

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130 – award review

TORRES STRAIT ISLANDER COMMUNITIES - COMMUNITY DEVELOPMENT EMPLOYMENT PROJECTS (TORRES STRAIT) AWARD - STATE 2004

(Matter A/2010/160)

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the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 31 August 2012.

TORRES STRAIT ISLANDER COMMUNITIES - COMMUNITY DEVELOPMENT EMPLOYMENT PROJECTS (TORRES STRAIT) AWARD - STATE 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Torres Strait Islander Communities - Community Development Employment Projects (Torres Strait) Award - State 2012.

1.2 Arrangement

Subject Matter Clause No.

PART 1 - APPLICATION AND OPERATION

Title	1.1
Arrangement	1.2
Award coverage	1.3
Parties bound	1.4
Definitions	1.5
Date of operation	1.6

PART 2 - FLEXIBILITY

No provisions inserted in this Award relevant to this Part.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

Grievance and dispute settling procedure	3.1
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PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

Employment categories	4.1
Anti-discrimination	4.2

PART 5 - WAGES AND WAGE RELATED MATTERS

Rates of pay	5.1
Superannuation	5.2

PART 6 - HOURS OF WORK

Hours of work	6.1
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PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

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

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

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

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

1.3 Award coverage

Notwithstanding any other State award, this Award applies throughout the Torres Strait Islands of Queensland and certain areas of the Cape York Peninsula, namely:

Bamaga Community;
 Seisia Community;
 Badu Island;
 Boigu Island;
 Coconut Island;
 Rennel Island;
 Darnley Island;
 Stephen Island;
 Dauan Island;
 Hammond Island;
 Moa Island (Kubin Community and St. Paul's Community);
 Mabuiag Island;
 Mer (Murray) Island;
 Dauar Island;
 Saibai Island;
 Warraber Island;
 Yam Island;
 Yorke Island;
 Horn Island;
 Thursday Island;
 Warrior Island; and
 Nagir Island.

And, in addition, any community of the Torres Strait or of the Cape York Peninsula which, may in the future, operate a CDEP scheme funded by the Torres Strait Regional Authority (TSRA).

1.4 Parties bound

This Award is legally binding upon the CDEP participants as prescribed by clause 1.3 and their Employers, and The Australian Workers' Union of Employees, Queensland and its members.

1.5 Definitions

- 1.5.1 "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.5.2 "CDEP" means the Community Development Employment Projects, a program funded by the Torres Strait Regional Authority (TSRA) which provides Torres Strait Islander people with an alternative to unemployment benefits. Participation in the CDEP scheme is voluntary and participants are able to leave at any time, without notice.
- 1.5.3 "Commission" means the Queensland Industrial Relations Commission.
- 1.5.4 "Community" means a Torres Strait community within coverage of this Award.
- 1.5.5 "Employer" means those employers who employ CDEP participants and operate with the Torres Strait Islands of Queensland and certain areas as identified in clause 1.3.
- 1.5.6 "Participant" means a person employed under the CDEP scheme.
- 1.5.7 "Union" means The Australian Workers' Union of Employees, Queensland.
- 1.5.8 "Work" means whatever activities are determined by the employer to be legitimate for attracting payment of a CDEP wage, may be less structured than in other workplaces in view of cultural differences and includes participation in ceremonial business.

1.6 Date of operation

This Award takes effect from 31 August 2012.

PART 2 - FLEXIBILITY

No provisions inserted in this Award relevant to this Part.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedure

The matters to be dealt with in this procedure shall include all grievances or disputes between an participant and the Community Council 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 participant or to any number of participants.

- 3.1.1 In the event of a participant having a grievance or dispute the participant 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 participant/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 participant or the participant's representative may refer the matter to the CDEP Coordinator or the Community Council. Such discussion should, if possible, take place within 24 hours after the request by the participant or the participant's representative.
- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the participant may commence the grievance resolution process by reporting the allegations directly to the CDEP Coordinator or the Community Council or alternatively the CDEP participant may proceed directly to the process outlined at clause 3.1.4.
- 3.1.4 If, after discussion between the parties, or their nominees mentioned in clause 3.1.2, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement, then notification of the existence of the dispute may be given to the Commission in accordance with the provisions of the Act.
- 3.1.5 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine risk and/or health and safety issue.
- 3.1.6 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed, provided that clause 3.1.5 shall not prejudice the rights or duties of the participant or community council.
- 3.1.7 All parties 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.
- 3.1.8 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.

- 3.1.9 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.
- 3.1.10 Where participants are involved in a dispute in a workplace that is covered by another State or Federal award or certified agreement, they, or the employer in that workplace may elect to use the dispute settling procedure in that award or certified agreement.

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

4.1 Employment categories

4.1.1 For the purposes of this Award, participants are classified into 2 categories:

- Category A participants work a specified number of hours per week as determined by the relevant community council or organisation.
- Category B participants work extra hours in addition to those worked by Category A participants. These hours may or may not be regular but will be paid the CDEP participant wage directly as if it were a subsidy. The number of these extra hours is determined by the relevant community council or organisation.

4.1.2 Category B participants will be treated as though they are covered by any State or Federal award or certified agreement governing the workplace where their work is actually undertaken. Where no State or Federal awards or certified agreements apply, this Award will govern their terms and conditions of employment.

4.2 Anti-discrimination

4.2.1 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 relation to, a person identified on the basis of the above attributes;
- (b) sexual harassment; and,
- (c) racial and religious vilification.

4.2.2 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.

4.2.3 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.

4.2.4 Nothing in clause 4.2 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.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Rates of pay

5.1.1 Where Category A participants are required to work a specified number of hours they are entitled to payment for the time worked at an hourly rate no less than 1/38th of the weekly Queensland Minimum Wage as determined by the Commission from time to time.

5.1.2 Category B participants who work beyond the specified number of regular hours per week are entitled to payment for all hours worked at the rate prescribed by the relevant State or Federal awards or certified

agreements governing the classifications/workplace where their work is actually undertaken. They will continue to receive direct payment of their CDEP entitlement. This amount will be treated as if it were a subsidy and the equivalent deducted from the relevant weekly rate of pay. Where there are no State or Federal awards or certified agreements governing the workplace where their work is actually undertaken, the minimum hourly rate and conditions will apply as for Category A participants.

- 5.1.3 In all circumstances the hourly divisor (1/38th) shall be applied to the weekly rate of pay and pay deducted for hours not worked that are not subject to approved leave.

5.2 Superannuation

All CDEP participants are subject to the provisions outlined in the current Superannuation Guarantee guidelines issued by the Australian Taxation Office.

PART 6 - HOURS OF WORK

6.1 Hours of work

- 6.1.1 Communities operating CDEP schemes will decide the hours of work that participants are actually required to perform work in order to receive pay.

- 6.1.2 Communities shall determine a specified minimum number of regular hours per week per participant.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

7.1.1 Entitlement

- (a) CDEP participants are entitled to annual leave as prescribed by the Act as amended from time to time.

- 7.1.2 In addition to those entitlements prescribed in 7.1.1, the following shall apply:

- (a) Annual leave shall be exclusive of public holidays and Mabo Day.
- (b) An employer may decide to close down over the Christmas period and to require participants to take annual leave at that time. An employer must give at least 4 weeks notice of such a requirement.
- (c) Category A participants are entitled to payment for a period of annual leave at the rate specified in clause 5.1.
- (d) Category B participants are entitled to payment for a period of annual leave based on the average number of weekly hours worked in the 3 months immediately prior to taking leave.
- (e) Category A participants are not entitled to a leave loading but may receive an annual bonus determined at the enterprise level.
- (f) Category B participants are entitled to the leave provisions contained in any State or Federal award or certified agreement governing their workplace, rather than the arrangements applying to other (category A) participants. This does not preclude them from receiving the same annual bonus. Where there is no other Federal or State award or certified agreement applying, Category B participants will be subject to the leave provisions that apply to Category A participants.

7.2 Sick leave

- 7.2.1 Category A participants absent from work because of personal illness or incapacity due to any cause are entitled to 10 days sick' leave per annum.

- 7.2.2 Participants are entitled to payment for a period of sick leave at the rate of pay they would otherwise have earned if not on sick leave.

- 7.2.3 Participants are not entitled to paid sick leave for any absence covered by workers' compensation or sickness benefits.

- 7.2.4 Participants who are unable to attend work due to sickness must inform their supervisor as soon as practicable on the day of the absence and must state the expected duration of their absence. This principle continues to apply in the event that their absence extends beyond the period previously advised.

- 7.2.5 Participants who fail to notify their supervisor of their absence due to sickness on the day of the absence in accordance with 7.2.4 are not entitled to payment for that day.
- 7.2.6 Participants may be required to provide reasonable proof that they were unable to attend for duty on account of sickness on the days for which they claim sick leave.
- 7.2.7 Reasonable proof includes:
- (a) in locations where a participant can be reasonably expected to obtain a medical certificate: a medical certificate.
 - (b) in locations where it is unreasonable to expect a participant to obtain a medical certificate: a statutory declaration or note from a registered nurse.
- 7.2.8 Category B participants will be subject to the sick leave provisions contained in any State or Federal award or certified agreement governing their workplace, rather than the arrangements applying to other participants. Where there is no other State or Federal award or certified agreement applying, they will be subject to whatever sick leave provisions apply to Category A participants.

7.3 Bereavement leave

- 7.3.1 Category A and B participants are entitled to bereavement leave on the death of a family or household member. The duration and payment of this leave is to be negotiated between the participant(s) and the employer.

7.4 Long service leave

- 7.4.1 Participants are entitled to long service leave in accordance with the Act as amended from time to time.
- 7.4.2 Accrued long service leave entitlements are not portable between CDEP schemes operating in different communities.

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

7.6 Public holidays

- 7.6.1 All work done by any employee on:

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

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

7.6.2 *Labour Day*

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

7.6.3 *Annual show*

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

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

7.6.4 *Double time and a-half*

For the purposes of clause 7.6, where the rate of wages is a weekly rate, "double time and a-half" means one and a-half days wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

7.6.5 All time worked on any of the holidays mentioned in clauses 7.6.1, 7.6.2 and 7.6.3 outside the 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 by the Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

7.6.6 *Stand-down over the Christmas period*

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the Employer or who has been stood-down by the Employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood-down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and the 1st January.

7.6.7 Where works are closed down at the Easter period, payment shall be made for the following holidays at ordinary rates to employees who have been employed for a period of not less than 3 months:

Good Friday; and
Easter Monday:

Provided that the qualification of 3 months prior employment shall not apply to deprive an employee of payment for Good Friday and Easter Monday where the period between Christmas and Easter is less than 3 months, if such employee has been continuously engaged between Christmas and Easter and is re-engaged on re-opening the works after Easter. Temporary breaks through wet weather shall not be deemed to break the continuity of employment.

7.6.8 When the ordinary work cycle provides for a rostered day off and a public holiday falls on that day, the rostered day off shall be moved to a day mutually agreed between the Employer and the employees concerned.

7.6.9 *Substitution of holidays*

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

Provided that, where an employee is subsequently required to work on such substituted day, the employee shall be paid the rate applicable for the holiday that has been substituted.

7.6.10 *Employees whose ordinary hours include work on a Saturday or Sunday*

In the case of employees who do not ordinarily work Monday to Friday of each week i.e. whose ordinary hours include work on a Saturday or Sunday such employees shall be entitled to public holidays as follows:

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

- (b) A part-time employee shall be 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 on that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.
- (d) Where Christmas Day falls on a Saturday or a Sunday and the public holiday is observed on another day an employee required to work on Christmas Day (i.e. 25 December) shall be paid at the rate of double time if it is a Saturday and double time and a-half if it is a Sunday.
- (e) Nothing in clause 7.6.9 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

7.7 Jury service

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

PART 8 - TRANSFERS, TRAVELLING AND WORKING AWARD 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

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

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

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

11.1.2 *Entry procedure*

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the Employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the Employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 *Inspection of records*

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) has made a written request to the Employer that they do 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.

11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the Employer, or a member or employee eligible to become a member of the Union:

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

11.1.5 *Conduct*

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

11.2 Time and wages record

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

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

employee is paid;

- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the Employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

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

11.2.3 The Employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the Employer's business hours by an inspector of the Department of 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.

11.3 Award posting

The Employer shall ensure that an up to date copy of this Award is readily available for perusal by employees.

11.4 Union encouragement

Preamble

Clause 11.4 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

11.4.1 Documentation to be provided by employer

At the point of engagement, the Employer shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the Employer in a place readily accessible by the employee.

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

11.4.2 Union delegates

Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

The Employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

11.4.3 Deduction of union fees

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

Dated 18 September 2012.

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

