

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130- award review

TOUR GUIDES AWARD - STATE 2003

(Matter A/2010/161)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

18 September 2012

AWARD REVIEW

After reviewing the above Award as required by s.130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 31 August 2012.

TOUR GUIDES AWARD - STATE 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Tour Guides Award - State 2012.

1.2 Arrangement of Award

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1.3 Definitions

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

1.3.2 "Casual Employee" means an employee who is engaged as such in accordance with clause 4.7.

1.3.3 "Commission" means the Queensland Industrial Relations Commission.

1.3.4 "Employer" means any organisation or person who employs Tour Guides to conduct, supervise or assist in a tour and/or supplies guide services to travel agents, other tour companies, inbound tour operators, tour product operators, educational product operators, resorts, hotels and/or other similar organisations.

1.3.5 "South-Eastern Division" means that portion of the State along or east of a line commencing at the junction of the southern border with 147 degrees of east longitude; thence by that meridian of longitude due north to 22 degrees of south latitude; and along or south of a line commencing at the junction of 147 degrees of east longitude with 22 degrees of south latitude; thence by that parallel of latitude due east to the eastern limit of the

State.

- 1.3.6 "Tour Guide" means an employee specifically engaged to conduct a guided tour involving explanations in one or more languages of the sights, venues of facilities being visited and generally to guide and assist tour members (including safety and welfare considerations) and do whatever is reasonably necessary to maximise their appreciation and enjoyment of the tour. Tour Guides may also be involved in selling additional tours as part of their normal Tour Guide activities, and any other duties that are incidental to Tour Guide operations.
- 1.3.7 "Union" means United Voice, Industrial Union of Employees, Queensland in the South-Eastern Division and The Australian Workers' Union of Employees, Queensland for the remainder of the State.

1.4 Commencement date

This Award takes effect and has the force of law throughout the State of Queensland as from 31 August 2012.

1.5 Coverage

1.5.1 This Award applies to the Employers as defined in clause 1.3.4 and their employees for whom rates of pay are prescribed in this Award.

1.5.2 Awards exempted

This Award does not apply to employees who are currently covered by the following Awards:

- Accommodation Industry (other than Hotels) Award - South-Eastern Division 2002;
- Hotels, Resorts and Certain Other Licensed Premises Award - State (Excluding South-East Queensland) 2002;
- Hotels, Resorts and Accommodation Industry Award - South-Eastern Division 2002;
- Motor Drivers, etc., Award - Southern Division 2002; and
- Passenger Vehicle Drivers etc., Award - Northern and Mackay Divisions 2002.

1.5.3 Partial exemption

- (a) Notwithstanding any other provision of this Award, any Tour Guide engaged on a weekly basis may enter into a written agreement with the Employer to receive a remuneration package that is at least 20% above the wage rates prescribed in clause 5.2 in return for being exempt from all of the provisions of this Award except for annual leave (clause 7.1), sick leave (clause 7.2), family leave (clause 7.5), bereavement leave (clause 7.3), long service leave (clause 7.4), occupational superannuation (clause 5.6), contract of employment (clause 4.2), commission payments (clause 5.3), payment of wages (clause 5.4), redundancy (clause 4.5) and Union encouragement (clause 11.4).
- (b) In the case of Casual Employees, employees in receipt of a casual loading of at least 38% above the wage rate prescribed in clause 5.2 shall be exempted from all provisions of the Award except for commission payments (clause 5.3), payment of wages (clause 5.4), occupational superannuation (clause 5.6), long service leave (clause 5.7), bereavement leave (clause 7.3), contract of employment (clause 4.2), overtime (clause 6.3.1 only), and Union encouragement (clause 11.4).

A copy of the terms of the agreement will be supplied to the employee.

There will be taken to be mutual agreement for the purposes of clause 1.5.3(a) if an Employer employed a Tour Guide and remunerated that employee at a level constant with a partial exemption rate prescribed in this Award prior to 1 January 2003.

The overall terms and conditions of employment agreed under clause 1.5.3(a) must not be less favourable than the provision of this Award as a whole and the employee shall not be disadvantaged by the agreement, taking into consideration the Award rate the employee would otherwise have been paid had the employee not entered into such agreement.

For any agreement entered into under clause 1.5.3(a) and, in accordance with s. 366(2) of the Act, there will be no requirement for the Employer to keep particulars of the employee's starting and finishing times each day. In relation to Casual Employees engaged under clause 1.5.3(b), sufficient records must be kept to establish whether any entitlement arises to overtime in terms of clause 6.3.1.

If any employee considers that they are disadvantaged by this agreement under clause 1.5.3(a) they may withdraw from the agreement with 4 weeks' written notice to the Employer.

1.6 Parties bound

This Award is legally binding upon the Employers as described in clause 1.3.4, their employees as described in clause 1.3.6 and the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees in the South-Eastern Division of the State and The Australian Workers' Union of Employees, Queensland in the remainder of the State.

1.7 Benefits not to be withdrawn

No employee shall suffer any reduction in overall benefits as a consequence of the introduction of this Award.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an Employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedures

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 (relevant) Union, be reported to the relevant officer of that (relevant) Union and the senior management of the Employer or the Employer's nominated industrial representative. An employee who is not a member of a (relevant) 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 any 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 EMPLOYEE DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

4.1 Anti-discrimination

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

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

4.1.2 Accordingly, in fulfilling their obligations under the grievance and dispute 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.

4.1.3 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.

4.1.4 Nothing in clause 4.1 is to be taken to affect:

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

4.2 Contract of employment

4.2.1 Employees (other than Casual Employees) covered by this Award shall be advised in writing of their employment category upon appointment. Employment categories are:

- (a) Full-time employee;
- (b) Part-time employee (as prescribed in clause 4.6);
- (c) Casual Employee (as prescribed in clause 4.7); and
- (d) Fixed term specific task (FTST) employee (as prescribed in clause 4.8).

4.2.2 Employees owe a duty of care to the Employer for all uniforms, protective clothing and equipment supplied to the employee during the course of duty.

4.2.3 Where an employee is absent from work for a period of 3 working days without notification to the Employer of illness or other reasonable excuse, such employee shall be considered to have terminated their employment without notice from the time such employee was absent from work.

4.3 Termination of employment

4.3.1 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.

4.3.2 Termination by employer

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

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

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.3.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week. 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 4.3.2(d) for a period of notice of one week.

4.3.4 Annual leave shall not be used to provide the notice prescribed by clauses 4.3.2.(a) and (b) and clause 4.3.3.

4.3.5 *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.

4.4 **Introduction of changes**

4.4.1 *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.

4.4.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.4.1.

- (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.

4.5 Redundancy

4.5.1 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 4.5.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.5.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.5.1 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 4.3.
- (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.

4.5.3 Transmission of business

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.5.3, "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.

4.5.4 Time off during notice period

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.5.1, 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.

4.5.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.5.1, 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.

4.5.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.3.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.5.1(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.

4.5.7 *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.

4.5.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.5.1(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.

4.5.9 *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.

4.5.10 *Employees with less than one year's service*

Clause 4.5 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.

4.5.11 *Employees exempted*

Clause 4.5 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.

4.5.12 *Employers exempted*

Subject to an order of the Commission, in a particular redundancy case, clause 4.5 shall not apply to an employer that employs employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

4.5.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.5.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.5.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.5.14 *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.

4.6 Part-time employment

4.6.1 *Rates of pay* - Part-time employees shall be paid at the rate of 1/38th of the weekly rate of wages prescribed by the appropriate classification per hour, with a minimum payment as for 4 hours on any day when work is performed and a minimum of 16 hours per week.

4.6.2 *Overtime* - Part-time employees shall be entitled to overtime if they work in excess of 8 hours, or 12 hours where such an arrangement has been mutually agreed, in any one day or 38 hours in any one week:

Provided that part-time employees shall be entitled to overtime if they work in excess of the ordinary hours prescribed in rosters which have been agreed pursuant to that clause.

4.6.3 *Hours of duty* - The hours of duty of part-time employees shall be worked in accordance with a roster under the provisions of clause 6.2 (Rosters) of this Award.

4.6.4 *Statutory holidays*

- (a) Part-time employees shall be entitled to the holiday provisions of clause 7.6 of this Award.

- (b) A part-time employee who is rostered to work on a day of the week on which a statutory holiday falls and who is not required to work on that day shall be paid for the hours which would otherwise have been worked on that day.
- (c) Should a part-time employee be rostered regularly to work on the day on which Labour Day, Show Day and Easter Saturday fall and such statutory holidays occur during a period of the employee's annual leave, there shall be added to the employee's annual leave an extra day for each such day so occurring.

4.6.5 *Annual leave* - Part-time employees shall be entitled to annual leave in accordance with clause 7.1 (Annual Leave) of this Award:

Provided that "full pay" shall be calculated in the same proportion as the average number of hours worked per week during the employee's year of employment bears to 38 hours per week.

4.6.6 *Sick leave* - Where a part-time employee has accumulated an entitlement to sick leave in accordance with clause 7.2 (Sick Leave) of this Award, payment for sick leave shall be based upon the number of hours that the employee would otherwise have worked on the day or days when such leave is taken:

Provided that no such employee shall be entitled to sick leave within each year of employment exceeding the proportion of 60.8 hours sick pay that the employee's average weekly working hours bears to 38 hours per week.

4.6.7 *Bereavement leave* - In the case of a part-time employee entitled to bereavement leave as per clause 7.3 of the Award, payment for such shall be based upon the number of hours that the employee would otherwise have worked on the day or days when such leave is taken.

4.6.8 *Termination* - Termination of service of a part-time employee shall be in accordance with clause 4.3:

Provided that a "week's wage" shall be an amount equivalent to the proportion that the employee's average weekly working hours bears to 38 hours per week.

4.7 Casual employment

4.7.1 Casual Employees shall not be employed for more than 38 ordinary hours in one week.

4.7.2 Casual Employees shall be engaged by the hour for not less than 2 hours for each engagement.

4.7.3 A Casual Employee shall be paid per hour of engagement, at the rate of 1/38th of the weekly rate, prescribed for the appropriate classification plus a loading of 23% for all ordinary time worked to be calculated to the next highest cent wherever a fraction of a cent results.

4.8 Fixed term specific task (FTST) employee

4.8.1 A fixed term specific task (FTST) employee is one who by mutual agreement with the Employer undertakes a specific task or assignment (e.g. tours) for a fixed sum which is no less than the Award payment calculated at the average time such a task or assignment takes based on custom and practice.

4.8.2 An FTST employee may be a full-time weekly employee, a part-time weekly employee or a casual.

4.8.3 Provided that, once a FTST is commenced, the employee must receive at least 3 hours pay at the appropriate rate even though the task may not be completed through no fault of the employee (e.g. sickness, accident, breakdown or inclement weather).

4.9 Probationary period

4.9.1 An employee may be engaged on probation for a period of up to three months duration or such longer period that is agreed in advance in accordance with the Act.

4.9.2 The employee will complete a first probationary review no later than mid-way through the defined probationary period. Following the conclusion of the first probationary review, the Employer will provide the employee with feedback on their performance.

4.9.3 Where areas of unsatisfactory performance are identified, the employee will be made aware of these, the standards of satisfactory performance required and the dates by which they are required to be achieved.

4.9.4 The Employer will complete a final probationary review by before the end of the probationary period specified in the contract of employment and immediately inform the employee of the outcome of this review in the following terms -

- (a) where the Employer has determined that the employee has satisfactorily completed their probation, their employment will continue and the employee will be given confirmation in writing; or
- (b) where the Employer, as a consequence of the probationary reviews, has determined that the employee has not satisfactorily met the Employer's work performance requirements, the employee will be informed of the outcome of the final review and will be given the appropriate notice of termination of employment or payment in lieu of such notice.

4.9.5 Should either party find the probationary period is not progressing satisfactorily, the employment may be terminated by the required notice or pay in lieu thereof by either party.

4.10 Mixed functions

Where any person on any one day performs 2 or more classes of work for which a differential rate fixed by any award or agreement 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 the employee works on that day at the same rate, which shall be at the highest rate fixed by such award or agreement in respect of any of such classes of work, and if employed for 4 hours or less on the class or classes of work carrying a higher rate, the employee shall be paid at such highest rate for 4 hours.

4.11 Transmission of business

4.11.1 Where a business is transmitted from an Employer to another Employer the following provides for continuity of service for employees for the purposes of:

Annual Leave
Sick Leave
Long Service Leave
Family Leave
Bereavement Leave
Redundancy Provisions
and all other service related entitlements

4.11.2 The transfer of a calling is taken not to break the transferred employee's continuity of service.

4.11.3 A "transferred employee" is a person who becomes an employee of an Employer (the "new Employer") because of the transfer of a calling to the new Employer from another Employer (the "former Employer").

4.11.4 Even if a person is dismissed by the former Employer before the transfer of a calling, the person is taken to be a transferred employee if:

- (a) the person is employed by the new Employer after the transfer, and the employee:
 - (i) was dismissed by the former Employer within 1 month immediately before the transfer; and
 - (ii) is re-employed by the new Employer within 3 months after the dismissal.

4.11.5 A period of service with the former Employer is taken to be a period of service with the new Employer.

4.11.6 An employee's continuity of service with an Employer is not broken if:

- (a) the employee's service is temporarily lent and let or hire; or
- (b) the employee is absent on paid or unpaid leave approved by the Employer.

4.11.7 An employee's continuity of service with an Employer is not broken if:

- (a) the employee's employment is terminated by the Employer or employee because of illness or injury; and
- (b) the Employer re-employs the employee; and
- (c) the employee has not been employed in a calling (whether on the employee's own account or as an employee) between the termination and the re-employment.

4.11.8 An employee's continuity of service with an Employer is not broken if:

- (a) the employee's employment is interrupted or terminated by the Employer with intent to avoid an obligation under this part, an industrial instrument or employment contract; or
- (b) the employee's employment is interrupted or terminated by the Employer as a direct or indirect result of an industrial dispute, and
- (c) the Employer re-employs the employee.

4.11.9 An employee's continuity of service with an Employer is not broken if:

- (a) the employee's employment is interrupted or terminated by the Employer because of slackness of trade or business; and
- (b) the Employer re-employs the employee.

4.12 Incidental and peripheral tasks

4.12.1 An Employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skills, competence and training, and classification under this Award.

4.12.2 An Employer may direct an employee to carry out such duties and use such tools and equipment as may be required:

Provided that the employee has been properly trained in the use of such tools and equipment (where relevant).

4.12.3 Any direction issued by an Employer pursuant to clauses 4.12.1 and 4.12.2 shall be consistent with the Employer's responsibilities to provide a safe and healthy working environment.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Classifications

The classifications of employees covered by this Award shall be as follows:

5.1.1 *Introductory Tour Guide* - Employees with no relevant industry experience may be employed as an Introductory Tour Guide for the first 6 months at two levels. During the first 3 months as an introductory Tour Guide A, at 82% relativity to trade rate equivalent, and for the subsequent period of 3 months as an introductory Tour Guide B; at 87% relativity to the trade rate equivalent.

5.1.2 *Tour Guide Level 1* (Relativity to Trade Equivalent 92%) - shall mean an employee having undertaken 6 months employment at the introductory level or an employee with relevant industry experience that is at least equivalent to the introductory level.

- (a) An employee at this level should be versed in guest services and public relations skills;
- (b) An employee at this level should understand matters of cultural sensitivity concerning tourists from other nations;
- (c) An employee at this level should have reasonable knowledge of tourism attractions and facilities in the area.
- (d) An employee at this level should also have a good understanding of the health and safety obligations required for the protection of tourists that may not understand dangers associated with the Australian environment and wildlife; and
- (e) An employee at this level may be required to hold the appropriate driver authorisation.

Indicative tasks of an employee at this level may include any of the follows:

- Conducting and/or supervising a number of tourists on a tour;
- Collecting cash;
- Driving an appropriate vehicle; and
- Promotional activities and incidental sales.

5.1.3 *Tour Guide Level 2* (Relativity to Trade Equivalent 100%) - means an employee possessing the skills of a Level 1 employee who is required to have detailed knowledge of the tourism attractions and facilities in the area and to fluently use a second language in the course of their duties. A "second language" is a language other than the employee's first language or native tongue.

5.1.4 *Tour Guide Level 3* (Relativity to Trade Equivalent 110%) - means an employee possessing the skills of a Level 2 employee who is required to fluently use more than two languages in the course of their duties.

5.2 Wages

Employees shall be paid not less than the following rates of pay:

Classification

Per Week
\$

Introductory Tour Guide	(a) First 3 months	626.90
	(b) Over 3 and up to 6 months	649.80
Tour Guide Level 1		670.70
Tour Guide Level 2		705.20
Tour Guide Level 3		748.30

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.

5.3 Commission payments

Whilst supplementary Commission payments are not an uncommon feature in the remuneration arrangements for Tour Guides in this industry, they may not be used to offset the base wage rates set out in clause 5.2 for any ordinary time worked. Commission payments may, however, be used to offset or absorb any penalty payments such as those applicable to night work, weekend work, work on statutory holidays, travelling time or overtime. Regular commission payments may be included for the purpose of calculating the partial exemption rates in clause 1.5.3.

5.4 Payment of wages

5.4.1 All wages must be paid in the Employer's time, and shall be paid weekly or fortnightly as determined by the Employer, but on the day being fixed it shall not be altered more than once in 3 months.

In the case of a statutory holiday occurring on the payday, such payment shall be made on the last banking business day before the holiday.

5.4.2 Wages may be paid by electronic funds transfer into the bank of other financial institution of the employee's choice.

5.4.3 No Employer shall hold more than 2 days' wages in hand.

5.4.4 In cases of termination of employment the employee shall be paid no later than the next ordinary pay day.

5.5 Allowances

5.5.1 *Supply of Torches and Batteries* - The Employer shall either provide suitable torches and batteries as required (such items to remain the property of the Employer) or alternatively, shall pay to the employee an allowance of \$5.62 per week to provide this equipment.

5.5.2 *First Aid Allowance* - Employees qualified as first-aid attendants, who are required to carry out the duties of a qualified first-aid attendant shall be paid an allowance of \$13.50 per week or \$2.69 per shift in the case of casual or part-time employees.

5.5.3 *Operation of Allowances* - The foregoing allowances prescribed by this clause shall be paid irrespective of the times at which the work in question is performed, and shall not be subject to any premium or penalty additions.

5.5.4 *Motor Vehicle Allowance* - When an employee is required to use their own vehicle in the course of their duties, such employee shall be paid an allowance of 55.45c per kilometre.

5.5.5 *Mobile Phone Allowance* - Where the employee is required to have a mobile phone for work related duties, a mobile phone will be provided and paid for by the Employer:

Provided that, except in the case of a non-work related emergency such phone may be used for work related purposes only:

Provided further that where the employee already has their own phone, they may enter into a mutually acceptable alternative arrangement with the Employer regarding the use of their own phone for work related purposes.

5.6 Occupational superannuation

5.6.1 *Local Government Employees*

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

5.6.2 *Employees of Local Government Entities not subject to compulsory arrangements pursuant to clause 5.6.1*

- (a) An Employer shall contribute to an approved superannuation fund as specified in clause 5.4.2 on behalf of each eligible employee, 9% of the employees' ordinary time earnings (or such other amount as may be prescribed from time to time by legislation) to comply with the *Superannuation Guarantee Administration Act 1992* as amended from time to time.
- (b) Ordinary time earnings for the purpose of this clause means the actual ordinary rate of pay the employee received 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 and weekend work, fares and travelling time allowances or any other extraneous payments of a like nature.

Provided that:

- (c) Contributions on behalf of each eligible employee shall apply from the date of the employee's commencement of employment with the Employer.
- (d) The fund must be complied with as follows:
 - (i) An Employer who receives written authorisation from the employee, must commence making payments into the fund on behalf of the employee within 14 days of receipt of the authorisation.
 - (ii) An employee may vary their additional contributions by a written authorisation and the Employer must alter the additional contributions within 14 days of receipt of the authorisation.
 - (iii) Additional employee contributions to the fund requested under this clause shall be expressed in whole dollars.

5.6.3 (a) An approved fund shall mean -

- (i) Host Super (Qld.);
- (ii) Australian Retirement Fund;
- (iii) Sunsuper; or
- (iv) LG Super.

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

6.1 Hours of work

6.1.1 The ordinary hours of work of employees must not exceed 38 hours per week or:

- (a) 76 hours in any period of 2 weeks; or
- (b) 114 hours in any period of 3 weeks; or
- (c) 152 hours in any period of 4 weeks.

6.1.2 The ordinary hours shall be worked Monday to Sunday on not more than 5 days per week with a maximum of 8 hours per day, or up to 12 hours per day by mutual agreement. Wherever practicable, such 2 days off per week shall be consecutive.

6.1.3 Employees may by agreement with the Employer work up to 50 ordinary hours in any 5 day week, with the excess over 38 being banked into an accumulation account to be taken as extra ordinary paid time off at a mutually agreed time to maintain the integrity of the average 38 hour week. Any such excess time accumulated shall be taken as ordinary time off within 12 months of accumulation, or paid out at single time on termination.

6.1.4 Employees shall have a break of at least 8 hours between the finishing of ordinary time on one day and the commencement of ordinary time on the following day. If such a break is not provided, double time must be paid until an 8 hour break is provided.

6.2 Rosters

6.2.1 Where reasonably practicable a roster showing ordinary weekly hours to be worked by an employee shall be exhibited in a conspicuous place, easily accessible to all employees.

6.2.2 Ordinary working hours shall be arranged from week to week so as to equally distribute the work among employees as far as practicable and no change of rostered hours shall be made without giving the employee at least 6 days' notice of such change, except that where through unforeseen circumstances a change of hours is necessary, 24 hours' notice shall be given, unless otherwise mutually agreed with the employee.

6.2.3 Employees may swap rostered hours by agreement with no penalty to the Employer, subject to the Employer being notified and approving such arrangements.

6.3 Overtime

6.3.1 Except as hereinafter provided, all work performed by employees in excess or outside of the ordinary hours of work prescribed by clause 6.1 of this Award, or outside of an employee's usual fixed commencing and ceasing times, shall be deemed to be overtime and shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

6.3.2 Where an employee is required to continue working for more than 2 hours beyond the employee's ordinary ceasing time after completing at least 7.6 ordinary hours on that day, the employee shall be provided with a meal or paid a meal allowance of \$12.10 in lieu of the provision of such meal.

Where an employee has been given notice to work overtime and the employee has provided a meal because of working overtime, and such overtime is cancelled on the day such overtime is to be worked, such employee shall be paid a meal allowance of \$12.10.

6.3.3 All employees, after the expiration of 4 hours overtime must be allowed one half-hour for a meal in the Employer's time, and one half-hour after the completion of every additional four hours' overtime worked, provided that the employee is required to continue working after such meal break.

6.3.4 All overtime worked on a Sunday must be paid for at the rate of double time.

6.3.5 When an employee is called upon to work overtime, every part of a quarter of an hour shall be paid for as a full quarter of an hour. Nothing less than a full quarter of an hour's pay shall be paid.

6.4 Meal breaks

6.4.1 *Meal Break* - All employees who are required to work more than 6 hours in one day, shall be entitled to a meal break of one hour's duration to be taken at times compatible with meal times or tour breaks so as to ensure continuity of the tour:

Provided that where the Employer and employees agree not less than 30 minutes shall be allowed for such meal break.

6.4.2 Where, at the instruction of the Employer, the meal period is worked, it shall be deemed to be overtime and shall be paid for at the rate of double time for half an hour, except in circumstances where the employee chooses to work through the meal break in order to finish their tour duties half an hour earlier for that day. In the normal course of events, Tour Guides will have their meal break at the same time that meals are taken by the tourists whom they guide.

6.5 Rest pauses

6.5.1 Employees who work a minimum of 4 consecutive ordinary hours, but less than 8 consecutive ordinary hours on any one day, shall receive a rest pause of 10 minutes duration.

Employees who work a minimum of 8 consecutive ordinary hours (excluding meal break) on any one day shall receive a rest pause of 10 minutes duration in the first half and the second half of the period worked:

Provided that when more than 10 ordinary working hours per day are worked, the employee shall be entitled to 3 such 10 minute rest pauses during any such day.

6.5.2 Rest pauses shall be taken in the Employer's time.

- 6.5.3 Rest pauses shall be taken at times to suit the convenience of the Employer and so as not to interfere with the continuity of work where continuity is necessary.
- 6.5.4 Where there is agreement between the Employer and the majority of employees, the rest pauses may be combined into one 20 minute rest pause to be taken in the first or second half of the working day, with the combined rest pause and the meal break being arranged in such a way that the ordinary working day is broken up into 3 approximate equal periods.
- 6.5.5 Notwithstanding the above rest pauses shall be taken at times to suit the convenience of the tour so as to not interfere with the continuity of the work where continuity is necessary.

6.6 Late night penalty

Any ordinary hours worked between 10.00 p.m. and 6.00 a.m. the following day Monday to Friday, shall receive an ordinary time loading of 15%.

6.7 Weekend penalty rates

All ordinary time worked by employees, between midnight Friday and midnight Sunday, shall be paid for at the rate of time and a-half.

Casual Employees shall be entitled to the same payment as a permanent employee for work performed on a Saturday or Sunday.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Every employee other than a Casual Employee covered by this Award shall at the end of each year of employment be entitled to annual leave on full pay as follows:

- (a) If employed throughout such year of employment on permanent night or afternoon work (non-rotating) over a period of 7 days per week, or if employed on shift work where more than one shift per day is worked over a period of 7 days, not less than 5 weeks.
- (b) If employed other than on work described above, not less than 4 weeks.

Such annual holiday shall be exclusive of any statutory holiday which may occur during the period of that annual holiday and shall be paid for by the Employer in advance -

- (i) in the case of any and every employee in receipt immediately prior to that holiday of ordinary pay at a rate in excess of prescribed ordinary rate of wages, at that excess rate; and
- (ii) in every other case, at the ordinary rate payable to the employee concerned immediately prior to that holiday under this Award.

If the employment of any employee is terminated at the expiration of a full year of employment, the Employer shall be deemed to have given the holiday to the employee from the date of the termination of the employment and shall forthwith pay to the employee, in addition to all other amounts due such employee, that employee's pay, calculated in accordance with clause 7.1.2, for the holiday period prescribed above and also the employee's ordinary pay for any statutory holiday occurring during such prescribed period.

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 that employee, an amount equal to one ninth of such employee's pay for the period of employment if that employee is an employee to whom provision (a) above applies, and one-twelfth of that employee's pay for the period of employment if such employee is an employee to whom provision (b) above applies, calculated in accordance with 7.1.2 hereof.

Except on termination of employment, it is not lawful for the Employer to give or for any employee to receive payment in lieu of annual leave.

7.1.2 *Calculation of annual holiday pay* - In respect to annual holiday entitlements to which this clause applies, annual holiday pay (including any proportionate payments) shall be calculated as follows:

- (a) *Shift workers* - Subject to clause 7.1.2(c), the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or holiday shifts.

- (b) *Supervisory employees* - Subject to clause 7.1.2(c), supervisory allowances and other payments of a like nature, 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 7.1.2(d), in no case shall the payment by an Employer to an employee be less than the sum of the following amounts:
 - (i) the employee's ordinary wage rate as prescribed in clause 5.2 for the annual leave period (excluding shift premiums and weekend penalty rates);
 - (ii) supervisory allowance or payments of a like nature;
 - (iii) in the case of shift workers, a further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.2(c)(i) and 7.1.2(c)(ii); and
 - (iv) in the case of all other employees, a further amount calculated at the rate of 17.5% of the amounts referred to in clauses 7.1.2(c)(i) and 7.1.2(c)(ii).
- (d) The provisions of clause 7.1.2(c) shall not apply to the following:
 - (i) any period or periods of annual holidays exceeding:
 - (A) five weeks per annum in the case of employees employed on work where the provisions of clause 7.1.1(a) apply;
 - (B) four weeks per annum in any other case.
 - (ii) Employers (and their employees) who are already paying (or receiving) an annual holiday bonus, loading or other annual holiday payment, which is not less favourable to employees.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, pieceworkers, and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their Employer:

Provided that part-time employees accrue sick leave on a proportional basis.
- (b) This entitlement will accrue at the rate of 7.6 hours' sick leave for 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.

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 their Employer a doctor's certificate, or other reasonably acceptable evidence to the Employer's satisfaction, about the nature and approximate duration of the illness.

7.2.4 Accumulated sick leave

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

- (a) The employee is absent from work on unpaid leave granted by the Employer;

- (b) The Employer or employee terminates the employee's employment and the employee is re-employed within 3 months;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same Employer without having been employed in the interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the Employer.

7.3 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 "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 one year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

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

7.3.4 Unpaid leave

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

7.4 Long service leave

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

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

7.5 Family leave

The provisions of the *Family Leave Award 2012* 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 2012*;
- (b) a copy of the *Family Leave Award 2012* is required to be displayed in accordance with section 697 of the Act.

7.5.2 The Family Leave Award 2012 also provides for the terms and conditions of leave associated with:

- (a) Maternity leave;
- (b) Parental leave;
- (c) Adoption leave; and

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

7.6 Public holidays

7.6.1 All work done by any employee on Good Friday, Christmas Day, the twenty-fifth day of April (Anzac Day), the first day of January, the twenty-sixth day of January, Easter Saturday (the day after Good Friday), Easter Monday, The Birthday of the Sovereign, and Boxing Day, or any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday, shall be paid for at the rate of double time and a-half with a minimum of 4 hours.

All employees (other than Casual 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 at one and a-half times the ordinary rate prescribed for such work with a minimum of 4 hours.

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

Provided that all time worked on any of the aforesaid holidays outside the employee's ordinary starting and ceasing times for the day of the week on which such holiday falls shall be paid for at double the rate prescribed for such time when worked outside such ordinary starting and ceasing times on an ordinary working day.

Casual Employees shall be paid when working on a statutory holiday at an hourly rate of 2 and a-half times the ordinary hourly rate applicable to a full-time employee of the same classification in the same location, with a minimum engagement of 4 hours.

7.6.2 *Holidays on Rostered Days Off* - Should any of the statutory holidays mentioned in clause 7.6.1 fall on a day on which an employee is rostered off duty, such employee is, in lieu of such holiday, entitled to either the payment of an extra day's pay or an alternative day off or the addition of an extra day to the employee's annual leave entitlement.

7.6.3 Any and every employee other than a Casual Employee who, having been dismissed or stood down by the Employer during the month of December in any year, and re-employed by the Employer at any time before the end of the month of January in the next succeeding year, is, 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, entitled to be paid and shall be paid by the 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 dismissal or standing down to and including the date of re-employment.

7.6.4 Employees other than Casual Employees who do not work Monday to Friday of each week:

In the case of employees who do not work Monday to Friday of each week they shall be entitled to public holidays as follows:

(a) A full-time employee is entitled to either payment for each public holiday or a substituted day's leave.

(b) A part-time employee is entitled to either payment for each public holiday or a substituted day's leave:

Provided that the part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.

(c) Where a public holiday would have fallen on a Saturday or a Sunday and is substituted for another day all employees who do not work Monday to Friday of each week is entitled to payment for the public holiday or a substituted day's leave.

(d) Where Christmas day falls on a Saturday or Sunday and the public holiday is observed on another day a full-time employee required to work on Christmas day must be paid at the rate of double time in the case of a Saturday and double time and one-quarter in the case of a Sunday.

(e) Nothing in this clause confers a right to any employee to payment for as well as a substituted day in lieu of a public holiday.

7.7 Jury service

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.

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.

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.

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.

"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 - TRANSFER, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

8.1 Travelling time

Employees travelling under the instruction of the Employer shall be paid for such travelling time at a rate equivalent to their ordinary time rate exclusive of any loadings.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

The parties commit themselves to continuing and upgrading the training provided to employees.

It is agreed that the parties will co-operate in ensuring that it be maintained and improved.

This training will form the basis of an enhanced career structure in the industry.

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

10.1 Uniforms

Where employees are required to wear a distinctive type of clothing, be it overalls or shirt and trousers, one set of such clothes shall be supplied annually by the Employer free of cost to the employee. If employees are required to launder such clothing they shall be paid an allowance of 75 cents.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.2 and 11.3 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 Availability of award

A true copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the Employer so as to be easily ready by the employees.

11.2 Right of entry

11.2.1 Authorised industrial officer

(a) An "authorised industrial officer" is any (relevant) Union official holding a current authority issued by the

Industrial Registrar.

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

11.2.2 *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 11.2.2(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 11.2.2 the authorised industrial officer may be treated as a trespasser.

11.2.3 *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 (relevant) Union; or
 - (ii) has made a written request to the Employer that the employee does not want their record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the Employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.2.4 *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 (relevant) 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 (relevant) Union during non-working time.

11.2.5 *Conduct*

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

11.3 Time and wages record

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

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

- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the Employer to a superannuation fund.

11.3.2 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.

11.3.3 The Employer must keep the record for 6 years.

11.3.4 Such records shall be open to inspection during the Employer's business hours by an inspector of the Department of Justice and Attorney-General, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.4 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 an Organisation of employees that has the right to represent the industrial interests of the employees concerned.

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 each 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 Trade union training leave

11.5.1 Upon written application by an employee, or the Union on behalf of the employee, to an Employer and giving to the Employer at least 2 months' notice, such employee must be granted up to 3 working days' leave (non-cumulative) on ordinary pay, each calendar year, to attend courses and/or seminars conducted by the Union.

For the purposes of this clause, ordinary pay shall mean at the ordinary weekly rate paid to the employee exclusive of any disability allowances and in the case of a Casual Employee, shall mean the ordinary hourly rate.

11.5.2 The granting of leave shall be subject to the following conditions:

- (a) An employee must have at least 12 months' service with an Employer prior to such leave being granted;
- (b) This clause shall not apply to an Employer with less than five employees, including Casual Employees, bound by this Award;
- (c) The maximum number of employees of one and the same Employer attending a course or seminar at the same time will be as follows:
 - Where the Employer employs between 5 and 49 employees: 1
 - Where the Employer employs between 50 and 99 employees: 2
 - Where the Employer employs 100 or more employees: 3
- (d) Where an Employer has more than one place of employment in Queensland, then the maximum number of employees entitled to attend a course at the same time shall be two (2). This shall not prevent an Employer from agreeing to release additional employees.
- (e) In any one calendar year -
 - (i) the maximum number of employees of any one Employer entitled to attend accredited courses shall be 3; and
 - (ii) the maximum number of days for which an Employer will be required to make payment to employees for leave shall be 9.
- (f) The taking of leave shall be arranged so as to minimise any adverse affect on the Employer's operation. Where an Employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular employee at a particular time (including where the Employer may have previously advised of its ability to release such employee) the Union will not unnecessarily press its request for the release of that employee at that time. If the matter is not amicably resolved, it shall be processed in accordance with the grievance procedure contained in this Award;
- (g) The scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations, industrial efficiency and workplace issues within the Employer's operations;
- (h) In granting such paid leave the Employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee;
- (i) Leave granted to attend courses will not incur additional payment if such course coincides with an employee's rostered day off; and
- (j) The taking of leave will not affect other leave granted to employees under this Award, nor shall it adversely affect the employee's service for the calculation of leave entitlements.

11.6 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.

Dated 31 August 2012.

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

Operative Date: 31 August 2012