

- (a) The employee is absent from work on unpaid leave granted by 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.
- (d) The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.5 Workers' compensation

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

7.3 Bereavement leave

7.3.1 Full-time and part-time employees

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

7.3.2 Long-term casual employees

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

7.3.3 "Immediate family" includes:

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

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

7.4 Long service leave

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

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Public holidays

7.6.1 All work done by any employee on:

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

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

7.6.2 Labour Day

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

7.6.3 Annual show

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

7.6.4 Double time and a-half

For the purposes of clause 7.6, where the rate of wages is a full-time rate, "double time and a-half" means 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.

7.6.5 Stand down

Any 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.

7.6.6 Substitution

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

Provided that, where an employee is subsequently required to work on such substituted days, the employee shall be paid at the rate applicable for the holidays that have been substituted.

7.7 Jury service

- (a) An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.
- (b) Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.
- (c) Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.
- (d) If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.
- (e) "Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

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

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

PART 9 - TRAINING AND RELATED MATTERS

9.1 Training

9.1.1 The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this award, 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; and
- (c) removing barriers to the use of skills acquired.

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

10.1 Accidents

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

10.2 Wet weather

10.2.1 All time lost through wet weather shall be paid for provided the employees turn up on the work and hold themselves in readiness. The employer or other person under whose direction the employees are working shall decide whether or not it is too wet to work:

Provided that when employees are prevented by wet weather from following their usual work, unless they 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.

10.3 Work in the rain

10.3.1 When an employee is required to perform work in the rain and by doing so gets their clothes wet, they shall be paid double rates for all work so performed. Such payment shall continue until such time as the employee finished work or is able to change into dry clothing:

Provided that where effective waterproof clothing (consisting of sou'wester, raincoat and waterproof rain trousers) is made available by the employer for the use of employees required to work in the rain the payment of double rates herein prescribed shall not apply.

10.4 Clothing, equipment and tools

10.4.1 Employers to supply tools

All tools and other special equipment required to be used by employees in the course of their work shall be supplied and maintained by the employer, but the employees shall be liable for damage done to such tools or equipment wilfully or through negligence.

10.5 First aid

10.5.1 Any qualified employee appointed by the employer to perform first-aid duty shall be paid \$12.80 per week in addition to their ordinary rate of pay.

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

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

(a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.

(b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

(a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:

(i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and

- (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the employer that 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 Union:

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

11.1.5 Conduct

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

11.2 Time and wages record

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

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the Award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a 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 Posting of award

A copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the employer.

11.4 Union encouragement

Clause 11.4 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.

11.4.1 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 the employee.

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

11.4.2 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.

11.4.3 Deduction of union fees

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of Union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

11.5 Union tickets

The employer shall, on the request in writing of any employee, pay to the Union, out of the money due to such employee in respect of wages, the annual contribution of such employee as a member of the Union.

Dated 29 July 2003.

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

Operative Date: 29 September 2003