

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

WHITSUNDAY CHARTER BOAT INDUSTRY AWARD - STATE 2005

Pursuant to s. 698 of the *Industrial Relations Act 1999*, the Whitsunday Charter Boat Industry Award - State 2005 with all amendments as at 10 December 2009, is hereby reprinted.

I hereby certify that the Award contained herein is a true and correct copy of the Whitsunday Charter Boat Industry Award - State 2005 as at 10 December 2009.

Dated 10 December 2009.

G.D. Savill
Industrial Registrar

WHITSUNDAY CHARTER BOAT INDUSTRY AWARD - STATE 2005

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Whitsunday Charter Boat Industry Award - State 2005.

1.2 Arrangement

Subject Matter	Clause No.
----------------	------------

PART 1 - APPLICATION AND OPERATION

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

PART 2 - FLEXIBILITY

Enterprise flexibility	2.1
------------------------	-----

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

Consultative mechanisms and procedures in the workplace	3.1
Grievance and dispute settling procedure	3.2
Work practices and requirements	3.3

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

Contract of employment	4.1
Termination of employment	4.2
Introduction of changes	4.3
Redundancy	4.4
Anti-discrimination	4.5
Incidental or peripheral tasks	4.6
Outside employment	4.7
Continuity of service - transfer of calling	4.8

PART 5 - WAGES AND WAGE RELATED MATTERS

Subject Matter	Clause No.
Definition of classifications	5.1
Wages	5.2
Payment of wages	5.3
Payment for higher duties	5.4
Leave without pay	5.5
Completion of timesheets	5.6
Occupational superannuation	5.7
PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK	
Days of work	6.1
Rosters	6.2
Meal breaks	6.3
Rest pauses	6.4
Overtime	6.5
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
Jury service	7.6
PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK	
Living away from home	8.1
PART 9 - TRAINING AND RELATED MATTERS	
Commitment to training and careers	9.1
Supervision of trainees	9.2
PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES	
Avoidance of physical exhaustion	10.1
Workplace health and safety	10.2
Loss of personal effects	10.3
Safety and working environment	10.4
PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS	
Right of entry	11.1
Time and wages record	11.2
Union encouragement	11.3
Award posting	11.4

1.3 Award coverage and area of operation

This Award applies to all employers operating commercial vessels for the carriage of passengers or tourists (other than ferries engaged in regular scheduled passenger transport) where the voyage/charter/tour on the vessel originates or commences on or near the east coast of Queensland (including any port, bay, harbour, river, inlet, offshore installation or offshore island adjacent to that coast) between the 20th and 21st parallel of south latitude, and to their employees engaged in the classification specified in clause 5.1.

Unless expressly provided by this Award or by an Order of the Commission, no other award shall apply to the employment of employees covered by this Award:

Provided that, notwithstanding any other provision of this Award, the Award shall not apply to the following employers in relation to those categories and classifications of employment covered by the Masters, Mates and Engineers' Award, Motor Vessels 2500 B.H.P./1866 kW.B.P. and Under - State (Excluding the Port of Brisbane) 2003 and which are common to that Award and this Award:

Club Crocodile Holdings Limited trading as Club Crocodile Long Island-ACN - 010 715 901
Holiday Villages (Australia) Pty Ltd trading as Club Med Lindeman Island-ACN - 003 758 610
Great! Keppel Island Resort Pty Limited trading as Great! Keppel Island Resort - ACN - 075 964 359
Mulpha Hotel Pty Ltd trading as Hayman Resort - ACN - 070 662 627
Lady Elliot Island Holdings Pty Ltd trading as Lady Elliot Island Reef Resort - ACN - 010 563 005
Arenco Holdings Pty Ltd trading as Orpheus Island Resort ABN - 44 010 564 771
Bedarra Island Pty Ltd ABN - 67 010 255 811
Brampton Island Pty Ltd - ABN - 64 081 108 198
Dunk Island Pty Ltd - ABN - 35 000 033 456
Heron Island Pty Ltd - ABN - 67 009 724 921
Lizard Island Pty Ltd - ABN - 85 010 494 096.

1.4 Definitions

- 1.4.1 "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.4.2 "Commission" means the Queensland Industrial Relations Commission.
- 1.4.3 "Union" or "Unions" means The Australian Workers' Union of Employees, Queensland (AWU) and/or The Seamen's Union of Australasia, Queensland Branch, Union of Employees (SUA) and/or the Merchant Service Guild of Australia, Queensland Branch Union of Employees (MSG).
- 1.4.4 "Employee" means and includes all persons for whom classifications are prescribed in this Award.

1.5 Date of operation

This Award takes effect from 1 June 2005.

1.6 Parties bound

This Award is binding upon the employees as prescribed in clause 5.1 and their employer and the Unions and their members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

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

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultative mechanisms and procedures in the workplace

- 3.1.1 The employer, the employees and their relevant Unions shall continue to evolve consultative procedures appropriate to the employer's operation with a view to establishing formal consultative mechanisms. Measures raised by the employer, employees or Unions for consideration consistent with increasing the efficiency, productivity and international competitiveness of the employer's operation shall be processed through such consultative procedures.
- 3.1.2 Any measures designed to increase productivity, flexibility and efficiency may be raised by any party.
- 3.1.3 The relevant Union must be a party to such agreement and shall not unreasonably oppose any agreement.

3.2 Grievance and dispute settling procedure

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an

employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, either party may refer the dispute to the Commission for determination, and such decision, subject to the parties' right of appeal, shall be binding.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed without prejudice to either party to the dispute.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

3.3 Work practices and requirements

3.3.1 *Co-operation and productivity*

All employees shall undertake such duties in relation to the operation of vessels, including public relations, which are consistent with the running of vessels. Improved co-operation between employees and the extra effort towards improving passenger convenience and comfort should lead to improved productivity and positive immediate and future benefits to the employer's business. Company standing orders will be strictly adhered to.

3.3.2 *Elimination of inefficient practices*

The parties acknowledge that the employer must attain a level of efficiency to be able to compete successfully in the market place. This requires the employer and the employees to work together to eliminate inefficient work practices which have arisen outside of Award provisions. Masters will ensure that all crew co-operate in reducing inefficient work practices which cause additional costs to the employer.

3.3.3 *Proficiency in job roles*

All employees are required to become proficient in job roles on the employer's vessels in connection with routine and preventative maintenance.

To prevent the public from being disadvantaged all employees shall work as a team during repairs and breakdowns.

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

4.1 Contract of employment

4.1.1 An employee shall on or prior to commencing employment, be provided by the employer with a written statement (contract of employment) outlining the nature of the employee's engagement:

(a) Employment categories shall be:

- (i) Full-time employees shall be provided with a minimum of 20 days' employment during a 28 day roster cycle or payment in lieu of;
- (ii) Part-time employees are employed for not less than 6 days and for not more than 20 days' employment during a 28 day roster cycle;

A part-time employee who works in excess of the 20 days' during a 28 day roster cycle shall be paid overtime in accordance with clause 6.5;

A part-time employee employed under the provisions of this clause must be paid for ordinary days worked at the rate prescribed for the class of work performed.

The provision of this Award in respect of annual leave and sick leave shall apply on a *pro rata* basis to part-time employees.

Where an employee and their employer agree in writing, part-time employment may be converted to full-time employment and vice versa on a permanent basis or for a specific period of time. If such an employee transfers from full-time to part-time employment (or vice versa), all accrued award and legislative entitlements shall be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

- (iii) Casual employees shall be paid a minimum of a-quarter of one day's pay for each engagement, provided that if the employee is required to perform actual work for more than 2 hours in an engagement, they shall be paid a-half of one day's pay, and if the employee is required to perform actual work for more than 4 hours in an engagement, they shall be paid one day's pay.

The rate of pay for casual employees shall be at the appropriate full-time rate prescribed in clause 5.2 with the addition of the appropriate loading as prescribed. These loadings are payable separately and are not to be compounded:

From 1 June 2005:	19%
From 1 October 2006:	21%
From 1 October 2007:	23%

The employer may offer a casual employee, part-time or full-time employment (including all entitlements such as sick and annual leave) within 12 months of the employee's commencement date:

Provided that the employer may offer a casual employee part-time or full-time employment at any time during their employment.

Upon an employee accepting either a part-time or full-time position, the employer shall provide to the employee a written statement outlining the employee's transfer as per clause 4.1. NOTE: the probationary period does not commence again with a transfer from casual employment to either part-time or full-time employment:

Provided that a casual employee does not necessarily have to accept the offer of part-time or full-time employment should the definition of casual employment be suitable to the employee.

- (iv) Specific period (full or part-time)
- (v) Junior - the minimum rates of wages for junior employees shall be the undermentioned percentages of the wage rate prescribed for the adult classification appropriate to the work performed in the area in which the work is performed:

Provided where a junior is deemed by the employer to possess a level of competence equivalent to

an adult, they shall be remunerated as an adult.

Junior Age	%
Under 18 years	90
18 years and over	100

Provided that an employee aged under 18 years who at the date of operation of this Award was receiving an adult rate of pay, shall continue to receive the adult rate appropriate for the classification.

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

- (b) Classification
- (c) Ordinary days of work
- (d) Rate of pay
- (e) Date of appointment

4.1.2 The first 3 months of employment shall be regarded as a probationary period.

4.2 Termination of employment

4.2.1 Notice of termination by employer (except casuals)

In order to terminate the employment of a full-time and part-time employee, the employer shall give the following notice in writing:

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

In addition to the notice above, employees over 45 years of age or over at the time of giving of notice and with not less than 2 years' continuous service, shall be entitled to an additional week's notice:

This period of notice shall not apply in the case of dismissal for misconduct or other grounds that justified instant dismissal, or in the case of casual employees, or employees engaged for a specific period of time.

4.2.2 Notice of termination by employee

The notice of termination required to be given by an employee shall be seven (7) days. If an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate for the period of notice.

4.2.3 Notice of termination by casual employee or by employer to casual employee

The employment of a casual employee may be terminated without notice by either party, provided that the minimum payment of 1/4 of a day's pay shall apply should the employer terminate the employee.

4.2.4 Statement of employment

The 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 Introduction of changes

4.3.1 Employer's duty to notify

- (a) Where an employer has made a definite decision to introduce major 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 their Union or Unions.
- (b) "Significant effects" include 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 this Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.3.2 *Employer's duty to discuss change*

- (a) The employer shall discuss with the employees affected and their Union or Unions, *inter alia*, the introduction of the changes referred to, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees.
- (b) The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 4.3.1.
- (c) For the purpose of such discussion, the employer shall provide in writing to the employees concerned and 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 an employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employers' interests.

4.4 **Redundancy**

4.4.1 *Discussions before terminations*

- (a) Where an employer has made a definite decision that the employee 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 hold discussions with the employees directly affected and where relevant, their Union or Unions.
- (b) The discussions shall take place as soon as it is practicable after the employer has made a definite decision which will invoke clause 4.4.1(a), and shall cover *inter alia*, the reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate the adverse effects of any terminations of the employees concerned.
- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and 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 an employer shall not be required to disclose confidential information, the disclosure of which would be inimical to its interests.

4.4.2 *Transfer to lower paid duties*

Where an employee is transferred to other duties for reasons set out in clause 4.4.1, the employee shall be entitled to the same period of notice of transfer the employee would have been entitled to if the employee's employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

4.4.3 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.4.1, 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.

4.4.4 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.4.1 the employer shall notify Centrelink as soon as possible giving relevant information including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

4.4.5 *Severance pay*

In addition to the period of notice prescribed for ordinary termination in clause 4.2.1, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.4.1(a) shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance pay (weeks' pay)
1 year or less	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

"Weeks' pay" means the ordinary time rate of pay for the employee concerned as averaged out over the previous 3 months' employment.

4.4.6 *Superannuation benefits*

Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, such employee shall only receive under clause 4.4.5 of the difference between the severance pay specified in that clause and the amount of the superannuation benefit such employee receives which is attributable to employer contributions only. If this superannuation benefit is greater than the amount due under clause 4.4.5 then the employee shall receive no payment under that clause.

4.4.7 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.4.1(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.

4.4.8 *Alternative employment*

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

4.4.9 *Employees with less than one years' service*

Clause 4.4 shall not apply to employees with less than one years' 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.

4.4.10 *Employees exempted*

Clause 4.4 shall not apply:

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

4.4.11 *Employer's exempted*

Subject to an order of the Commission, in a particular redundancy case, clause 4.4 shall not apply to employers who employ less than 15 people.

4.4.12 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

4.5 Anti-discrimination

4.5.1 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* which includes:

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

4.5.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.2, 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.

4.5.3 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.

4.5.4 Nothing in clause 4.5 is to be taken to affect:

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

4.6 Incidental or peripheral tasks

4.6.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.

4.6.2 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.

4.6.3 Any direction issued by an employer pursuant to clauses 4.6.1 and 4.6.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.7 Outside employment

A full-time employee whilst employed by an employer shall not undertake or perform duties for any other employer in connection with the operation or running of any type of vessel operating under this Award, unless by mutual agreement of the employee and the full-time employer. The full-time employer shall not be entitled to unreasonably withhold agreement where there exists no reasonable possibility of the employee becoming involved in a conflict of interest or duties.

4.8 Continuity of service - transfer of calling

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act, as amended from time to time.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Definition of classification

- 5.1.1 *Crew Level 1* - New employee entry level is 85% of Crew Level 3 wage. This wage level is for the first 3 months of employment (probationary period). During this timeframe the 5 day Introduction Deckhand Course is to be completed by the new employee. Duties include entertaining passengers, prepare vessel for departure/s, set, trim, and strike sails as required. Stock and dispense liquor under direction of licensee. Prepare meals, order stores, and perform duties as required by immediate supervisor or Master/Coxswain.
- 5.1.2 *Crew Level 2* - After completing the first 3 months of employment (probationary period) and upon completion of the Introduction Deckhand Course the Employees' wage level shall rise to 92.5% of the Crew Level 3 wage. Duties include entertaining passengers, prepare vessel for departure/s, set, trim, and strike sails as required. Stock and dispense liquor under direction of licensee. Prepare meals, order stores, and perform duties as required by immediate supervisor or Master/Coxswain.
- 5.1.3 *Crew Level 3* - A qualified crew member who obtains the qualification of Coxswain Ticket enabling the Employee to drive a tender within 2 nautical miles of the mothership. Duties include entertaining passengers, prepare vessel for departure/s, set, trim, and strike sails as required. Stock and dispense liquor under direction of licensee. Prepare meals, order stores, and perform duties as required by immediate supervisor or Master/Coxswain.
- 5.1.4 *Dive Master/Diver Instructor* - Entertain passengers, prepare vessel for departure/s, set, trim, strike sails as required. Manage and perform diving duties or other duties as required from immediate supervisor or Master/Coxswain.
- 5.1.5 *Coxswain* - Navigate vessel of class coxswain status. Ensure safe operation of vessel, supervise crew and entertain passengers. Perform routine and preventative maintenance as required.
- 5.1.6 *Master V* - Navigate vessel of class V status. Ensure safe operation of vessel, supervise crew and entertain passengers. Perform routine and preventative maintenance as required.
- 5.1.7 *Master IV* - Navigate vessel of class IV status. Ensure safe operation of vessel, supervise crew and entertain passengers. Perform routine and preventative maintenance as required.

5.2 Wages

Classification	Daily rate full/part-time \$	Daily rate casual \$
Crew Level 1	111.06	136.60
Crew Level 2	119.26	146.69
Crew Level 3	126.52	155.62
Dive Instructor/Dive Master	127.43	156.74
Coxswain - Master of vessel less than 12m	138.34	170.16
Master V - 12m to 24m vessel - 1st year increment	161.06	198.10
Master V - Experienced or 2nd year increment	179.26	220.49
Master IV	201.97	248.42

- 5.2.1 The wage rates set above have been calculated to include compensation for weekend and public holiday penalties.

- (a) NOTE: For further increases to the casual loading rate on 1 October 2006 and 1 October 2007, refer to clause 4.1.1(a)(iii).
- (b) The above wage rates shall be increased in accordance with general ruling or general policy decision relating to safety net, or living wage, or like increases awarded by the Commission and operative from the first full pay after the operative date nominated by the Commission.
- (c) The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2009 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

- (d) No employee shall suffer a reduction of his or her wage rate as a result of the implementation of this Award.

5.2.2 Allowances

Allowances	Daily rate full/part-time \$	Daily rate casual \$
MED II allowance	23.73	23.73
MED III allowance	11.86	11.86
Outer reef allowance	11.86	11.86

- (a) Payment of the MED II or III allowance shall only be paid to employees if the ticket is required for the vessel, and is paid per day for the duration of the voyage/charter or tour.
- (b) Payment of the outer reef allowance shall only be paid to Masters where the itinerary requires outer reef work, and is paid per day for the duration of the voyage/charter or tour.

5.2.3 Casual employees

Casual employees shall be paid at the rate applicable to the vessel and classification on or in which the employee is engaged for the time being not the rate applying to the ticket they hold, e.g. Master IV ticket on a Coxswain vessel is paid Coxswain wage.

5.3 Payment of wages

- 5.3.1 Payment of wages shall be made weekly and/or fortnightly on a day fixed by mutual agreement between the employer and the employee and such payment shall be made in the employer's time, where mutually agreed payment of wages to each employee will be paid by means of direct credit (electronic funds transfer) into a nominated bank, credit union or building society account to be available on the agreed pay day, or an otherwise method mutually agreed upon by the employer and the employee (either by cheque or cash).
- 5.3.2 No timesheet or wage record may be amended by any person other than the employee who has originally signed it. All changes must be initialled by the employee or else they may be challenged.
- 5.3.3 If wages are payable to an employee when the employee stops employment with the employer, the wages will be paid to the employee within 3 business days after the employment stops:
- Provided that either party has given sufficient notice of termination.
- 5.3.4 In the case where an employee has not given any notice of termination, wages payable to the employee when the employee stopped employment with the employer will be paid to the employee in the next pay period.

5.4 Payment for higher duties

Where any person on any one day performs 2 or more classes of work to which a differential rate fixed by this Award is applicable, such person, if employed for more than half the rostered charter or trip on the class or classes of work carrying a higher rate, shall be paid in respect of the whole time during which they work on that charter or trip at the same rate, which shall be at the higher rate fixed by this Award in respect of any of such classes of work, and if employed for half the rostered charter or trip or less on the class or classes of work carrying a higher rate, they shall be paid at such higher rate for half the rostered charter or trip hours.

5.5 Leave without pay

- 5.5.1 Every employee will become entitled to make application for up to 12 months' leave without pay once they have completed one year of continuous employment with an employer. Approval of leave without pay applications will be at the employer's discretion and the conditions that will apply for leave accruals will mirror the Continuity of Service conditions at Chapter 2, Part 6 of the Act.
- 5.5.2 Employees who take leave without pay will be assured of a position at the same classification level they departed upon, when they return to duty after a period of leave without pay. This position will not necessarily be on the same vessel they departed from however.
- 5.5.3 Approval of leave without pay is on the condition employees return to work on the agreed date (or other date as the employer may agree) at the end of the leave. Where an employee breaks this agreement by not returning to work, the employer will have the right to terminate the employment from the commencement date of the leave

without pay.

- 5.5.4 Employees who commence leave without pay will be required to take all entitlements at the commencement of the period of leave without pay.

5.6 Completion of timesheets

All employees employed under this Award must complete charter or trip timesheets. The Employees must include their starting time at the commencement of a charter or trip, and their finishing time at the completion of a charter or trip.

5.7 Occupational superannuation

- 5.7.1 *Application* - In addition to the rates of pay prescribed in clause 5.2, eligible employees (as defined in clause 5.7.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.7.

5.7.2 Contributions

- (a) Amount - Every employer shall contribute on behalf of each eligible employee, an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund (as defined in clause 5.7.3(a)). Each such payment of contributions shall be rounded off to the nearest 10 cents.
- (b) Regular payment - The employer shall pay such contributions to the credit of each eligible employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.
- (c) Minimum level of earnings - No employer shall be required to pay superannuation contributions on behalf of any eligible Employee whether full-time, part-time, casual, adult or junior in respect of any month during which the Employee's ordinary time earnings (as defined in clause 5.7.3(d)), is less than \$450.00.
- (d) Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation. In the case of workers' compensation, the employer shall contribute in accordance with clause 5.7.2(a) whenever the employee is receiving by way of workers' compensation an amount of money no less than the employee's normal award rate of pay.
- (e) Other contributions - Nothing in clause 5.7 shall preclude an employee from making contributions to a fund in accordance with the provisions of the trust deed of the fund.
- (f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.
- (g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed in clause 5.7.

5.7.3 Definitions

- (a) "Approved fund" means a fund (as defined in clause 5.7.3(c)) approved for the purposes of clause 5.7 by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.7. Such approved fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.7.2 effective from the commencement of that qualifying period.
- (c) "Fund" means a superannuation fund satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant Act. In the case of a newly established fund, the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.
- (d) "Ordinary time earnings" for the purposes of clause 5.7 means the actual ordinary daily rate or *pro-rata* daily rate for casuals of pay the Employee receives for work. The term includes any over-award payment

as well as casual rates received for ordinary daily rates. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

5.7.4 For the purposes of this Award, an approved fund means:

- (a) Sunsuper
- (b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and as recorded in an approved Industrial Instrument.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which has already had practical application to the majority of award employees of that employer.
- (d) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship, any fund nominated by the employer and approved by the Brethren.
- (e) Any fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of section 115 of the Act.
- (f) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.7.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contribution.

5.7.5 *Challenge of a fund*

- (a) An eligible employee being a member or a potential member of a fund, as well as an industrial organisation whose registered list of callings incorporates any of the classification/s of employees to whom the Award applies, may by notification of a dispute to the Commission challenge a fund on the grounds that it does not meet the requirements of clause 5.7.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.7, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause 5.7.2 up to and including the date of that determination.
- (c) In the event of any dispute over whether any fund complies with the requirements of clause 5.7, the onus of proof shall rest upon the employer.

5.7.6 *Fund selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses 5.7.4(c), (d), (e), (f) and (g) shall be determined by a majority decision of employees.
- (b) Employees who are members of an established fund covered by clause 5.7.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.7.2 paid into a fund as provided for elsewhere in clause 5.7.4 in lieu of the established fund to which clause 5.7.4(f) has application.
- (c) The initial selection of a fund recognised in clause 5.7.4 shall not preclude a subsequent decision by the majority of Employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.
- (d) Where clause 5.7.6 has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation:

Provided that the provisions of clause 5.7 do not preclude the making at any time of an industrial instrument within the terms of clause 5.7.4(e).

5.7.7 *Enrolment*

- (a) Each employer to whom clause 5.7 applies shall as soon as practicable as to both current and future eligible Employees:
 - (i) notify each employee of the employee's entitlement to occupational superannuation;
 - (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.7.4;
 - (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund, each eligible employee receives, completes, signs and returns the necessary application form/s provided by the employer, to enable that Employee to become a member of the fund; and
 - (iv) submit completed application form/s and any other relevant material to the trustees of the fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.7 shall:
 - (i) complete and sign the necessary application form/s to enable that employee to become a member of that fund; and
 - (ii) return such form/s to the employer within 28 days of receipt of the application form/s in order to be entitled to the benefit of the contributions prescribed in clause 5.7.2.
- (c) Where an employer has complied with the requirements of clause 5.7.7(a) and an eligible employee fails to complete, sign and return the application form/s within 28 days of the receipt by the employee of that form/s, then that employer shall:
 - (i) Advise the eligible employee in writing of the non-receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardize the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.7;
 - (ii) In the event that the eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which the completed and signed application form/s is received by the employer;
 - (iii) In the event that the eligible employee fails to return a completed and signed application form/s within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form/s is a pre-requisite to the payment of any occupational superannuation contributions; and
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.7.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.7.7(c)(i) and 5.7.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.7.7(a)(iii) the employer shall be obliged to make contributions as from the date the employee became an eligible employee provided that the eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where the eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of clause 5.7.7(c) shall apply.

5.7.8 Unpaid contributions

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.7.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.7.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.7.5, had they been paid on the due dates. The making of such contributions satisfies the requirements of clause 5.7 excepting that resort to clause 5.7.8 shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

5.7.9 Record Keeping

The employer shall be required to maintain record of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the approved fund in similar form to time and wages records required to be kept in accordance with s. 366 of the *Industrial Relations Act 1999*, and shall have such records available for inspection by an industrial inspector or officer of an industrial organisation, authorised pursuant to s. 364 of that Act.

5.7.10 Exemptions

An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.7 in the following circumstances:

- (a) incapacity to pay the costs associated with its implementation; or
- (b) any special or compelling circumstances peculiar to the business of the employer.

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

6.1 Days of work

6.1.1 The ordinary working days of all Employees shall not exceed 20 days in any 28 day roster cycle, except in cases where clause 6.5.2 applies.

6.1.2 Description of the duration of a trip must comply with the following standards:

Charter	Days of work
Day charter	1
1 day/1 night	1.5
2 days/1 night	2
2 days/2 nights	2.5
3 days/2 nights	3
3 days/3 nights	3.5
4 days/3 nights	4
4 days/4 nights	4.5

- (a) Day charter - leaves before 10 a.m. and returns after 3 p.m.;
- (b) 2 day/1 night trip - leaves before 10 a.m. on the first day and returns after 3 p.m. on the second day;
- (c) 2 day/2 night trip - leaves after 10 a.m. on the first day and returns before 3 p.m. on the third day;
- (d) 3 day/2 night trip - leaves before 10 a.m. on the first day and returns after 3 p.m. on the third day;
- (e) 3 day/3 night trip - leaves after 10 a.m. on the first day and returns before 3 p.m. on the fourth day;
- (f) 4 day/3 night trip - leaves before 10 a.m. on the first day and returns after 3 p.m. on the fourth day.

This classifying system above continues for all longer trips following the same pattern, and recognises that back to back departures are calculated as a single charter.

6.1.3 There is agreement between the employer and the relevant Unions that the abovementioned list in clause 6.1.2 shall not be varied from without prior discussions between the parties.

6.1.4 Employees shall not be rostered to work within 10 hours of the cessation of their previous rostered charter or trip. Should an employee be rostered to work so that such employee will not have at least 10 consecutive hours off between rostered duty times then the employee shall, subject to clause 6.1.4, be released from work until the employee has had 10 consecutive hours off between rostered duty times. If, on the instructions of the employer, such employee resumes or continues work without having had ten consecutive hours off between rostered periods of duty, the employee shall be paid double rates until the employee is released from rostered duty at which stage the employee shall be entitled to be absent until the employee has had 10 consecutive hours off rostered duty without loss of pay for ordinary working time occurring during such absence:

Provided that for the purpose of clause 6.1.4, 8 hours shall be substituted for 10 hours where there is a changeover of rosters or where the employee and employer mutually agree in writing to do so.

6.2 Rosters

6.2.1 A weekly roster posted before 5 p.m. on a set day nominated by the employer, which may only be changed on 2

weeks' notice to employees shall be exhibited in a conspicuous place accessible to all employees and this roster shall remain in force for one week notwithstanding anything previously specified in this Award, provided that:-

- (a) the employer may allow for "swaps" to provide flexibility to employees and is prepared to offer the employees the opportunity for additional work to fill any shortfalls due to absences of normally rostered employees. With consultation with the relevant employee/s the employer maintains the right to vary rosters to reflect changes through vessel lay-ups, vessel maintenance periods, abnormal weather conditions, passenger demand and short employee situations caused through illness, or unforeseen absences of rostered Employees;
- (b) the employer may allow for "swaps" among its employees, provided that the relevant employees immediately advise their employer of the swap, and that the employer mutually agrees with the employee/s to the swap;
- (c) all "swaps" regardless of whether they are employer or employee originated will be recorded on the employee's timesheet; and
- (d) no employee can be required by the employer to work on a rostered day off.

6.2.2 Provided that in circumstances where it is not possible for the employer to establish a roster, agreement shall be reached between the employer and the employee/s directly affected as to the method of arranging working hours and the notification to be given to employees and failing agreement the matter may be processed through the grievance and disputes settlement procedure in clause 3.2.

6.3 Meal breaks

6.3.1 All employees shall be allowed time for meal breaks during the course of their working day:

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

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

6.3.2 Meals will be provided free of charge during each trip roster, and will be of a standard that is sufficient without waste.

6.4 Rest pauses

6.4.1 Each employee is entitled to a 10 minute rest pause in the employers time during the morning and afternoon without loss of pay, and is to be taken at a time mutually agreed between the Master/Coxswain and the employee, and is to be taken at a time that will not interfere with vessel operations.

6.4.2 Ideally, these rest pauses will occur when passengers on the vessel are having morning and afternoon tea breaks.

6.5 Overtime

6.5.1 If at the request of the employer, and with the agreement of the employee, the employee resumes duties after completing 20 days' work during a 28 day cycle, all time worked after the completed 20 days worked will be paid at the rate of time and one-half the daily rate specified in clause 5.2. Such request and agreement will be recorded on the employee's timesheet.

6.5.2 If at the request of the employee, the employee resumes duties after completing 20 days' work over a 28 day cycle, all time worked after the completed 20 days worked will be paid at the ordinary daily rates. Such request will be recorded on the employee's timesheet. An employer must not solicit such request by an employee, nor apply any pressure to an employee which is intended or likely to persuade an employee to make a request, so as to relieve the employer of the obligations under clause 6.5.1. Informing an employee of the terms of clause 6.5 shall not constitute a breach of clause 6.5.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual Leave

7.1.1 All employees including school-based trainees and trainees (except casuals) covered by this Award shall be entitled to annual leave at the rate of 4 weeks for each completed year of service.

7.1.2 Such annual leave shall be paid for by the employer in advance and, subject to clause 7.1.7, at the employee's ordinary rate of pay as defined in clause 5.2.

- 7.1.3 Where an employee is in receipt of a higher rate of pay immediately prior to taking an approved period of annual leave, payment for the annual leave period will be at the higher rate. In all other instances, annual leave will be paid at the ordinary rate.
- 7.1.4 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall forthwith pay to the employee in addition to all other amounts due, such pay calculated in accordance with clause 7.1.7, for the outstanding leave balance.
- 7.1.5 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid in addition to all other amounts due to them, an amount equal to 1/12th of the pay for the period of employment calculated in accordance with clause 7.1.7.
- 7.1.6 The taking of annual leave will be at a time mutually agreeable between the employer and the employee.
- 7.1.7 *Calculation of annual leave pay*

Annual leave pay (including any proportionate payment) shall be calculated as follows:

- (a) All employees

Subject to clause 7.1.7(b), in no case shall the payment by the employer to the employee be less than the sum of the following amounts:

- (i) the employee's ordinary wage rate as prescribed by this Award for the period of the annual leave (and to avoid any doubt, the employee shall be paid five times the daily rate for each week taken);
- (ii) a further amount calculated at the rate of 17.5% of the amounts referred to in clause 7.1.7(a)(i).

- (b) Clause 7.1.7(a) shall not apply to the following:

- (i) any periods of annual leave exceeding 4 weeks;
- (ii) employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to Employees.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee including school-based trainees and trainees (except casuals) are entitled to 8 days' sick leave for each completed year of their employment with their employer:
 - (i) this entitlement will accrue at the rate of one day sick leave for each 6 weeks of employment.
- (b) Sick leave may be taken for part of a day.
- (c) 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

- (a) Every employee absent from work through illness on the production of a certificate from a duly qualified practitioner specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the employer, and subject to the employee having promptly notified the employer of the illness and of the approximate period aforesaid shall, subject as herein provided, be entitled to payment in full for all time absent from work:

Provided that it shall not be necessary for an employee to produce such a certificate if the absence from work on account of illness does not exceed 2 days. Where an employee has a record of recurring absences of sick leave the employer shall, if it is considered appropriate to take such action, inform such

employee that in the event of future absences a certificate will be required from a duly qualified medical practitioner.

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; and
- (c) the employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

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

7.2.5 *Workers' compensation*

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

7.3 **Bereavement leave**

7.3.1 *Full-time and part-time employees*

All employees (except casuals) shall on the death of the employee's immediate family or a member of the employee's household, be entitled on notice to leave to attend the funeral, and such leave shall be without reduction of pay for a period not exceeding the number of days worked by the employee in 2 or 3 ordinary days of work, subject to clauses 7.3.1(a) and 7.3.1(b). Proof of such death shall be furnished by the employee to the satisfaction of the employer.

- (a) 2 days' bereavement leave is applicable if the funeral of a member of the employee's immediate family or a member of the employee's household is less than 300 kilometres from the employee's residence.
- (b) 3 days' bereavement leave is applicable if the funeral of a member of the employee's immediate family or a member of the employee's household is more than 300 kilometres from the employee's residence.

7.3.2 "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.

7.3.3 *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**

7.4.1 All employees covered by this Award will be entitled to 13 weeks' accrued long service leave after the completion of 10 years' continuous service with the same employer.

7.4.2 Except as amended by clause 7.4, all Employees covered by this Award shall be entitled to long service leave on full pay under, subject to, and in accordance with the provisions of the Act. Where any inconsistency exists, this Award will take precedence.

7.4.3 On termination, employees who have completed 7 but less than 10 years' continuous service are entitled to *pro rata* long service leave only if:

- (a) the employee's service is terminated by their death;
- (b) the employee terminates their service because of their illness or incapacity or because of a domestic or other pressing necessity;
- (c) the employer dismisses the employee for a reason other than the employee's conduct, capacity or

performance; or

- (d) the employee unfairly dismisses the employee

7.4.4 For an employee who has 10 years' continuous service or more, the payment of *pro rata* long service leave on termination of employment is not subject to the above listed criteria.

7.5 Family leave

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

7.5.1 It is to be noted that:

- (a) Employees shall be entitled to take up to 5 days' family leave per annum drawn from their sick leave entitlement in accordance with the provisions of the Family Leave Award, as per clause 7.5.2(d);
- (b) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
- (c) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.
- (d) Employees will, in every circumstance, be promptly advised of any family related information that may be received by the employer. Under no circumstances should any such information be delayed until the end of a charter or trip or similar activity.

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

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

7.6 Jury service

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

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

8.1 Living away from home

Whilst at sea, every employee shall be provided with proper meals, and a bed as defined under the survey requirements of Maritime Safety Queensland, and supplied once a week with clean linen. The employer shall be responsible for the laundering of such linen.

Meals, tea, sugar, milk and coffee shall be provided on all vessels for employees at the employer's expense.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

- 9.1.1 The parties acknowledge that various degrees of training are provided to employees in the industry, both by internal on-the-job training and through external providers.
- 9.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in such cases where this is required.
- 9.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in this industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits from such training.
- 9.1.4 The parties agree to continue discussions on issues raised in relation to training.
- 9.1.5 The parties are committed to promoting the industry as one which has the capacity to provide them with interesting career prospects.
- 9.1.6 Training courses undertaken by employees at the request of the employer will be paid by the employer for the employee's time in attending such training courses at their ordinary rate (provided that casual loading shall not be paid for time in attending such training courses), or if the employer and the employee agree, taken as time in lieu. Clause 9.1.6 shall only apply to employees who have been employed by the employer on a continuous basis for at least 12 months.

9.2 Supervision of trainees

- 9.2.1 The parties to this Award are committed to implementing traineeships. It is acknowledged that this will involve employment under a registered training contract as defined by the *Vocational Education, Training and Employment Act 2000*, or any successor legislation, and the compliance with the terms and conditions imposed by such legislation. Additionally, the employer shall ensure that trainees are supervised to the extent required by the Training and Employment Recognition Council.
- 9.2.2 The minimum rates of wages for school based trainees and trainees shall be the percentages of the rate prescribed for adult classification as per clause 5.2, and as follows:

Level	School based		Trainees	
	1st Year (Grade 11)	2nd Year (Grade 12)	1st Year	2nd Year
Certificate II	65% of Crew Level One	65% of Crew Level Two	Crew Level One	N/A
Certificate III	65% of Crew Level One	65% of Crew Level Two	Crew Level One	Crew Level Three
Certificate IV	65% of Crew Level One	65% of Crew Level Two	Crew Level One	Crew Level Three

- 9.2.3 School based trainees are high school students - typically Grade 11 and 12 - who work with an employer as paid Employees whilst studying for their Senior Certificate, and are bound by a Registered Training Contract made in accordance with clause 9.2.
- 9.2.4 For the purposes of clause 9.2, the definition of Trainee is as defined by the *Vocational Education, Training and Employment Act 2000*.
- 9.2.5 No school based trainee or trainee shall suffer a reduction of their wage rate as a result of the implementation of this Award. However, trainees who are currently receiving in excess of the total amount prescribed in clauses 5.2 and 9.2 will be safe guarded at their pre-existing rate until such time as the total minimum rate of pay expressed for that wage rate is equal to or in excess of the sage guarded position.

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

10.1 Avoidance of physical exhaustion

- 10.1.1 Unless the exigencies of the service (e.g. under emergency or immediate attention situations) requires it, no employee shall be required to be continuously on duty for more than 20 days.
- 10.1.2 Where the employee has been continuously on duty for 20 days, that Employee shall not be required for further

duty until the employee has had a rest period of seven consecutive days.

10.1.3 If an employee volunteers to work more than 20 consecutive days of duty, the employee must notify the employer of their offer in writing, and the employer must agree to accept that offer before the employee continues duty past the initial 20 days.

10.1.4 Before permitting an employee to work as requested clause 10.1.3, an employer must assess the fitness for such duty and any possible fatigue of the employee. No employee shall be permitted to work more than 28 consecutive days.

10.2 Workplace health and safety

10.2.1 The employer shall operate to the standards of safety set down by Maritime Safety Queensland, Workplace Health and Safety Queensland and Queensland Health in order to ensure a safe, clean and healthy work environment for all employees.

10.2.2 The employer will provide the necessary tools and equipment to protect employees and to enable employees to work in a safe manner at all time as set down in relevant legislation.

10.2.3 Additionally, all employees will complete mandatory safety courses required to carry out their duties as per relevant legislation.

10.3 Loss of personal effects

10.3.1 If an employee sustains loss or damage of, or to their necessary personal effects (such as, prescription glasses, medical equipment, etc), and tools by fire, foundering, shipwreck, collision, explosion, stranding or ingress of oil or water, during or in the course of their employment, the employer shall compensate the Employee concerned for such loss or damage by a cash payment equivalent to the value of the effects, tools or other equipment so lost or damaged, but any such payment shall not exceed the amount of \$890.00. The maximum payable for any one article to be limited to \$400.00.

10.3.2 *Definition of ingress of oil and water*

- (a) Ingress of oil - damage to personal effects shall be deemed to have occurred if oil enters the crew's quarters as the result of:
 - (i) malfunctions; or
 - (ii) bunkers overflowing during refuelling; or
 - (iii) a bunker rupturing; or
 - (iv) a fuel pipe leaking.
- (b) Ingress of water - damage to personal effects shall be deemed to have occurred if water enters the crew's quarters as the result of:
 - (i) a cabin window or port breaking in bad weather; or
 - (ii) a leak allowing bilges to flood; or
 - (iii) a fresh water or ballast tank leaking; or
 - (iv) a deck head leaking; or
 - (v) a ballast, raw or fresh water pipe leaking

10.4 Safety and working environment

10.4.1 A continuing high safety and working environment standard will be maintained in all facets of the employer's operations.

10.4.2 The minimum safety standards and safe working practices to be observed shall be those as prescribed from by the Workplace Health and Safety Queensland, relevant Australian Standards, Maritime Safety Queensland and Queensland Health in accordance with the work the employees performs.

10.4.3 In line with the employer's duty of care obligations, employees who are exposed to health and safety hazards as identified by individual workplace health and safety hazard risk assessments conducted by the employer from

time to time, will be provided appropriate Personal Protective Equipment (PPE).

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

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

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

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

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

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the employer that 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 Industrial Relations, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

11.3 Union encouragement

This clause 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 a Union.

11.3.1 *Documentation to be provided by employer*

At the point of engagement, an employer to whom this Award applies shall provide employees with a document

indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.

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

11.3.2 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.

11.3.3 Deduction of union fees

The employer undertakes upon authorisation to deduct union membership dues, as levied by the relevant Union in accordance with its rules, from the pay of employees who are members of the relevant Union. Such monies collected will be forwarded to the relevant Union at the beginning of each month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

11.4 Award posting

A copy of this Award and the Family Leave Award shall be kept on each vessel and the premises of the employer in a position so as to be easily read without let or hindrance by the employees.

Dated 24 May 2005.

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

Operative Date: 1 June 2005
New Award - Whitsunday Charter Boat Industry Award -
State 2005
Released: 9 June 2005