

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

RACING INDUSTRY EMPLOYEES' OCCUPATIONAL SUPERANNUATION AWARD - STATE 2003

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the Racing Industry Employees' Occupational Superannuation 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 Racing Industry Employees' Occupational Superannuation Award - State 2003 as at 1 September 2010.

Dated 1 November 2010.

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

RACING INDUSTRY EMPLOYEES' OCCUPATIONAL SUPERANNUATION AWARD - STATE 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Racing Industry Employees' Occupational Superannuation Award - State 2003.

1.2 Arrangement

Subject Matter	Clause No.
PART 1 - APPLICATION AND OPERATION	
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PART 2 - FLEXIBILITY

No provisions inserted in this Award relevant to this Part.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

No provisions inserted in this Award relevant to this Part.

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

No provisions inserted in this Award relevant to this Part.

PART 5 - WAGES AND WAGE RELATED MATTERS

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

No provisions inserted in this Award relevant to this Part.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

No provisions inserted in this Award relevant to this Part.

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

No provisions inserted in this Award relevant to this Part.

PART 9 - TRAINING AND RELATED MATTERS

No provisions inserted in this Award relevant to this Part.

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

No provisions inserted in this Award relevant to this Part.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Posting of Award

11.1

1.3 Coverage

This Award applies to eligible employees and to their employers employed under any of the undermentioned Awards and Industrial Agreements in respect of Occupational Superannuation:

- (a) Racecourses and Showground Employees' Award - Brisbane
- (b) Employees - Albion Park Trotting Club and Gabba Greyhound Racing Club - Industrial Agreement
- (c) Racecourse Employees Award - Southern Division (Eastern District) 2003
- (d) Trotting Club Employees' Award 2002
- (e) Racecourse Employees - Townsville Turf Club - Industrial Agreement
- (f) Employees - Rockhampton Agricultural Society - Industrial Agreement
- (g) Sports Ground Employees' Award - Southern Division (Eastern District) 2002

1.4 Date of operation

This Award takes effect from 14 July 2003.

1.5 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.3 and their employers, and the Union and its members.

1.6 Definitions

- 1.6.1 The "Act" means 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 Australian Workers' Union of Employees, Queensland.

PART 2 - FLEXIBILITY

No provisions inserted in this Award relevant to this Part.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

No provisions inserted in this Award relevant to this Part.

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

No provisions inserted in this Award relevant to this Part.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Occupational Superannuation

In addition to the rates of pay prescribed by the Awards and Industrial Agreements mentioned in clause 1.3, eligible employees, as defined herein, shall be entitled to Occupational Superannuation Benefits, as provided herein.

5.1.1 Contribution

(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.

5.1.2 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.

5.1.3 Other contributions

Nothing in clause 5.1 shall preclude an employee from making contributions to a Fund in accordance with the provisions thereof.

5.1.4 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.

5.1.5 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.

5.1.6 Definitions

- (a) "Approved Fund" means a Fund approved for the purposes of this Award by the Commission as one to which Occupational Superannuation contributions may be made by an employer on behalf of an employee, as required by this Award. Such approved Fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" shall mean any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.1.1 effective from the commencement of that qualifying period.
- (c) "Fund" means a Superannuation Fund satisfying the Commonwealth legislation for 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" shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

5.1.7 *Approved funds*

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 parties to this Award and as recorded in an approved Industrial Agreement.
- (c) In the case of a minority group of employees of a particular employer, any Industry, Multi-Industry or other Fund which has been approved in an Award of, or an Agreement approved by, an Industrial Tribunal, whether State or Federal jurisdiction, and already has practical application to the majority of Award employees of that Employer.
- (d) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any Fund nominated by the employer and approved by the Brethren.
- (e) Any Fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a Fund cited in an Award would be in conflict with the conscientious beliefs of that employee in terms of section 115.
- (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 5.1.1 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions:

Provided that the making of a deposit, an initial or other contributions subsequent to 29 September 1989, but on a retrospective basis, in respect of any period up to and including 29 September 1989, shall not under any circumstances bring a Fund within the meaning of clause 5.1.7. The mere signing and submission of any nomination for membership documents to Trustees of a Fund prior to 29 September 1989 does not bring a Fund within the meaning of clause 5.1.7.

5.1.8 *Challenge of a Fund*

An eligible employee being a member or a potential member of a Fund, as well as the Union, may by notification of a dispute challenge a Fund on the grounds that it does not meet the requirements of clause 5.1.

Notwithstanding that the Commission determines that a particular Fund does not meet the requirements of clause 5.1, 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 5.1 up to and including the date of that determination.

In the event of any dispute over whether any Fund complies with the requirements of clause 5.1, the onus of proof shall rest upon the employer.

5.1.9 *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 5.1.7(c), (d), (e) and (f), shall be determined by a majority decision of employees.
- (b) Employees to whom these provisions apply who as at the date of this variation are members of an established Fund covered by clause 5.1.7(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.1.1 paid into a Fund as provided for elsewhere in clause 5.1.7 in lieu of the established Fund to which clause 5.1.7(f) has application.
- (c) The initial selection of a Fund recognised in clause 5.1.7 shall not preclude a subsequent decision by the

majority of employees in favour of another Fund recognised under clause 5.1.7 where the long term performance of the Fund is clearly disappointing.

Where clause 5.1.9 has been utilised and as a result another approved Fund is determined, access to a further re-appraisal of the Fund for the purpose of favouring yet another Fund shall not be available until a period of 3 years has elapsed after that utilisation:

5.1.10 *Enrolment*

- (a) Each employer to whom clause 5.1 applies shall as soon as practicable as to both current and future eligible employees:
 - (i) notify each employee of the employee's entitlement to Occupational Superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate Fund within the meaning of clause 5.1.7;
 - (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 forms provided by the employer to enable that employee to become a member of the Fund; and
 - (iv) submit all completed application forms 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 5.1 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 5.1.1.
- (c) Where an employer has complied with the requirements of clause 5.1.10(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employer of that form, then that employer shall:
 - (i) Advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise the employee's entitlement to the Occupational Superannuation benefit prescribed by clause 5.1.
 - (ii) In the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any Occupational Superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form is received by the employer.
 - (iii) In the event that an eligible employee fails to return a completed and signed application form within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form is a pre-requisite to the payment of any Occupational Superannuation contributions.
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.1.10(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.1.10(c)(i) and (iii).
 - (v) Where an employer fails to provide an eligible employee with an application form in accordance with clause 5.1.10(a)(iii) the employer shall be obliged to make contributions as from the date an employee became an "eligible employee" provided that an eligible employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form within such period of 28 days the provisions of clause 5.1.10(c) shall apply.

5.1.11 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.1.8, 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 5.1.1 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 5.1.8, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.1 excepting that resort to clause 5.1.11 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.

5.1.12 *Record keeping*

The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to Occupational Superannuation, and of payments made to the approved Fund in similar form to time and wages records required to be kept in accordance with section 366 of the Act, and shall have such records available for inspection by an Industrial Inspector or officer of the Union, authorised pursuant to sections 372 and 373 of the Act.

5.1.13 *Exemptions*

An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.1 in the following circumstances:

- (a) Incapacity to pay the costs associated with its implementation, or
- (b) Any special or compelling circumstances peculiar to the business of the employer.

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

No provisions inserted in this Award relevant to this Part.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

No provisions inserted in this Award relevant to this Part.

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No provisions inserted in this Award relevant to this Part.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

11.1 Posting of Award

A copy of this Award shall be posted up in a conspicuous place, accessible to all employees.

Dated 6 May 2003.

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

Operative Date: 14 July 2003