

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

FAMILY LEAVE AWARD 2003

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the Family Leave Award 2003 is hereby reprinted, pursuant to s. 698 of the *Industrial Relations Act 1999*.

I hereby certify that the Award contained herein is a true and correct copy of the Family Leave Award 2003 as at 1 September 2010.

Dated 1 November 2010.

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

FAMILY LEAVE AWARD 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Family Leave Award 2003.

1.2 Arrangement

Subject matter	Clause No.
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PART 1 - APPLICATION AND OPERATION

Title	1.1
Arrangement	1.2
Award coverage	1.3
Date of operation	1.4
Award posting	1.5
Grievance process	1.6
Employer's obligation	1.7
Anti-discrimination	1.8

PART 2 - TERMS AND CONDITIONS

Maternity leave	2.1
Parental leave	2.2
Adoption leave	2.3
Part-time work	2.4
Exclusion	2.5

PART 3 - CARER'S LEAVE

Use of sick leave	3.1
Unpaid leave for caring purposes	3.2
Annual leave	3.3
Time off in lieu of payment for overtime	3.4
Make up time	3.5

PART 4 - BEREAVEMENT LEAVE

Bereavement leave	4.1
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Industrial Agreements to which this Award has application SCHEDULE 1

1.3 Award coverage

This Award applies to all employers and employees who are engaged in a calling or callings in a State Award that include a clause deeming the Family Leave Award to be a part of that particular Award. This Award also applies to those parties bound by an industrial agreement listed in the Schedule 1.

1.4 Date of operation

This Award takes effect from 14 July 2003.

1.5 Award posting

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

1.6 Grievance and dispute settling procedure

In the event of any dispute arising in connection with any part of this Award the dispute will be processed through the grievance and dispute settling procedure clause in the relevant parent Award subject to clause 1.8 (Anti discrimination).

1.7 Employer's obligation

1.7.1 On becoming aware that an employee or an employee's spouse is pregnant, or that an employee is adopting a child, an employer must inform the employee of:

- (a) the employee's entitlement to parental leave under this Award.
- (b) The employee's obligations to notify the employer of any matter in this Award.

1.7.2 An employer cannot rely on an employee's failure to give a notice or other document required by this Award unless the employer establishes that clause 1.7.1 has been complied with.

1.8 Anti-discrimination

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

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

1.8.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 1.6, 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.

1.8.3 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.

1.8.4 Nothing in clause 1.8 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 Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

PART 2 - TERMS AND CONDITIONS

2.1 Maternity leave

2.1.1 *Nature of leave* - Maternity leave is unpaid leave.

2.1.2 *Definitions* - For the purposes of clause 2.1:

- (a) "Employee" includes a part-time employee who has at least 12 months' continuous service with the employer or a long term casual employee, but does not include an employee engaged upon other casual or seasonal work.
- (b) "Parental leave" means leave of the type provided for in clause 2.2 whether prescribed in an Award or otherwise.
- (c) "Child" means a child of the employee under the age of one year.
- (d) "Spouse" includes a *de facto* spouse, including a spouse of the same sex or a former spouse.
- (e) "Continuous service" means service under an unbroken contract of employment and includes:
 - (i) any period of leave taken in accordance with clause 2.1;
 - (ii) any period of part-time employment worked in accordance with clause 2.1; or
 - (iii) any period of leave or absence authorised by the employer or by the Award.
- (f) "Long term casual" employees means casual employees who are engaged, by a particular employer on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement.

2.1.3 *Eligibility for maternity leave*

- (a) The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.
- (b) An employee who becomes pregnant, upon production to her employer of the certificate required by clause 2.1.4, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's 1st birthday. This entitlement shall be reduced by any period of parental leave taken by the employee's spouse in relation to the same child and apart from parental leave of up to one week at the time of confinement shall not be taken concurrently with parental leave.

2.1.4 *Certification* - At the time specified in clause 2.1.5 the employee must produce to her employer:

- (a) A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.
- (b) A statutory declaration stating particulars of any period of parental leave sought or taken by her spouse and that for the period of maternity leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

2.1.5 *Notice requirements*

- (a) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in clause 2.1.4(a).
- (b) An employee shall give not less than 4 weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in clause 2.1.4(b).
- (c) Subject to clauses 2.1.6 and 2.1.9 where an employee continues to work within the 6 week period immediately prior to the expected date of birth an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties or transfer to a safe job in accordance with clause 2.1.6.
- (d) An employee shall not be in breach of clause 2.1.5 as a consequence of failure to give the stipulated period of notice in accordance with clause 2.1.5(b) if such failure is occasioned by the confinement occurring earlier than the presumed date or another reason that was reasonable in the circumstances:

Provided that the employee must give the employer:

- (i) notice of the period of the leave within 2 weeks after the birth; and

- (ii) in the case of the birth of a living child - a doctor's certificate stating the date on which the child was born.

2.1.6 *Transfer to a safe job*

Where a risk assessment based on:

- (a) a doctor's certificate given by the employee to the employer; and
- (b) the employer's obligations under the *Workplace Health and Safety Act 1995*;

determines that the present work of a female employee, because of her pregnancy or breast feeding, provides a risk to the health or safety of the employee or of her unborn or newborn child, the employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.

Where an adjustment is not practicable the employer must transfer the employee to a safe job which will not expose her to the risk. The job should be as nearly as possible comparable to remuneration and status of her present work.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave or available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to risk.

2.1.7 *Variation of period of maternity leave*

- (a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under clause 2.1.3:
 - (i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the employer and the employee.
- (b) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (c) An employee and an employer may agree that the employee break the period of maternity leave by returning to work for the employer, whether on a full-time, part-time or casual basis.

2.1.8 *Cancellation of maternity leave*

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 2 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

2.1.9 *Special maternity leave and sick leave*

- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (i) she shall be entitled to such period of unpaid leave (to be known as *special maternity leave*) as a registered medical practitioner certifies as necessary before her return to work; or
 - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to *special maternity leave*, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as *special maternity leave*) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under clause 2.1.3.

- (c) For the purposes of clauses 2.1.10, 2.1.11, 2.1.12 and 2.1.13, maternity leave shall include *special maternity leave*.

2.1.10 *Maternity leave and other leave entitlements*

- (a) Provided the aggregate of any leave, including leave taken under clause 2.1, does not exceed the period to which the employee is entitled under clause 2.1.3, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

2.1.11 *Effect of maternity leave on employment*

Absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant Award or agreement but in accordance with s. 11(5)(a) of the *Industrial Relations Act 1999* shall be taken into account in calculating entitlement to annual leave to a maximum of 3 months:

Provided that where an employee on maternity leave does not return to the service of the employer prior to or following completion of maternity leave and thereafter remain in the service of that employer for a continuous period of 3 months, such employee shall forfeit the right to have any part of the period of maternity leave taken into account in calculating entitlements to or in lieu of annual leave.

This proviso shall not apply in the case of termination of employment by the employer otherwise than for serious misconduct.

2.1.12 *Termination of employment*

- (a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with the industrial instrument relevant to that employment.
- (b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected.

2.1.13 *Return to work after maternity leave*

- (a) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.
- (b) Subject to clauses 2.1.6 where an employee elects to return to work within six weeks after the birth of the child, the employee will provide to the employer a medical certificate stating that she is fit to work on her normal duties.
- (c) An employee returning to work after the completion of a period of leave taken pursuant to clause 2.1 shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to clause 2.1.6 to the position she held immediately before such transfer.

Where such position no longer exists which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

- (d) If a long term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

2.1.14 *Replacement employees*

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under clause 2.1 the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Nothing in clause 2.1.14 shall be construed as requiring an employer to engage a replacement employee.

2.2 Parental leave

2.2.1 Nature of leave

Parental leave generically encompasses long parental leave, short parental leave or adoption leave. For the purpose of clause 2.2 parental leave refers to leave taken by the spouse of the pregnant or adoptive employee and is exclusive of maternity and adoption leave. Parental leave is unpaid leave.

2.2.2 Definitions - For the purposes of clause 2.2:

- (a) "Employee" includes a part-time employee who has at least 12 months continuous service with the employer or a long term casual employee, but does not include an employee engaged upon other casual or seasonal work.
- (b) "Maternity leave" means leave of the type provided for in clause 2.1 (and includes special maternity leave) whether prescribed in an Award or otherwise.
- (c) "Child" means a child of the employee or the employee's spouse under the age of one year.
- (d) "Spouse" includes a *de facto* including a spouse of the same sex as the employee or a former spouse.
- (e) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.
- (f) "Continuous service" means service under an unbroken contract of employment and includes:
 - (i) any period of leave taken in accordance with clause 2.2;
 - (ii) any period of part-time employment worked in accordance with clause 2.2; or
 - (iii) any period of leave or absence authorised by the employer or by the Award.
- (g) "Long term casual" employees means casual employees who are engaged, by a particular employer on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement.
- (h) "Long parental leave" means:
 - (i) for a pregnant employee - maternity leave; or
 - (ii) for an employee whose spouse gives birth - leave taken by the employee to enable the employee to be the child's primary caregiver.
- (i) "Short parental leave" means leave taken by an employee, in connection with the birth of a child of the employee's spouse, at the time of the birth of the child or the other termination of the pregnancy.

2.2.3 Eligibility for parental leave

An employee, upon production to the employer of the certificate required by clause 2.2.4, shall be entitled to one or 2 periods of parental leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (a) An unbroken period of up to one week at the time of confinement of the spouse.
- (b) A further unbroken period of up to 51 weeks in order to be the primary caregiver of a child provided that such leave shall not extend beyond the child's 1st birthday.

This entitlement shall be reduced by any period of maternity leave or adoption leave taken by the employee's spouse and long parental leave shall not be taken concurrently with that maternity leave or adoption leave. The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which they proceed upon either period of leave.

2.2.4 Certification

At the time specified in clause 2.2.5 the employee must produce to the employer:

- (a) A certificate from a registered medical practitioner which names the spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (b) In relation to any period to be taken under clause 2.2.3(b), a statutory declaration stating:
 - (i) the period of parental leave to become the primary caregiver of a child;
 - (ii) particulars of any period of maternity leave sought or taken by the spouse; and
 - (iii) for the period of paternity leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

2.2.5 *Notice requirements*

- (a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which the employee proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in clause 2.2.4.
- (b) The employee shall not be in breach of clause 2.2.5 as a consequence of failure to give the notice required in clause 2.2.5(a) if such failure is due to:
 - (i) the birth occurring earlier than the expected date; or
 - (ii) the death of the mother of the child; or
 - (iii) another reason that was reasonable in the circumstances

Provided that the employee must give the employer:

- (A) notice of the period of the leave within 2 weeks after the birth; and
 - (B) in the case of the birth of a living child - a doctor's certificate stating the date on which the child was born
- (c) An employee must notify the employer of any change in the information provided pursuant to clause 2.2.4 within 2 weeks after the change.

2.2.6 *Variation of period of parental leave*

- (a) Provided the maximum period of parental leave does not exceed the period to which the employee is entitled under clause 2.2.3:
 - (i) the period of parental leave provided clause 2.2.3(b) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the employer and the employee.
- (b) The period of parental leave taken under clause 2.2.3(b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

2.2.7 *Cancellation of parental leave*

Parental leave, applied for under clause 2.2.3(b) but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

2.2.8 *Parental leave and other leave entitlements*

- (a) Provided the aggregate of any leave, including leave taken under clause 2.2, does not exceed the period to which the employee is entitled under clause 2.2.3, an employee may, in lieu of or in conjunction with parental leave, take any annual leave or long service leave or any part thereof to which the employee is entitled.
- (b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave) shall not be available to an employee during the absence on parental leave.

2.2.9 *Effect of parental leave on employment*

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant Award or Agreement but in accordance with s. 11(5)(a) of the *Industrial Relations Act 1999* shall be taken into account in calculating entitlement to annual leave to a maximum of 3 months:

Provided that where an employee on parental leave does not return to the service of the employer prior to or following completion of parental leave and thereafter remain in the service of that employer for a continuous period of 3 months, such employee shall forfeit the right to have any part of the period of parental leave taken into account in calculating entitlements to or in lieu of annual leave.

This proviso shall not apply in the case of termination of employment by the employer otherwise than for serious misconduct.

2.2.10 Termination of employment

- (a) An employee on parental leave may terminate their employment at any time during the period of leave by notice given in accordance with the industrial instrument relevant to that employment.
- (b) An employer shall not terminate the employment of an employee on the ground of their absence on parental leave, but otherwise the rights of an employer in relation to termination of employment are not affected.

2.2.11 Return to work after parental leave

- (a) An employee shall confirm their intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of parental leave provided by clause 2.2.3(b).
- (b) An employee, upon returning to work after parental leave or the expiration of the notice required by clause 2.2.11(a) shall be entitled to the position which the employee held immediately before proceeding on parental leave, or in relation to an employee who has worked part-time under clause 2.2 to the position the employee held immediately before commencing such part-time work.

Where such position no longer exists which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

- (c) If a long term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

2.2.12 Replacement employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave.
- (b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under clause 2.2 the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Nothing in clause 2.2.12 shall be construed as requiring an employer to engage a replacement employee.

2.3 Adoption leave

2.3.1 *Nature of Leave* - Adoption leave is unpaid leave and refers to short adoption leave or long adoption leave

2.3.2 *Definitions* - For the purposes of clause 2.3:

- (a) "Employee" includes a part-time employee who has at least 12 months continuous service with the employer or a long term casual employee, but does not include an employee engaged upon other casual or seasonal work.
- (b) "Child" means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.

- (c) "Relative adoption" occurs when a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (d) "Primary care-giver" means a person who assumes the principal role of providing care and attention to the child.
- (e) "Spouse" includes a *de facto*, spouse including a spouse of the same sex as the employee and a former spouse.
- (f) "Continuous services" means service under an unbroken contract of employment and includes:
 - (i) any period of leave taken in accordance with clause 2.3;
 - (ii) any period of part-time employment worked in accordance with clause 2.3; or
 - (iii) any period of leave or absence authorised by the employer or by the Award.
- (g) "Long term casual employee" means a casual employee who has been engaged, by a particular employer on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks access to this type of leave.
- (h) "Short adoption leave" means leave taken by an employee at the time of the placement of an adopted child with the employee.
- (i) "Long adoption leave" means leave taken by an employee to enable the employee to be the child's primary caregiver.

2.3.3 Eligibility

An employee, upon production to the employer of the documentation required by clause 2.3.4 shall be entitled to one or 2 periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (a) An unbroken period of up to 3 weeks at the time of the placement of the child;
- (b) An unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child.

This entitlement of up to 52 weeks shall be reduced by:

- (i) any period of leave taken pursuant to clause 2.3.3(a); and
- (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

2.3.4 Certification

Before taking adoption leave the employee must produce to the employer:

- (a) (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (b) In relation to any period to be taken under clause 2.3.3(b), a statutory declaration stating:
 - (i) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

2.3.5 Notice requirements

- (a) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (b) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take:

Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which the employee proceeds upon such leave.

- (c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but not later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under clause 2.3.3(a).
- (d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under clause 2.3.3(b) give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (e) An employee shall not be in breach of clause 2.3.5, as a consequence of failure to give the stipulated period of notice in accordance with clauses 2.3.5(c) and (d) if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or another reason that was reasonable in the circumstances:

Provided that the employee must give the employer notice of the period of the leave within 2 weeks after the placement.

2.3.6 *Variation of period of adoption leave*

- (a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under clause 2.3.3:
 - (i) the period of leave taken under clause 2.3.3(b) may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the employer and employee.
- (b) The period of adoption leave taken clause 2.3.3(b) may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

2.3.7 *Cancellation of adoption leave*

- (a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding 2 weeks from receipt of notification for the employee's resumption of work.

2.3.8 *Special leave*

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding 2 days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

2.3.9 *Adoption leave and other entitlements*

- (a) Provided the aggregate of any leave, including leave taken under clause 2.3, does not exceed the period to which the employee is entitled under clause 2.3.3, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which the employee is entitled.
- (b) Paid sick leave or other paid authorised Award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave

2.3.10 *Effect of adoption leave on employment*

Absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant Award or agreement but in accordance with s.11 (5)(a) of the *Industrial Relations Act 1999* shall be taken into account in calculating entitlement to annual leave to a maximum of 3 months:

Provided that where an employee on adoption leave does not return to the service of the employer prior to or following completion of adoption leave and thereafter remain in the service of that employer for a continuous period of 3 months, such employee shall forfeit the right to have any part of the period of adoption leave taken into account in calculating entitlements to or in lieu of annual leave.

This proviso shall not apply in the case of termination of employment by the employer otherwise than for serious misconduct.

2.3.11 *Termination of employment*

- (a) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with the industrial instrument relevant to that employment.
- (b) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected.

2.3.12 *Return to work after adoption leave:*

- (a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than 4 weeks prior to the expiration of the period of adoption leave provided by clause 2.3.3(b).
- (b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under clause 2.3 the position held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

2.3.13 *Replacement employees*

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under clause 2.3, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Nothing in clause 2.3.13 shall be construed as requiring an employer to engage a replacement employee.

2.4 Part-time work

2.4.1 *Definitions* - For the purposes of clause 2.4:

- (a) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
- (b) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (c) "Spouse" includes a *de facto* spouse, including a spouse of the same sex as the employee and former spouse.
- (d) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under clause 2.4 whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

(e) "Continuous service" means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with clause 2.4;
- (ii) any period of part-time employment worked in accordance with clause 2.4; or
- (iii) any period of leave or absence authorised by the employer or by the Award.

2.4.2 Entitlement

With the agreement of the employer:

- (a) An employee may work part-time in one or more periods at any time from the date of birth of the child until its 2nd birthday or in relation to adoption from the date of placement of the child until the 2nd anniversary of the placement.
- (b) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

2.4.3 Return to former position

- (a) An employee who has had at least 12 months' continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (b) Nothing in Clause 2.4.3(a) shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

2.4.4 Effect of part-time employment on continuous service

Commencement on part-time work under clause 2.4, and return from part-time work to full-time work under clause 2.4, shall not break the continuity of service or employment.

2.4.5 Pro Rata entitlements

Subject to clause 2.4 and the matters agreed to in accordance with clause 2.4.8, part-time employment shall be in accordance with the provisions of the industrial instrument relevant to that employment which shall apply *pro rata*.

2.4.6 Transitional arrangements - Annual leave

- (a) An employee working part-time under clause 2.4 shall be paid for and take any leave accrued in respect of a period of part-time employment, in such periods and manner as specified in the annual leave provisions of the industrial instrument relevant to that employment, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under clause 2.4.
- (b) A full time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under clause 2.4 in such periods and manner as specified in the industrial instrument relevant to that employment as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

Provided that, by agreement between the employer and the employee, the periods over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

2.4.7 Transitional arrangements - Sick leave

An employee working part-time under clause 2.4 shall have sick leave entitlements which have accrued under the industrial instrument relevant to that employment (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

2.4.8 Part-time work agreement

- (a) Before commencing a period of part-time employment under clause 2.4 the employee and the employer shall have agreed:

- (i) that the employee may work part-time
 - (ii) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (iii) upon the classification applying to the work to be performed; and
 - (iv) upon the period of part-time employment.
- (b) The terms of this agreement may be amended by consent.
 - (c) The terms of this agreement or any amendment to it shall be reduced to writing and retained by the employer. A copy of the agreement and any amendment to it shall be provided to the employee by the employer.
 - (d) The terms of this agreement shall apply to the part-time employment.

2.4.9 *Termination of employment*

- (a) The employment of a part-time employee under clause 2.4, may be terminated in accordance with the provisions of the industrial instrument relevant to that employment but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under clause 2.4 or has enjoyed or proposes to enjoy any benefits arising under clause 2.4.
- (b) Any termination entitlements payable to an employee whose employment is terminated while working part-time under clause 2.4, or while working full-time after transferring from part-time work under clause 2.4, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a *pro rata* basis.

2.4.10 *Extension of hours of work*

An employer may request, but not require, an employee working part-time under clause 2.4 to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with clause 2.4.5.

2.4.11 *Nature of part-time work*

The work to be performed part-time need not be the work performed by the employee in their former position but shall be work otherwise performed under the industrial instrument relevant to that employment.

2.4.12 *Inconsistent Award provisions*

An employee may work part-time under clause 2.4 notwithstanding any other provision of the industrial instrument relevant to that employment which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (a) Limiting the number of employees who may work part-time.
- (b) Establishing quotas as to the ratio of part-time to full-time employees.
- (c) Prescribing a minimum or maximum number of hours a part-time employee may work.
- (d) Requiring consultation with, consent of or monitoring by a Union.

Such provisions do not apply to part time work under clause 2.4.

2.4.13 *Replacement employees*

- (a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under clause 2.4.
- (b) A replacement employee may be employed part-time. Clauses 2.4.5, 2.4.6, 2.4.7, 2.4.8, 2.4.9 and 2.4.12 apply to the part-time employment of a replacement employee.
- (c) Before an employer engages a replacement employee under clause 2.4, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of clause 2.4.1(e).

(e) Nothing in clause 2.4.13 shall be construed as requiring an employer to engage a replacement employee.

2.5 Exclusion

This Award has effect despite any industrial instrument or order to the extent that the industrial instrument or order provides an employee with a benefit that is less favourable to the employee.

PART 3 - CARER'S LEAVE

3.1 Use of sick leave

3.1.1 An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use up to 5 days per annum sick leave entitlement for absences to provide care and support for such persons when they are ill.

3.1.2 The employee shall, if required by the employer, establish by production of a medical certificate and/or statutory declaration that the person concerned is ill and that the illness is such as to require care by another.

3.1.3 In normal circumstances, an employee shall not take carer's leave where another person has taken leave to care for the same person.

3.1.4 Carer's leave may be taken for part of a single day.

3.1.5 The entitlement to use sick leave in accordance with clause 3.1 is subject to:

(a) The employee being responsible for the care of the person concerned.

(b) The person concerned being either:

(i) a member of the employee's immediate family; or

(ii) a member of the employee's household.

(c) The term "immediate family" includes:

(i) 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

(ii) an adult child (including an adopted 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.

3.1.6 The employee shall, where practicable (give the employer):

(a) Notice prior to the absence of the intention to take leave;

(b) The name of the person requiring care and their relationship to the employee;

(c) The reasons for taking such leave; and

(d) The estimated length of absence.

If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first reasonable opportunity.

3.1.7 An employee who may use sick leave as carer's leave may take unpaid carer's leave if the employer agrees.

3.1.8 A long term casual employee may take additional unpaid carer's leave if the employer agrees.

3.1.9 Upon application by an employee, the Commission may issue orders in accordance with clause 3.1 for the purpose of providing care and support when the primary care giver is ill and unable to provide care and support for the person concerned. Application for orders may only be made after the parties have genuinely attempted to resolve the matter in accordance with the grievance and dispute settling procedure clause in the relevant parent Award.

3.2 Unpaid leave for caring purposes

An employee may elect with the consent of the employer, to take unpaid leave.

3.3 Annual leave

- 3.3.1 An employee may elect, with the consent of the employer, to take annual leave not exceeding 5 days in any calendar year at a time or times agreed between the parties which may be taken in single day periods or parts thereof in any calendar year at a time or times agreed between the parties.
- 3.3.2 Access to annual leave, as prescribed in clause 3.3.1, shall be exclusive of any shutdown period provided for elsewhere under the parent Award.
- 3.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.

3.4 Time off in lieu of payment for overtime

- 3.4.1 An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer to discharge a responsibility to care for or support a person within clause 3.1.5 whether sick or not.
- 3.4.2 Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- 3.4.3 An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime in the parent Award, for any overtime worked under clause 3.4.1 where such time has not been taken within 4 weeks of accrual and requested by the employee.

3.5 Make-up time

- 3.5.1 An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the parent Award, at ordinary rates.
- 3.5.2 An employee on shift work may elect, with the consent of their employer, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, at the shift rate which would have been applicable to the hours taken off.

PART 4 - BEREAVEMENT LEAVE

4.1 Bereavement leave

4.1.1 Full-time and part-time employees

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

4.1.2 Long term casual employees

- (a) A long term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under clause 4.1.2.

4.1.3 "Immediate family" includes:

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

4.1.4 Unpaid leave

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

SCHEDULE

Schedule of Industrial Agreements to which this Award has application.

Name of Industrial Agreement	Case No.	Date of Operation
Anglican Boarding Schools and Colleges (Excluding South-East Queensland) Industrial Agreement	B531 of 1992	14 December 1992
Australian Environmental Pest Managers Association Ltd - Industrial Agreement	IA51 of 1996	1 April 1996
Barrier Reef Retail Pty. Ltd. - Industrial Agreement	B78 of 1992	1 May 1992
Biostil Plant - CSR Plane Creek - Industrial Agreement	IA55 of 1994	5 December 1994
Bowen Coke Pty. Ltd. - Bowen Coke Works - Industrial Agreement	IA11 of 1994	23 March 1994
Brisbane Market Trust - Market Officers and Cleaners - Industrial Agreement	B166 of 1992	6 May 1992
Bundaberg Bag Company Pty. Ltd. - Industrial Agreement	B320 of 1992	7 September 1992
Bundaberg Sugar Company Limited - Plantation Employees - Industrial Agreement	B81 of 1992	1 May 1992
Cairns Marine Terminal Pty. Ltd., Trading as 'GBR (Diving) Centre' Industrial Agreement	B473 of 1992	2 November 1992
Cairns Parkroyal - Industrial Agreement	B77 of 1992	1 May 1992
Canteen Employees - Provincial Traders Pty. Ltd. - Industrial Agreement	B163 of 1992	22 June 1992
Carbon Consulting International Pty Ltd, Cargo Superintendents Co. (A/sia) Pty Ltd, and S.G.S. Australia Pty Ltd Employees - State - Industrial Agreement	IA66 of 1993	16 December 1993
Caretaker, Cleaners and Turnstile Attendants - Swimming Pool - Townsville City Council - Industrial Agreement	B167 of 1992	4 May 1992
Catholic Boarding Schools and Colleges Employees (Excluding South-East Queensland) - Industrial Agreement	IA102 of 1995	2 October 1995
Clerical and Administrative Staff Queensland University of Technology Student Guild - Industrial Agreement	B110 of 1992	20 March 1992
Clerks - Mirror Newspapers Limited - Industrial Agreement	B110 of 1992	20 March 1992
Clerks - Queensland Newspapers Pty. Ltd. - Industrial Agreement	B110 of 1992	20 March 1992
Department for Social Mission of the Presbyterian Church of Queensland - Industrial Agreement	B77 of 1992	1 May 1992
Diversional Therapy - AWU - Industrial Agreement	B581 of 1992	4 January 1993
Douglas Developments Pty. Ltd. - Tourist Employees - Industrial Agreement	B77 of 1992	1 May 1992
Drum Reconditioning - C.J. Kelly Pty. Ltd. - Industrial Agreement	B79 of 1992	1 May 1992
Drum Reconditioning - Stuart Drum Company - Industrial Agreement	B79 of 1992	1 May 1992
Employees - Anglican Boarding Schools and Colleges (Excluding South East Queensland) - Industrial Agreement	B77 of 1992	1 May 1992
Employees - Birch Carroll and Coyle Limited Multi-Cinema Complex - Industrial Agreement	B113 of 1992	31 March 1992
Employees - Cook Freeze Pty. Ltd. - Industrial Agreement	B79 of 1992	1 May 1992
Endeavour Foundation - Industrial Agreement	IA26 of 1994	4 July 1994
Epic Employment Services Incorporated - AWU - Industrial Agreement	B77 of 1992	1 May 1992
Everhard Industries Pty. Ltd. - Industrial Agreement	B79 of 1992	1 May 1992
Fast Food Industry Award - State (Excluding South-East Queensland) - The Coffee Club, Rockhampton - Industrial Agreement	IA79 of 1995	1 August 1995
Flight Nurses (Royal Flying Doctor Service - Queensland) - Industrial Agreement	IA24 of 1994	7 July 1994
Forest Resource Industry - Employees - Corinthian Industries (Qld) Pty. Ltd. - Industrial Agreement	A27 of 1992	14 May 1992
Forest Resources - Hancock Bros. and AWU - Industrial Agreement	B373 of 1992	5 August 1992
Glass Bottom Water Bikes - Industrial Agreement	IA80 of 1996	4 November 1996
Grundy Entertainment Pty. Ltd. - Industrial Agreement	B372 of 1992	5 August 1992
Hamilton Islands Employees - Industrial Agreement	IA114 of 1995	15 December 1995
Hayman Island Resort (Marine) - Industrial Agreement	IA44 of 1993	5 October 1993
Hilton International Cairns - Industrial Agreement	B77 of 1992	1 May 1992
Holiday Apartments - Industrial Agreement	IA20 of 1993	28 May 1993
Hotels, Motels, Resorts and Accommodation - Industrial Agreement	IA88 of 1996	19 March 1997
Laboratory Personnel - Provincial Traders Pty. Ltd. - Industrial Agreement	B163 of 1992	22 June 1992
Mackay Region Hospitality Employees - Industrial Agreement	IA60 of 1995	1 July 1995

Name of Industrial Agreement	Case No.	Date of Operation
Masters, Mates and Engineers - Reef Management Pty. Ltd. - Industrial Agreement	2R98-1 of 1990 2R4-1 of 1993	1 November 1993
Mechanical Engineering Award - State - Thomas Borthwick & Sons (Australasia) Limited - Industrial Agreement	B153 of 1996	23 February 1996
Medium Density Fibreboard Production ACI Australia Limited Trading as Laminex Industries - Industrial Agreement	B79 of 1992	1 May 1992
Metalliferous Mining Award - State - Commercial Minerals Limited CM Division - Industrial Agreement	B81 of 1992	1 May 1992
Moreton Hire Service - Trade, Public Promotion and Hire Services Employees Industrial Agreement	IA21 of 1997	7 March 1997
North Goonyella Coal Mine Catering - Industrial Agreement	IA70 of 1993	22 February 1994
Off-Shore Island Resorts - Industrial Agreement	IA20 of 1997	5 March 1997
Oil Industry - Oil Re-Refining Oil and Chemical Industries Pty. Ltd. - Industrial Agreement	B81 of 1992	1 May 1992
Paperboard Manufacturing, Wastepaper Handling - Australian Paper Manufacturers - Industrial Agreement	B79 of 1992	1 May 1992
Parents and Citizens Associations' Retail Employees - Industrial Agreement	IA23 of 1993	23 April 1993
Presbyterian Boarding Schools and Colleges Employees (Excluding South East Queensland) - Industrial Agreement	B77 of 1992	1 May 1992
Professional and Technical Employees - Red Cross Transfusion Service - Industrial Agreement	B121 of 1992	16 April 1992
Queensland Fire Service - Professional Technical and Administrative Employees - Industrial Agreement	A56 of 1992 IA65 of 1996	14 September 1992 13 September 1996
Queensland Fire Service - Rural Fire Division - Industrial Agreement	A49 of 1992	19 August 1992
Queensland Spastic Welfare League (Equipment Technology Services) - Industrial Agreement	IA9 of 1997	31 January 1997
Queensland University of Technology Student Guild - Administrative Employees - Industrial Agreement	IA55 of 1993	15 November 1993
Queensland University of Technology Student Guild - Industrial Agreement	IA54 of 1993	15 November 1993
Radisson Plaza Hotel - Industrial Agreement	B77 of 1992	1 May 1992
Remand and Reception Centre (Brisbane) - Employees - Industrial Agreement	B285 of 1993	9 August 1993
Rice Milling and Rice Storing - Lower Burdekin Rice Producers' Co-operative Association - Industrial Agreement	B79 of 1992	1 May 1992
River Connections Pty Ltd - Industrial Agreement	IA23 of 1997	24 March 1997
Rocky Point Products Industrial Agreement	IA10 of 1997	11 February 1997
Royal Queensland Bush Children's Health Scheme - Industrial Agreement	B77 of 1992	1 May 1992
Sea Swift Pty. Ltd. - Industrial Agreement	B79 of 1992	1 May 1992
SEPR Australia Pty Ltd - Refractory Brick Manufacturing - Industrial Agreement	IA85 of 1995	15 September 1995
Storemen and Packers - Campbells Cash & Carry Pty. Limited - Industrial Agreement	B434 of 1994	4 July 1994
Storemen and Packers - Davids Holdings Pty. Limited - Grocery and Variety Distribution Centre - Industrial Agreement	B434 of 1994	4 July 1994
Stradbroke Ferries Pty. Ltd. - AWU - Industrial Agreement	IA32 of 1993	23 August 1993
Subway - Fast Food Industry Award - South-Eastern Division - Industrial Agreement	IA39 of 1994	28 October 1994
Subway - Fast Food Industry Award - State (Excluding South-East Queensland) - Industrial Agreement	IA38 of 1994	28 October 1994
Take-away Food Production Employees - Golden Dragon Products, Zillmere - Industrial Agreement	A22 of 1992	13 April 1992
Theatrical Employees - Local Authority Area Theatres - Industrial Agreement	B113 of 1992	31 March 1992
Tobacco Farm Workers - Industrial Agreement	B79 of 1992	1 May 1992
Veterinary Employees - Animal Protection League - Industrial Agreement	B104 of 1992	13 May 1992
Veterinary Surgery, Clinic and Practice Employees Award - State	B77 of 1992	1 May 1992
Wall Panels and Fixtures Processing and Manufacture - A.J. Bates (Australia) Ltd. - Industrial Agreement	B79 of 1992	1 May 1992
Wheaten, Biscuit Production Employees - Lemlodge Pty. Ltd. - Industrial Agreement	A66 of 1992	11 November 1992
Work Venture Incorporated - AWU - Industrial Agreement	B77 of 1992	1 May 1992
Yatala Pies Pty. Ltd. - Industrial Agreement	A65 of 1992	11 November 1992
Zarb Road Transport Pty. Ltd. - Industrial Agreement	IA5 of 1997	16 June 1996

Dated 22 May 2003.

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

Operative Date: 14 July 2003