

Vol. 372, Part 1

27 January 2012

Pages 1 - 902



NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

Printed by the authority of the  
**Industrial Registrar**  
47 Bridge Street, Sydney, N.S.W.

ISSN 0028-677X

## CONTENTS

Vol. 372, Part 1

27 January 2012

Pages 1 - 902

		Page
Awards and Determinations -		
Motels, Accommodation and Resorts, &c. (State) Award	CORR	1
Award Reprints -		
Canteen, &c., Workers (State) Award	AR	2
Charitable Institutions (Professional Paramedical Staff) (State) Award 2006	AR	32
Charitable Sector Aged and Disability Care Services (State) Award 2003	AR	62
Charitable, Aged and Disability Care Services (State) Award	AR	127
Clerical and Administrative Employees (State) Award	AR	187
Clothing Trades (State) Award	AR	225
Entertainment and Broadcasting Industry - Live Theatre and Concert (State) Award	AR	315
Hair and Beauty (State) Award	AR	353
Health, Fitness and Indoor Sports Centres (State) Award	AR	383
Marine Charter Vessels (State) Award	AR	420
Miscellaneous Workers' - Kindergartens and Child Care Centres, &c. (State) Award	AR	435
Miscellaneous Workers Home Care Industry (State) Award	AR	490
Miscellaneous Workers' Kindergarten and Child Care Centres (State) Training Wage Award	AR	527
Motels, Accommodation and Resorts, &c. (State) Award	AR	534
Nurses (Private Sector) Redundancy (State) Award	AR	577
Nurses (Private Sector) Superannuation (State) Award	AR	584
Nurses' (Private Sector) Training Wage (State) Award	AR	588
Nurses, Other Than in Hospitals, &c. (State) Award 2006	AR	598
Nursing Homes, &c., Nurses' (State) Award	AR	621
Private Health and Charitable Sector Employees Superannuation (State) Award	AR	668
Private Hospitals Aged and Disability Care Services Industry Redundancy (State) Award, The	AR	672
Private Hospitals, Aged Care and Disability Services Industry (Training) (State) Award	AR	680
Restaurants, &c., Employees (State) Award	AR	693
Security Industry (State) Award	AR	722
Shop Employees (State) Award	AR	763
Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 2009	AR	811
Transport Industry - Redundancy (State) Award	AR	847
Transport Industry (State) Award	AR	855

NEW SOUTH WALES

**INDUSTRIAL GAZETTE**

*Printed by the authority of the Industrial Registrar*



## **INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES**

### **PRESIDENT**

The Honourable Justice R. P. BOLAND<sup>†</sup>

### **VICE-PRESIDENT**

The Honourable Justice M. J. WALTON<sup>†</sup>

### **MEMBERS**

The Honourable Justice F. MARKS<sup>\*</sup>  
The Honourable Mr Deputy President R. W. HARRISON<sup>†</sup>  
The Honourable Justice T. M. KAVANAGH<sup>\*</sup>  
Mr Deputy President P. J. SAMS AM<sup>‡</sup>  
The Honourable Justice W. R. HAYLEN<sup>\*</sup>  
The Honourable Justice C. G. STAFF<sup>\*</sup>  
The Honourable Justice A. F. BACKMAN<sup>\*</sup>

Commissioner Inaam TABBAA  
Commissioner Donna McKENNA<sup>‡</sup>  
Commissioner Elizabeth A. R. BISHOP  
Commissioner Alastair MACDONALD<sup>†</sup>  
Commissioner David W. RITCHIE  
Commissioner John D. STANTON<sup>†</sup>

### **INDUSTRIAL REGISTRAR**

Mr M. GRIMSON

### **ACTING DEPUTY INDUSTRIAL REGISTRAR**

Ms L. HOURIGAN

---

\* These Presidential members are also Judicial members of the Industrial Court of New South Wales, established as a superior court of record pursuant to section 152 of the *Industrial Act* 1996.

† These members are dual appointees of Fair Work Australia.

‡ These dual appointees work full-time from Fair Work Australia premises at 80 William Street Sydney.



**MOTELS, ACCOMMODATION AND RESORTS, &c. (STATE)  
AWARD**

**CORRECTION**

A. The Variation of 30 September 2005, Serial C4119, published 3 February 2006 (356 I.G. 1229), is corrected as follows:

1. By inserting the following new instruction 13, and renumbering the existing instruction 13 to read as 14:

13. Insert after clause 35, Union Dues, the following new clause:

**36. Leave Reserved**

Leave is reserved for any party to revisit the provisions of the award to consider what amendments, if any, should be made to the award as a result of the decisions of the Commission in matter IRC No. 4330 of 2003, application for variation of awards Re: Secure Employment Clause, and matter IRC No. 7167 of 2003, application for a State Decision pursuant to s51 of the *Industrial Relations Act 1996* to address Employment Opportunities.

G. M. GRIMSON *Industrial Registrar.*

---

Printed by the authority of the Industrial Registrar.

**CANTEEN WORKERS (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B8492	17/03/2000	First pay period on or after 19/07/1999	314	155
7(7.1)(7.1.3) & Part B	B8612	20/04/2000	First pay period on or after 07/09/1999	315	80
15(15.1).	B8862	19/05/2000	On and from 17/12/1999	315	941
7(7.1)(7.1.3) & Part B.	B9584	19/01/2001	First pay period on or after 07/09/2000	321	969
7(7.1)(7.1.3) & Part B.	C0519	21/09/2001	First pay period on or after 07/09/2001	327	1247
7 (7.1) (7.1.3) & Part B	C1394	13/09/2002	First full pay period on or after 07/09/2002	336	253
& (7.1.3) & Part B	C2004	15/08/2003	First full pay period on or after 07/09/2003	340	988
7, Part B	C2827	20/08/2004	First full pay period on or after 01/09/2004	346	65
7, 31	C2797	21/01/2005	On and from 22/03/2004	348	88
29	C3819	16/09/2005	First full pay period on or after 27/06/2005	353	892
7, Part B	C3924	21/10/2005	First full pay period on or after 07/09/2005	354	594
1, 10, 20A	C4775	06/10/2006	From 14/03/2006	361	122
7, Part B	C5030	03/11/2006	First full pay period on or after 07/09/2006	361	729
2, 7, 9	C5312	23/02/2007	From 01/01/2007	362	112
24, 25, 26	C5493	06/07/2007	On and from 19/12/2007	362	1129
7, Part B	C5855	31/08/2007	First full pay period on or after 07/09/2007	363	663
9, 31, 38	C6161	30/11/2007	On and from 03/10/2007	364	608
7, Part B	C6689	26/09/2008	First full pay period on or after 07/09/2008	366	759
7, Part B	C7238	30/10/2009	First full pay period on or after 18/09/2009	369	420
7, Part B	C7578	02/09/2011	First full pay period on or after 16/10/2010	371	590



## PART A

### 1. Arrangement

#### PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Classification Structure
4.	Terms of Employment
5.	Hours
6.	Make-up Time
7.	Wages
8.	Juniors
9.	Apprentices
10.	Casual Employees
11.	Meal Break
12.	Overtime and Penalty Rates
13.	First-aid
14.	Superannuation
15.	Public Holidays
16.	Annual Leave
17.	Mixed Functions
18.	Payment of Wages
19.	Laundry Allowance
20.	Work Clothes and Safety Equipment
20A.	Secure Employment (Occupational Health and Safety)
21.	Working Together
22.	Grievance Handling and Disputes Procedure
23.	Sick Leave
24.	Personal/Carer's Leave
25.	Parental Leave
26.	Bereavement Leave
27.	Jury Service
28.	Blood Donors
29.	Redundancy and Technological Change
30.	Supported Wage
31.	Traineeships
32.	Sick Leave
33.	Exhibition of Award in Workplace
34.	Employee Representative and Union Business
35.	Exemptions
36.	Laundry Allowance Leave Reserved
37.	Redundancy
38.	Area, Incidence and Duration

#### PART B

#### MONETARY RATES

Table 1 - Wage Rates

Table 2 - Other Rates and Allowances

### 2. Definitions

- 2.1 "Part-time Employee" means a permanent employee who is engaged to work a regular number of ordinary hours, such hours being not less than nine and not more than an average of 32 hours per week.

- 2.2 "Casual Employee" means an employee engaged other than as a full-time or part-time employee.
- 2.3 "Full-time Employee" is an employee who is engaged to work an average of 38 ordinary hours per week.
- 2.4 "School based apprentice" is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

### 3. Classification Structure

- 3.1 The following classification structure shall apply:
- 3.1.1 GRADE 1 - An employee with less than six months experience in the canteen industry or an industry where similar work is carried out and can be employed for up to three months at the introductory level where on the job training will be provided by the employer.
- 3.1.2 GRADE 2 - Is an employee who is primarily engaged in one or more of the following:
- Cleaning, tidying and setting up of kitchen, food preparation and customer services areas, including the cleaning of equipment, crockery and general utensils;
  - Setting and/or wiping down tables and sideboards, removing food plates, emptying ashtrays and picking up glasses;
  - Assembly and preparation of ingredients for cooking, heating meals and/or preparing simple food items, such as sandwiches, chips, salads, hamburgers and toasted foodstuffs;
  - Undertaking general waiting duties of both food and/or beverages, taking customer orders at a table, serving food and/or beverages to tables;
  - Receipt of monies, giving change, operation of cash registers, and use of electronic swipe input devices;
  - Greeting and seating guests under general supervision.
  - Supplying, dispensing or mixing of liquor, including cleaning of bar areas and equipment, preparing the bar for service, taking orders and serving drinks and assisting in the cellar;
  - Receiving, counting, storing and distributing goods not involving the extensive use of documents and records;
  - General cleaning, handling pantry items and linen; and
  - General assistance to employees of a higher grade.
- 3.1.3 GRADE 3 - Is an employee who is primarily engaged in one or more of the following:
- Preparing and cooking a limited range of food items such as breakfasts, grills and snacks;
  - Waiting duties of food and/or beverages, including providing assistance in choosing the meal and wines by providing detailed information when required of each item listed on menus, advising customers on the appropriate choices of wine and providing information on wine types and all items on the wine list, taking customer orders, serving food and/or beverages, supervises or undertakes the clearing of tables after and during meals, receipt of monies, taking reservations, greeting and seating guests;

Preparing and serving a range of drinks, including blended and other cocktails;

Receiving, counting, storing and distributing goods not involving the control of the store or cellar; and

Assisting in the instruction on a one to one basis of employees of a lower grade.

3.1.4 GRADE 4 - Is an employee who is primarily engaged in one or more of the following:

Undertaking general cooking duties, including a la carte cookery, baking, pastry cooking or butchery;

Full control of a cellar and/or store, including stock control and ordering;

Designing, preparing and serving a range of sophisticated cocktails and other drinks, or duties performed by a head bar person;

Performing specialist waiting duties in a fine dining or otherwise complex catering environment, such as those performed by a head waiter;

Performing specialist wine waiting and ordering duties;

Providing basic supervision and instruction to employees of a lower grade; and

Supervising, training and co-ordinating staff.

3.1.5 GRADE 5 - Is an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:

Undertaking cooking, baking, pastry cooking or butchering duties;

Undertaking general and specialised waiting duties;

Other trade work appropriate to an employee's trade;

Supervising, training and co-ordinating staff; and

The employer may require the employee to provide proof of any previous service or a trade certificate at the time of commencing employment. Where it is established that the employee failed to disclose that information when required to do so, such service or qualification shall not be taken into account when assessing any later claim on the employer.

3.1.6 GRADE 6 - Is an employee who has completed an apprenticeship or who has passed the appropriate trade test and has completed post trade qualifications:

Supervising, training and co-ordinating other trade qualified staff.

3.2 The above classification structure is intended to cover all employees employed at a canteen, but not managerial employees. Where the employee's duties are not mentioned within these classifications, the employee shall be classified in a grade which, by reference to the grading descriptions, most closely reflects the skills and responsibilities of the job. All employees will perform both front and back of house duties within their classification.

#### **4. Terms of Employment**

4.1 Employees shall be engaged on a full-time, part-time or casual basis. The basis of the engagement will not be changed without the employer giving the employee 14 days notice of the change.

4.2 Upon engagement an employee shall be informed by the employer of:

- 4.2.1 Whether the employee is to be engaged on a full time, part time or casual basis.
- 4.2.2 The employee's classification, job description and the duties to be performed.
- 4.2.3 The working times including when meal breaks and rest breaks will be taken.
- 4.2.4 Who will supervise the employee.
- 4.2.5 The training the employee will receive.
- 4.2.6 The career path the employee can expect.
- 4.2.7 Whether the employee starts work on probation (not applicable to apprentices or trainees.)
- 4.3 Probationary Employment -
- 4.3.1 Employees engaged as full-time or part-time employees without any previous service with the employer may be employed on probation for the first 14 days of employment, during which period the employment may be terminated with one day's notice.
- 4.4 Leaving Employment -
- 4.4.1 An employer may terminate the employment of a full-time or part-time employee by giving the amount of notice as set out below for the employee's period of continuous employment or by paying the employee the money the employee would otherwise have earned during this period:
- |                               |         |
|-------------------------------|---------|
| Less than 1 year              | 1 week  |
| 1 year and less than 3 years  | 2 weeks |
| 3 years and less than 5 years | 3 weeks |
| 5 years and over              | 4 weeks |
- 4.4.2 An employer will not terminate an employee's employment unless the employee has been employed with the employer for less than one month or the employer has told the employee that the employer is unhappy with the employee's employment and the employee has not improved after being given a chance to do so.
- 4.4.3 Nothing in this clause shall affect the right of the employer to dismiss an employee without notice or without paying any monies instead of notice if the employee has acted dishonestly in employment, the employee has unreasonably failed to carry out a direction properly given to them by a person in charge, or the employee has otherwise behaved so badly as to justify being dismissed without notice.
- 4.4.4 A full-time or part-time employee when leaving employment must give the employer at least one week's notice or the employer may deduct from wages owing any part of the notice period not worked. An employer shall not terminate an employee's employment only because the employee has given notice.
- 4.4.5 On termination of employment for any reason, the employer will give a full or part-time employee a certificate of service stating how long the employee had worked for the employer and what job the employee did.
- 4.5 Where an employee is detained at work after the normal finishing time and it is then too late to travel by the employee's usual transport to go home, the employer shall either arrange transport or repay the employee's taxi fare.

## 5. Hours

- 5.1 Full-time employees will work not more than an average of 38 ordinary hours per week in accordance with this award. These ordinary hours may not be averaged over more than a four week period.

- 5.2 Full-time and part-time employees will work not more than five days per week or, by agreement between the employer and the employee, not more than 20 days in a four week period.
- 5.3 Rosters -
- 5.3.1 The employer shall display a roster in a place accessible to all employees. The roster shall set out the starting, finishing and meal times for full-time and part-time employees for each week. The roster shall be posted at least seven days before its commencement.
- 5.3.2 Subject to other clauses of this award, employees must work at such times and on such days as the employer needs them. An employer cannot change the roster of a full-time employee without giving the employee seven days notice, except in an emergency beyond the employers control, or by agreement with the employee. The employer will discuss any change with the employee and try to take into account the employee's family and personal needs.
- 5.4 The ordinary daily working hours of full-time and part-time employees will not be more than ten hours in any one shift, not including the time taken for meal breaks. By agreement between the employer and the employee, an employee other than an employee under 18 years old, may work up to 12 ordinary hours including the time taken for a paid meal break, without the payment of a penalty as set out in subclause 12.1, of clause 12, Overtime and Penalty Rates.
- 5.5 Full-time and part-time employees will be given ten clear hours off between finishing work on one shift and starting work on the next shift or paid double the employees ordinary rate of pay for all time worked until the employee has had ten clear hours off.
- 5.6 If a full-time or part-time employee works less than three hours on a shift the employee will be paid for no less than three hours worked.
- 5.7 A part-time employee's ordinary hours shall be:
- 5.7.1 Where there are less than 15 full time and part time employees employed at the establishment, not less than nine hours per week and not more than 128 hours per four week period.
- 5.7.2 Where there are 15 or more full time and part time employees employed at the establishment, not less than 15 hours per week and not more than 128 hours per four week period.
- 5.8 If a part time employee is not given at least seven days notice or otherwise agrees to a change of rostered hours, the employee will be paid an extra ten per cent for the whole of the period of any affected shift(s) (and any overtime or other penalty payment will be calculated on this extra ten per cent), except where the change of roster has been requested by the employee.
- 5.9 Broken Shift - Where an employee works a broken shift the employer will pay the employee for not less than eight hours worked on any one shift. The shift will be spread over not more than two periods within a span of not more than 14 hours inclusive of meal breaks. For each broken shift worked, an employee shall be paid an allowance of one half of the hourly ordinary rate of pay payable from time to time to employees at the Grade 2 classification.

## **6. Make-Up Time**

- 6.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours and works those hours at a later time during the spread of ordinary hours provided in this award, at the ordinary rate of pay.
- 6.2 If an employee is in receipt of a penalty as set out in paragraph 12.2.1 of subclause 12.2 of clause 12, Overtime and Penalty Rates, that employee may elect, with the consent of the 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 loaded rate which would have been applicable to the hours taken off.

## 7. Wages

### 7.1 Full-Time Employees:

7.1.1 Adult full-time employees shall be paid the appropriate minimum weekly wage rate for the employees grade as set out in Table 1 - Wage Rates, of Part B, Monetary Rates.

7.1.2 The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

- (i) any equivalent overaward payments, and/or
- (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

7.1.3 Wage rates will be calculated to the nearest ten cents.

### 7.2 Part-time Employees:

7.2.1 Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-eight.

7.2.2 Terms and conditions of this award applicable to full-time employees shall apply to part-time employees on a pro-rata basis.

### 7.3 Casual Employees

7.3.1 Casual employees will be paid for each hour worked 1/38th of the weekly rate for the grade which applies to the employee plus 20 per cent. All overtime and other penalty rates will be calculated on this rate.

7.3.2 Casual employees are also entitled to be paid 1/12th of the employee's ordinary pay as defined in the *Annual Holidays Act 1944*, to pay for the employee's annual holiday entitlement.

### 7.4 Wages for school based apprentice

- (a) The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the job training.
- (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
- (c) Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

## 8. Juniors

The minimum weekly wage rate for a junior employee shall be calculated by applying the following percentages of the appropriate adult rate for the classification in which the employee is employed:

Age	%
17 years of age and under	62
18 years of age	70
19 years of age	80
20 years of age	90

## 9. Apprentices

- 9.1 The minimum weekly wage rate for apprentices shall be calculated by applying the following percentages to the total rate of a Grade 5 employee.

% of Grade 5

Four year apprentice cooks -

1st year (or equivalent training stage)	46
2nd year (or equivalent training stage)	54
3rd year (or equivalent training stage)	67
4th year (or equivalent training stage)	80

"Equivalent training stage" recognises that an employee could receive credit for training undertaken prior to the commencement of the employees apprenticeship or have the ability to accelerate the period of the employees apprenticeship.

- 9.2 Tool Allowance - An apprentice in cooking who provides the employees own tools shall be paid an allowance as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- 9.3 Progression through Wage Structure

9.3.1 School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.

9.3.2 The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

- 9.4 Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

- 9.5 Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.

- 9.6 Disputes and Disciplinary Matters

The provisions of the Apprenticeship and Traineeship Act 2001 shall apply for the resolution of disputes and disciplinary matters.

## 10. Casual Employees

- 10.1 Casual employees will not be entitled to annual leave loading or compassionate or bereavement leave or to payment for jury service or as a blood donor and clauses 5, 6, 23, 24, 25, 26, 27, 28, 29, 31 do not apply to them.

- 10.2 The ordinary daily working hours of casual employees will not be more than ten hours in any one shift, not including the time taken for meal breaks. By agreement between the employer and the employee, hours per shift may not be more than 12 including the time taken for meal breaks (employees under 18 years old will not be required to work more than ten hours in any one shift), without the payment of a penalty as set out in subclause 12.1, of clause 12, Overtime and Penalty Rates. The agreement referred to will be in writing.

10.3 If a casual employee works less than three hours on a shift the employee will be paid for no less than three hours worked.

10.4 Casual employees will not be entitled to any public holiday penalty unless the employee works on a public holiday.

#### 10.5 Secure Employment

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(b) Casual Conversion

(i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of twelve months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

(ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of twelve months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

(iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

(iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

(v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.

(vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:

(1) whether the employee will convert to full-time or part-time employment; and

(2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work



agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (d) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

### 11. Meal Break

- 11.1 An employee who is engaged to work five hours or more shall be given a meal break of between 30 minutes and one hour. This meal break shall be given after working not more than five hours. The first meal break taken on any shift shall be unpaid. For full time and part time employees, the second meal break will be a paid break, and the employee will be paid a meal allowance for the second break the amount of which is as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, or given a meal.
- 11.2 Such meals for all employees may be staggered by the employer within each particular canteen in order that full services may be maintained.

### 12. Overtime and Penalty Rates

- 12.1 If the employer requires an employee to work:
- 12.1.1 Overtime being for full time employees more than 38 hours per week or the employer may average these hours over up to a four week period;
  - 12.1.2 overtime being for part time employees being more than 36 hours per week or the employer may average these hours over up to a four week period;
  - 12.1.3 overtime being more than the ordinary daily working hours as set out in subclause 5.4 of clause 5, Hours;
  - 12.1.4 on a Saturday;
  - 12.1.5 on a Sunday;

12.1.6 on a public holiday;

the employer will pay the employee extra wages (called a penalty) being:

in the case of paragraphs 12.1.1 and 12.1.2 of this subclause, time and one half of the ordinary rate of pay for the first two hours worked and after that double time;

in the case of paragraph 12.1.3 of this subclause double the ordinary rate of pay for all overtime worked;

in the case of Saturday work, time and one quarter of the ordinary rate of pay for all time worked;

in the case of Sunday work, time and one half of the ordinary rate of pay for all time worked; and

in the case of public holidays work two and a half times the ordinary rate of pay for all time worked.

12.2 Evening or Night Work

12.2.1 If an employee works more than half a regular shift on any day between midnight and 6.00a.m. (called a night shift), the employer will pay the employee for all time worked on that shift an extra 30 per cent penalty. This penalty is not payable for work on Sundays and public holidays, or for overtime worked under this clause 12.

12.3 Time off in lieu of payment for overtime - The employee may, with the consent of the employer, take time off within 12 months of becoming entitled to these payments instead of being paid with the time off being calculated at the rate of one hour off for every hour worked. Time off not taken within 12 months will be paid out at the overtime rates applying at the time it was earned.

### 13. First-Aid

13.1 Where an employee is a qualified first-aid attendant and is employed to carry out the duties of a qualified first aid attendant he/she shall be paid an additional amount as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

### 14. Superannuation

14.1 Definitions -

14.1.1. "Eligible Employee" shall mean a full time or permanent part time weekly employee who has completed a total of four weeks service with the employer, or a casual employee with more than 152 ordinary hours service in any one year.

14.1.2. "Approved fund" means either:

14.1.2.1. A registered company fund, provided that the fund is a complying regulated fund and holds a Certificate of Compliance issued by the Insurance and Superannuation Commission ("the Company Fund");

14.1.2.2. The Australian Superannuation Savings Employment Trust (ASSET); or

14.1.2.3. The Hospitality Industry Portable Liquor Union Superannuation Trust Deed (Host-Plus); or

14.1.2.4. Superannuation Trust of Australia (STA); or

14.1.3. "Complying regulated fund" means a superannuation fund that is regulated under the *Superannuation Industry (Supervision) Act 1993*, and has been issued with a Certificate of Compliance by the Insurance and Superannuation Commission.

- 14.1.4. "Ordinary time earnings" means the award classification rate including any over award payments, shift premiums for ordinary hours of work, and any percentage addition payable to casual employees for ordinary hours of work. Provided that, contributions shall not include the calculation of overtime, meal money, extra rates, occasional bonus payments or any other ancillary payments of a like nature prescribed by this award.
- 14.2 Superannuation Legislation - The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993*, and section 124 of the *Industrial Relations Act 1996*. This legislation, as varied from time to time, shall govern the superannuation rights and obligations of the parties.
- 14.3 Contributions -
- 14.3.1. The employer shall make, in respect of eligible employees, superannuation contributions of three per cent of ordinary time earnings into an approved Fund. Such contributions shall be made in the manner and at times specified by the terms of the Fund or any agreement between the employer and the Trustee of the Fund.
- 14.3.2. The employer shall not be required to make contributions for any period in which an eligible employee is absent on unpaid leave or when on workers compensation.
- 14.3.3. An eligible employee may make contributions in addition to those paid by the employer and may authorise the employer to pay such contributions in the Fund directly from the employee's wages.
- 14.3.4. The obligation of the employer to contribute to the Fund in respect of any eligible employee shall cease on the last day of such employee's employment with the employer.
- 14.3.5. Existing Arrangements - An employer shall be exempt from the superannuation provisions of this clause if that employer has, prior to 1 August 1991, established a fund and is paying on behalf of eligible employees, contributions providing superannuation benefits equivalent to three per cent of an employee's ordinary weekly earnings. This exemption shall extend to all aspects of this clause.

## 15. Public Holidays

### 15.1

- 15.1.1 Public Holidays are New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day and the days on which Australia Day, Anzac Day, Queen's Birthday and Labour Day are observed as public holidays.
- 15.1.2 Where a substitute day is proclaimed or gazetted to replace any of the above days, the substituted day shall be the public holiday in lieu of the original day.
- 15.1.3 The following additional days are also public holidays for the Christmas/New Year period of 1999-2000:
- Tuesday 28 December 1999; and
- Monday 3 January 2000.
- 15.1.4 The following is a public half-holiday for the Christmas-New Year period of 1999-2000 in New South Wales:
- that part of Friday 31 December 1999 that is after noon.

- 15.2 If a full time or part time employee works on a public holiday, the employee shall be paid at the rate of double time and one-half for all time worked.
- 15.3 If an employee, other than a casual employee, does not work and would normally be rostered to work on a public holiday, the employee will be paid the employees normal ordinary wages for that week.
- 15.4 If an employee, other than a casual employee, is not normally rostered to work regularly on the same days each week and the employee is not rostered to work on a public holiday, the employer will either pay the employee an additional day's wages, or add a day to the employees annual holiday's leave, or give the employee another day off on ordinary pay
- 15.5 An employer may not change an employee's normal rosters to avoid paying the employee for a public holiday.
- 15.6 If an employee, other than a casual employee, is absent from work on the working day before or the working day after a public holiday without reasonable excuse, the employee shall not be entitled to payment for such a holiday.
- 15.7 An employee, other than a casual employee, will be given an additional holiday as a public holiday. The employee will become entitled to this on the anniversary of each continuous year of employment with the employer. This day can be taken on a day which is convenient to the employee and employer as a public holiday and is instead of a union picnic day.

#### **16. Annual Leave**

- 16.1 See *Annual Holidays Act 1944*.
- 16.2 A seven day shift worker, being a shift worker who is rostered to work regularly on Sundays and public holidays over a 12 month period, shall be allowed an additional week's annual leave in addition to the leave prescribed under the *Annual Holidays Act 1944*.
- 16.3 During any period of annual leave an employee shall receive a loading of 17.5 per cent calculated on the rates of pay prescribed by clause 7, Wages, on leave falling due on or after the coming into effect of this award.

#### **17. Mixed Functions**

- 17.1 An employee who is required by the employer to carry out work on a temporary basis that carries a higher rate of pay than the employee's ordinary classification shall be paid the higher rate while doing that work. This clause shall not apply to work performed under supervision for training purposes.

#### **18. Payment of Wages**

- 18.1 All Wages Will be Paid Weekly Or Fortnightly By Cheque Or Electronic Funds Transfer Into an Account Nominated By the Employee from Time to Time Or By Cash as the Employer May Choose.
- 18.2 Wages will be paid or transferred into the employees nominated account within two business days of the end of each pay period.
- 18.3 All wages will be calculated in ten minute intervals for time worked of less than an hour.
- 18.4 Where a decision is made to change the pay period from weekly to fortnightly, the employer will provide reasonable notice of such change to affected employee(s).

#### **19. Laundry Allowance**

- 19.1 The employer will launder an employee's special clothing or pay the employee a laundry allowance of the amount as set out in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- 19.2 Special clothes are those which the employer asks the employee to wear as a uniform and which the employee could not use for everyday wear or, if the employee is a chef or cook, the employee's uniform.

## **20. Work Clothes and Safety Equipment**

- 20.1 The employer will provide an employee with all necessary safety equipment and protective clothing. The employee must use/wear these items at all times when necessary and must take good care of them.
- 20.2 The employer will replace all broken or lost items but the employer can ask the employee to pay the employer back if they are lost or broken because of carelessness of the employee. The onus of proving this will be on the employer.

### **20A. Secure Employment (Occupational Health and Safety)**

- (i) For the purposes of this subclause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

## **21. Working Together**

- 21.1 The parties to this award recognise the need for employers and employees to work closely to make the employer's organisation a better place to work and to make business better. Employers shall consult with employees either individually, within working groups or altogether.
- 21.2 Individually - Employers shall meet with employees from time to time to discuss matters such as the employees' progress, job performance, problems, training programme and career prospects.

- 21.3 As work groups - Employers and employees shall hold meetings from time to time to discuss how the business is doing, what changes can be made to increase business and work efficiency, any concerns either party has about work or work related matters and any proposed changes that may lead to employees being made redundant.
- 21.4 An employer shall not harm an employee in employment because an employee has expressed an opinion.

## **22. Grievance Handling and Disputes Procedure**

- 22.1 Procedures relating to grievances of individual employees -
- 22.1.1 The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- 22.1.2 A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 22.1.3 Reasonable time limits must be allowed for discussion and resolution at higher levels of authority.
- 22.1.4 At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- 22.1.5 While a procedure is being followed, normal work must continue.
- 22.2 Procedures relating to disputes etc. between employers and their employees -
- 22.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduate steps for further discussion and resolution at higher levels of authority.
- 22.2.2 Reasonable time limits must be allowed for discussion at each level of authority.
- 22.2.3 While a procedure is being followed, normal work must continue.
- 22.3 The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure

## **23. Sick Leave**

- 23.1 An employee, other than a casual employee, who has worked for the employer for more than three months shall be entitled to up to 38 hours off in the first year of employment and 60.8 hours off in each of the second and subsequent years of employment without loss of pay if the employee is unable to attend work because the employee is ill or has been injured.
- 23.2 An employee must give the employer as much notice as possible if the employee is to take sick leave, and give the employer any reasonable proof that the employer may ask for.
- 23.3 Sick leave accumulates from year to year, that is, sick leave not taken in each year of service will be available to the employee from the end of each such year.

## **24. Personal/Carer's Leave**

- 24.1 Use of Sick Leave
- 24.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 24.1.3.2 who needs the employee's care and support, shall be entitled to use, in

accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 23, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

24.1.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

24.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:

24.1.3.1 the employee being responsible for the care of the person concerned; and

24.1.3.2 the person concerned being:

24.1.3.2.1 a spouse of the employee; or

24.1.3.2.2 a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or

24.1.3.2.3 a child or an adult child ( including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

24.1.3.2.4 a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

24.1.3.2.5 a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:

24.1.3.2.5.1 "relative" means a person related by blood, marriage or affinity;

24.1.3.2.5.2 "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

24.1.3.2.5.3 "household" means a family group living in the same domestic dwelling.

24.1.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of the absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 22, Grievance Handling and Disputes Procedure, should be followed.

24.2 Unpaid Leave for Family Purpose -

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 24.1.3.2 above who is ill or who requires care due to an unexpected emergency.

24.3 Annual Leave -

24.3.1 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

24.3.2 Access to annual leave, as prescribed in paragraph 24.3.1 of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

24.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

24.3.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

24.4 Time Off in Lieu of Payment for Overtime -

24.4.1 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 within 12 months of the said election.

24.4.2 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.

24.4.3 If, having elected to take time as leave in accordance with paragraph 24.4.1 of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.

24.4.4 Where no election is made in accordance with the said paragraph 24.4.1, the employee shall be paid overtime rates in accordance with the award.

24.5 Make-up Time -

24.5.1 An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.

24.5.2 An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

24.6 Rostered Day Off (RDO) -

24.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.

24.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

24.6.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.



24.6.4 This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

24.7 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 24.1.2 and 24.1.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 24.1.3.2 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 25. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

(a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 26. Bereavement Leave

26.1 An employee, other than a casual employee, shall be entitled to up to three days bereavement leave in each year of employment without deduction of pay on the death of a person prescribed in subclause 26.3 of this clause.

26.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.

26.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in paragraph 24.1.3, of subclause 24.1 of clause 24, Personal/Carer's, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

26.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which employee has already been granted other leave.

26.5 Bereavement entitlements for casual employees

26.5.1 Subject to the evidentiary and notice requirements in 26.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 24.1.3.2 of clause 24, Personal/Carer's Leave.

26.5.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

26.5.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **27. Jury Service**

- 27.1 If an employee, other than a casual employee, is required to attend for jury service the employer will pay the employee the difference between what the employee would have earned while working for the employer and the amount of jury pay received by the employee.
- 27.2 The employee shall give the employer proof that the employee was on jury service and the amount received.
- 27.3 The employee must tell the employer as soon as the employee knows that the employee is required for jury service.

### **28. Blood Donors**

If an employee wishes to donate blood, the employee may do so during working hours without loss of pay provided that:

- 28.1 The time and day selected meet with the employer's convenience and does not unduly disrupt the employer's operations.
- 28.2 The employee is able to donate blood at a place within five walking minutes of the workplace.
- 28.3 The employee must provide the employer with proof that the employee donated blood.
- 28.4 This entitlement is limited to a maximum of two hours on no more than three occasions in any one year of employment.

### **29. Redundancy and Technological Change**

#### **29.1 Application**

- 29.1.1 This Clause shall apply in respect to full time and part time persons employed in the classifications specified by Clause 3, Classification Structure.
- 29.1.2 In respect to employers who employ 15 or more employees immediately prior to the termination of employment of employees, in the terms of Clause 29.5.
- 29.1.3 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
- 29.1.4 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks, or where employment is terminated due to the ordinary and customary turnover of labour.

#### **29.2 Introduction of Change - Employer's Duty to Notify**

- 29.2.1 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 the Union to which they belong.

- 29.2.2 "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, promotion 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, it shall be deemed not to have significant effect.

### 29.3 Employer's Duty to Discuss Change

- 29.3.1 The employer shall discuss with the employees affected and the Union to which they belong, inter alia, the introduction of the changes referred to in subclause 29.2 above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.

- 29.3.2 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 subclause 29.2 of this Clause.

- 29.3.3 For the purpose of such discussions, the employer shall provide to the employees concerned and the Union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 29.4 Redundancy - Discussions Before Terminations

- 29.4.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subclause 29.2.1, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the Union to which they belong.

- 29.4.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause 29.4.1 and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

- 29.4.3 For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the Union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 29.5 Termination of Employment - Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure, in accordance with subclause 29.2.1.

- 29.5.1 In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than one year	1 week
1 year and less than 3 years	2 weeks

3 years and less than 5 years	3 weeks
5 years and over	4 weeks

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

29.5.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

#### 29.6 Notice for Technological Change

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with subclause 29.2.1 of this award:

29.6.1 In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.

29.6.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment shall be terminated by part of the period of notice specified and part payment in lieu thereof.

29.6.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

#### 29.7 Time Off During the Notice Period

29.7.1 During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.

29.7.2 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.

#### 29.8 Employee Leaving During the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this Clause to which the employee would have been entitled had the 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.

#### 29.9 Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

#### 29.10 Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify CentreLink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## 29.11 Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by CentreLink.

## 29.12 Transfer To Lower-Paid Duties

Where an employee is transferred to lower-paid duties for reasons set out in subclause 29.2, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary-time rates for the number of weeks of notice still owing.

## 29.13 Severance Pay

29.13.1 Where an employee is to be terminated pursuant to subclause 29.5, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service.

If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of service	Under 45 years of age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

29.13.2 Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of service	45 years of age and over entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

29.13.3 "Week's pay" means - the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid pursuant to this award.

## 29.14 Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 29.13 above.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect of paying the amount of severance pay in subclause 29.13 of this Clause will have on the employer.

## 29.15 Alternative Employment

Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 29.13 above if the employer obtains acceptable alternative employment for an employee.

**30. Supported Wage**

## 30.1 Definitions -

30.1.1 "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity with the supported wage system.

30.1.2 "Assessment Instrument" means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

30.1.3 "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

30.1.4 "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process".

## 30.2 Application -

30.2.1 This clause applies only to employees who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on the employees productive capacity and who meet the impairment criteria for the receipt of a Disability Support Pension.

30.2.2 This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation.

30.2.3 This clause does not apply to employers in respect of the employers facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 1986*, and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under section 10 or section 12A of the said Act, or if a part only has received recognition, that part.

## 30.3 Wages -

30.3.1 Following the trial period prescribed in paragraph 30.4.5, of subclause 30.4 of this clause, employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay for the class of work which the person is performing according to the following schedule:

Assessed Capacity Rate	% of Rate of Pay
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%

70%	70%
80%	80%
90%	90%

Notation - Where a person's assessed capacity is ten per cent, the person shall receive a high degree of assistance and support.

30.3.2 The minimum weekly ordinary time rate of pay payable to the employee during the trial period shall be no less than \$45.00 per week.

30.3.3 The weekly wage shall be the rate of pay for all purposes.

#### 30.4 Employment Conditions -

30.4.1 For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument by either:

30.4.1.1 The employer and the union to which the employee belongs, in consultation with the employee or, if desired by any of these:

30.4.1.2 The employer, the employee and an accredited assessor.

#### 30.4.2 Lodgement of Assessment Instrument -

30.4.2.1 All assessment instruments under the conditions of this award, including the appropriate percentage of the award rate to be paid to the employee, shall be lodged by the employer with the Industrial Registry of the Industrial Relations Commission of New South Wales.

30.4.2.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union is not a party to the assessment, it shall be referred by the Industrial Registry to the union by certified mail and shall take effect unless an objection is notified to the Industrial Registry within ten working days.

30.4.3 Review of Assessment - The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the supported wage system.

30.4.4 Workplace Adjustment - An employer wishing to employ a person under the provisions of this clause, shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.

#### 30.4.5 Trial Period -

30.4.5.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this award for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

30.4.5.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

30.4.5.3 Work trials should include induction or training as appropriate to the job being trialled.



- 30.4.5.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment.

### 31. Traineeships

#### 31.1 Application

This clause applies only to persons employed in a traineeship which has been registered with the Relevant NSW Training Authority

#### 31.2 Definitions

- 31.2.1 A "traineeship" is a program of training comprising structured training with an employer, and it will include training conducted by a Registered Training Organisation that has been approved by the Vocational Education Training Accreditation Board. For the purposes of the traineeship, structured training shall mean formal instruction and closely supervised practice directly related to that instruction that is undertaken according to the provisions of the training agreement.
- 31.2.2 A "training agreement" means an agreement between an employer and a trainee for registered training and employment which is approved by the Relevant NSW Training Authority.
- 31.2.3 A "trainee" is an employee undertaking a traineeship who is bound by a training agreement.
- 31.2.4 "Relevant NSW Training Authority" means the Department of Education and Training or its successor organisation.

#### 31.3 Training Conditions

A trainee undertaking a traineeship shall be engaged as a full-time employee for a traineeship of a nominal period of one year or as approved by the Relevant NSW Training Authority, provided that the trainee shall be subject to a satisfactory probation period of up to one month.

#### 31.4 All Trainees

- 31.4.1 The time spent off the job at training shall be allowed without loss of continuity of employment.
- 31.4.2 Where employment of a trainee by an employer is continued after completion of the traineeship period, the traineeship period shall be counted as service for all award and statutory entitlements where consistent with relevant legislation.
- 31.4.3 For the purposes of the *Long Service Leave Act 1955* where an employee has entered into a contract of employment with an employer within a 12 month period after the completion of the traineeship with the employer, the period of the employee's traineeship with the employer shall be taken into account for the purposes of ascertaining the period of service of the employee with that employer under that contract of employment.
- 31.4.4 Preference in continuation of employment shall be given to trainees, where possible, should vacancies occur at the conclusion of the training period.
- 31.4.5 The provisions of the *Workplace Injury Management and Workers Compensation Act 1998* and the *Occupational Health and Safety Act 2000* shall apply to trainees.
- 31.4.6 It is acknowledged by the parties to this award that the purpose of the relevant traineeships is to create education and career opportunities for persons who would

otherwise be unemployed, and to that extent the traineeship systems will not be utilised by employers as a means of displacing existing regular employees, whether full-time, part-time or casual.

- 31.4.7 The employer shall ensure that the trainee is permitted to attend prescribed off-the-job training and is provided with on-the-job training approved by the Relevant State Training Authority.
- 31.4.8 The union shall be afforded reasonable access to trainees and the trainees records, consistent with the *Industrial Relations Act 1996*.
- 31.5 Wages
- 31.5.1 The weekly wage payable to Trainees shall be calculated by multiplying the hourly rate applicable to the trainee by 38, less the average weekly training time to be spent in structured training.
- 31.5.2 Junior hourly rates shall be calculated in accordance with Clause 8 - Juniors. The rate for employees 21 years of age and over shall be calculated at the rate for a Grade 2 employee.
- 31.5.3 The average weekly training time to be spent in structured training shall be calculated by averaging the total number of hours that the trainee, during each year of employment, spends in structured training over the total number of weeks in that year of employment under the traineeship.

### **32. Stand Down**

- 32.1 Refer section 4A of the *Annual Holidays Act 1944*.

### **33. Exhibition of Award in Workplace**

- 33.1 A copy of this award must be exhibited in a conspicuous place at the workplace.

### **34. Employee Representative and Union Business**

- 34.1 Where there is no union delegate on site, the employer will recognise any person appointed by a majority of employees as an employee representative. The employer will not recognise more than one employee representative for less than 50 persons who are employed by the employer at any one time. The employer will provide a notice board in a staff area for the employee representative (who may be a union delegate) to place notices, including union notices, provided that the notices do not contain defamatory or offensive material.

### **35. Exemptions**

- 35.1 For the purpose of Australasian Conference Association Ltd at Cooranbong the words, "Friday" (other than in the expression of "Good Friday"), "Saturday", "Sunday", and "Monday" (other than in the expression "Easter Monday") wherever appearing in this award, are to read, respectively as "Thursday", "Friday", "Saturday" and "Sunday". The hours worked by shift employees of the Association at Cooranbong from 10.00 p.m. to midnight on Saturday and/or holidays shall not be considered as worked on Saturday and/or holidays so as to entitle the employees to Saturday or holiday rates. Where, however, a shift commences at 10.00 p.m. on the day immediately preceding a holiday and extends into the holiday the employee shall be entitled to holiday rates for the whole shift.
- 35.2 This award shall not apply to employees of the Sydney Water Corporation or Australian Water Technologies Pty Ltd.
- 35.3 The Shell Company of Australia Limited is hereby exempted from the provisions of clause 15, Public Holidays, in respect of the picnic day of the Federated Liquor and Allied Industries Employees' Union of Australia, New South Wales Branch, as to its employees employed at Shell House, Carrington Street,

Sydney; provided that such employees are granted a holiday on full pay for the day following Easter Monday or the first Monday in August each year.

- 35.4 Clause 14, Superannuation, does not apply to The Broken Hill Proprietary Company Limited or Tubemakers of Australia Limited, or any corporation which is a related corporation (within the meaning of the *Companies Act* 1981) of either The Broken Hill Proprietary Company or Tubemakers of Australia Limited.

### **36. Leave Reserved**

- 36.1 Leave is reserved to the parties in respect of clause 32 Stand Down.

### **37. Savings Clause**

Any full time or part time employee who, at 16 July 1999, was employed and classified under the provisions of the Canteen &c. Workers (State) Award shall not suffer any overall reduction in wages and salary as a result of the making of this award. In this clause 'an overall reduction in wages and salary' means that, when comparing like work pattern with like work pattern, the gross income of the employee is less under this award than it would have been if the employee continued to be paid under the provisions of the award immediately prior to the date of making this award. Notwithstanding, any employee who transfers at the employee's request to a site other than the employees usual site, will cease to have the benefit of this clause from the date of such transfer.

### **38. Area, Incidence and Duration**

- 38.1 This award rescinds and replaces:
- 38.1.1 the Canteen Workers (State) Award published 2 March 1983 and reprinted 15 November 1991 (265 IG 1553), and all variations thereof.
  - 38.1.2 the Canteen Workers (State) Wages Adjustment Award published 28 February 1997 (296 IG 1009), and all variations thereof.
  - 38.1.3 the Canteen Workers Redundancy and Technological Change (State) Award published 22 March 1996 (291 IG 475).
- 38.2 This award shall apply to employees in restaurants, tea shops, cafeterias or other eating establishments attached to an/or carried on in connection with factories, workshops, banks, business premises, or other like establishments where food is prepared for or served to employees in the State, excluding the County of Yancowinna, within the jurisdiction of the Restaurant, &c., Employees, Factories, &c. (State) Industrial Committee.
- 38.3 This award takes effect from the beginning of the first pay period to commence on or after 19 July 1999 and shall remain in force for a period of three years.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 3 October 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

**PART B****MONETARY RATES****Table 1 - Wage Rates**

GRADE	Weekly Rates of Pay SWC 2010 (4.25%) \$
1	592.20
2	611.10
3	639.70
4	660.50
5	698.90
6	746.30

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount SWC 2010 (4.25%) \$
1	9	Tool Allowance	0.76 per week
2	11	Meal Allowance	12.29 per week
3	13	First Aid Allowance	13.44 per week
4	19	Laundry Allowance: - special clothing requiring ironing	3.56 per day to a maximum of 10.68 per week
		- special clothing not requiring ironing	2.00 per day to a maximum of 6.03 per week

**Restaurant, &c., Employees, Factories, &c. (State) Industrial Committee**

## Industries &amp; Callings

All employees in restaurants, tea shops, cafeterias, or other eating establishments attached to and/or carried on in connection with factories, workshops, banks, business premises, or any other like establishments where food is prepared or served to employees, in the State, excluding the County of Yancowinna:

Excepting employees of:

The Broken Hill Proprietary Company Limited;  
 Australian Wire Industries Pty Ltd at its Newcastle Wiremill;  
 Blue Circle Southern Cement Limited;  
 The Sydney County Council;  
 The Council of the City of Newcastle;  
 The Australian Gas Light Company;  
 The North Shore Gas Company Ltd;

And excepting:

Employees within the jurisdiction of the Hostel Employees (State) Industrial Committee, the Special Steels and Steel products Manufacture (Commonwealth Steel Company Limited) Industrial Committee, the Tubemakers of Australia Limited, Newcastle Industrial Committee, the County Councils (Electricity Undertakings) Employees Industrial Committee, the Smelting, &c (Electrolytic R. & S. Company, &c) Industrial Committee, the John Lysaght (Australia) Pty Ltd, Newcastle Industrial Committee, the John Lysaght (Australia) Pty Ltd Port Kembla Industrial Committee, Australian Wire Industries Pty Ltd - Newcastle Ropery Industrial

Committee, the Commonwealth Steel Company Limited, Unanderra Industrial Committee, the Tubemakers of Australia Limited Yennora, Industrial Committee; the Smelting and Fertilizer Manufacturing (Sulphide Corporation Pty Limited and Greenleaf Fertilizers Limited) Industrial Committee; the Cement Workers, &c. (State) Industrial Committee; the Shoalhaven Scheme Industrial Committee; and the Googong Dam Project Industrial Committee;

And excepting:

Persons employed in or by The United Dental Hospital of Sydney.

---

Printed by the authority of the Industrial Registrar.

## CHARITABLE INSTITUTIONS (PROFESSIONAL PARAMEDICAL STAFF) (STATE) AWARD 2006

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0444	31/8/2001	First pay period on or after 13/06/2001	327	399
3(3.10); Part B	C0924	08/02/2002	First pay period on or after 13/09/2001	331	211
3(3.10) & Part B	C1649	20/12/2002	First pay period on or after 19/09/2002	337	522
3(3.10) Part B	C2313	27/02/2004	First pay period on or after 01/10/2003	343	486
1, 32 and 33	C2627	28/05/2004	First pay period on or after 06/11/2003	344	715
1, 2, 3, 8, 33, 34	C2822	01/10/2004	On 08/06/2004	346	705
3 & Part B	C3164	04/03/2005	First pay period on or after 01/10/2004	348	1100
3, Part B	C4246	17/02/2006	First pay period on or after 01/10/2005	357	254
1, 34, 35	C4488	05/05/2006	From 10/03/2006	359	94
Title, 3, Part B	C5047	03/11/2006	First pay period on or after 01/10/2006	361	719
19, 20, 31	C5502	06/07/2007	On and from 19/12/2005	362	1141
35	C6310	08/02/2008	On and from 23/07/2007	364	839
3, Part B	C6230	08/02/2008	First pay period on or after 08/10/2007	364	840
3, Part B	C6801	26/12/2008	First pay period on or after 08/10/2008	366	1478
3, Part B	C7247	30/10/2009	First pay period on or after 08/10/2009	369	424
3, Part B	C7573	02/09/2011	First pay period on or after 16/12/2010	371	592

### PART A

#### 1. Arrangement

##### PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Salaries
4.	Payment of Wages and Conditions of Employment
5.	Hours of Work
6.	Roster of Hours
7.	On Call and Call Back
8.	Shift Work
9.	Weekend Work

10. Meals
11. Part-time Employees
12. Casual Employees
13. Overtime
14. Annual Leave
15. Annual Leave Loading
16. Public Holidays
17. Sick Leave
18. Long Service Leave
19. Personal/Carer's Leave
20. Bereavement Leave
21. Travelling Allowance
22. Uniforms and Laundry Allowances
23. Telephone Allowance
24. Amenities
25. Labour Flexibility
26. Grievance and Dispute Resolution Procedures
27. Anti-Discrimination
28. Right of Entry
29. Termination of Employment
30. Redundancy
31. Parental Leave
32. Remuneration Packaging
33. Reasonable Hours
34. Secure Employment
35. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Salaries

Table 2 - Other Rates and Allowances

## 2. Definitions

"Union" means the Health Services Union

"Service", for the purpose of this award, means service before and/or after the commencement of this award in one or more hospitals or agencies or in other institutions approved from time to time by agreement between the parties to this award. It shall include service in the same discipline in the Australian Armed Forces and service within the public health system as defined in the *Health Services Act 1997*, or in any other hospital or agency in the Commonwealth of Australia.

"Agency" means a body or organisation registered or granted exemption from registration under the *Charitable Fundraising Act 1991* (see Division 4, clause 25, of the said Act) and shall exclude any agency to which any of the provisions of the *Private Hospital and Day Procedure Centres Act 1988* have been applied.

"Officer" shall mean an employee appointed to a position within the ambit of this award, provided that such employee holds a degree or certificate requiring at least two years' full-time or three years' part-time post-Higher School Certificate level study at an institution reasonably and properly deemed as such by an employer, and provided further that the employee is reasonably and properly deemed to be an officer within this definition.

### 2.1 Scientific Officers -

- (a) "Trainee Scientific Officer" means an officer appointed as such who is undertaking a part-time degree course in science and who is engaged on work related to the profession for which he/she is qualifying.

- (b) "Scientific Officer" means an officer appointed as such who has obtained a degree in science from an approved university requiring a minimum of three years' full-time study or such other qualifications deemed by the Department of Health, NSW, to be the equivalent thereof.
- (c) "Senior Scientific Officer" means an officer appointed as such who is engaged in scientific work who holds a post-graduate degree in science at a university or such other qualifications deemed by the Department of Health, NSW, to be appropriate.
- (d) "Principal Scientific Officer" means an officer appointed as such who is engaged in scientific work and holds a post-graduate degree in science at least equivalent to the degree of Master of Science of an approved university or such other qualifications deemed by the Department of Health, NSW, to be appropriate and who has had not less than ten years' post-graduate experience in an appropriate scientific field.
- 2.2 "Medical Record Administrator" means a person employed in the industry record librarianship in agencies who has qualifications acceptable to the Health Information Management Association of Australia or such other qualifications deemed to be equivalent.
- 2.3 "Nurse Counsellor" means an officer appointed as such who possesses an appropriate degree of a recognised university or other qualifications deemed equivalent by the employer.
- 2.4 "Dentist" means an officer who has obtained a degree in dental surgery at a recognised university or such other qualification as may be agreed upon by the parties to this award.
- 2.5 "Dental Chairside Assistant" shall mean and shall include all persons employed to assist Dental Officers and Senior Dentists at the chairside.
- 2.6 "Dietitian" means a person employed in the industry of dietetics in hospitals or agencies who has qualifications acceptable to the Dietitians Association of Australia and who is eligible for full membership of the said Association.
- "Industry of Dietetics" means the industry of persons engaged in New South Wales in the profession of dietetics in an agency.
- "Institute" means the Dietitians Association of Australia.
- 2.7 Therapists, Physiotherapists, Occupational Therapists, Speech Therapists, Music Therapists -
- (a) "Therapist" shall mean and shall include:
- (1) "Physiotherapist" means an officer registered or conditionally registered under the *Physiotherapists' Registration Act 2001*.
- (2) "Occupational Therapist" means an officer employed in the industry of occupational therapy who has qualifications acceptable to the NSW Association of Occupational Therapists.
- (3) "Speech Therapist" means an officer employed in the industry of speech therapy who has qualifications acceptable to the NSW Branch of Speech Pathology Australia.
- (4) "Music Therapist" means an officer employed in the industry of music therapy.
- (5) An officer performing such other activities as may be conveniently related to the use of therapeutic method for the purpose of curing or alleviating any abnormal condition of the human mind or body and that may emerge as a professional discipline in the future.
- (b) "Senior Assistant" means a speech therapist with not less than three years' experience who is appointed as such in an agency where five or more speech therapists are employed. There shall be only one senior assistant employed at any one location.



- (c) "Day Worker" means an officer who works his/her ordinary hours from Monday to Friday, inclusive, and who commences work on such days at or after 6.00 a.m. and before 10.00 a.m. otherwise than as part of a shift system.
- (d) "Shift Worker" means an officer who is not a day worker as defined.
- 2.8 "Audiologist" means a person appointed as such who possesses an appropriate degree of a recognised university or college of advanced education with appropriate training in audiology.
- 2.9 "Degree with Honours" means a degree with honours awarded by a recognised university where the subject in respect of which the honours is awarded is appropriate to the classification and duties undertaken by the officer concerned.
- 2.10 "Psychologist" means a person appointed as such who possesses an appropriate degree of a recognised university or college of advanced education and is registered with the Psychologists Registration Board of New South Wales.
- 2.11 "Clinical Psychologist" means a person appointed as such who possesses an appropriate masters degree of a recognised university, recognised by the Australian Psychological Society and is registered with the Psychologists Registration Board of New South Wales.

### 3. Salaries

3.1 Scientific Officers shall be paid at the rates set out in Table 1 - Salaries, of Part B, Monetary Rates.

- (a) Scientific Officers - as set out in Table 1 of Part B.
- (b) Senior Scientific Officers - as set out in the said Table 1. Provided that a Senior Scientific Officer shall not progress beyond the salary prescribed for the third year of the scale unless such officer holds a post-graduate degree in science at least equivalent to the degree of Master of Science of an approved university or has been admitted as a Member of the Australasian Association of Clinical Bio-chemists, or such other qualifications as are deemed equivalent.
- (c) Senior Scientific Officer in Charge - as set out in the said Table 1.
- (d) Principal Scientific Officer - as set out in the said Table 1. Provided that a Principal Scientific Officer shall not progress beyond the salary prescribed for the fourth year of the scale unless such officer holds a post-graduate degree in science at least equivalent to the degree of Doctor of Philosophy of an approved university or has been admitted as a Fellow of the Australasian Association of Clinical Bio-chemists, or such other qualifications as are deemed equivalent.

Provided further that any Senior Scientific Officer in receipt of the fourth year of service rate and above or Principal Scientific Officer who holds the degree of Master of Science or appropriate equivalent qualifications shall be paid an additional amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- (e) Trainee Scientific Officer - as set out in the said Table 1.
- (f) Grading Officers -
  - (1) Grades - Every officer, other than trainee scientific officers, shall be classified in one of the grades of scientific officer, senior scientific officer, or principal scientific officer, as provided for hereunder.
  - (2) Years of Scale -
    - (i) Within each grade officers employed by any hospital shall, at all times, be classified not lower than the year of scale corresponding to the minimum prescribed hereunder for their respective qualifications and/or duties advanced by -

- (A) at least one year of scale for each completed year of service in grade and hospital; and
  - (B) at least one further year of scale for each completed year of service in the same branch of science in that grade in any other hospital or hospitals.
- (ii) In determining an officer's classification, due allowance also shall be made for any other post-graduate experience.
  - (iii) For the purpose of this subclause, service at any time prior to the commencement of this award shall be deemed to be service in the grade in which the qualifications and/or duties of an officer would have required him/her to be classified had the award been in force at that time.
- (3) Scientific Officer - Officers who hold or are qualified to hold a degree, diploma or other qualification, as shown hereunder, shall not be classified below the respective year of scale in this grade, as follows, with advancement as provided for in subparagraph (2) of this paragraph:
- Bachelor's degree (three-year course), diploma with no experience, junior of the Royal Australian Chemical Institute or graduate of the Australian Institute of Physics - 1st year;
- Bachelor's degree with honours (four-year course) - 2nd year;
- Bachelor's degree with honours (four-year course), diploma or Bachelor's degree with at least two years' experience concurrent with or after last two years of course provided that at least one year has been after 21st birthday), associate of the Royal Australian Chemical Institute, or associate of the Royal Institute of Chemistry (UK) - 3rd year;
- Master's degree - 4th year;
- Associate of the Institute of Physics - 6th year;
- Associate of the Australian Institute of Physics (UK) - 6th year;
- Degree of Doctor of Philosophy - 6th year;
- provided that such degree with honours or such Master's degree has been obtained in subjects relevant to the branch of science in which the officer is engaged.
- (4) Credentials Committee - A committee, as set up by the Hospital Scientist (State) Award published 18 January 2002 (330 I.G. 837), consisting of two representatives of the Department of Health, N.S.W., and two representatives of the Union, shall be constituted to consider and recommend to the employer, upon application by the Union or the employing hospital:
- (i) the appointment of a new employee as senior scientific officer or principal scientific officer;
  - (ii) the promotion of an employee from scientific officer to senior scientific officer;
  - (iii) the promotion of an employee from senior scientific officer to principal scientific officer.

3.2 Medical Record Administrators - as set out in the said Table 1.

3.3 Nurse Counsellor - as set out in the said Table 1.

- 3.4 Dental Officers - as set out in the said Table 1. Promotion to Senior Dentist shall be subject to an officer having completed ten years' satisfactory service, or having completed three years' satisfactory service on the maximum salary prescribed for Dental Officers set out in Table 1 of Part B.
- 3.5 Dental Chairside Assistants-as set out in the said Table 1.
- 3.6 Dietitians -
- (a) As set out in the said Table 1. Promotion from the General Scale to Grade 1 shall be subject to completion of 12 months' service on the maximum rate of the general scale and agreement from the agency that the quality of the officer concerned and the skills and responsibilities exercised by the officer in the performance of his or her duties are such as to warrant promotion.
- (b) Grading Officers - A committee consisting of two representatives of the Department of Health, NSW, and two representatives of the Union shall be constituted to consider and recommend to the employer, upon application by the Union or agency:
- (1) the grading of any new position or any variation of grading of a position as a result of any substantial change in duties and/or responsibilities; and
- (2) the date of the effect of the grading recommended. Provided that -
- (i) an employee shall, whilst the grading of the position is under consideration, be ineligible to be a member of the committee;
- (ii) the committee shall not, without sufficient reason, recommend the retrospective operation of any grading or remuneration; and
- (iii) where a retrospective date of effect is recommended, such date shall not be earlier than a date six months prior to the date on which the matter was referred to the committee.
- 3.7
- (a) Therapists (Other than Speech Pathologists)-as set out in the said Table 1.
- (b) Speech Pathologists Salaries - as set out in the said Table 1.
- (c) In-charge Allowances - Locational Responsibility Allowances - Officers-in-Charge shall be paid, in addition to the salary prescribed in paragraph (b) of this subclause, an allowance per week in accordance with the scale set out in Item 3 of Table 2.
- Senior Assistants shall be paid, in addition to the salary prescribed, an allowance per week as set out in Item 4 of Table 2.
- Therapists accepting locational responsibility for the work of other therapists shall be paid an allowance per week as set out in Item 5 of Table 2.
- Sole Therapist - Provided that where only one therapist is employed in a hospital, such therapist shall be paid, in addition to the salary prescribed by this clause, an allowance set out in Item 6 of Table 2.
- 3.8 Audiologists - as set out in the said Table 1, provided that -
- (a) The commencing rate of salary for an officer who has obtained a degree of a recognised university requiring a minimum of three years' full-time study or other qualifications deemed by the employer to be equivalent thereof shall be the rate prescribed for the first year of service.

- (b) The commencing rate of salary for an officer who has also completed an additional course of study and qualified for a degree with honours or the Diploma of Education or other qualifications deemed by the employer to be the equivalent thereof shall be the rate prescribed for the second year of service.
- (c) The commencing rate of salary for an officer who has obtained a degree of a recognised university which requires a minimum of four years' full-time study and has, in addition, completed at least one year of training at an approved teachers' college or other qualifications deemed by the employer to be the equivalent thereof shall be the rate prescribed for the third year of service.

Provided that Audiologists who -

- (1) have completed 12 months' service at the salary prescribed on the maximum of the scale; and
- (2) have demonstrated to the satisfaction of the endorser by the work performed and the results achieved, the aptitude, abilities and qualities of mind warranting such payment, shall be paid an allowance set in Item 2 of Table 2 and, after 12 months' service in receipt of such allowance, shall be paid a further allowance at the rate set out in the said Item 2.

3.9 Psychologists and Clinical Psychologists - as set out in the said Table 1.

3.10 The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

- (a) any equivalent over-award payments, and/or
- (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustment.

#### **4. Payment of Wages and Conditions of Employment**

4.1 All employees shall be paid weekly or fortnightly into one account with a bank or other financial institution of their choice; provided that, for the purpose of adjustments of wages relating to alterations in the basic wage, from time to time effective, the pay period shall be deemed to be weekly.

4.2 It is agreed that there should be full flexibility in relation to the payment of wages on the basis that such statement relates to the payment of shift and weekend penalties owing for the second week of a roster period being made in the succeeding pay period.

#### **5. Hours of Work**

5.1 The ordinary hours of work, exclusive of meal breaks, shall be 152 hours per 28 calendar days.

5.2 The hours of work prescribed in subclause 5.1 shall be worked in one of the following ways:

- (a) 38 hours per week, to be arranged so that an employee shall not be required to work their ordinary hours on more than five days in one week; or
- (b) 76 hours per fortnight, to be arranged so that an employee shall not be required to work their ordinary hours on more than ten days in the fortnight; or
- (c) 152 hours per 28 calendar days, to be arranged so that an employee shall not be required to work their ordinary hours on more than 19 days in the roster cycle; or
- (d) 190 hours per 35 calendar days, to be arranged so that an employee shall not be required to work their ordinary hours on more than 19 days in the 35 calendar days cycle.

- 5.3 Each employee shall be entitled to not less than four full days free from duty in each fortnight or two full days free from duty in each week (rostered days off), and such rostered days off shall, where practicable, be consecutive

### **6. Roster of Hours**

- 6.1 The ordinary hours of work for each shift worker shall be displayed on a roster in a place conveniently accessible to officers. Where reasonably practicable, such roster shall be displayed at least 2 weeks but, in any case, at least one week prior to the commencing date of the first working period in the roster; provided that a roster may be altered at any time to enable the services of the agency to be carried on where another officer is absent from duty on account of illness or in emergency but where any such alteration involves the officer working on a day which would have been such officer's day off, the day off shall be mutually arranged.

### **7. On Call and Call Back**

- 7.1 An "on-call period" is a period during which an officer is required by the agency where he or she is employed to be on call.
- 7.2 Scientific Officers - An officer required by his or her agency to be on call in any one 24-hour period shall be paid an allowance as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for that period or any part thereof, provided that only one allowance shall be payable in any period of 24 hours. For the purpose of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- 7.3 Therapists - An officer shall be paid for each on-call period an allowance which shall be, at the option of the employer, either the allowance per on-call period as set out in Item 8 of Table 2 or the allowance per week as set in the said Item 8. For the purpose of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.
- 7.4 Medical Record Administrators - An officer shall be paid for each on-call period an allowance which shall, at the option of the employer, be either the allowance per on-call period as set out in Item 9 of Table 2 or the allowance per week as set out in the said Item 9. For the purpose of calculation of payment of on-call allowances and for call-back duty, an on-call period shall not exceed 24 hours.

### **8. Shift Work**

- 8.1 Employees may be employed on shift work.
- 8.2 Shift workers working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift; provided that part-time officers shall only be entitled to the additional rates where their shifts commence prior to 6.00 a.m. or finish subsequent to 6.00 p.m.:
- (a) Afternoon shift commencing at 10.00 a.m. and before 1.00 p.m. - 10 per cent.
  - (b) Afternoon shift commencing at 1.00 p.m. and before 4.00 p.m. - 12.5 per cent.
  - (c) Night shift commencing at 4.00 p.m. and before 4.00 a.m. - 15 per cent.
  - (d) Night shift commencing at 4.00 a.m. and before 6.00 a.m. - 10 per cent.
- 8.3 For the purposes of this subclause, day, afternoon and night shifts shall be defined as follows:
- (a) "Day shift" means a shift which commences at or after 6.00 a.m. and before 10.00 a.m.
  - (b) "Afternoon shift" means a shift which commences at or after 10.00 a.m. and before 4.00 p.m.
  - (c) "Night shift" means a shift which commences at or after 4.00 p.m. and before 6.00 a.m. on the day following.

- 8.4 Notwithstanding subclause 8.2, Scientific Officers shall be paid as follows:
- (a) On Mondays to Fridays between 8.30 a.m. and 9.00 p.m. - at ordinary rate of pay;
  - (b) On Mondays to Fridays before 8.30 a.m. and after 9.00 p.m. - at the rate of time and one-half.
- 8.5 Notwithstanding subclause 8.1, an employer shall only engage Nurse Counsellors, Dentists, Dental Chairside Assistants, Dietitians, Audiologists and Psychologists as shift workers where the employees consent in writing.
- 8.6 Notwithstanding subclause 8.1, an employer shall only engage Scientific Officers as shift workers where the employees consent in writing. In relation to Scientific Officers, the Union shall be informed of any proposal to introduce a shift arrangement, and the Union given the opportunity to discuss any such proposals with employer representatives.

### **9. Weekend Work**

- 9.1 Provided that work has been authorised:
- (a) All work performed as ordinary time on Saturday shall be paid for at the rate of time and one-half.
  - (b) All work performed as ordinary time on Sunday shall be paid for at the rate of time and three-quarters.
- 9.2 These rates shall be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 8, Shift Work.

### **10. Meals**

- 10.1 Where practicable, employees shall not be required to work more than six hours without a meal break. Such meal break shall be between 30 and 60 minutes duration and shall not count as time worked.
- 10.2 An employee who is required to work overtime for more than two hours shall be paid, in addition to payment for such overtime:
- (a) the amount as set out in Item 10 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for breakfast when commencing such overtime work at or before 6.00 a.m.;
  - (b) the amount set out in Item 11 of the said Table 2 for an evening meal when such overtime is worked for at least one hour immediately following his/her normal ceasing time, exclusive of any meal break, and extends beyond or is worked wholly after 7.00 p.m.;
  - (c) the amount set out in Item 12 of Table 2 for luncheon when such overtime extends beyond 2.00 p.m. on Saturdays, Sundays or holidays;
- or shall be provided with adequate meals in lieu of such payment.
- 10.3 The meal allowances specified in subclause 10.2 shall be varied according to adjustments in the Consumer Price Index, subject to the principles set down in State Wage Cases.

### **11. Part-Time Employees**

- 11.1 A part-time employee shall mean an employee who works a specified number or ordinary hours which are less than those prescribed for a full-time employee, with a minimum of two hours per start.
- 11.2 Part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate weekly rate prescribed by clause 3, Salaries.

- 11.3 The provisions of this award shall apply to part-time employees on a pro-rata basis unless otherwise specified in the award.
- 11.4 Notwithstanding the provisions of subclauses 11.1 to 11.3 of this clause, the union and an employer may agree in writing to observe other conditions in order to meet special cases.

### 12. Casual Employees

- 12.1 A casual employee is one engaged on an hourly basis or otherwise than as a full-time employee or part-time employee. Casual employees may only be engaged in the following circumstances: for short-term periods where there is a need to supplement the workforce arising from fluctuation in the needs of the facility; or in the place of another employee who is absent; or in an emergency.
- 12.2 Casual employees shall be paid a minimum of two hours.
- 12.3 The appropriate hourly rate shall be the hourly rate prescribed in clause 3, Salaries, plus the percentage thereof set out hereunder:

Percentage		
(a)	Monday to Friday	15
(b)	Saturday	50
(c)	Sunday	75
(d)	Public Holidays	150

- 12.4 Casual employees shall not be entitled to the provisions of clauses 13-Overtime; 15-Annual Leave Loading; 16-Public Holidays; 17-Sick Leave; 22-Uniforms & Laundry Allowances; 29-Termination of Employment, and 30-Redundancy.

### 13. Overtime

- 13.1 Where an employee is requested to perform duty in excess of their ordinary hours of work, he/she shall be paid for such time at the rate of time and one-half, up to two hours in each day, and thereafter at double time.
- 13.2 By agreement between the employee and employer an employee may be compensated by way of time off in lieu of payment of overtime on the following bases:
- (a) time off in lieu of overtime must be taken at ordinary rates within one month of its being accrued;
  - (b) where it is not possible for an employee to take time off in lieu of overtime within the one-month period, it is to be paid out at the appropriate overtime rate contained in subclause 13.1 of this clause based on the rates of pay applying at the time payment is made;
  - (c) employees cannot be compelled to take time off in lieu of overtime;
  - (d) time off in lieu of overtime should only be considered as an option in those circumstances where the employer is able to provide adequate replacement staff to ensure that the level of the quality of service that would otherwise have been provided, had the overtime been paid, is in fact provided; and
  - (e) records of all time off in lieu of overtime owing to employees and taken by employees must be maintained by the employer.
- 13.3 Provided that all work performed as overtime on a Sunday shall be paid at the rate of double time.

### 14. Annual Leave

- 14.1 Annual leave shall be granted to employees in accordance with the *Annual Holidays Act 1944*.

### 15. Annual Leave Loading

- 15.1 In this clause the *Annual Holidays Act 1944* is referred to as "the Act".
- 15.2 Before an employee is given and takes his/her annual holiday or where, by agreement between the employer and employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause. (NOTE: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause 15.6).
- 15.3 The loading is payable in addition to the pay for the period of annual holiday given and taken and due to the employee under the Act.
- 15.4 The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled under the Act (but excluding days added to compensate for holidays prescribed by clause 16, Public Holidays) or where such annual holiday is given and taken in separate periods, then in relation to each such separate period. (NOTE: See subclause 15.6 as to annual holidays taken wholly or partly in advance.)
- 15.5 The loading is the amount payable for the period, or the separate period, as the case may be, stated in subclause 15.4 at the rate per week of 17.5 per cent of the appropriate ordinary weekly rate calculated in accordance with the provisions of clause 3, Salaries, applicable immediately before commencing her/his annual holiday but shall not include any allowances, penalty or disability rates, overtime or other payments prescribed by this award.
- 15.6 No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when he/she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such annual holiday, and is to be calculated in accordance with subclause 15.5 of this clause applying the award rates of wages payable on that day.
- 15.7 Where, in accordance with the Act, the employer's establishment, or part of it, is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned:
- (a) an employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause 15.5 of this clause;
  - (b) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid, in addition to the amount payable to him/her under the Act, such proportion of the loading that would have been payable to him/her under this subclause if he/she had become entitled to an annual holiday prior to the close-down as his/her qualifying period of employment in completed weeks bears to 52.
- 15.8
- (a) When the employment of an employee is terminated by his/her employer for a cause other than misconduct and at the time of termination the employee has not been given and has not taken the whole of an annual holiday to which he/she became entitled, he/she shall be paid a loading calculated in accordance with subclause 15.5 for the period not taken.
  - (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.

### 16. Public Holidays

- 16.1 Public holidays shall be allowed to employees on full pay.
- 16.2 Where an employee is required to, and does, work on a public holiday, whether for a full day or not, the employee shall, for each such public holiday:



- (a) be paid one and one-half day's salary in addition to the weekly rate; or
- (b) if the employer and the employee so agree, be paid ordinary pay plus 50 per cent and have one day's leave added to his/her period of annual leave or take one day at a mutually suitable time.

16.3 For the purpose of this clause, the following shall be public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, August Bank Holiday or any holiday proclaimed in lieu thereof, together with any other day observed as a public holiday within the area in which the agency is situated. Provided that, by agreement between an employer and employee, the August Bank Holiday may be taken on another day.

### **17. Sick Leave**

17.1 Employees shall be entitled to sick leave on full pay, calculated by allowing 76 ordinary working hours for each year of continuous service, less any sick leave on full pay already taken, subject to the following conditions:

- (a) An employee in the first year of employment shall accumulate 7.6 hours for each month of employment for the first ten months.
- (b) The agency may require the sickness to be certified by a legally qualified medical practitioner approved by the agency, provided that such approval shall not be unreasonably withheld, or may require other satisfactory evidence thereof.
- (c) An employee shall not be entitled to sick leave until after three months' continuous service.
- (d) Continuous service, for the purpose of this clause, shall be calculated in the same manner as provided for in the *Long Service Leave Act 1955*.
- (e) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, that an agency shall pay to an employee who has sick leave entitlements under this clause the difference between the amount received as workers' compensation and full pay. When an agency pays such difference, the employee's sick leave entitlements under this clause shall, for each week during which such difference is paid, be reduced by that proportion of one week which the difference paid bears to full pay.

17.2 A part-time employee shall be entitled to sick leave in the same proportion of 76 hours as the ordinary weekly hours worked bear to 38 ordinary hours. Such entitlement shall be subject to all of the above provisions applying to full-time employees.

### **18. Long Service Leave**

18.1 Employees shall be entitled to long service leave in accordance with the *Long Service Leave Act 1955*.

### **19. Personal/Carer's Leave**

19.1 Use of Sick Leave -

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 19.1(c)(2) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 17, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (1) the employee being responsible for the care of the person concerned; and
  - (2) the person concerned being:
    - (i) a spouse of the employee; or
    - (ii) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (iii) a child or an adult child (including an adopted child, a step-child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian) grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (v) a relative of the employee who is a member of the same household where, for the purposes of this paragraph:
      - (A) "relative" means a person related by blood, marriage or affinity;
      - (B) "affinity" means a relationship that one spouse, because of marriage, has to blood relatives of the other; and
      - (C) "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 26, Grievance and Dispute Resolution Procedures, should be followed.

## 19.2 Unpaid Leave for Family Purpose -

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 19.1(c)(2) above who is ill or who requires care due to an unexpected emergency.

## 19.3 Annual Leave -

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single-day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

## 19.4 Time Off in Lieu of Payment for Overtime -

- (a) For the purpose of providing care and support for a person in accordance with subclause 19.1, by mutual agreement between an employee and employer, the employee may take time off in lieu of payment for overtime, subject to the provisions contained in clause 13, Overtime.

## 19.5 Make-up Time -

- (a) 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 award, at the ordinary rate of pay.
- (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

## 19.6 Allocated Days Off -

- (a) An employee may elect, with the consent of the employer, to take an allocated day off at any time.
- (b) An employee may elect, with the consent of the employer, to take allocated days off in part-day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all allocated days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of allocated day off flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

19.7 The Catholic Commission for Employment Relations, representing Catholic employers, being Catholic Dioceses, Catholic Parishes or Religious Orders who operate a service, are exempted from the provisions of this clause. The Charitable Institutions Catholic Personal/Carer's Leave (State) Award made 10 December 1998 shall apply.

## 19.8 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 19.1(b) and 19.1(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 19.1(c)(2) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **20. Bereavement Leave**

- 20.1 An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay on each occasion on the death of a person prescribed in subclause 20.3 of this clause.
- 20.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- 20.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's leave as set out in subparagraph (2) of paragraph (c) of subclause 19.1 of clause 19, Personal/Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 20.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- 20.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 19.2, 19.3, 19.4, 19.5 and 19.6 of said clause 19. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 20.6 The Catholic Commission for Employment Relations, representing Catholic employers, being Catholic Dioceses, Catholic Parishes or Religious Orders who operate a service, are exempted from the provisions of this clause. The Charitable Institutions Catholic Personal/Carer's Leave (State) Award made 10 December 1998 shall apply.
- 20.7 Bereavement entitlements for casual employees
  - 20.7.1 Subject to the evidentiary and notice requirements in 20.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 19.1(c)(2) of clause 19, Personal/Carer's Leave.
  - 20.7.2 the employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - 20.7.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## **21. Travelling Allowance**

- 21.1 An employee sent for duty to a place other than their regular place of duty shall be paid for all excess travelling time at the appropriate rate of pay and be reimbursed reasonable expenses.
- 21.2 Where an employee is required by the employer to use their own vehicle in the performance of their duties he/she shall be paid the mileage allowance per kilometre as set out in Item 13 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

## **22. Uniforms and Laundry Allowances**

- 22.1 Where an employer requires a uniform to be worn by an employee the employer shall provide sufficient suitable and serviceable uniforms free of cost to the employee; provided that an employee, to whom a new uniform or part of a uniform has been supplied by the employer, who without good reason fails to return the corresponding article last supplied to him or her, shall not be entitled to have such article replaced without payment therefore at a reasonable price.
- 22.2 An employee on leaving the service of an employer shall return any uniform, or part thereof, supplied by that employer which is still in use immediately prior to leaving.
- 22.3 In lieu of supplying a uniform to an employee, an employer shall pay to such employee an amount per week as set out in Item 14 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates.
- 22.4 If the uniform of an employee is not laundered at the expense of the agency, an amount per week as set out in Item 15 of the said Table 2 shall be paid to such employee.

## **23. Telephone Allowance**

- 23.1 An officer required to answer emergency telephone calls outside ordinary working hours shall be recompensed rental charges on such telephone upon production of receipted accounts.
- 23.2 Provided that, where an officer is required to answer out of hours telephone calls on a relief basis, he/she shall be paid one-twelfth of his/her yearly telephone rental for each month or part thereof he/she is so employed.

## **24. Amenities**

- 24.1 Suitable lavatory conveniences shall be provided for all employees and, when and where practicable, dining room accommodation, dressing room and lockers also shall be provided.

## **25. Labour Flexibility**

- 25.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the employee's main tasks, provided that such duties are not designed to promote deskilling.
- 25.2 The 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 or has otherwise acquired the necessary skills in the use of such tools and equipment.
- 25.3 Any direction issued by the employer pursuant to subclauses 25.1 and/or 25.2 shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees and the employer's duty of care to residents.

## **26. Grievance and Dispute Resolution Procedures**

- 26.1 The following procedure shall be followed in relation to grievances of individual employees:
- (a) The employee is required to notify the employer in writing as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.

- (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.
- 26.2 The following procedure shall be followed in relation to disputes, etc., between employers and their employees:
- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) While a procedure is being followed, normal work must continue.
- 26.3 For the procedure set out in subclauses 26.1 and 26.2, the employer may be represented by an industrial organisation of employers, and the employees may be represented by the union or the union's representative.
- 26.4 For the purpose of this clause, union representative shall mean an employee appointed as a union representative who shall, upon notification thereof to the employer in writing and within 14 days of such appointment, be recognised as the accredited representative of the union.
- 26.5 This clause shall not apply to an employer who employs not more than 20 employees or an employer with a management structure under which all employees are directly supervised and controlled by the employer or the chief executive of the facility.

## **27. Anti-Discrimination**

- 27.1 It is intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity age and responsibilities as a carer.
- 27.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 27.3 Under the *Anti-Discrimination Act 1977*, 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.
- 27.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 27.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section b56 (d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion:

### 28. Right of Entry

- 28.1 An authorised industrial officer may enter, during working hours, any premises where relevant employees are engaged, for the purpose of holding discussions with the employees at the premises in any lunch time or non-working time.
- 28.2 An authorised industrial officer may enter, during working hours, any premises where relevant employees are engaged, for the purpose of investigating any suspected breach of the industrial relations legislation or of any industrial instrument that applies to any such employees, provided the authorised industrial officer has given the employer concerned at least 48 hours' notice.
- 28.3 All other conditions regarding entry and inspection by officers of industrial organisations shall be in accordance with the *Industrial Relations Act 1996*.

### 29. Termination of Employment

- 29.1 During the first three months of employment in any agency, employment shall be from week to week.
- 29.2 After three months continuous service, employment may be terminated by the employee by the giving of fourteen days notice. Failure to give 14 days notice shall result in the forfeiture of 14 days salary.
- 29.3 Nothing in this clause shall prevent the summary dismissal of an employee for misconduct.
- 29.4 Except for misconduct justifying summary dismissal, the services of an employee shall be terminated by an employer only by notice as prescribed by the following: -

Years of Continuous Service	Notice Required
Not more than 1 year	at least one week
More than 1 but not more than 3 years	at least two weeks
More than 3 but not more than 5 years	at least three weeks
More than 5 years	at least four weeks

Where an employee is over 45 years of age they shall receive, in addition to the above table, one week's extra notice, provided the employee has had two years' service.

### 30. Redundancy

- 30.1 Application -
- (a) This clause shall apply in respect of full-time and part-time persons employed under this award; and
- (b) In respect to employers who employ more than 15 employees immediately prior to the termination of employment of employees, it shall apply in the terms of this clause.
- 30.2 Introduction of Change -
- Employer's Duty to Notify -

- (a) Where an employer had made a definite decision to introduce changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the union to which they belong.
- (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, promotion 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.

### 30.3 Employer's Duty to Discuss Change -

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter-alia, the introduction of the changes referred to in subclause 30.2 of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause 30.2 of this clause.
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees; provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 30.4 Discussions Before Terminations -

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to paragraph (a) of subclause 30.2, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provision of paragraph (a) of this subclause and shall cover, inter-alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purposes of the discussions the employer shall, as soon as practicable, provide to the employees concerned, and the union to which they belong, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 30.5 Notice for Changes in Production, Program, Organisation or Structure - This subclause sets out the provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure in accordance with subclause 30.2 of this clause.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:



Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate period of notice is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- 30.6 Notice for Technological Change - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with subclause 30.2 of this clause.
- (a) In order to terminate the employment of an employee the employer shall give to the employee three months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.
- 30.7 Time Off During the Notice Period -
- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, up to a maximum of five days off, 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.
- 30.8 Employee Leaving During the Notice Period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.
- 30.9 Statement of Employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- 30.10 Notice to Centrelink - Where a decision has been made to terminate the employment of 15 or more employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- 30.11 Centrelink Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by Centrelink

30.12 Transfer to Lower-paid Duties - Where an employee is transferred to lower-paid duties for reasons set out in subclause 30.2 of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated 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 ordinary-time rates for the number of weeks of notice still owing.

30.13 Severance Pay - Where the employment of an employee is to be terminated pursuant to this clause, and subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the following severance pay in respect of a continuous period of service:

- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service Entitlement	Under 45 Years of Age
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of Service Entitlement	45 Years of Age and Over
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) "Week's Pay" means the all-purpose rate of pay for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, overaward payments, shift penalties and allowances paid in accordance with this award.

30.14 Incapacity to Pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 30.13 of this clause.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause 30.13 will have on the employer.

30.15 Alternative Employment - Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 30.13 if the employer obtains acceptable alternative employment for an employee.

30.16 Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### 31. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
    - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **32. Remuneration Packaging**

- (i) Where agreed between the employer and an employee, an employer may introduce remuneration packaging. Neither the employer nor the employee may be compelled to enter into a remuneration packaging agreement. Employees may exercise their right to continue to receive their applicable award salary.
- (ii) Remuneration packaging means that an employee will have part of their remuneration packaged into a fringe benefit, which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (iii) The terms and conditions of a remuneration package offered to an employee shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the award and shall be subject to the following provisions.
  - (a) A copy of the agreement shall be made available to the employee.
  - (b) The employer shall ensure that the structure of any package complies with taxation and other relevant laws.
  - (c) All award conditions, other than the salary and those conditions as agreed in sub-clause (d) below shall continue to apply.
  - (d) Where packaging arrangements apply, the employer and employee may by mutual agreement delete the application of certain award clauses, excepting clauses involving: Annual Leave; Sick Leave; Long Service Leave; Personal/Carer's Leave; Public Holidays; and Grievance and Disputes Resolution Procedures.
  - (e) The employee shall be entitled to inspect details of the payments made under the terms of this agreement.
  - (f) Superannuation Guarantee Contributions will be calculated with reference to the salary the employee would have been entitled to receive but for the remuneration packaging agreement.
  - (g) Any allowance, penalty rates, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee but for the remuneration packaging agreement.
  - (h) Pay increases granted to employees in accordance with this award shall also apply to employees subject to remuneration packaging arrangements.
  - (i) Remuneration packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.
  - (j) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
  - (k) A remuneration package may be changed or terminated at any time, by agreement of the parties.

- (l) Either party may unilaterally withdraw from a remuneration packaging agreement by providing one month's written notice to the other party. A lesser period of notice or no notice may be provided in circumstances identified in subclause (iii)(m).
- (m) The employer may terminate a remuneration packaging agreement, at any time, should the employer cease to attract exemption from the payment of Fringe Benefit Tax or should amendments to legislation be made that are detrimental to, or increase the costs of remuneration packaging arrangements.
- (n) Where a remuneration packaging agreement is terminated the employee's salary will revert to the applicable award classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.
- (o) In the event that the employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination shall be treated as salary and the appropriate tax deducted.

### **33. Reasonable Hours**

- 33.1 Subject to sub-clause (ii) an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for under the award.
- 33.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- 33.3 For the purposes of sub-clause (ii) what is reasonable or other wise will be determined having regard to:
  - (a) any risk to employee health and safety.
  - (b) The employee's personal circumstances including any family and carer responsibilities.
  - (c) The needs of the workplace or enterprise.
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) Any other relevant matter.

### **34. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
  - (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
  - (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
    - (1) whether the employee will convert to full-time or part-time employment; and
    - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);
- Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.
- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or

services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

### **35. Area, Incidence and Duration**

- 35.1 This award was made following a review under section 19 of the *Industrial Relations Act 1996*.
- 35.2 This award rescinds and replaces the Charitable Institutions (Professional Paramedical Staff) (State) Award published 7 July 2000 (316 IG 1240), and all variations thereof.
- 35.3 This award shall apply to all employees as defined herein.
- 35.4 This award shall take effect from the first pay period on or after 13 June 2001 and shall remain in force thereafter for a period of 24 months.
- 35.5 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.
- 35.6 This award remains in force until varied or rescinded, the period for which it was made already having expired.

**PART B**  
**MONETARY RATES**

**Table 1 - Salaries**

Classification	Current Rate per week  \$	SWC 2010 Adjustment per week %	Wage Rate as from 16.12.2010 per week \$
Scientific Officer			762.60
1 <sup>st</sup> year of service	731.50	4.25	782.90
2nd year of service	751.00	4.25	817.30
3rd year of service	784.00	4.25	858.30
4th year of service	823.30	4.25	902.20
5th year of service	865.40	4.25	943.30
6th year of service	904.80	4.25	976.00
7th year of service	936.20	4.25	1000.60
8th year of service & thereafter	959.80	4.25	
Senior Scientific Officer			1059.80
1st year of service	1,016.60	4.25	1088.20
2nd year of service	1,043.80	4.25	1112.50
3rd year of service	1,067.10	4.25	1136.80
4th year of service	1,090.50	4.25	1162.20
5th year of service	1,114.80	4.25	1194.20
6th year of service	1,145.50	4.25	1223.80
7th year of service	1,173.90	4.25	1249.40
8th year of service & thereafter	1,198.50	4.25	
Senior Scientific Officer in Charge			
In charge of a section of a laboratory			
1st year	1,016.60	4.25	1059.80
2nd year	1,043.80	4.25	1088.20
3rd year & thereafter	1,067.10	4.25	1112.50
In charge of a laboratory of an agency having an ADA of			
Less than 200 ADA			
1st year	1,090.50	4.25	1136.80
2nd year	1,114.80	4.25	1162.20
3rd year & thereafter	1,145.50	4.25	1194.20
More than 200 ADA			
1st year	1,145.50	4.25	1194.20
2nd year	1,174.00	4.25	1223.90
3rd year & thereafter	1,198.50	4.25	1249.40
Principal Scientific Officer			
1st year of service	1,231.10	4.25	1283.40
2nd year of service	1,256.70	4.25	1310.10
3rd year of service	1,284.80	4.25	1339.40
4th year of service	1,310.50	4.25	1366.20
5th year of service	1,337.00	4.25	1393.80
6th year of service	1,363.60	4.25	1421.60
7th year of service	1,390.20	4.25	1449.30
8th year of service	1,417.10	4.25	1477.30
9th year of service	1,443.40	4.25	1504.70
10th year of service & thereafter	1,470.90	4.25	1533.40
Trainee Scientific Officer			
1st year of service	492.70	4.25	513.60
2nd year of service	538.90	4.25	561.80
3rd year of service	561.00	4.25	584.80



4th year of service	612.10	4.25	638.10
5th year of service	665.40	4.25	693.70
6th year of service	708.70	4.25	738.80
<b>Medical Records Administrator</b>			
Grade 1	722.10	4.25	752.80
Grade 2	733.00	4.25	764.20
Grade 3	743.70	4.25	775.30
Grade 4	753.90	4.25	785.90
Grade 5	767.90	4.25	800.50
Grade 6	779.80	4.25	812.90
Grade 7	793.20	4.25	826.90
Grade 8	825.20	4.25	860.30
<b>Nurse Counsellor</b>			
1st year of service	721.90	4.25	752.60
2nd year of service	746.40	4.25	778.10
3rd year of service	779.80	4.25	812.90
4th year of service	810.00	4.25	844.40
5th year of service	845.20	4.25	881.10
6th year of service	874.20	4.25	911.40
7th year of service	899.20	4.25	937.40
8th year of service	920.90	4.25	960.00
9th year of service	955.40	4.25	996.00
<b>Dental Officer</b>			
<b>On appointment</b>			
Less than 2 years service	826.40	4.25	861.50
with 2 and less than 4 years service	878.90	4.25	916.30
with 4 and less than 5 years service	927.10	4.25	966.50
with 5 or more years' service	982.70	4.25	1024.50
<b>on completion of 12 months on maximum of scale-</b>			
1st year	1,038.80	4.25	1082.90
2nd year	1,091.70	4.25	1138.10
<b>Senior Dentist</b>			
1st year	1,123.30	4.25	1171.00
2nd year	1,153.80	4.25	1202.80
<b>Dental Chairside Assistant</b>			
1st year of service	433.60	4.25	452.00
2nd year of service	465.70	4.25	485.50
3rd year of service	495.90	4.25	517.00
4th year of service	531.20	4.25	553.80
5th year of service	559.00	4.25	582.80
6th year of service	594.10	4.25	619.30
7th year of service	608.60	4.25	634.50
8th year of service	617.10	4.25	643.30
9th year of service	624.90	4.25	651.50
<b>Dietitians</b>			
<b>General Scale</b>			
1st year of service	751.00	4.25	782.90
2nd year of service	784.00	4.25	817.30
3rd year of service	823.30	4.25	858.30
4th year of service	865.40	4.25	902.20
5th year of service	904.80	4.25	943.30
6th year of service	936.20	4.25	976.00
7th year of service	959.80	4.25	1000.60
<b>Grade 1</b>			
1st year	1,016.60	4.25	1059.80
2nd year	1,043.80	4.25	1088.20

Therapists (other than Speech Pathologists) Salaries			
1st year of service	731.50	4.25	762.60
2nd year of service	751.00	4.25	782.90
3rd year of service	784.00	4.25	817.30
4th year of service	823.30	4.25	858.30
5th year of service	865.40	4.25	902.20
6th year of service	904.80	4.25	943.30
7th year of service	936.20	4.25	976.00
8th year of service & thereafter	959.80	4.25	1000.60
Speech Pathologists			
1st year of service	731.50	4.25	762.60
2nd year of service	751.00	4.25	782.90
3rd year of service	784.00	4.25	817.30
4th year of service	823.30	4.25	858.30
5th year of service	865.40	4.25	902.20
6th year of service	904.80	4.25	943.30
7th year of service	936.20	4.25	976.00
8th year of service & thereafter	959.80	4.25	1000.60
Audiologists			
1st year of service	715.80	4.25	746.20
2nd year of service	740.30	4.25	771.80
3rd year of service	773.90	4.25	806.80
4th year of service	806.30	4.25	840.60
5th year of service	840.80	4.25	876.50
6th year of service	873.00	4.25	910.10
7th year of service	898.90	4.25	937.10
8th year of service	924.10	4.25	963.40
9th year of service	955.00	4.25	995.60
Psychologists			
1st year of service	716.50	4.25	747.00
2nd year of service	740.70	4.25	772.20
3rd year of service	773.40	4.25	806.30
4th year of service	805.00	4.25	839.20
5th year of service	839.90	4.25	875.60
6th year of service	872.40	4.25	909.50
7th year of service	897.90	4.25	936.10
8th year of service	954.20	4.25	994.80
Clinical Psychologists			
1st year of service	923.10	4.25	962.30
2nd year of service	968.20	4.25	1009.30
3rd year of service	1,009.90	4.25	1052.80
4th year of service	1,055.30	4.25	1100.20
5th year of service	1,097.30	4.25	1143.90

Table 2 - Allowances

Item No.	Clause No.	Allowance	Amount 16.12.2010 SWC 2010 (4.25%) \$
1	3.1 (d)	Qualification Allowance	41.40 p/wk
2	3.8 (c)	Audiologist's Allowance	51.20 p/wk
3	3.7 (c)	In Charge Allowance	
		In charge of 1 to 5 other therapists of the same discipline	118.00 p/wk
		In charge of 6 to 9 other therapists of the same discipline	158.40 p/wk
		In charge of 10 to 19 other therapists of the same discipline	191.90 p/wk
		In charge of 20 or more other therapists of the same discipline	226.30 p/wk

4	3.7 (c)	Senior Assistant's Allowance	23.40 p/wk
5	3.7 (c)	Location Responsibility Allowance Responsible for 4 to 5 other therapists of the same discipline Responsible for 6 to 9 other therapists of the same discipline Responsible for 10 or more therapists of the same discipline	47.10 p/wk 69.50 p/wk 86.70 p/wk
6	3.7 (c)	Sole Therapist's Allowance	34.40 p/wk
7	7.2	Scientific Officers - On-Call Allowance	12.40 p/on-call
8	7.3	Therapists - On-Call Allowance	8.20 p/on-call 41.10 p/wk
9	7.4	Medical Records Administrators-On-Call Allowance	8.20 p/on-call 41.10 p/wk
10	10.2 (a)	Breakfast Allowance	6.00 p/shift
11	10.2 (b)	Evening Meal Allowance	10.00 p/shift
12	10.2 (c)	Luncheon Allowance	8.00 p/shift
13	21.2	Travelling Allowance	0.526 p/kilometre
14	22.3	Uniform Allowance	1.66 p/wk
15	22.4	Laundry Allowance	0.94 p/wk

---

Printed by the authority of the Industrial Registrar.

## CHARITABLE SECTOR, AGED AND DISABILITY CARE SERVICES (STATE) AWARD 2003

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C2432	07/05/2004	First pay period on or after 03/12/2003	344	331
51	C2766	19/11/2005	From 12/04/2004	347	423
5 & Part B	C3518	25/03/2005	First pay period on or after 03/12/2004	349	741
53	C3632	01/07/2005	On and from 18/03/2005	352	185
4, 5, 7, 10, 11, 18,23, 45, 48, 50, Part B	C4161	24/03/2006	First pay period on or after 17/10/2005	358	567
12, 23, 24, 38,	C4461	05/05/2006	On and from 19/12/2005	359	81
Arrangement, 53, 54	C4490	05/05/2006	From 10/03/2006	359	91
2, 5, 41	C5314	23/02/2007	From 01/01/2007	362	116
41, 54	C6089	09/11/2007	On and from 23/07/2007	364	384
41, Part B	C6225	08/02/2008	First pay period on or after 17/10/2007	364	846
Part B	C6809	26/12/2008	First full pay period on or after 17/10/2008	366	1483
5, Part B	C7249	30/10/2009	First full pay period on or after 17/10/2009	369	429
5, Part B	C7598	02/09/2011	First full pay period on or after 16/12/2010	371	597

### PART A

#### 1. Arrangement

Clause No.      Subject Matter

#### PART A

1. Arrangement
2. Definitions
3. Anti-Discrimination
4. Employment Classifications
5. Wages
6. Remuneration Packaging
7. Hours
8. Roster of Hours

9. Meals
10. Overtime
11. Permanent Part-time Employee
12. Casual Employee
13. Temporary Employment
14. Climatic and Isolation Allowances
15. Penalty Rates and Shift Allowances
16. Live-in Housekeeper - Remuneration
17. Allowances for Special Working Conditions
18. Public Holidays
19. Annual Leave
20. Annual Leave Loading
21. Long Service Leave
22. Sick Leave
23. Personal/Carer's Leave
24. Compassionate Leave
25. Leave Without Pay
26. Payment and Particulars of Wages
27. Service Allowance
28. Leading Hands
29. Higher Duties
30. Uniforms and Protective Clothing
31. Sleepovers
32. Live-in
33. Grievance and Dispute Resolution Procedures
34. Attendance at Meetings
35. Labour Flexibility and Mixed Functions
36. Promotions and Appointments
37. Emergency Telephone Calls
38. Parental Leave
39. Repatriation Leave
40. Union Representative
41. Apprentices
42. Redundancy
43. Termination of Employment
44. Notice Board
45. Accommodation and Amenities
46. Inspection of Lockers
47. Consultative Arrangements
48. No Extra Claims Commitment
49. Training
50. Leave Reserved
51. Exemptions
52. Reasonable Hours
53. Secure Employment
54. Area, Incidence and Duration

#### PART B

Table 1 - Monetary Rates

Table 2 - Other Rates and Allowances

Table 3 - Translation Table

## 2. Definitions

"Adult Service" - means service with an employer during which the worker received a rate of pay not less than the lowest rates fixed by this award for an adult, in the same classification as the worker, or the employee is on the age scale at 18 years and over.

"Union" - means the Health Services Union.

"Day Worker" - means an employee who works their ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6:00 a.m. and at or before 10:30 a.m., otherwise than as part of a shift system.

"Engagement" - means time that an employee is engaged in homecare services with the client/s joined by the time taken to travel between clients, meal breaks and rest periods, including overtime worked continuously after the engagement.

"Homecare Residence" - means the Homecare Client's place of abode.

"Ordinary Pay" - includes base pay and over-award payments for ordinary hours of work; climatic and isolation allowances; leading hand allowance; and service allowance. It does not include shift or weekend penalties.

"Shift Worker" - means an employee who is not a Day Worker as defined.

"School based apprentice" is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

### 3. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

#### 4. Employment Classifications

The duties required to be undertaken by an employee in any of the following classifications shall remain within that employee's skills and competence in accordance with clause 35, Labour Flexibility and Mixed Functions.

Where the employer requires the employee to perform any or all of the tasks set out below, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skill and competence, appropriate training shall be facilitated.

(i) Care Service Employees

(a) New Entrant

An employee with less than 500 hours' work experience in this industry who performs basic duties under direct supervision. Such employees perform routine functions requiring understanding of clear rules and procedures. Work is performed using established practices, procedures and instructions, including compliance with documentation requirements as determined by the employer. Problems should be referred to a more senior staff member. Indicative tasks an employee at this level may perform are as follows:

Typical Duties

Care Stream	Support Stream	Maintenance Stream
Carry out simple tasks under supervision to assist a higher-grade Care Service Employee attending to the personal needs of residents	General assistance to higher-grade employees in the full range of domestic duties.	General labouring assistance to higher-grade employees in the full range of gardening and maintenance duties.

(b) Grade 1

An employee who has 500 hours' work experience in the industry or who has, or can demonstrate, relevant prior experience, acceptable to the employer, which enables the employee to work effectively at this level. A Junior Employee (less than 18 years) when classified at this grade may be paid as a new entrant. An employee who works under limited supervision individually or in a team environment or on sleepover. Employees at this level work within established guidelines, including compliance with documentation requirements as determined by the employer. In some situations detailed instructions may be necessary. Indicative tasks an employee at this level may perform are as follows:

Typical Duties

Care Stream	Support Stream	Maintenance Stream
Under limited supervision, provide assistance to residents in carrying out simple personal care tasks which shall include but not be limited to: Supervise daily hygiene, e.g. assist with showers or baths, shaving, cutting nails; lay out clothes and assist in dressing; make beds and tidy rooms; store clothes and	Performance under limited supervision of the full range of domestic duties, including but not limited to: General cleaning of Accommodation, food service and general areas; General waiting, table service and clearing duties; Assistance in the preparation of food, including the cooking and/or preparation of	Performance under limited supervision of labouring duties associated with gardening and general maintenance activities, including but not limited to: Sweeping; Hosing; Garbage collection and disposal; Keeping the outside of buildings clean and tidy;

clean wardrobes; assist with meals. Under direct supervision, provide assistance to a higher-grade Care Service Employee in attending to the personal care needs of a resident.	light refreshments; All laundry duties.	Mowing lawns and assisting the gardener in labouring.
--	--	---

## (c) Grade 2

An employee with relevant experience who works individually or in a team environment and is responsible for the quality of their own work, subject to general supervision, including compliance with documentation requirements as determined by the employer. Indicative tasks an employee at this level may perform are as follows:

## Typical Duties

Care Stream	Support Stream	Maintenance Stream
<p>Provide a wide range of Personal care services to residents, under limited supervision, in accordance with Commonwealth and State legislative requirements, and in accordance with the resident's Care Plan, including:</p> <p>Assist and support residents with medication utilising medication compliance aids; Simple wound dressing; Implementation of continence programs as identified in the Care Plan; Attend to routine urinalysis, blood pressure, temperature and pulse checks; Blood sugar level checks, etc. and assist and support diabetic residents in the management of their insulin and diet, recognising the signs of both hyper- and hypo-glycemia. Recognise, report and respond appropriately to changes in the condition of residents, within the skills and competence of the employee and the policies and procedures of the organisation. Assist in the development and implementation of resident care plans. Assist in the development and implementation of programs</p>	<p>Assist a higher-grade worker in the planning, cooking and preparation of the full range of meals. Drive a sedan or utility.</p>	<p>Undertake basic repairs to buildings, equipment, Appliances and similar items Not calling for trades skills or Knowledge. Work with and undertake limited co-Ordination of the work of other maintenance workers. Where no tradesperson is employed, an employee at This level may be called upon to perform tasks falling within the scope of trades skills, provided the time involved in performing such work is paid at the rate of Care Service Employee - Grade 3, in accordance with clause 35, Labour Flexibility And Mixed Functions. Perform gardening duties. Provide advice on planning And plant maintenance. Attend to indoor plants, conduct recycling and re-potting schedules. Carry out physical inspections of property and premises and report.</p>



of activities for residents, under the supervision of a Care Service Employee - Grade 3 or above, or a Diversional Therapist.		
---	--	--

(d) Grade 3

An employee who holds either a Certificate Level III in Care Support Services or other appropriate qualification/experience acceptable to the employer and:

is designated by the employer as having the responsibility for leading and/or supervising the work of others; or

is required to work individually with minimal supervision and has been designated by the employer as having overall responsibility for a particular function within the facility.

An employee who holds appropriate trade qualifications and is required to act on them. Where the work of such employee requires the holding of a licence, the licence allowance from the applicable State trades award shall be paid.

Employees at this level may be required to plan, direct and train staff and comply with documentation requirements as determined by the employer and assist in the development of budgets.

Indicative tasks an employee at this level may perform are as follows:

Typical Duties

Care Stream	Support Stream	Maintenance Stream
Co-ordinate and direct the work of staff. Schedule work programs on a routine and regular basis. Develop and implement programs of activities for residents. Develop resident care plans.	Responsible for the planning, ordering and preparing of all Meals. Responsible for the provision of domestic services. Schedule work programs on a routine and regular basis. Co-ordinate and direct the Work of staff. Drive a minibus or larger vehicle.	Carry out maintenance, repairs, gardening and other tasks falling within the scope of trades skills. Undertake the more complicated repairs to equipment and appliances calling for trades skills. Co-ordinate and direct the work of staff performing gardening duties. Schedule work programs on a routine and regular basis.

(e) Grade 4

Level One

An employee who holds a Certificate IV in Aged Care Work (CHC40102) or other appropriate Qualification/Experience acceptable to the employer and is required to act on it, and

is designated by the employer as having responsibility for leading and/or supervising the work of others in excess of that required of a CSE 3; and

is required to work individually with minimal/ indirect supervision.

Employees at Grade 4 may be required to exercise any/all managerial functions in relation to the operation of the facility and comply with documentation requirements as determined by the employer.

Indicative tasks an employee at this level may perform are as follows.

#### Typical Duties

Care Stream	Support Stream	Maintenance Stream
Overall responsibility for the provision of personal care to residents.	Coordinate and direct the work of staff involved with the preparation and delivery of food.	Coordinate and direct the work of staff performing gardening duties.
Coordinate and direct the work of staff.	Schedule work programs.	Schedule gardening work programs.
Schedule work programs.		Where required, let routine service contracts associated with gardening.

#### Level Two

An employee who is required to deliver medication to residents in facilities:

previously defined as Nursing Homes (as at 31 December 2004) by the *Nursing Homes Act, 1988*; or

in which more than 80% of places are "allocated high care places" as defined in the *Aged Care Act 1997 (Clth)*.

An employee at this level must hold the following qualifications, which may be varied from time to time by the relevant National Vocational, Education and Training Body:

a Certificate III in Aged Care Work (CHC30102); and

a Certificate IV in Aged Care Work (CHC40102); and

medication module - "Provide Physical Assistance with Medication" (CHCCS303A); or

Hold other appropriate qualification acceptable to the employer.

Employees at this level may be required to perform the duties of a CSE 4 - Level 1.

#### (f) Grade 5

This grade shall only apply to employees having responsibility for supervision of the entire facility.

An employee who may be required to have and use any additional qualifications than would be required for a Grade 4 employee.

Employees at this level may be required to exercise any/all managerial functions in relation to the operation of the facility and comply with documentation requirements as determined by the employer.

"Catering Officer" - means a person who is responsible for catering services.

"Diversional Therapist" - means a person who provides, facilitates and co-ordinates group and individual leisure and recreational activities. This person must be a graduate from an approved university course which includes: the Associate Diploma and Diploma of Applied Science (Diversional Therapy) at the University of Sydney; Bachelor of Applied Sciences (Leisure and Health) at the University of Sydney; Bachelor of Applied Science (Diversional Therapy) at the University of Western Sydney, Macarthur; the Diploma or Bachelor of Health Sciences (Leisure and Health) at Charles Sturt University; the Associate Diploma course in Diversional Therapy conducted by the Cumberland College of Health Sciences; or who has such other qualifications deemed to be equivalent.

"Maintenance Supervisor (Tradesperson)" - means an employee who has trade qualifications and has overall responsibility for maintenance at the place of employment and may be required to supervise other maintenance staff.

"Maintenance Supervisor (Otherwise)" - means an employee who is required to perform maintenance duties as required and who may be required to supervise other maintenance staff and has overall responsibility for maintenance at the place of employment.

Note: Employees classified and paid as Recreational Activities Officers as at 3 December 2002 shall be reclassified in accordance with the new definitions of Care Services Employee. Employees reclassified at Level 2 by virtue of the above exercise shall be paid at Level 3 from the effective date of this award, and continue to be so paid whilst employed in the provision of recreational activities by their current employer. These employees may be required to perform the duties of a Level 3 Care Services Employee where they have the skill and competence to do so.

(ii) Homecare Employees

(a) Homecare Worker

"Homecare Worker" - means an employee who performs the duties associated with the provisions of Homecare Services to Homecare Clients in the private residence, which may include cleaning, child-minding, gardening, handywork (within the employee's skills and competencies), cooking, laundry, shopping, personal errands, escorting clients and associated driving, personal care services and general up-keeping services. A Homecare Worker would not normally live at the client's residence for periods in excess of 48 hours.

An employee employed as a Homecare Employee may be offered additional hours (over and above their guaranteed minimum hours) at a facility and would be paid the rate applicable to the classification worked.

An employee employed at a facility may be offered additional hours (over and above their guaranteed minimum hours) in homecare duties and this employee would be paid the rate applicable to that of a Homecare Employee.

Grade 1

Shall mean a person without previous relevant experience in personal care delivery. This is a trainee level, which applies to new employees. The employer shall provide training. At the end of a period of six months or 250 hours employment, whichever is first completed, employees who have satisfactorily completed the requirements of Grade 1 shall progress to Grade 2.

Should an employee at this Grade 1 level not satisfactorily complete the requirements of Grade 1, he/she shall be notified in writing by the employer two weeks prior to the date on which he/she would have proceeded to Grade 2.

An employee may seek the assistance of the Union during these discussions and, if there is a disagreement between the parties as to the employee's future, the matter shall be resolved as per clause 33, Grievance and Dispute Resolution procedure.

A Grade 1 employee shall work under general supervision.

Notwithstanding the above, employees who choose only to carry out general housekeeping duties and are not prepared to multi-skill shall be paid at this grade.

#### Grade 2

Shall mean a person who satisfies the requirements of Grade 1 and has progressed to Grade 2.

An employee at this level shall be competent in carrying out simple personal care, housekeeping and tasks relevant to assisting clients to maintain their independence in their own homes and may be required to perform the duties of Handyman as defined.

Optional training shall be provided to employees at the request of the employees at this level to equip employees to apply for positions at Grade 3.

Grade 2 employees may be required to perform complex tasks required of a Grade 3 employee from time to time, within their competence, and shall be paid at the rate for Grade 3 whenever such duties are performed for periods in excess of five hours per week.

Where the employer requires the employee to perform any or all of the tasks set out below, relevant to a Grade 2 position, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be provided.

#### Typical Duties - Grade 2

##### Showering/Bathing

Excepting where client has severely limited/uncontrollable body movements:

Assisting clients to shower/bath self or totally showering/bathing client;

Assisting with mobility or transferring to and from shower/bath;

Assisting or transferring client to commode chair;

Supervising children's bath;

Bathing a baby;

Total bed bath/sponge - exception Level 3.

##### Toileting

Helping people to the toilet;

Assisting people to use the toilet by loosening clothing;

Assisting client to change own incontinence and sanitary pads;

Assisting clients with bottles;

Assisting self-catheterisation by holding mirror or positioning legs except where there is severely limited/uncontrollable body movements;

Changing babies, nappies, toileting children.

#### Menstrual Care

Assisting with menstrual care.

#### Skin Care

All skin care (e.g. application of cream, rubbing pressure areas with lotion, etc. except where dressings are involved).

#### Grooming

All hair care;

Limited care of nails.

Shaving:

- (i) where there are uncontrollable body movements use electric razors only;
- (ii) all other shaving - electric razors recommended.

All dressing/undressing or assistance with dressing/undressing except where there is uncontrollable body movements.

#### Oral Hygiene

Assisting clients with their own care of teeth or dentures;

Care of teeth and dentures for the client by using tooth brush/toothpaste/oral solution only.

#### Oral Medication

Assisting client with or administering liquid medicines, pills, powders, nose and eye drops.

#### Transferring/Mobility

Transferring client in and out of bed/chair/car and assisting with mobility-exceptions see Level 3;

Assisting clients to turn or sit up - exceptions Level 3.

#### Fitting of Aids/Appliances

Such as splints and callipers.

#### Therapy

Assisting with therapy in any of the following circumstances:

Low level of assistance is required;

Carer/therapist is not on site and client is able to take responsibility for the therapy or carer/therapist is on site;

Simple instructions required rather than specialised training knowledge.

Assistance with Eating

Assisting where there are no eating difficulties.

### Grade 3

Shall mean a person who performs the duties of a Grade 2 and is required to directly attend to a client's needs, as opposed to assisting the client to do for himself/herself because of the client's behaviour or the client's condition and/or household environment.

Where the employer requires the employee to perform any or all of the tasks set out below, relevant to a Grade 3 position, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be provided.

Grade 3 employees will be involved in on-the-job training of Homecare Employees where required.

### Typical Duties - Grade 3

#### Showering/Bathing

Showering/bathing adults and children with severely limited/uncontrollable body movements;

Total bed bath/sponge where there is severely limited/uncontrollable body movements or serious comfort/health consideration.

#### Toileting

Assisting in placement/removal/emptying/care/cleaning of sheaths and leg baths;

Assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site;

Changing or assisting with urinary diversion - colostomy and drainage bags;

All bowel management;

Continual caring of someone with bowel incontinence, including washing the person and changing bowel incontinence pads;

Assisting the resident with the sterilising of glass catheters.

#### Menstrual Care

Changing tampons and sanitary pads.

#### Skin Care

Changing simple wound dressing;

Application of treatment creams to genital area.

#### Nasal Care

Cleaning noses.

### Grooming

All dressing/undressing where there are severely limited/uncontrollable body movements.

### Medication

Suppositories;

Assist and support diabetic residents in the management of their insulin and diet and recognising the signs of both hyper- and hypo-glycemia.

### Transferring/Mobility

Assisting clients to turn/sit where clients can offer limited/no assistance with weight bearing;

Using mechanical aids to lift and transfer clients;

Assisting clients with transfers/mobility where:

- (i) Clients can offer limited/no assistance with weight bearing;
- (ii) Careful handling is required because of the client's health/disability;
- (iii) Some lifting or physically awkward movement is involved for employees in transfer/mobility.

### Therapy

Assisting with therapy in any of the following circumstances:

- (i) High degree of assistance is involved;
- (ii) Employees have total responsibility because client is unable to take responsibility for the therapy and carer/therapist is not on site;
- (iii) Specialised training knowledge is required.

### Assisting with Eating

Assisting with eating where a risk of choking, vomiting or other eating difficulty is involved.

## (b) Live-in Housekeeper

"Live-in Housekeeper" - shall mean an employee who would normally live at the client's premises for a period in excess of 48 hours.

### (1)

- (A) "Live-in Housekeeper - Grade 1" is an employee employed to perform general housekeeping duties only. "General housekeeping" means preparing meals, cleaning, laundry, shopping and household duties of a like nature and handyperson work within the skill, competence and training of the employee and excludes personal care.

- (B) "Live-in Housekeeper/Carer - Grade 2" is an employee employed to perform housekeeping duties as defined in Grade 1 and the personal care duties of a Grade 2 as described in paragraph (a) of subclause (ii) of this clause.
- (C) "Live-in Housekeeper/Carer - Grade 3" is an employee employed to perform general housekeeping duties as defined in Grade 1 and the personal care duties of Grades 2 and 3 as described in the said paragraph (a).
- (2) Designated commencement and cessation of work insofar as place, date and time are concerned shall be calculated by the employer. Provided that time spent travelling shall be regarded as time worked.
- (3) In the event of work appropriate to a Live-in Housekeeper not being available:
- (A) A Live-in Housekeeper can be required to undertake work performed by other Homecare Employees. Provided that, where such work is directed and carried out, it shall be paid at the rates and conditions for a Live-in Housekeeper; and
- (B) In the event of work not being available, the Secretary or other responsible officer of the Health Services Union will be contacted. During this period of time the Live-in Housekeeper will not suffer any reduction in pay. Discussions will commence as soon as possible between the employer and the said Union. From the date of contact with the said Union, the Live-in Housekeeper will not suffer any reduction in pay, although such time will be limited to two weeks.
- (iii) Clerical and Administrative Employees

(a) Grades

All employees shall be graded in one of the following grades and informed accordingly in writing within 14 days of appointment to the position held by the employee and subsequent graded positions.

- (b) An employee shall be graded in the grade where the principal function of his/her employment, as determined by the employer, is of a clerical nature and is described in paragraphs (c) to (g) of this subclause.
- (c) A Grade 1 position is described as follows:
- (1) The employee may work under direct supervision with regular checking of progress.
- (2) An employee at this grade applies knowledge and skills to a limited range of tasks. The choice of actions required is clear.
- (3) Usually work will be performed within established routines, methods and procedures which are predictable and which may require the exercise of limited discretion.

Indicative tasks of a Grade 1 position are:

Unit	Element
Information Handling	Receive and distribute incoming mail Receive and dispatch outgoing mail Collate and dispatch documents for bulk mailing File and retrieve documents
Communication	Receive and relay oral and written messages Complete simple forms
Enterprise	Identify key functions and personnel Apply office procedures



Technology	Operate office equipment appropriate to the tasks to be completed Open computer file, retrieve and copy data Close files
Organisational	Plan and organise a personal daily work routine
Team	Complete allocated tasks
Business Financial	Record petty cash transactions Prepare banking documents Prepare business source documents

(d) A Grade 2 position is described as follows:

- (1) The employee may work under routine supervision with intermittent checking.
- (2) An employee at this grade applies knowledge and skills to a range of tasks. The choice of actions required is usually clear, with limited complexity in the choice.
- (3) Work will be performed within established routines, methods and procedures, which involve the exercise of some discretion and minor decision-making.

Indicative tasks of a Grade 2 position are:

Unit	Element
Information Handling	Update and modify existing organisational records Remove inactive files Copy data on to standard forms
Communication	Respond to incoming telephone calls Make telephone calls Draft simple correspondence
Enterprise	Provide information from own function area Re-direct inquiries and/or take appropriate follow-up action Greet visitors and attend to their needs
Technology	Operate equipment Identify and/or rectify minor faults in equipment Edit and save information Produce document from written text using standard format Shutdown equipment
Organisational	Organise own work schedule Know roles and functions of other employees
Team	Participate in identifying tasks for team Complete own tasks Assist others to complete tasks
Business Financial	Reconcile invoices for payment to creditors Prepare statements for debtors Enter payment summaries into journals Post journals to ledger

(e) A Grade 3 position is described as follows:

- (1) The employee may work under limited supervision with checking related to overall progress.
- (2) An employee at this grade may be responsible for the work of others and may be required to co-ordinate such work.
- (3) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. Usually work will be performed within routines, methods and procedures where some discretion and judgement is required.

Indicative tasks of a Grade 3 position are:

Unit	Element
Information Handling	Prepare new files Identify and process inactive files Record documentation movements
Communication	Respond to telephone, oral and written requests for information Draft routine correspondence. Handle sensitive inquiries with tact and discretion
Enterprise	Clarify specific needs of client/other employees Provide information and advice Follow-up on client/employee needs Clarify the nature of a verbal message Identify options for resolution and act accordingly
Technology	Maintain equipment Train others in the use of office equipment Select appropriate media Establish document structure Produce documents
Organisational	Co-ordinate own work routine with others Make and record appointments on behalf of others Make travel and accommodation bookings in line with given itinerary
Team	Clarify tasks to achieve group goals Negotiate allocation of tasks Monitor own completion of allocated tasks
Business Financial	Reconcile accounts to balance Prepare bank reconciliations Document and lodge takings at bank Receive and document payment/takings Dispatch statements to debtors Follow up and record outstanding accounts Dispatch payments to creditors Maintain stock control records

(f) A Grade 4 position is described as follows:

- (1) The employee may be required to work without supervision, with general guidance on progress and outcomes sought. Responsibility for the organisation of the work of others may be involved.
- (2) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks, and the range and choice of actions required will usually be complex.
- (3) An employee at this grade applies competencies usually applied within routines, methods and procedures where discretion and judgement is required, for both self and others.

Indicative tasks of a Grade 4 position are:

Unit	Element
Information Handling	Categorise files Ensure efficient distribution of files and records Maintain security of filing system Train others in the operation of the filing system Compile report Identify information source(s) inside and outside the organisation

Communication	Receive and process a request for information Identify information source(s) Compose report/correspondence
Enterprise	Provide information on current service provision and resource allocation within area of responsibility Identify trends in client requirements
Technology	Maintain storage media Devise and maintain filing system Set printer for document requirements when various set-ups are available Design document format Assist and train network users Shutdown network equipment
Organisational	Manage diary on behalf of others Assist with appointment preparation and follow-up for others Organise business itinerary Make meeting arrangements Record minutes of meeting Identify credit facilities Prepare content of documentation for meetings
Team	Plan work for the team Allocate tasks to members of the team Provide training for team members
Business Financial	Prepare financial reports Draft financial forecasts/budgets Undertake and document costing procedures

(g) A Grade 5 position is described as follows:

- (1) The employee may be supervised by professional staff and may be responsible for the planning and management of the work of others.
- (2) An employee at this grade applies knowledge with substantial depth in some areas, and a range of skills, which may be varied or highly specific. The employee may receive assistance with specific problems.
- (3) An employee at this grade applies knowledge and skills independently and non-routinely. Judgement and initiative are required.

Indicative tasks of a Grade 5 position are:

Unit	Element
Information Handling	Implement new/improved system Update incoming publications Circulate publications Identify information source(s) inside and outside the organisation
Communication	Obtain data from external sources Produce report Identify need for documents and/or research
Enterprise	Assist with the development of options for future strategies Assist with planning to match future requirements with resource allocation
Technology	Establish and maintain a small network Identify document requirements Determine presentation and format of document and produce it
Organisational	Organise meetings Plan and organise conference

Team	Draft job vacancy advertisement Assist in the selection of staff Plan and allocate work for the team Monitor team performance Organise training for team
Business Financial	Administer PAYE salary records Process payment of wages and salaries Prepare payroll data

### 5. Wages

- (i) Employees shall be paid not less than the rates for the appropriate classification set out in Part B, Monetary Rates, of this award.
- (ii) Nothing in this award shall be deemed or construed to reduce the wages, conditions or allowances of any employee below that level accorded him/her prior to the date of operation of this award.
- (iii) Wages for school based apprentice
  - (a) The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the job training.
  - (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
  - (c) Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.
- (iv) This award has been varied by consent, to reflect adjustments in the rates of pay. The adjustments may be offset against any equivalent overaward payments. The adjustments are in lieu of any adjustments available under the State Wage Case 2010.

### 6. Remuneration Packaging

Where agreed between the employer and an employee, an employer may introduce remuneration packaging. The terms and conditions of such a package may make provision for a salary greater than that contained in the salary band. The package overall shall not be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:

- (i) the employer shall ensure that the structure of any package complies with taxation and other relevant laws;
- (ii) the employer shall confirm in writing to the employee the classification level and the current salary payable as applicable to the employee under this award;
- (iii) the employer shall advise the employee in writing of his/her right to choose payment of that salary referred to in subclause (ii) of this clause instead of a remuneration package;
- (iv) the employer shall advise the employee, in writing, that all award conditions, other than the salary and those conditions as agreed in subclause (v) of this clause shall continue to apply;
- (v) where packaging arrangements apply, the employer and employee may by mutual agreement delete the application of certain award clauses, excepting clause 19, Annual Leave, clause 22, Sick Leave, clause 21, Long Service Leave, clause 23, Personal/Carer's Leave, clause 18, Public Holidays, clause 33, Grievance and Dispute Resolution Procedures, and clause 38, Parental Leave;

- (vi) when determining the remuneration package, the non-salary fringe benefit shall be in accordance with relevant Australian Taxation Office legislation;
- (vii) a copy of the agreement shall be made available to the employee;
- (viii) the employee shall be entitled to inspect details of the payments made under the terms of this agreement;
- (ix) the configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer;
- (x) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, an unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
- (xi) salary packaging is only offered on the strict understanding and agreement that, in the event existing taxation law is changed regarding Fringe Benefit Tax or personal tax arrangements, and that change may impact on this agreement, all salary packaging arrangements may at the discretion of the employer be terminated. Upon termination in these circumstances the employee's rate of pay will revert to the rate of pay that applied immediately prior to a salary packaging agreement made pursuant to this clause, or the appropriate award rate of pay, whichever is greater;
- (xii) where changes are proposed to salary packaging arrangements other than to flow on wage increases, or salary packaging arrangements are to be cancelled for reasons other than legislative requirements, then the employer and/or the employee must give three months notice of the proposed change;
- (xiii) in the event that employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination and all leave entitlements due on termination shall be paid at the rates in accordance with subclause (ii) of this clause. Any outstanding benefit shall be paid on or before the date of termination;
- (xiv) any pay increases granted to employees under this award shall also apply to employees subject to remuneration packaging arrangements within this clause.

## 7. Hours

- (i)
  - (a) The ordinary hours of work for Day Workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight to be worked Monday to Friday and to commence on such days at or after 6:00 a.m. and at or before 10:30 a.m.
  - (b) The ordinary hours of work for Shift Workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight or an average of 38 hours per week in each roster cycle.
- (ii)
  - (a) The hours of work prescribed in subclause (i) of this clause shall be arranged as follows:
    - (1) 152 hours in a 28 calendar-day cycle to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 28 calendar-day cycle; or
    - (2) 190 hours per 35 calendar days to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 35 calendar-day cycle.
  - (b) Following consultation and discussion with the Union, the hours of work may also be arranged in one of the following ways:

- (1) 76 hours per fortnight to be arranged so that each employee shall not work their ordinary hours on more than ten days in the fortnight; or
  - (2) 38 hours per week to be arranged so that each employee shall not work their ordinary hours on more than five days in the week.
- (iii)
- (a) Each employee shall be entitled to not less than four full days in each fortnight free from duty or two full days in each week free from duty (rostered days off), and every effort shall be made for such rostered days off to be consecutive, unless otherwise agreed.
  - (b) A Live-in Housekeeper shall, after each five consecutive days of duty, be entitled to two consecutive days off, provided that:
    - (1) Such days may accumulate to a limit of six and in any case must be taken at the conclusion of such service.
    - (2) Where it is mutually agreed between the employer and the employee that under such circumstances the days of duty should continue, such days may accumulate to a limit of eight to be taken at the conclusion of such service.
    - (3) Provided that the Live-in Housekeeper shall continue to receive the normal weekly wage during such days off.
- (iv) Each shift shall consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the employer agrees.
- (v)
- (a) Full-time employees shall receive a minimum payment of four hours for each start in respect of ordinary hours of work.
  - (b) Permanent part-time and casual employees, other than Homecare Employees, shall receive a minimum payment of two hours for each start.
  - (c) Permanent part-time Homecare Employees and casual Homecare Employees shall receive a minimum of one hour for each engagement
- (vi)
- (a) An employee whose ordinary hours of work are arranged in accordance with paragraph (a) of subclause (ii) of this clause shall be entitled to an allocated day off in each cycle of 28 days or 35 days as the case may be. The ordinary hours worked on each of those days shall be arranged to include a proportion of one hour on the basis of 0.4 of one hour for each eight-hour shift worked and 0.5 of one hour for each ten-hour shift worked which shall accumulate towards the employee's allocated day off duty on pay.
  - (b) A full-time employee's allocated day off duty (ADO) shall be determined by mutual agreement between the employee and the employer having regard to the needs of the place of employment or sections thereof. Such allocated day off duty shall, where practicable, be consecutive with the rostered days off prescribed in subclause (iii) of this clause. Provided that allocated days off shall not be rostered on public holidays.
  - (c) Where the employer and the employee agree, up to five allocated days off may be accumulated and taken in conjunction with the employee's annual leave or at another agreed time.

- (d) In a hostel which has a bed capacity of 40 or less, the employer shall have the option of granting an employee a 19-day four-week cycle or accumulating 12 allocated days off per annum which may be taken in conjunction with the employee's annual leave or at another agreed time.
  - (e) No time towards an allocated day off shall accumulate during periods of workers' compensation, unpaid parental leave, long service leave, any period of unpaid leave or the statutory four weeks' annual leave.
  - (f) Credit towards an allocated day off shall continue to accumulate whilst an employee is on paid sick leave. Where an allocated day off duty falls during a period of sick leave, the employee's available sick leave shall not be debited for that day.
- (vii) The ordinary hours of work for a permanent part-time employee will be a specified number of hours, which are less than those prescribed for a full-time employee. The specified number of hours may be balanced over a week or fortnight, provided that the average weekly hours worked shall be deemed to be the specified number of hours for the purposes of accrual of leave provided for by this award. Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee working on a "week-on", "week-off" basis in accordance with this subclause.
- (viii) Two separate ten-minute tea breaks (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked, employees shall be allowed one ten-minute tea break in each four-hour period. Subject to agreement between the employer and the employee, the two ten-minute tea breaks may alternatively be taken as one 20-minute tea break, or by one ten-minute tea break with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such tea break(s) shall count as working time.
- (ix) Employees must receive a minimum break of eight hours between ordinary rostered shifts, which are not broken shifts.
- (x) Except for meal breaks, all time from the commencement to the cessation of duty each shift shall count as working time, except for shifts being worked as broken shifts.
- (xi) With respect to broken shifts:
- (a) A "broken shift" for the purposes of this subclause means a single shift worked by an employee that includes one or more breaks in excess of that provided for meal breaks, where the time between the commencement and termination of the broken shift shall not exceed 12 hours.
  - (b) An employee must receive a minimum break of ten hours between broken shifts rostered on successive days.
  - (c) Where broken shifts are worked, employees shall receive an allowance of the amount set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B of this award, per shift.
  - (d) Payment for a broken shift shall be at ordinary pay with penalty rates and shift allowances in accordance with clause 15, with shift allowances being determined by the commencing time of the broken shift.
  - (e) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double ordinary pay.
  - (f) Broken shifts may be introduced for up to four weeks without the permission of the Union.
  - (g) Where the employer seeks the approval of the Union to work broken shifts in excess of four weeks, it must be in writing, which the Union will accept or decline within 14 days. The Union will not decline such an application without good cause.

- (h) Where an employee works a broken shift and at least part of that shift involves the work of a Homecare Employee, the employer is not required to seek the exemption from the Union as prescribed by paragraph (g) of this subclause.

### **8. Roster of Hours**

- (i)
  - (a) The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees. Such roster shall be displayed two weeks prior to the commencing date of the first working period in any roster subject to paragraph (b) of this subclause.
  - (b) In the case of Homecare Employees, alternative means of communicating changes of rosters such as telephone communication, direct contact, mail or facsimile will be accepted.
- (ii) Subclause (i) of this clause shall not make it obligatory for the employer to display any roster of ordinary hours of work of members of the casual or relieving staff.
- (iii) Provided that a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency. Where such alteration involves an employee working on a day which would have been his/her rostered day off, such employee may elect to be paid at overtime rates or have a day off in lieu which shall be mutually arranged.

Provided also that this provision shall not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.

Provided further that any alteration to the roster of hours of a Day Worker must be consistent with the definition of a Day Worker contained in clause 2, Definitions.

- (iv)
  - (a) Where a Homecare Client cancels for reasons other than those outlined in paragraph (b) of this subclause, permanent employees shall be entitled to receive payment for their minimum specified hours in that pay period. The employer may direct the employee to make-up time equivalent to the cancelled time, in that or the subsequent fortnightly period. This time may be made up working with other Homecare Clients or in a facility.
  - (b) Where the employer is unable to meet the minimum specified hours of a permanent employee for reasons associated with death, hospitalisation or other like extenuating circumstances, the following procedures shall be followed in the sequence provided:
    - (1) work shall be re-allocated from casual employees to the permanent employee; or
    - (2) hours shall be reallocated from another employee who is working hours additional to their minimum specified hours; or
    - (3) where the employee agrees, the employee may have access to annual or long service leave; or
    - (4) the employee and employer may agree to a period of unpaid leave; or
    - (5) failing agreement in subparagraph (4) of this paragraph, refer to the dispute procedure.
    - (6) Notwithstanding the provisions in subparagraphs (1) to (5) inclusive, if after six weeks - or earlier if by mutual agreement - the employer is unable to provide the minimum



specified hours, the employee shall be entitled to the provisions set out in clause 42, Redundancy.

- (v) Where an employee is entitled to an allocated day off duty in accordance with clause 7, Hours, that allocated day off duty is to be shown on the roster of hours for that employee.
- (vi) Each sleepover shall appear on the roster.

#### **9. Meals**

- (i)
  - (a) Employees shall not be required to work more than six hours without a meal break. Such meal break shall be of between 30 and 60 minutes duration and shall not count as time worked.
  - (b) However, employees engaged in homecare duties may be rostered to have a paid 20-minute break in the place of the meal break where they are required to remain with the client during such break.
  - (c) In the event that all or some of the meals of breakfast, lunch and dinner are not provided for a live-in housekeeper, the employer shall reimburse such reasonable amounts for same, upon proof of expenditure.
- (ii) Notwithstanding the provisions of subclause (i) of this clause, an employee required to work shifts in excess of ten hours shall be entitled to a 60-minute meal break. Such time shall be taken as either two 30-minute meal breaks or one 60-minute meal break, subject to agreement between employer and employee.
- (iii) An employee who is required to work overtime for more than two hours and such overtime goes beyond 7:00 a.m., 1:00 p.m., and 6:00 p.m. shall, at the option of the employer, be supplied with a meal or shall be paid:
  - (a) an amount set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B of this award, for breakfast;
  - (b) an amount set out in Item 3 of the said Table 2 for luncheon;
  - (c) an amount set out in Item 4 of the said Table 2 for the evening meal.

#### **10. Overtime**

- (i) All time worked by employees outside the ordinary hours in accordance with clause 7, Hours, and clause 8, Roster of Hours, shall be paid time and one half ordinary pay up to two hours each day and thereafter double ordinary pay; provided, however, that all overtime worked on Sunday shall be paid at double ordinary pay and all overtime worked on public holidays shall be paid for at double time and one-half ordinary pay
- (ii) An employee must receive an eight- or ten-hour break between rostered shifts, in accordance with clause 7, Hours. Where the next shift is due to commence before the employee has had their appropriate eight or ten hours break, one of the following will apply:
  - (a) The employee will be released prior to, or after the completion of their shift to permit them to have their appropriate break under clause 7, Hours, without loss of pay for the working time occurring during such absence.
  - (b) If at the request of the employer an employee works without their appropriate break, they shall be paid until they are released from duty at overtime rates. Once released from duty, such employees shall be entitled to be absent from work until they have had their appropriate break in

accordance with clause 7, Hours, without loss of pay for working time occurring during such an absence.

- (iii) Employees who are recalled to work overtime after leaving the employer's place of work shall be paid a minimum of four hours at the applicable overtime rate for each time so recalled. Provided that, except in unforeseen circumstances, an employee shall not be required to work the full four hours if the tasks they were recalled to perform are completed within a shorter period.
  - (a) An employee recalled to work overtime pursuant to subclause (ii) of this clause shall be reimbursed reasonable travel expenses incurred in respect of the recall to work.
  - (b) Provided that, where an employee elects to use their own vehicle, they shall be paid an allowance of the amount set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B of this award.
  - (c) An employee who agrees to be on call, requiring to make themselves ready and available to return to work whilst off duty, shall be paid an allowance of the amount set out in Item 6 of the said Table 2.
  - (d) Employees will not be required to be on call in excess of ten days in any 28-day period.
- (iv) For the purposes of assessing overtime, each day shall stand alone, provided that, where any one period of overtime is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if they had occurred within the one day.
- (v) All time worked by permanent part-time employees in excess of the hours prescribed in subclause (iv) of clause 7, Hours, of this award shall be paid for at overtime rates.
  - (a) All time worked by permanent part-time employees in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned, or, where there is no such majority of full-time employees employed on that shift in the ward or section concerned, all time in excess of 11 hours per day shall be paid for at overtime rates.

Provided that time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at ordinary pay.
  - (b) All time worked by permanent part-time employees in excess of the hours prescribed for a full-time employee in clause 7, Hours, shall be paid for at overtime rates.
- (vi) In lieu of receiving payment for overtime in accordance with this clause, employees may be compensated by way of time off in lieu of overtime on the following basis:
  - (a) Time off in lieu of overtime is taken on the basis of hour for hour at ordinary pay, that is, for example, one hour off for each hour of overtime worked. However, any applicable shift and weekend penalties shall still be paid as if the time was worked when taking such time in lieu. It must be taken within four months of it being accrued at a mutually agreed time.
  - (b) Where it is not possible for an employee to take the time off in lieu of overtime within the four-month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
  - (c) Employees cannot be compelled to take time off in lieu of overtime.
  - (d) The employer must maintain records of all time in lieu of overtime owing and taken by employees.

- (e) Where no election is made, the employee shall be paid overtime rates in accordance with the award.

### **11. Permanent Part-Time Employee**

- (i) A permanent part-time employee is one who is permanently appointed by a facility to work for a specified number of hours, which are less than those prescribed for a full-time employee.
- (ii) At the request of an employee, the hours worked by the employee will be reviewed annually. Where the employee is regularly working more than their specified contract hours then such contract hours shall be adjusted by the employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment.
  - (a) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
  - (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident.
- (iii) Any adjusted contracted hours resulting from a review identified in subclause (ii) of this clause should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.
- (iv) Permanent part-time employees shall be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (v) Permanent part-time employees engaged in the provision of homecare services shall:
  - (a) Have a minimum specified number of hours of ten per week or 20 per fortnight.
  - (b) Have a minimum payment per engagement of one hour.
  - (c) Notwithstanding the provisions in paragraph (a) of this subclause, where there is a genuine agreement in writing between the employer and employee, the minimum contract hours may be reduced.
  - (d) Have hours of engagement maintained as per clause 8, Roster of Hours.

### **12. Casual Employee**

- (i)
  - (a) A casual employee is one engaged on an hourly basis otherwise than as a full-time employee or permanent part-time employee.
  - (b) A casual employee may only be engaged in the following circumstances: for short term periods where there is a need to supplement the workforce arising from fluctuations in the needs of the facility; or in the place of another employee who is absent; or in an emergency.
- (ii) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth (1/38th) of the appropriate rate prescribed by Part B, Monetary Rates of this award, plus ten (10) per centum thereof, with a minimum payment of two hours for each start, (where the casual is employed in the place of a homecare employee who is absent then the minimum payment per engagement may be one (1) hour) and one thirty-eighth of the uniform and laundry allowances where a uniform is not supplied in accordance with clause 30-Uniforms and Protective Clothing.
- (iii) For weekend and public holiday work, casual employees shall, in lieu of all other penalty rates and the 10% casual loading, receive the rates prescribed in clause 15-Penalty Rates and Shift Allowances and clause 18-Public Holidays.

- (iv) Overtime rates shall be payable on the hourly rate (1/38th) in lieu of the 10% casual loading only when a casual works in excess of 38 hours per week or 76 hours per fortnight depending on the pay period.
- (v) For the entitlement to annual leave, a casual shall receive an additional amount equivalent to one-twelfth of the sum of their ordinary pay plus payments received in accordance with clause 15-Penalty Rates and Shift Allowances. No other allowances or payments are to be included for the calculation of this annual leave entitlement. Further, this amount will be itemised separately on the employee's pay records.
- (vi) For the entitlement to long service leave, see Long Service Leave Act, 1955.
- (vii) With respect to a casual employee, the provisions of the following clauses shall not apply:

Clause 8-Roster of Hours; clause 19-Annual Leave; clause 20-Annual Leave Loading; clause 21-Long Service Leave; clause 22-Sick Leave; clause 24-Compassionate Leave; clause 25-Leave Without Pay, clause 27-Service Allowance; clause 28-Leading Hands; clause 29-Higher Duties; clause 32-Live-In; clause 36-Promotions and Appointments; clause 37-Emergency Telephone Calls; clause 39-Repatriation Leave; clause 41-Apprentices.

- (viii) Personal Carers Entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in Clauses 23(i)(b) and 23(i)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Clause 23(i)(c)(2) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (ix) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in Clause 24(ii)(a)(2) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 23(i)(c)(2).
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **13. Temporary Employment**

- (i) Fixed-term or task contracts of employment may be offered and such temporary employees engaged where necessary to meet the genuine occupational requirements of the employer, which may include but not be limited to parental leave, limited-term funding arrangements, long-term relief or forthcoming service reductions.
- (ii) The provision of clause 42, Redundancy, will not apply to such employees.

#### 14. Climatic and Isolation Allowance

- (i) Subject to subclause (ii) of this clause, persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance of the amount set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B of this award, per week in addition to the salary to which they are otherwise entitled.

The line shall be drawn as follows: viz., commencing at Tocumwal and thence to the following towns in the order stated, namely: Lockhart; Narrandera; Leeton; Peak Hill; Gilgandra; Dunedoo; Coolah; Boggabri; Inverell; and Bonshaw.

- (ii) Persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance of the amount set out in Item 8 of the said Table 2 per week in addition to the salary to which they are otherwise entitled.

The line shall be drawn as follows: viz., commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria) and thence to the following towns in the order stated, namely: Hay; Hillston; Nyngan; Walgett; Collarenebri; and Mungindi.

- (iii) The allowances prescribed by this clause are not cumulative.
- (iv) Except for the computation of overtime, the allowances prescribed by this clause shall be regarded as part of salary for the purposes of this award.
- (v) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

#### 15. Penalty Rates and Shift Allowances

- (i) Employees shall be paid the following percentages in addition to their ordinary pay and, where applicable, the 10% casual loading, for shifts rostered as follows:
- (a) 10% for afternoon shift commencing after 10:30 a.m. and before 1:00 p.m.
  - (b) 12.5% for afternoon shift commencing at or after 1:00 p.m. and before 4:00 p.m.
  - (c) 15% for night shift commencing at or after 4:00 p.m. and before 4:00 a.m.
  - (d) 10% for night shift commencing at or after 4:00 a.m. and before 6:00 a.m.

Provided that laundry staff working afternoon or night shift as at 30 September 1993 shall be paid 20% in addition to the ordinary pay for such shift. Laundry staff employed after 30 September 1993, and who work afternoon or night shift, shall receive the penalty rates prescribed in paragraphs (a) to (d) of this subclause.

- (ii) Notwithstanding subclause (i) of this clause, employees working less than the hours prescribed for a full-time employee within clause 7, Hours, shall only be entitled to the additional rates where their shifts commence prior to 6:00 a.m. or finish subsequent to 7:00 p.m.
- (iii) Employees shall be paid the following penalties for ordinary hours of work occurring on a Saturday or a Sunday:
- (a) for work between midnight on Friday and midnight on Saturday - time and one-half.
  - (b) for work between midnight on Saturday and midnight on Sunday - time and three-quarters.

These extra rates shall be in substitution for and not cumulative upon the shift allowances prescribed in subclauses (i) and (ii) of this clause.

### 16. Live-in Housekeeper - Remuneration

(i) Live-in Housekeeper

The terms and conditions contained herein shall be in substitution for and not cumulative upon the following clauses: clause 7, Hours; clause 10, Overtime; clause 15, Penalty Rates and Shift Allowances; clause 18, Public Holidays.

(a) Live-in Housekeeper - Grade 1

The total weekly remuneration for a Live-in Housekeeper - Grade 1 shall be calculated as follows:

$$\text{Total Weekly Rate} = \text{Weekly Rates for a Homecare Employee - Grade 1} + \text{All-incidents Loading}$$

The All-incidents Loading for a Live-in Housekeeper - Grade 1 is calculated by obtaining 30% of the relevant weekly rate.

The All-incidents Loading of 30% takes into account all incidents of employment inherent in the work and conditions of employment of Live-in Housekeepers, including, but not limited to, the requirement to reside at the client's premises. Such tasks that are required to be performed by the employee will be performed at times of day which are mutually agreed between the employer and the employee.

(b) Live-in Housekeeper/Carer - Grade 2

The total remuneration for a Live-in Housekeeper/Carer - Grade 2 shall be calculated as follows:

$$\text{Total Weekly Rate} = \text{Weekly Rates for a Homecare Employee - Grade 2} + \text{All-incidents Loading}$$

The All-incidents Loading for a Live-in Housekeeper/Carer - Grade 2 is calculated by obtaining 40% of the relevant weekly rate. The All-incidents Loading of 40% takes into account all incidents of employment inherent in the work and conditions of employment of Live-in Housekeepers, including, but not limited to, the requirement to reside at the client's premises. The employee will normally perform duties at times of the day which are mutually agreed between the employer and employee.

(c) Live-in Housekeeper/Carer - Grade 3

The total remuneration for a Live-in Housekeeper/ Carer - Grade 3 shall be calculated as follows:

$$\text{Total Weekly Rate} = \text{Weekly Rates for a Homecare Employee - Grade 3} + \text{All-incidents Loading}$$

The Special Loading is calculated by obtaining 3.5% of the relevant weekly rate. The special loading is in recognition of all factors, including, but not limited to, the special pressures, responsibilities and climate inherent in the work of a Live-in Housekeeper - Grade 3.

The All-incidents Loading is calculated by obtaining 50% of the sum of the relevant weekly rate plus the Special Loading. The All-incidents Loading of 50% takes into account all incidents of employment inherent in the work and conditions of employment of Live-in Housekeepers, including, but not limited to, the requirement to reside at the client's premises and to perform work, and be available for the performance of work at all such times of the day as the job and client's needs may require.

## (ii) Wages - Daily Rates

## (a) Permanent Part-time Employees

The daily rate for a Live-in Housekeeper/Carer (any grade) shall be calculated as follows:

$$\text{Daily Rate} = \frac{\text{Appropriate Weekly Rate for a Live-in Housekeeper}}{5}$$

Provided that by mutual agreement up to three employees may be engaged as Live-in Housekeeper (any grade) per client.

For the purpose of this paragraph a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this paragraph shall be two days at the daily rate. Thereafter the minimum payment will be at the daily rate.

## (b) Casual Employees

The casual rate for a Live-in Housekeeper/Carer (any grade) shall be calculated as follows:

$$\text{Daily Rate} = \frac{\text{Appropriate Weekly Rate for a Live-in Housekeeper} + 15\%}{5}$$

For the purpose of this paragraph a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this paragraph shall be one day at the daily rate.

Work performed under this paragraph shall be for relief, emergency and temporary purposes only.

### 17. Allowances for Special Working Conditions

## (i)

(a) Employees engaged in work of a dirty or offensive nature and/or cleaning or scraping work in confined spaces (such as inside ventilator shafts, air-conditioning ducts or the like) shall, whilst so employed, be paid an allowance of the amount set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B of this award, per hour extra.

(b) Provided, however, that employees engaged in cleaning or scraping work inside the gas or water space of any boiler, flue or economiser shall, whilst so employed, be paid an allowance of the amount set out in Item 10 of the said Table 2 per hour extra.

(ii) Employees who are required to assist tradespersons on work of a dirty or offensive nature shall be paid disability allowances under the same terms and conditions as the disability allowances that may be payable to the tradespersons they are assisting.

(iii) Employees shall be paid an allowance of the amount set out in Item 11 of the said Table 2 per hour or part thereof for all time during which they are engaged in handling linen of a nauseous nature other than linen sealed in bags.

(iv) An employee, other than a Homecare Employee, sent for duty to a place other than his/her regular place of duty, shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.

## (v) Vehicle Allowance

Where an employee is called upon and agrees to use his/her private vehicle for official business, payment of an allowance shall be made by utilising the rate in Item 12 of the said Table 2 per kilometre, excluding travel to and from the employee's home to the first place of work and return to home at the end of his/her duties. This rate shall remain in force for the duration of this award. This subclause shall apply to all employees.

- (vi) Where an employee is required to use public transport for travel on official business, such employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the employee's home to the first place of work and return to home at the cessation of his/her duties.
- (vii) No payment shall be made under subclauses (v) and (vi) of this clause unless the employer is satisfied that the employee has incurred expenditure for such travel.
- (viii) Where Homecare Employees are rostered to work with consecutive clients, they shall be paid for the time taken to travel between locations at the rate of 3% of the ordinary pay per hour per kilometre travelled, excluding travel from the employee's home to the first place of work and return to home at the cessation of his/her duties; provided that this payment shall not be made if the employee is being paid at the hourly rate of pay for the time between consecutive clients.
- (ix) An employee in possession of, and required to act on, a Laundry and Dry Cleaning Certificate shall be paid an allowance in the nature of a salary as set out in Item 13 of the said Table 2.
- (x) An employee who works less than 38 hours per week shall be entitled to this allowance identified in subclause (ix) of this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

### 18. Public Holidays

- (i) Public holidays shall be allowed to employees without loss of ordinary pay.
- (ii) For the purposes of this award, the following shall be deemed to be public holidays: New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day.
- (iii) In addition to those public holidays specified in sub-clause (ii) employees shall be entitled to an extra public holiday each year. Such public holiday shall occur on one of the following days as determined by the employer:
  - (a) On the day on which the August Bank Holiday is observed; or
  - (b) On a day between Christmas and New Year within the days Monday to Friday inclusive and not coinciding with a date that is already a gazetted public holiday for that calendar year; or
  - (c) On a gazetted and proclaimed local public holiday. In areas where only one half-day is proclaimed and observed, the whole day will be regarded as a public holiday for the purposes of this award. In these circumstances if a further one half day local public holiday occurs in that calendar year, it will not be observed for the purposes of this clause.
  - (d) The employer shall nominate before July 1 of each calendar year, the date on which this extra public holiday is to be observed. Once such an election is made, such date then becomes the date on which the extra public holiday is to be observed for all workers in that establishment covered by this award, provided however that if no such election is duly made, the extra public holiday will be observed on the August Bank Holiday.
- (iv) Employees shall also be entitled to any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated, beyond those days already observed in accordance with subclauses (ii) and (iii) above. .



- (v) An employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift allowances (except broken shift allowances), weekend penalties, casual loading and part-time loading, as follows:
- (a) Full-time Employees
- (1) Time and one half for all ordinary time worked in addition to the weekly rate.
- Alternatively, if the employee elects:
- (2) Half-time extra for all time worked in addition to the weekly rate and have one ordinary working day added to be taken in conjunction with the period of annual leave.
- (b) Permanent Part-time Employees
- (1) Double and a half for all time worked on the public holiday, although, where the time worked by agreement is less than the rostered shift, the balance of the rostered shift will be paid at ordinary pay.
- Alternatively, if the employee elects:
- (2) Half-time extra for all time worked in addition to the weekly rate and have the equivalent number of hours worked added to be taken in conjunction with the period of annual leave.
- (c) Casual Employees
- Double time and one-half for all time worked.
- (vi) Full-time shift-workers rostered off duty on a public holiday shall:
- (a) be paid one day's pay in addition to the weekly rate; or
- (b) if the employee so elects, have one day added to be taken in conjunction with their period of annual leave.
- (vii) The election referred to in subclauses (iv) and (v) of this clause is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during that period of employment.

### 19. Annual Leave

- (i) All employees shall be entitled to the provisions of the *Annual Holidays Act 1944*.
- (ii)
- (a) Full-time employees and permanent part-time employees who are rostered to work their ordinary hours on Sundays and/or public holidays shall be entitled to receive additional annual leave if, during a qualifying period of employment for annual leave purposes, they have worked:

	Full-time Employees	Permanent Part-time Employees
3 shifts or less	Nil	Nil
4 - 10 shifts	1 day	0.2 weeks
11 - 17 shifts	2 days	0.4 weeks
18 - 24 shifts	3 days	0.6 weeks
25 - 31 shifts	4 days	0.8 weeks
32 or more shifts	5 days	1 week.

Provided that an employee entitled to additional annual leave by virtue of this subclause may elect to be paid an amount equivalent to the value of his/her additional leave entitlements in lieu of taking the additional leave. Such election is to be made in writing by the employee at the

commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) Live-in Housekeepers employed and paid as such shall accrue an additional week's leave for every 12 months of continuous service on a pro rata basis.
- (iii) Provided that, on termination of employment, employees shall be entitled to payment for any untaken annual leave due under subclause (ii) of this clause, together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with subclause (i) of this clause.
- (iv) Employees entitled to allocated days off duty in accordance with subclause (vi) of clause 7, Hours, shall accrue credits towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with subclause (ii) of this clause and subclauses (iv) and (v) of clause 18, Public Holidays.

## **20. Annual Leave Loading**

- (i) Employees shall be entitled to annual leave loading of 17.5% on four weeks of the appropriate weekly rate of pay, or shift allowances and weekend penalties as set out in subclause (ii) of this clause, whichever is the greater.
- (ii) A Shift Worker, as defined in clause 2, Definitions, shall be paid whilst on annual leave his/her ordinary pay plus shift allowances and weekend penalties relating to ordinary time the Shift Worker would have worked if he/she had not been on annual leave. Provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave, for days which have been added to annual leave in accordance with the provisions of clause 18, Public Holidays, or paragraph (a) of subclause (ii) of clause 19, Annual Leave.
- (iii) No loading is payable where the annual leave is taken wholly or partly in advance, provided, however, that, if the employment of such an employee continues until their next anniversary date, the loading then becomes payable.
- (iv) Where the employment of an employee is terminated for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of the annual leave accrued as at their last anniversary date, they shall be paid the leave loading for such leave on termination. No leave loading is payable on pro rate leave on termination.

## **21. Long Service Leave**

- (i)
  - (a) Each employee shall be entitled to two months' long service leave on ordinary pay after ten years' service; thereafter additional long service leave shall accrue on the basis of five months' long service leave for each ten years' service. This additional leave may be taken on a pro rata basis each five years after completing the initial ten-year period of service.
  - (b) Where the services of an employee with at least five years' service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, he/she shall be entitled to be paid a proportionate amount on the basis of two months for ten years' service.
- (ii) For the purpose of subclause (i) of this clause:
  - (a) service shall mean continuous service with any one employer/organisation;
  - (b) service shall not include:

- (1) any period of leave without pay except in the case of employees who have completed at least ten years' service (any period of absence without pay being excluded there from) in which case service shall include any period without pay not exceeding six months taken after 1 June 1980;
  - (2) any period of service as a part-time worker except as provided for in subclause (vi) of this clause.
- (iii)
- (a) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken. Long service leave shall be taken as soon as practicable having regard to the needs of the facility or, where the employer and the employee agree, such leave may be postponed to an agreed date.
  - (b) Where the employer and the employee agree in writing that the taking of a period of leave be postponed at the request of an employee to an agreed future date, the period of leave at the time of this agreement being made will, when taken, be paid at the rate applicable at the time of the agreement.
- (iv)
- (a) On the termination of employment of an employee otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination.
  - (b) Where an employee who has acquired a right to long service leave, or after having had five years' service and less than ten years' service dies, the widow or the widower of such employee or, if there is no such widow or widower, the children of such employee, or if there is no such widow, widower or children such person who, in the opinion of the employer, was at the time of the death of such an employee, a dependent relative of such employee, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee had his/her services terminated as referred to in paragraph (b) of subclause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.  
  
Where there is a guardian of any children entitled under this subclause, the payment to which such children are entitled may be made to such guardian for their maintenance, education and advancement.  
  
Where there is no person entitled under this subclause to receive the monetary value of leave payable under the foregoing provisions, payment in respect thereof shall be made to the legal personal representative of such employee.
- (v) Full-time and permanent part-time employees shall be entitled to have previous part-time service as a part-time worker which is the equivalent of at least two full days' duty per week taken into account for long service leave purposes in conjunction with full-time and/or permanent part-time service on the basis of the proportion that the actual number of hours worked each week bears to 40 hours up until 30 April 1985 and bears to 38 hours on and from 1 May 1985, provided the part-time service as a part-time worker merges without break with the subsequent full-time service or permanent part-time employment.
- (vi) Where an employee has been granted a period of long service leave prior to the coming into force of this award, the amount of such leave shall be debited against the amount of leave due under this award.
- (vii) Employees of the employer previously covered by alternative awards will have their long service leave accrued entitlement carried over but the accrual and access to long service leave entitlements from the date of transfer will be in accordance with this award, e.g. an employee with 15 years' continuous service under an alternative award at the time of transfer may have an accrued entitlement of three

months' long service leave. From this time onwards employees would accrue their entitlements in accordance with this award, at the rate of 2.5 months for each five years' service as the continuity of service is not affected by the change of award coverage. Thus, after 20 years' continuous service, the employee would be entitled to 5.5 months' leave, made up of three months under the previous award and a further 2.5 months under this award.

## 22. Sick Leave

- (i)
  - (a) An employee during his/her first year of employment with an employer shall be entitled to sick leave at the rate of 7.6 hours or pro rata thereof on the anniversary date of each of the first three months of continuous service.
  - (b) Upon completion of four months' continuous service, the employee shall be entitled to a further 53.2 hours or pro rata thereof sick leave
- (ii) A full-time employee shall be entitled to sick leave on ordinary pay by allowing 76 rostered ordinary hours of work for each year of continuous service.
- (iii) Part-time employees shall be entitled to sick leave in the same proportion of 76 hours as the average weekly hours worked over the preceding 12 months or from the time of the commencement of employment, whichever is the lesser, bears to 38 ordinary hours of one week for each year of continuous service. Such entitlements shall be subject to all the conditions applying to full-time employees.
- (iv)
  - (a) An employee, other than a Homecare Employee, shall notify his/her employer of an absence from work due to illness or injury prior to the commencement of his/her rostered shift or as soon as practicable thereafter and shall inform the employer of the expected duration of the absence.
  - (b) A Homecare Employee shall notify his/her employer of an absence from work due to illness or injury at least three hours prior to the commencement of his/her rostered shift but in any case no later than one hour before the first client where the employee is not prevented from doing so and shall inform the employer of the expected duration of the absence.
  - (c) An employee who is working in two different classifications shall be paid the relevant pay for the classification he/she would have been working on the day of their sick leave.
- (v) Periods of sickness shall not be required to be certified to by a legally registered medical practitioner, excepting where the absence exceeds two consecutive days or where in the employer's opinion the circumstances are such as to warrant such requirements.
- (vi) The employer shall not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the seven days immediately following the commencement of sick leave merely by reason of the fact that the employee is on sick leave.
- (vii) An employee shall not be entitled to sick leave on ordinary pay for any period in respect of which such employee is entitled to worker's compensation payments at full ordinary rate; provided, however, that, where an employee is not in receipt of such full ordinary compensation rate, an employer shall pay to an employee who has sick leave entitlements under this clause the difference between the amount received as worker's compensation and full pay.

The employee's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by the proportion of hours which the difference bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.

Provided that this subclause shall not apply where an employee unreasonably refuses to undergo a rehabilitation program.

- (viii) For the purpose of determining a full-time employee's sick leave credit as at 1 May 1985, sick leave entitlement shall be proportioned on the basis of 76:80.
- (ix) For the purposes of this clause, service shall mean continuous service with any one employer/organisation.
- (x) Any unused sick leave shall remain to the employee's credit.

### **23. Personal/Carer's Leave**

#### (i) Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in sub-clause (ii) of sub-clause (c), who needs the employee's care and support, shall be entitled to use, in accordance with this sub-clause any current or accrued sick leave entitlement, provided for in clause 22-Sick Leave, for absences to provide care and support, for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
  - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned or that the illness is such as to require care by another person, or
  - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this sub-clause where another person has taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this sub-clause is subject to:
  - (1) the employee being responsible for the care of the person concerned; and
  - (2) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (E) a relative of the employee who is a member of the same household, where for the purposes of this sub-clause:
      - 1. "relative" means a person related by blood, marriage or affinity;
      - 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

3. "household" means a family group living in the same domestic dwelling.

- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.
- (e) An employee, in addition to the circumstances and manner stated in subclauses (a)-(d), shall also be entitled to access accrued sick leave for the purposes of personal/carer's leave in the following situation:
- (1) one permanent employee only per facility each calendar year shall be entitled to access two (2) days of such leave to attend training facilitated by the Union to increase awareness and knowledge of workplace issues and/or consultative mechanisms and/or statutory entitlements and obligations, which will contribute to a more productive, aware and harmonious workplace environment;
  - (2) such an employee will give a minimum of four weeks notice to the employer of attendance at such training, unless a lesser notification period is agreed to by the employer, and the employer shall be entitled to request written confirmation from the Union as to the time and nature of the training;
  - (3) access to this two (2) days per year in this subclause is not cumulative; and
  - (4) such an employee may, with the consent of the employer, access additional or alternative leave, as prescribed in subclauses (ii)-(vi) of this clause, for the purposes of attending such training as stated in subclause (e)(1) above.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 33 should be followed.

(ii) Unpaid Leave for carer's leave Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in sub-clause (i) (c) (2) above, who is ill or who require care due to an unexpected emergency.

(iii) Annual Leave

- (a) An employee may elect with the consent of the employer, to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in sub-clause (a) of this sub-clause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due

- (iv) Time Off in Lieu of Payment for Overtime
- (a) 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 within 12 months of the said election.
  - (b) Overtime taken as time off during ordinary time hours shall be taken as set out in clause 10(vi)-Overtime.
  - (c) If, having elected to take time as leave in accordance with sub-clause (a) of this sub-clause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
  - (d) Where no election is made in accordance with the said sub-clause (a), the employee shall be paid overtime rates in accordance with the award.
- (v) Make-up Time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours payable at the ordinary rate of pay, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate, which would have been applicable to the hours taken off.
- (vi) Allocated Days Off
- (a) An employee may elect with the consent of the employer, to take an allocated day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take allocated days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all allocated days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee or subject to reasonable notice by the employee or the employer.
  - (d) This sub-clause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of ADO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

#### **24. Compassionate Leave**

- (i) Compassionate leave with pay shall be granted only in extraordinary or emergent circumstances where an employee is forced to be absent from duty because of an urgent pressing necessity, and such leave as is granted should be limited to the time necessary to cover the immediate emergency.

An absence occasioned by personal exigencies which might fairly be regarded as an obligation on the employee, rather than the employer, may be covered by the grant of leave without pay, or if the employee so desires, charged against available annual leave credits.

- (ii) Compassionate leave shall be granted on the following principles:

- (a) Bereavement Leave

- (1) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay, on each occasion of the death of a person as

prescribed in subparagraph (3) of this paragraph, provided that where the employee is involved in making funeral arrangements, travelling, etc., leave may be allowed for up to three days. Leave with pay would not ordinarily be granted for the death or attendance at a funeral for relatives not outlined in the said subparagraph (3) unless special circumstances exist, e.g., the employee resided with the deceased.

- (2) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
  - (3) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (c) of subclause (i) of clause 23, Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
  - (4) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
  - (5) Bereavement leave may be taken in conjunction with other leave available under subclauses (ii), (iii), (iv), (v) and (vi) of the said clause 23. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (b) Where an illness in the family causes an immediate emergency, sufficient leave should be granted to meet the immediate emergencies and to allow the employee to make any other arrangements considered necessary. Except in very special cases, such leave with pay should be limited to one day and where no one but the employee was available to care for the sick family member.
  - (c) Compassionate leave may also be granted in cases of unforeseen emergencies, which clearly prevent attendance for duty, e.g., flood, bush fires etc.
- (iii) Only under the most exceptional circumstances shall compassionate leave be granted for a period exceeding three working days within any one year. This is provided that additional leave may be granted by the employer in exceptional circumstances.

## **25. Leave Without Pay**

- (a) By agreement between an employer and a permanent employee, an employee may be granted a period of leave without pay.
- (b) The period of leave without pay will not break the continuity of service but will not count for the purpose of:
  - (i) accruing annual leave, incremental progression, sick leave and public holidays;
  - (ii) accruing long service leave except in the case of employees who have completed at least ten years' service (any period of absence without pay being excluded therefrom) in which case service shall include any period without pay not exceeding six months taken after 1 June 1980;
  - (iii) qualifying period for paid and unpaid paternity leave; and
  - (iv) the calculation of notice and severance pay in accordance with clause 42, Redundancy, and clause 43, Termination of Employment.



## 26. Payment and Particulars of Wages

- (i) Wages shall be paid weekly or fortnightly, provided that, for the purpose of adjustments of wages related to alterations in the basic wage, from time to time effective, the pay period shall be deemed to be weekly.
- (ii) On each pay day the pay shall be made up to a day not more than five days prior to the day of payment.
- (iii) Employees shall have their wages paid by direct deposit or electronic transfer into one account with a bank or other financial institution in New South Wales as nominated by the employee except where agreement as to payment by cash or cheque has been reached between the Union and the employer due to the isolation of the place of employment and/or the limited number of employees.
- (iv) Wages shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees by the close of business on pay day. Where the wages are not available to the employee by such time due to circumstances beyond the employer's control, the employer shall not be held accountable for such delay.
- (v) Where the services of an employee are terminated with due notice, all moneys owing shall be paid upon cessation of employment but, in the case of termination without due notice, within three working days.
- (vi) On pay day each employee shall be provided with a payslip, which specifies the following particulars:
  - (a) name and date of payment;
  - (b) the period for which the payment is made;
  - (c) the gross amount of wages, including overtime and other earnings and annual leave payments for casuals;
  - (d) the ordinary pay per hour;
  - (e) the amount paid as overtime or such information as will enable the amount paid as overtime to be calculated by the employee;
  - (f) the amount of other earnings and the purpose for which they are paid;
  - (g) the amount deducted for taxation purposes;
  - (h) the particulars of all other deductions; and
  - (i) the net amount paid.
- (vii) Where an employer has overpaid an employee, the employer shall notify the employee of such overpayment and how such overpayment is made up, in writing, and may recover such amounts, with the agreement of the employee as to the amount of the overpayment and method of such recovery. This subclause authorises the use of deductions from wages for the purpose of such recovery. All such deduction from wages must be authorised in writing by the employee.

## 27. Service Allowance

- (i) All full-time employees appointed prior to 1 June 1980 shall, after ten years' continuous service with the same organisation, be paid by the said organisation in addition to the rates prescribed in Table 1 - Monetary Rates, of Part B of this award, a service allowance in the following manner:

For 10 years of service but less than 15 years	5%
For 15 years of service but less than 20 years	7½%
For 20 years of service and over	10%

- (ii) Payments due under this clause will be made on the usual payday when other payments under the award are made.
- (iii) Continuous service in the same organisation prior to the commencement of this award shall be taken into account when computing service for the purposes of this clause.
- (iv) Continuous service shall be deemed not to have been broken by absence from the organisation due to membership of the defence forces of the Commonwealth in time of war or during any period of special leave for members of the Military Reserve Forces.

### **28. Leading Hands**

- (i) A leading hand is an employee who is placed in charge of not less than two other employees of a substantially similar classification but does not include any employee whose classification denotes supervisory responsibility.
- (ii) A leading hand shall be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

	Item No. of Table 2 - Other Rates and Allowances
in charge of 2 to 5 other employees	Item 14
in charge of 6 to 10 other employees	Item 15
in charge of 11 to 15 other employees	Item 16
in charge of 16 to 19 other employees	Item 17

- (iii) This allowance shall be part of salary for all purposes of this award.
- (iv) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

### **29. Higher Duties**

- (i) An employee when called upon by the employer to undertake duties carrying a higher rate of pay than their ordinary classification shall be paid the higher rate for the time so spent performing the higher duties.
- (ii) This clause shall not apply when an employee in a higher grade is absent from duty by reason of their allocated day off duty.

### **30. Uniforms and Protective Clothing**

- (i)
  - (a) Subject to paragraph (c) of this subclause, sufficient suitable and serviceable uniforms or overalls shall be supplied free of cost to each employee required to wear them. An employee to whom a new uniform or part of a uniform has been supplied by the organisation who fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment for it at a reasonable price in the absence of a satisfactory reason for the loss of such article or failure to produce such uniform or part thereof.
  - (b) Upon termination, an employee shall return any uniform or part thereof supplied by the organisation which is still in use by the employee, immediately prior to leaving.
  - (c) In lieu of supplying a uniform to an employee, an employer shall pay the said employee the sum set out in Item 18 of Table 2 - Other Rates and Allowances, of Part B of this award, per week.
  - (d) In lieu of supplying special-type shoes where required to an employee, an employer shall pay the said employee the sum set out in Item 19 of the said Table 2, per week.

- (e) In lieu of supplying a cardigan or jacket where required to an employee an employer shall pay the said employee the sum per week set out in Item 20 of the said Table 2, per week.
  - (f) If the uniform of the employee is not laundered at the expense of the organisation, an allowance of the amount set out in Item 21 of the said Table 2, per week shall be paid to the employee.
  - (g) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.
- (ii) Each employee whose duties require them to work out of doors shall be supplied with overboots. Sufficient raincoats shall also be made available for use by these employees.
  - (iii) Each employee whose duties require them to work in a hazardous situation with or near machinery shall be supplied with appropriate protective clothing and equipment.
  - (iv) For employees engaged in homecare services the following shall apply:
    - (a) On request, the employer shall supply free of charge two sets of full body aprons or other attire as agreed by the parties;
    - (b) The attire supplied in paragraph (a) of this subclause shall be replaced by the employer on the basis of fair wear and tear;
    - (c) The attire supplied in the said paragraph (a) shall remain the property of the employer at all times and any employee applying for a new issue supplied by the employer who fails to return their last issue shall not be entitled to a new issue without payment thereof;
    - (d) All new employees at time of engagement and all existing employees at the time of the next issue of uniforms may be required to sign an authorisation permitting the employer to deduct the value of uniforms and/or employer property from termination monies if the uniform and/or employer's property is not returned. Employer property is property personally given to an employee and where such property can reasonably be expected to remain in the employee's personal control;
    - (e) Where the client supplies equipment, materials and tools, the employer shall ensure that they are of reasonable quality and comply with safety standards;
    - (f) Where an employee is required to work outdoors, the employer shall provide a suitable broad-brimmed hat.

### **31. Sleepovers**

- (i) Employees may, in addition to normal rostered shifts, be required to sleepover. A sleepover means sleeping in at night in order to be on call for emergencies.
- (ii) The following conditions shall apply to each night of sleepover:
  - (a) The span for a sleepover shall be not less than eight hours nor more than ten hours on any one night.
  - (b) Employees shall be provided with free board and lodging for each night on which they are required to sleep over.
  - (c) Employees shall be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.
  - (d) In addition to the provision of free board and lodging for such nights, the employee shall be entitled to a sleepover allowance of the amount set out in Item 22 of Table 2 - Other Rates and Allowances, of Part B of this award, for each night on which they sleepover.

- (e) No work other than that of an emergency nature shall be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
  - (f) An employee directed to perform work other than that of an emergency nature during any sleepover shall be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in paragraph (d) of this subclause.
  - (g) All time worked during any sleepover shall count as time worked and be paid for in accordance with the following provisions:
    - (1) All time worked by full-time employees during any sleepover shall be paid for at overtime rates.
    - (2) All time worked by permanent part-time employees during any sleepover shall be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or 11 hours where there are no such full-time employees, then the excess hours worked on that day shall be paid for at overtime rates; and provided further that, if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
    - (3) All time worked by casual employees during any sleepover shall be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
    - (4) And provided further that, where the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of paragraph (j) of this subclause will apply.
  - (h) A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
  - (i) No employee shall be required to sleep over during any part of their rostered days off and/or allocated days off provided for in subclauses (iii) and (vi) of clause 7, Hours.
  - (j) An employee (whether a full-time employee, permanent part-time employee or casual employee) who performs so much work during sleepover periods between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times shall, subject to this subclause, be released after completion of such work until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such eight consecutive hours off duty, they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
  - (k) Casual employees may only be used for sleepovers when full-time employees or permanent part-time employees are not available for that duty and in no case shall casual employees be used exclusively or almost exclusively for sleepovers.
- (iii) Nothing in this clause shall preclude the employer from rostering an employee to work shift work in lieu of undertaking sleepovers.

### **32. Live-in**

Hostel Supervisors and Live-in Housekeepers required to live in shall be provided with full board and lodging free of charge. Where, in these circumstances, supervisors are rostered off duty, other appropriate staff shall be available.

### **33. Grievance and Dispute Resolution Procedures**

- (i) The following procedures shall be followed in relation to grievances of individual employees:
  - (a) The employee is required to notify the employer, preferably in writing, as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to the source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (ii) The following procedure shall be followed in relation to disputes, etc., between employers and their employees:
  - (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
- (iii) In the case of employers who employ not more than 20 employees, or where the management structure is such that all employees are subject to the direct supervision and control of the employer, graduated steps for further discussion and resolution at higher levels do not apply.
- (iv) While the above procedure is being followed, work will continue as normal where it is agreed there is an existing practice, but in other cases work will continue on the employer's instructions. No party will be prejudiced as to the final settlement by continuation of work.
- (v) For any of the above procedures, the employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an industrial organisation of employees.
- (vi) The industrial organisation representing employees reserves the right to vary this procedure where it is considered a safety factor is involved.

### **34. Attendance at Meetings**

Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive ordinary pay per hour for the actual time spent in attendance at such meetings.

In lieu of receiving payment, employees may, with the agreement of the employer, be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent shall not be viewed as overtime for the purposes of this award.

### **35. Labour Flexibility and Mixed Functions**

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

- (ii) The 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 or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and/or (ii) of this clause shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees and the employer's duty of care to residents.

### 36. Promotions and Appointments

Promotion and/or appointment shall be by merit, provided, however, that no employee with a claim to seniority shall be passed over without having his/her claim considered.

### 37. Emergency Telephone Calls

An employee required to answer emergency telephone calls outside of ordinary working hours, but not recalled to duty, shall be reimbursed rental charges on such telephone calls on production of receipted accounts. Provided that, where an employee is required to answer out of hours telephone calls on a relief basis, he/she shall be paid 1/12th of his/her yearly telephone rental for each month or part thereof he/she is so employed.

### 38. Parental Leave

- (i) All employees are entitled to parental leave in accordance with the provisions of the *Industrial Relations Act, 1996*.
- (ii)
  - (a) Full-time employees and permanent part-time employees are eligible for paid parental leave in accordance with the following provisions:
    - (1) Permanent employees are eligible for paid parental leave when they have completed at least 40 weeks' of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.
  - (b) Employees who are eligible for paid parental leave are entitled to such leave as follows:
    - (1) Paid Leave
      - (A) Paid Maternity Leave - an eligible employee is entitled to nine weeks paid maternity leave at ordinary pay from the date the maternity leave commences.

Maternity leave may commence up to nine weeks prior to the expected date of birth. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during this period, it is subject to the employee being able to satisfactorily perform the full range of normal duties.
      - (B) Paid Paternity Leave - an eligible employee is entitled to one week paid paternity leave in any one year at ordinary pay which must commence within four weeks of the birth of the child. (Eligible employees will be as defined in the Industrial Relations Act 1996.)
      - (C) Paid Adoption Leave - an eligible employee is entitled to paid adoption leave of three weeks from and including the date of taking custody of the child.
      - (D) Such leave may be paid:
        - (i) on a normal fortnightly basis;
        - (ii) in advance in a lump sum;

- (iii) at the rate of half pay over a period of 18 weeks on a regular fortnightly basis for maternity leave and at the rate of half pay over a period of six weeks on a regular fortnightly basis for adoption leave.

Annual and/or long service leave credits can be combined with periods of maternity leave or adoption leave on half pay to enable an employee to remain on full pay for that period.

(2) Unpaid Leave

- (A) Unpaid Maternity Leave - An employee is entitled to a further period of unpaid maternity leave of not more than twelve months after the actual date of birth of the child.
  - (B) Unpaid Paternity Leave - An employee is entitled to a further period of unpaid paternity leave of not more than three weeks, to be taken in conjunction with a period of paid paternity leave, unless otherwise agreed by the employer and employee.
  - (C) Unpaid Adoption Leave - An employee is entitled to unpaid adoption leave as follows:
    - (i) where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
    - (ii) where the child is over the age of 12 months - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.
- (c) An employee who has once met the conditions for paid maternity leave and paid adoption leave will not be required to again work the 40 weeks' continuous service in order to qualify for a further period of maternity leave or adoption leave, unless:
- (1) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
  - (2) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Workers' Compensation Act.
- (d) An employee who intends to proceed on maternity or paternity leave should formally notify the employer of such intention as early as possible, so that arrangements associated with the absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.
- (e) In the case of notification of intention to take adoption leave, due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.
- (f) After commencing maternity leave or adoption leave, an employee may vary the period of her maternity leave or adoption leave, once, without the consent of the employer and otherwise, with the consent of the employer. A minimum of four weeks' notice must be given, although an employer may accept less notice if convenient.

- (g) Any person who occupies the position of an employee on parental leave must be informed that the employee has the right to return to her former position. Additionally, since an employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the employee elects to return to duty, whichever occurs first.
- (h) When an employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual and long service leave and any period of maternity leave or adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.
- (i) Except in the case of employees who have completed ten years service the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six months.
- (j) Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
- (k) Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.
- (l) If because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
- (m) Where an employee is entitled to paid maternity leave, but because of illness, is on sick, recreation, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of the birth. The employee then commences maternity leave with the normal provisions applying.
- (n) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.
- (o) In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.
- (p) In the case of stillbirth, an employee may elect to take sick leave, subject to the production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
- (q) An employee who gives birth prematurely, and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.
- (r) An employee returning from parental leave has the right to resume their former position. Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and for which the employee is capable or qualified.



- (s) Employees may make application to their employer to return to duty for less than the full-time hours they previously worked by taking weekly leave without pay. Such return to work is to be according to the following principles:
- (1) the period is to be limited to twelve months after which the full-time duties must be resumed;
  - (2) the employee is to make an application for leave without pay to reduce her full-time weekly hours of work. This application should be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks' notice must be given;
  - (3) the quantum of leave without pay to be granted to individual employees is to be at the absolute discretion and convenience of the employer;
  - (4) salary and conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work, that is for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
  - (5) Full-time employees who return to work under this arrangement remain full-time employees.
- (t) Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.
- (iii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996* (NSW)) because:
- (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(iv) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
  - (2) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
  - (3) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.
- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under Clauses 38(iv)(a)(2) and 38(iv)(a)(3) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under Clause 38(iv)(a)(3) such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (v) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return or other contact details which might affect the employer's capacity to comply with Clause 38(v)(a).

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **39. Repatriation Leave**

- (i) Employees who are ex-servicemen or ex-servicewomen may be granted special leave in one or more periods up to a maximum of 6½ working days in any period of 12 months without deduction from annual or sick leave credits for the following purposes in connection with an accepted war-caused disability or in connection with an application to the Repatriation Department for a disability to be so accepted:

- (a) to attend a hospital or clinic or visit a medical officer in that regard;
- (b) to attend a hospital, clinic or medical officer or to report for periodical examination or attention;
- (c) to attend limb factories for the supply, renewal and repair of artificial replacements and surgical appliances.

- (ii) Employees are to provide the employer with documentary evidence as to the attendance prior to the payment of special leave being granted.

### **40. Union Representative**

An employee appointed Union representative shall, upon notification thereof in writing to the organisation, within 14 days of such appointment, or as soon as practicable thereafter, be recognised as the accredited representative of the Union and shall be allowed the necessary time, during working hours, to interview the employer on matters affecting employees.

#### 41. Apprentices

- (i) Indentured apprentice means an employee who is serving a period of training under an indenture for the purpose of rendering them fit to be a qualified worker in an industry. Apprentices may be indentured to an organisation as cooks or gardeners.
- (ii) Apprenticeship means an apprenticeship established under the *Apprenticeship and Traineeship Act 2001*.
- (iii) Wages for school based apprentice
- (a) The hourly rates for full-time apprentices are set out in this award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
- (c) Where this award specifies a weekly rate for full-time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.
- (iv) The minimum rates of wages for apprentice cooks shall be the following percentages of the rate applicable to the classification of Care Service Employee - Grade 3 as varied from time to time:
- |             |        |
|-------------|--------|
| First year  | 60%    |
| Second year | 82.5%  |
| Third year  | 92.5%. |
- (v) The minimum rates of wages for apprentice gardeners shall be the following percentages of the rate applicable for the classification of a Care Service Employee Grade 3 as varied from time to time:
- |             |     |
|-------------|-----|
| First year  | 50% |
| Second year | 60% |
| Third year  | 80% |
| Fourth year | 90% |
- (vi) Apprentices attending college for training shall be entitled to fares to and from home to college.
- (vii) An apprentice who obtains and hands to his/her employer a certificate or statement of having passed his/her first year technical college examination and in respect of whom a satisfactory report as to conduct, punctuality and progress is furnished shall be paid an allowance of the amount in Item 23 of Table 2 - Other Rates and Allowances, of Part B of this award, per week in addition to the rates prescribed in the ensuing twelve months, plus an additional allowance of the amount in the said Item 23, per week if he/she passes each subsequent year.
- (viii) The ordinary hours of work for apprentices shall be as prescribed in clause 7, Hours. No apprentice shall be permitted or required to perform work which would prevent the apprentice from attending classes at TAFE.
- (ix) Progression through Wage Structure
- (a) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- (b) The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

(x) Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

(xi) Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.

(xii) Disputes and Disciplinary Matters

The provisions of the *Apprenticeship and Traineeship Act 2001* shall apply for the resolution of disputes and disciplinary matters.

#### 42. Redundancy

(i) For the purposes of this clause, "continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955* as at 22 July 1996. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this award.

(ii) Introduction of Change

(a) Employer's duty to notify -

- (1) Where the 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 the Union.
- (2) "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, promotion 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.

(b) Employer's duty to discuss change -

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (a) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (a) of this clause.
- (3) For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.

## (iii) Redundancy

Discussions before terminations -

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision may lead to termination of the employee's employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of subclause (a) of this clause and, in any case, prior to the beginning of the period of notice required by subclause (iv) of this clause. These discussions shall cover, inter alia, any reasons for the proposed terminations, and measures to avoid or minimise the terminations, and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (c) For the purposes of the discussion the employer shall, as soon as practicable and, in any case, prior to the beginning of the period of notice required by the said subclause (iv), provide to the employees concerned and to the union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.

## (iv) Termination of Employment

- (a) Notice for changes in production, program, organisation or structure -

This paragraph sets out the notice provisions to be applied to terminations or proposed terminations of the employment of an employee by the employer in circumstances where the employer no longer wishes the job which the employee has been doing to be done by anyone, for any reason (other than technological change), and for reasons arising from production, program, organisation or structure in accordance with subparagraph (1) of paragraph (a) of subclause (ii) of this clause. These provisions shall be at least the minimum periods of notice as provided in clause 43, Termination of Employment.

- (b) Notice for technological change -

This paragraph sets out the notice provisions to be applied to terminations or proposed terminations by the employer for reasons arising from technology in accordance with the said subparagraph (1).

- (1) An employer shall not terminate the employment of an employee unless the employer has given to the employee at least three months' notice of termination.
- (2) Payment in lieu of the period of notice specified in subparagraph (1) of this paragraph shall be made if the said period of notice is not given. Provided that employment may be terminated by part of the period of notice specified and part-payment in lieu of the period of notice specified.
- (3) The period of notice required by this paragraph to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any act amending or replacing either of these Acts.

(c) Time off during the notice period -

- (1) During the period of notice of termination given by the employer, each affected employee shall be allowed up to one day's time off without loss of pay for each week of notice, up to a maximum of five days off, for the purposes of seeking other employment.
- (2) If an employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, if the employer so requests, the employee shall be required to produce proof of attendance at an interview. If the employee is so required to produce such proof of attendance and fails to do so, the employee shall not be entitled to receive payment for such time.

(d) Employee leaving during the notice period -

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments to which the employee shall be entitled had the employee remained with the employer until the expiry of such notice.

(e) Statement of employment -

The employer shall provide to each employee whose employment has been terminated, a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(f) Notice to Centrelink -

Where a decision has been made to terminate the employment of 15 or more employees, the employer shall notify Centrelink of this, as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(g) Centrelink Employment Separation Certificate -

The employer shall provide to an employee whose employment has been terminated an Employment Separation Certificate in the form required by Centrelink.

(h) Transfer to lower-paid duties -

Where an employee is genuinely transferred to a lower-paid classification for reasons set out in paragraph (a) of subclause (ii) of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment has been terminated. However, the employer will in addition continue to pay the employee their former ordinary pay for a period equivalent to one week for each year of service completed with the employer to a maximum of six weeks.

(v) Retrenchment Pay

Unless the Industrial Relations Commission of New South Wales subsequently orders otherwise pursuant to subclause (vi) of this clause, where the employment of an employee is to be terminated for reasons set out in subclause (ii) of this clause, the employer shall pay, in addition to other payments due to that employee, the following retrenchment pay in respect of the following continuous periods of service:

- (a) Where the employee is under 45 years of age, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	7 weeks' pay
3 years and less than 4 years	10 weeks' pay
4 years and less than 5 years	12 weeks' pay
5 years and less than 6 years	14 weeks' pay
6 years and over	16 weeks' pay

- (b) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	5 weeks' pay
2 years and less than 3 years	8.75 weeks' pay
3 years and less than 4 years	12.5 weeks' pay
4 years and less than 5 years	15 weeks' pay
5 years and less than 6 years	17.5 weeks' pay
6 years and over	20 weeks' pay

- (c) "Week's pay" means the rate of pay for the employee concerned at the date of termination, and shall include in addition to the ordinary pay any over-award payments:

- (1) shift allowances as prescribed in subclauses (i) and (ii) of clause 15, Penalty Rates and Shift Allowances;
- (2) weekend penalties as prescribed in subclause (iii) of the said clause 15;
- (3) service allowances as prescribed in subclause (i) of clause 27, Service Allowance;
- (4) broken shift allowances as prescribed in clause 7, Hours;
- (5) sleepover allowances as prescribed in clause 31, Sleepovers;
- (6) apprentices' TAFE examination allowances as prescribed in clause 41, Apprentices;
- (7) climatic and isolation allowances as prescribed in clause 14, Climatic and Isolation Allowances;
- (8) leading hand allowances as prescribed in clause 28, Leading Hands;
- (9) Laundry and Dry Cleaning Certificate allowance as prescribed in Table 2 - Other Rates and Allowances, of Part B of this award.

- (vi) Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of retrenchment pay than that contained in subclause (v) of this clause.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of retrenchment pay in the said subclause (v) will have on the employer.

## (vii) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (v) of this clause if the employer obtains acceptable alternative employment for an employee.

**43. Termination of Employment**

(i) Employment, other than of a casual, will be terminated only by appropriate notice on either side or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified.

## (ii) Notice of Termination by Employer

## (a)

## (1)

Period of Continuous Service	Minimum Period of Notice
1 year or less	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

(2) A Care Service Employee - Grade 4 who has responsibility for the overall management of a facility and a Care Service Employee - Grade 5 shall be entitled to four weeks' notice.

(b) Employees aged 45 years or older will be entitled to an additional one week's notice in the following circumstances:

(1) On completion of at least five years' continuous service, for Care Service Employees - Grade 4 who have responsibility for the overall management of a facility, and Care Service Employees - Grade 5; and

(2) On completion of at least two years' continuous service for all other employees other than casuals.

(c) Casuals are to be given notice to the end of the current shift worked.

## (iii) Notice by Employee

(a) Subject to paragraphs (b) and (c) of this subclause, employees shall give the employer one week's notice of termination in writing.

(b) A Care Service Employee - Grade 4 who has responsibility for the overall management of a facility and a Care Service Employee - Grade 5 shall give four weeks' notice of termination in writing.

(c) Casuals shall only be required to give notice to the end of the current shift worked.

(iv) The employer may, without notice, summarily dismiss an employee at any time for misconduct or wilful disobedience. Payment is up to the time of dismissal only. Serious misconduct is where it would be unreasonable to require the employer to continue the employment during a notice period.

(v) The employer will give the employee a statement signed by the employer stating the period of employment and when the employment was terminated if the employee requests.



(vi) Abandonment of Employment

- (a) Where an employee is absent from work for a continuous period of two working days without the consent of the employer, and without notification to the employer, the employer shall be entitled to inform the employee by written correspondence that, unless the employee provides a satisfactory explanation for her/his absence within two days of the receipt of such a request, the employee will be considered to have abandoned employment.

#### 44. Notice Board

- (i) The employer shall permit a notice board of reasonable dimensions to be erected in a prominent position upon which the Union representatives shall be permitted to post Union notices.
- (ii) The employer shall keep exhibited a copy of this award in accordance with section 361 of the *Industrial Relations Act 1996*.

#### 45. Accommodation and Amenities

- (i) The minimum standards as set out in all relevant occupational health and safety legislation shall be met in the provision of amenities to employees.
- (ii) Such amenities must include:
- (a) change rooms and lockers;
  - (b) meal room;
  - (c) facilities for boiling water, warming and refrigerating food and for washing and storing, dining utensils;
  - (d) rest room;
  - (e) washing and bathing facilities;
  - (f) sanitary conveniences; and
  - (g) Safe and secure workplace.
- (iii) sub-clauses (i) & (ii) above shall not apply to homecare employees.
- (iv) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### 46. Inspection of Lockers

Lockers may only be opened for inspection in the presence of the employee but, in cases where the employee neglects or refuses to be present or in any circumstances where notice to the employee is impracticable, such inspection may be carried out in the absence of the employee by an officer of the employer and a Union representative where practicable; otherwise, by any two officers of the facility appointed by the employer for that purpose.

#### 47. Consultative Arrangements

The parties support the development of consultative arrangements in the aged care industry and to that end recommend that facilities establish consultative teams and that those teams meet regularly. The number of management representatives should not exceed the number of staff representatives. The meetings are a forum to allow the exchange of ideas and information on policies, procedures, etc. Members should encourage the development of skills by attendance at recognised training forums and greater participation of all employees in the consultative process.

#### **48. No Extra Claims Commitment**

It is a term of this award that the Union undertakes, for a two year period commencing 17 October 2005, not to pursue any extra claims.

#### **49. Training**

- (i) Employees will be given ongoing training as necessary, relevant to their roles and responsibilities.
- (ii) Each employee shall provide to his/her employer details of their attendance at training and the employer shall keep a record of this attendance.
- (iii) Upon termination of the employee's employment, the employer shall provide to the employee a written statement of the hours of training attended by the employee.
- (iv) Where practicable, such training shall be provided to employees during their normal rostered hours of work. Where this is not practicable:
  - (a) Employees shall attend training outside their normal rostered working hours when required to do so by the employer;
  - (b) An employer shall provide employees with two weeks' notice of the requirement to attend training outside of their normal rostered working hours;
  - (c) Notwithstanding clause 10, Overtime, attendance at such training shall be paid ordinary pay for the period of training.
  - (d) An employer requiring an employee to attend training shall also pay to the employee ordinary pay for time travelling to and from a period of training referred to in subclause (c) of this clause that is in excess of the time normally taken for that employee to attend work.
  - (e) When receiving travelling time as set out in subclause (d) above in this clause, any employee using their own vehicle for attendance at such training shall be reimbursed as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B of this award.
  - (f) Training provided outside the normal rostered hours of work shall be arranged so as to allow full-time employees to have at least eight or ten hours off duty before or after training and the end or beginning of their shift, whichever is applicable, as set out in clause 7, Hours. Where practicable, similar arrangements should also be made available to all other employees.
  - (g) Any training undertaken by an employee that occurs at a workplace is not intended to replace or supplement staffing levels and the normal levels of service delivery at such a workplace.
  - (h) Notwithstanding subclause (ix) of clause 7, Hours, subclause (ii) of clause 10, Overtime will not apply where attendance at such training is outside the normal rostered working time of other than full-time employees and where it interrupts the applicable eight- or ten-hour break between shifts.

#### **50. Leave Reserved**

The parties agree to the following:

- (a) continue to review the classification structures within the Award to ensure their on-going currency and relevance to the industry; and
- (b) continue discussions regarding reasonable workloads.

### 51. Exemptions

This award shall not apply to:

- (i) Novices, aspirants or persons who have taken the vows of religious orders.
- (ii) Employees of the Spastic Centre of New South Wales to whom the terms of The Spastic Centre of New South Wales Enterprise (State) Award published 7 November 2003 (341 I.G. 945), and any variations thereto or replacements thereof, apply.
- (iii) Employees of Stewart House of South Curl Curl, to whom the terms of the Registered Industrial Agreement No. 6299, and any variations thereto or replacements thereof, apply.
- (iv) Employees of Carrington Centennial Hospital for Convalescents at the Carrington Retirement Village of Camden, to whom the terms of the Registered Industrial Agreement No. 8634, and any variations thereto or replacements thereof, apply.
- (v) Employees of the Richmond Fellowship of New South Wales to whom the terms of The Richmond Fellowship of New South Wales (State) Award 1999 published 14 April 2000 (314 I.G. 1055) apply.
- (vi) Employees of the Royal Institute for Deaf and Blind Children, North Rocks whilst ever the terms of The Royal New South Wales Institute for Deaf and Blind Children Employees' (State) Award published 19 January 2001 (321 I.G. 716) apply to them.
- (vii) Employees of the Northcott Society whilst ever they are applying to their employees the terms of The Northcott Society (State) Award published 8 September 2000 (318 I.G. 490).
- (viii) Employees of the following nursing homes whilst ever these nursing homes are applying to their employees the terms of the Aged Care General Services (State) Award published 10 November 2000 (320 I.G. 1), or any award replacing that award:

Austral House Nursing Home, 4 Austral Avenue, North Manly

Cardinal Freeman Nursing Home, Clissold Street, Ashfield

Castellorizian Nursing Home, 95 Todman Avenue, Kensington

Castle Hill Nursing Home, 454 Old Northern Road, Dural

Coffs Harbour Legacy Nursing Home, 55 Victoria Street, Coffs Harbour

Courtlands Nursing Home, Walden Road, Parramatta

Edinglassie Nursing Home, Emerald Street, Emu Plains

Ex-Servicemen's Memorial Nursing Home, The Ridgeway, Bolton Point

Fairview Nursing Home, Victoria Terrace, Moree

Garden Suburbs Nursing Home, 7 Myall Road, Garden Suburbs

I.O.O.F. Nursing Home, 7 Saunders Street, North Parramatta

Jacaranda Nursing Home, 12-14 English Street, Cronulla

James Milson Nursing Home, 55 High Street, North Sydney

John and Helen Robinson Nursing Home, Belinda Street, Gerringong

Leisure World Nursing Home, 93 Baumans Road, Peakhurst  
Loreto Home for the Aged Nursing Home, 367 Bronte Road, Waverley  
Lourdes Village Nursing Home, 95 Stanhope Road, Killara  
Lynvale Nursing Home, 55 Stokes Street, Lane Cove  
Mary Potter Nursing Home, Lewisham Avenue, Wagga Wagga  
Mayflower Nursing Home, 2 Helen Street, Westmead  
McCall Garden Colony Nursing Home, 10-32 Terrey Road, Box Hill  
Narla Village Nursing Home, 21 Lentara Road, Belmont North  
Ocean View Nursing Home, 2 Jenkin Street, Mona Vale  
Peakhurst Nursing Home, 18 Henry Lawson Drive, Peakhurst  
Pioneer House Nursing Home, 44 Court Street, Mudgee  
Sir William Hudson Memorial Nursing Home, Buchan Parade, Cooma  
St. Luke's Nursing Home, 73 Roslyn Gardens, Elizabeth Bay  
Wesley Heights Nursing Home, 47 Birkley Road, Manly  
Wesley Lodge Nursing Home, 55 Bull Street, Mayfield  
Whitehall Nursing Home, 75B Maroo Avenue, Revesby  
Woodfield Nursing Home, 16 Stanton Road, Haberfield  
Woodstock Nursing Home, 88 Redmyre Road, Strathfield.

- (ix) Members of the Aged Services Association and/or the Catholic Commission for Employment Relations shall be covered by the Charitable, Aged and Disability Care Services (State) Award published 21 June 2002 (334 I.G. 601).

## **52. Reasonable Hours**

- (i) Subject to subclause (ii) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) of this clause, what is reasonable or otherwise will be determined having regard to:
- (a) Any risk to employee health and safety.
  - (b) The employee's personal circumstances, including any family and carer responsibilities.
  - (c) The needs of the workplace or enterprise.
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

- (e) Any other relevant matter.

### 53. Secure Employment

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times

of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
  - (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
    - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
    - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
    - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
    - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
  - (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

**54. Area, Incidence and Duration**

- (i) This award rescinds and replaces the Charitable Sector Aged and Disability Care Services (State) Award published 6 July 2001 (325 I.G. 996), and all variations thereof.
- (ii) This award shall apply to all persons employed by or in or in connection with voluntary, religious, charitable and non-profit making private retirement villages, nursing homes and hostels for the aged in the private health, health-related and aged care industries and who come within the constitution rule of the Health Services Union.
- (iii) This award shall apply to all persons employed by or in or in connection with voluntary, religious, charitable and non-profit making private nursing homes and hostels for the disabled in the private disability services industry and who come within the constitution rule of the Health Services Union.
- (iv) This award shall also apply to all persons employed by or in or in connection with other accommodation support services and/or community residential units for disabled persons owned, managed or conducted by voluntary, religious, charitable and other non-profit making organisations in the private disability services industry and who come within the constitution rule of the Health Services Union.
- (v) Provided that, with respect to the Grand United Centenary Nursing Home, employees employed prior to 15 July 1996 shall continue to be entitled to receive any benefit or benefits contained in the Aged Care General Services (State) Award published 10 November 2000 (320 I.G. 1), as varied, which are greater than the benefit or benefits contained in this award.
- (vi) Provided further that, with respect to the following nursing homes, however named:

Clarence Nursing Home, Grafton

Frank Whiddon Masonic Nursing Home, Glenfield

The Cedars Nursing Home, Casino

Wingham Court Nursing Home, Wingham

Narraburra Lodge Nursing Home, Temora (previously known as Greenstone Lodge Nursing Home, Temora)

employees employed prior to 4 September 1998 shall continue to be entitled to receive any benefit or benefits contained in the Aged Care General Services (State) Award published 10 November 2000 (320 I.G. 1), as varied, which are greater than the benefit or benefits contained in this award.

- (vii) Provided further that, with respect to the following hostels for the aged, however named:

A H Livingston House, Grafton

Arthur Webb Court Hostel, Glenfield

Birrungan Lodge Hostel

Easton Park Hostel Units, Glenfield

Easton Park New Hostel Units, Glenfield

Greenstone Lodge, Temora

Ilumba Gardens, Kelso

Kyogle Court, Kyogle

Lake Macquarie Retirement Village Hostel, Belmont

Laurieton Haven Hostel, Laurieton

Lower Clarence Retirement Village Hostel, Maclean

Maas House, Glenfield

Masonic Towers, Hornsby

Namoi Valley Aged Care Hostel

Primrose Court

Redhead Gardens Hostel

The Noel Warren Masonic Village

Wingham Court, Wingham

employees employed prior to 4 September 1998 shall be entitled to receive any benefit or benefits contained in the Aged Care General Services (State) Award published 10 November 2000 (320 I.G. 1) as varied, which are greater than the benefit or benefits contained in this award.

(viii) Provided further that, with respect to the following retirement villages, however named:

Easton Park Retirement Village, Glenfield

Frank Whiddon Masonic Homes, Glenfield

Ilumba Gardens Retirement Village, Kelso

Lake Macquarie Retirement Village

Laurieton Haven Home for the Frail Aged

Lower Clarence Retirement Village

Maitland Retirement Village

Namoi Valley Aged Care Complex

Redhead Gardens Retirement Village

employees employed prior to 4 September 1998 shall be entitled to receive any benefit or benefits contained in the Aged Care General Services (State) Award published 10 November 2000 (320 I.G. 1), as varied, which are greater than the benefit or benefits contained in this award.

(ix) This award shall also apply to all persons employed in the following centres:

Ashton House, Maroubra Junction

Ferguson Lodge, Lidcombe

Foundation for Disabled, Llandilo

Greystanes Children's Home, Leura

Handicapped Children's Centre, Kirrawee



Illawarra Society for Crippled Children

Kurinda Residential Services, Seven Hills

Lonsdale House Hostel

Lorna Hodgkinson Sunshine Home, Gore Hill

Mannix Children's Centre, Liverpool

Multiple Sclerosis Society of NSW, Lidcombe

Newcastle and District Association for Crippled Children

Royal Far West Children's Health Service & Services for the Aged

Sunnyfield Association, Allambie Heights;

Whitehall Children's Home, Revesby

- (x) Provided that this award shall not apply to persons substantially engaged in counselling, social welfare advice and referral, assessment of disability, design of disability services programs, or community development work in connection with services for the disabled or social workers or social educators properly so-called; provided this exclusion does not apply to persons eligible to become members of the Health Services Union who are employed as residential care workers, and persons primarily engaged in supervising the work performed by disabled persons, or in domestic duties in sheltered workshops for the disabled.
- (xi) Provided that this shall also not apply to persons who are employed in providing homecare services to clients in private residences which are not operated as an adjunct to a retirement village, nursing home, hostel, accommodation support service or community residential unit or where the provisions of the Miscellaneous Workers Homecare Industry (State) Award published 4 August 2000 (317 I.G. 618), as varied, apply.
- (xii) The variation, made on 18 February 1997, deleting the Grand United War Memorial Nursing Home from the list in subclause (viii) of clause 41, Exemptions, and adding the proviso to subclause (iii) of clause 42, Area, Incidence and Duration, shall take effect on and from 22 January 1997.
- (xiii) The variation applying to the nursing homes, hostels and retirement villages run by Frank Whiddon Masonic Homes shall take effect on and from 4 September 1998.
- (xiv) This award shall take effect on and from the beginning of the first pay period to commence on or after 3 December 2003 and it shall have a nominal term of 12 months.
- (xv) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.
- (xvi) This award remains in force until varied or rescinded, the period for which it was made already having expired.

The rates contained herein shall be deemed to apply from the first full pay period to commence on or from the date shown.

**PART B****Table 1 - Monetary Rates**

Classifications	Current Rate per week \$	SWC 2010 Adjustment per week %	Wage Rate as from 16.12.10 per week \$
Care Service Employees			
New Entrant Grade 1 Junior	544.10	4.25	567.20
Grade 1	635.10	4.25	662.10
Grade 2	675.00	4.25	703.70
Grade 3	715.40	4.25	745.80
Grade 4			
- Level 1	752.60	4.25	784.60
- Level 2	816.80	4.25	851.50
Grade 5 from	871.30	4.25	908.30
to	1287.40	4.25	1342.10
Note: Employees classified and paid as Recreational Activities Officers as at 10 November 1998 be reclassified in accordance with the new definitions of Care Service Employee. Employees reclassified at Grade 2 by virtue of the above exercise shall be paid at Grade 3 from the effective date of this award, and continue to be so paid whilst employed in the provision of recreational activities by their current employer. These employees may be required to perform the duties of a Level 3 Care Services Employee where they have the skill and competence to do so.			
Note: Salary Band-Grade 5 - Employers and employees may negotiate a rate within the salary band as shown. For the purposes of this award, the rate so negotiated shall be deemed to be the employee's award rate of pay. Salaries in excess of the salary band may also be negotiated between the parties.			
Maintenance Supervisors -			
Maintenance Supervisor (Otherwise)	747.30	4.25	779.10
Maintenance Supervisor (Otherwise)			
- in charge of staff	763.50	4.25	795.90
Maintenance Supervisor (Tradesperson)	810.40	4.25	844.80
Catering Officer			
Trainee Catering Officer -			
1st year	661.10	4.25	689.20
2nd year	673.10	4.25	701.70
3rd year	686.80	4.25	716.00
Assistant Catering Officer -			
80-120 beds	693.40	4.25	722.90
120-300 beds	738.60	4.25	770.00
300-500 beds	792.40	4.25	826.10
500-1000 beds	813.70	4.25	848.30
Catering Officer -			
80-120 beds	771.30	4.25	804.10
120-200 beds	792.40	4.25	826.10
200-300 beds	813.70	4.25	848.30
300-500 beds	854.30	4.25	890.60
500-1000 beds	922.10	4.25	961.30
Diversional Therapist			
1st year of experience	689.80	4.25	719.10
2nd year of experience	724.10	4.25	754.90
3rd year of experience	758.00	4.25	790.20
4th year of experience	791.90	4.25	825.60
5th year of experience and thereafter	824.40	4.25	859.40
Apprentices			
Apprentice Cook -			
1st year	429.20	60% of CSE 3	447.50
2nd year	590.20	82.5% of CSE 3	615.30

3rd year Apprentice Gardener -	661.70	92.5% of CSE 3	689.90
1st year	357.70	50% of CSE 3	372.90
2nd year	429.20	60% of CSE 3	447.50
3rd year	572.30	80% of CSE 3	596.60
4th year	643.90	90% of CSE 3	671.20
Homecare Employees Homecare Employee -			
Grade 1	638.90	4.25	666.10
Grade 2	670.20	4.25	698.70
Grade 3	716.50	4.25	747.00
Live-in Housekeeper -			
Grade 1	830.60	130% of Home Care-Grade 1	865.90
Grade 2	938.30	140% of Home Care-Grade 2	978.20
Grade 3	1087.30	refer formula	1133.60
Clerical & Administrative Employees Juniors -			
At 16 years of age and under	347.40	4.25	362.20
At 17 years of age	393.80	4.25	410.50
At 18 years of age	451.60	4.25	470.80
At 19 years of age	508.80	4.25	530.40
At 20 years of age	561.00	4.25	584.80
Adults -			
Grade 1	685.50	4.25	714.60
Grade 2	726.30	4.25	757.20
Grade 3	768.80	4.25	801.50
Grade 4	802.90	4.25	837.00
Grade 5	839.20	4.25	874.90
Note 1: Any employee paid on a classification/grade carrying a higher wage rate as at 10 November, 1998 shall have the difference between the higher rate and the new agreed grade/rate preserved whilst remaining to undertake the duties associated with the classification held prior to the date referred to above.			
Note 2: Clerks who are paid at a grade above that of Grade 5 as at 10 November, 1998 shall have the difference between that grade and the new agreed grade preserved whilst employed in a clerical position with their current employer.			

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description		Amount from 16.12.10 SWC 2010 (4.25%)
				\$
1	7(xi)(c)	Broken Shift	Per shift	8.45
2	9(iii)(a)	Overtime - Breakfast	Per meal	11.02
3	9(iii)(b)	Overtime - Luncheon	Per meal	14.25
4	9(iii)(c)	Overtime - Evening Meal	Per meal	20.80
5	10(iii)(b)	Overtime - recall use of own vehicle	Per klm	0.30
6	10(iii)(c)	On Call Allowance	Per day (24 hrs)	13.76
7	14(i)	Climatic & Isolation Allowance	Per week	5.48
8	14(ii)	Climatic & Isolation Allowance	Per week	10.35
9	17(i)(a)	Cleaning/Scraping Work - confined space	Per hour	0.52
10	17(i)(b)	Cleaning/Scraping Work - boiler/flue	Per hour	0.83

11	17(iii)	Linen Handling - nauseous nature	Per hour	0.25
12	17(v)	Use of own vehicle per kilometre	Per week	0.58
13	17(ix)	Laundry and Dry Cleaning Certificate Allowance	Per week	9.11
14	28(ii)	Leading Hand Allowance - in charge 2-5 employees	Per week	22.41
15	28(ii)	Leading Hand Allowance - in charge 6-10 employees	Per week	32.04
16	28(ii)	Leading Hand Allowance - in charge 11-15 employees	Per week	40.46
17	28(ii)	Leading Hand Allowance - in charge 16-19 employees	Per week	49.42
18	30(i)(c)	Uniform Allowance	Per week	5.64
19	30(i)(d)	Special Type Shoes Allowance	Per week	1.75
20	30(i)(e)	Cardigan or Jumper Allowance	Per week	1.68
21	30(i)(f)	Laundry Allowance - Uniform	Per week	4.69
22	31(ii)(d)	Sleepover Allowance	Per shift	40.00
23	41(vi)	Apprentice - TAFE Examination Allowance	Per week	1.87

**Table 3 - Translation**

Care Service Employee	Previous Classification
Grade 1	GSO Grade 1 GSO Grade 2 PCA Grade 1
Grade 2	PCA Grade 2 GSO Grade 3 Assistant Cook Recreational Activities Officer Gardener (Otherwise) Wardsman Handyperson Motor Vehicle Drivers (A and B)
Grade 3	GSO Grade 4 Cook Grade A Cook Grade B Housekeeper Gardener (Qualified) Head Gardener (Otherwise) Laundry Foreperson Recreational Activities Officer (in Charge) Motor Vehicle Driver (C to E)
Grade 4	Chef Grade A, B and C Head Gardener (Qualified) Hostel Supervisor Grade 1 and 2
Grade 5	Hostel Supervisor Grade 3 and 4

---

Printed by the authority of the Industrial Registrar.

## CHARITABLE, AGED AND DISABILITY CARE SERVICES (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Award	C1154	21/06/2002	First pay period on or after 01/07/2001	334	601
23 (vii)	C1309	23/08/2002	On and from 23/11/2001	335	1240
Part B	C2416	02/07/2004	First pay period on or after 01/08/2003	345	195
5 & Part B	C3169	04/03/2005	First pay period on or after 02/08/2004	348	1104
1, 2, 4, 7, 23, 26, 40, 41, 42, 44, 51, 52,	C3320	27/05/2005	On 22/10/2004	351	465
4, 5, 7, 10, 11, 18, 23, 45, 48, 50, Part B	C4037	10/03/2006	First pay period on or after 01/09/2005	357	1199
12, 23, 24, 38	C4462	05/05/2006	On and from 19/12/2005	359	78
1, 52, 53	C4487	05/05/2006	From 10/03/2006	359	140
2, 41	C5343	23/02/2007	From 01/01/2007	362	154
Part B	C6231	08/02/2008	First full pay period on or after 08/10/2007	364	849
53	C6348	08/02/2008	On and from 23/11/2007	364	852
Part B	C6820	26/12/2008	First full pay period on or after 8/10/2008	366	1486
Part B	C7246	30/10/2009	First full pay period on or after 8/10/2009	369	432

#### 1. Arrangement

Clause No.      Subject Matter

##### PART A

1. Arrangement
2. Definitions
3. Anti-Discrimination
4. Employment Classifications
5. Wages
6. Remuneration Packaging
7. Hours
8. Roster of Hours
9. Meals

10. Overtime
11. Permanent Part-time Employee
12. Casual Employees
13. Temporary Employment
14. Climatic and Isolation Allowance
15. Penalty Rates and Shift Allowances
16. Live-in Housekeeper Remuneration
17. Allowances for Special Working Conditions
18. Public Holidays
19. Annual Leave
20. Annual Leave Loading
21. Long Service Leave
22. Sick Leave
23. Personal/Carer's Leave
24. Compassionate Leave
25. Leave Without Pay
26. Payment and Particulars of Wages
27. Service Allowance
28. Leading Hands
29. Higher Duties
30. Uniforms and Protective Clothing
31. Sleepovers
32. Live-in
33. Grievance and Dispute Resolution Procedures
34. Attendance at Meetings
35. Labour Flexibility & Mixed Functions
36. Promotions and Appointments
37. Emergency Telephone Calls
38. Parental Leave
39. Repatriation Leave
40. Union Representative
41. Apprentices
42. Redundancy
43. Termination of Employment
44. Notice Board
45. Accommodation and Amenities
46. Inspection of Lockers
47. Consultative Arrangements
48. No Extra Claims Commitment
49. Training
50. Leave Reserved
51. Reasonable Hours
52. Secure Employment
53. Area, Incidence and Duration

## PART B

Table 1 - Monetary Rates

Table 2 - Other Rates and Allowances

## PART A

### 2. Definitions

"A.C.S." - means the Aged and Community Services Association of NSW and ACT Inc., a registered organisation of employers that is party to this award.

"Adult Service" - means service with an employer during which the worker received a rate of pay not less than the lowest rates fixed by this award for an adult, in the same classification as the worker, or the employee is on the age scale at 18 years and over.

"C.C.E.R." - means the Catholic Commission for Employment Relations that is an employer party to this award.

"Day Worker" - means an employee who works their ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6:00 a.m. and at or before 10:30 a.m., otherwise than as part of a shift system.

"Engagement" - means time that an employee is engaged in homecare services with the client/s joined by the time taken to travel between clients, meal breaks, and rest periods, including overtime worked continuously after the engagement.

"Homecare Residence" - means the homecare client's place of abode.

"Ordinary Pay" - includes base pay and overaward payments for ordinary hours of work; Climatic and Isolation allowances; Leading Hand allowance; and Service allowance. It does not include shift or weekend penalties.

"School based apprentice" is an employee who is undertaking an apprenticeship wider a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

"Shift Worker" - means an employee who is not a day worker as defined.

"Union" means the Health Services Union.

### 3. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age, carer status and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

Notes -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

#### 4. Employment Classifications

The duties required to be undertaken by an employee in any of the following classifications shall remain within that employee's skills and competence in accordance with Clause 35-Labour Flexibility and Mixed Functions.

Where the employer requires the employee to perform any or all of the tasks set out below, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be facilitated.

- (i) Care Service Employees:

New Entrant -

An employee with less than 500 Hours work experience in this industry who performs basic duties under direct supervision. Such employees perform routine functions requiring understanding of clear rules and procedures. Work is performed using established practices, procedures and instructions including compliance with documentation requirements as determined by the employer. Problems should be referred to a more senior staff member. Indicative tasks an employee at this level may perform are as follows.

Typical Duties:

CARE STREAM	SUPPORT STREAM	MAINTENANCE STREAM
Carry out simple tasks under supervision to assist a higher grade Care Service Employee attending to the personal needs of residents	General assistance to higher grade employees in the full range of Domestic duties.	General labouring assistance to higher-grade employees in the full range of gardening and maintenance duties.

GRADE 1.

An employee who has 500 hours work experience in the industry or who has/or can demonstrate relevant prior experience, acceptable to the employer, which enables the employee to work effectively at this level. A Junior Employee (less than 18 years) when classified at this grade may be paid as a new entrant. An employee who works under limited supervision individually or in a team environment or on sleepover. Employees at this level work within established guidelines including compliance with documentation requirements as determined by the employer. In some situations detailed instructions may be necessary. Indicative tasks an employee at this level may perform are as follows.

Typical Duties.

CARE STREAM	SUPPORT STREAM	MAINTENANCE STREAM
Under limited supervision, provide assistance to residents in carrying out simple personal care tasks which shall include but not be limited to:	Performance under limited supervision of the full range of Domestic duties including but not limited to:	Performance under limited supervision of labouring duties
		associated with gardening and general maintenance activities, including but not limited to:



Supervise daily hygiene eg assisting with showers or baths, shaving, cutting nails; lay out clothes and assist in dressing; make beds and tidy rooms; store clothes and clean wardrobes; assist with meals	General cleaning of accommodation food service, and general areas; General waiting, table service and clearing duties;	Sweeping; Hosing; Garbage collection and disposal; Keeping the outside of buildings clean and tidy; Mowing lawns and assisting the gardener in labouring.
Under direct supervision, provide assistance to a higher Grade Care Service Employee in attending to the personal care needs of a resident.	Assistance in the preparation of food, including the cooking and/or preparation of light refreshments; All laundry duties.	

GRADE 2.

An employee with relevant experience who works individually or in a team environment, and is responsible for the quality of their own work, subject to general supervision, including compliance with documentation requirements as determined by the employer. Indicative tasks an employee at this level may perform are as follows.

Typical Duties.

CARE STREAM	SUPPORT STREAM	MAINTENANCE STREAM
Provide a wide range of personal care services to residents, under limited supervision, in accordance with Commonwealth and State Legislative requirements, and in accordance with the resident's Care Plan, including:	Assist a higher grade worker in the planning, cooking and preparation of the full range of meals.	Undertake basic repairs to buildings, equipment, appliances, and similar items not calling for trades skills or knowledge. Work with and undertake limited coordination of the work of other maintenance workers. Where no tradesperson is employed, an employee at this level may be called upon to perform tasks falling within the scope of trades skills, provided the time involved in performing such work, is paid at the rate of Care Service Employee Grade 3, in accordance with Clause 33-Labour Flexibility and Mixed Functions
Assist and Support residents with medication utilising medication compliance aids; Simple wound dressing; Implementation of continence programs as identified in the Care Plan;	Drive a Sedan or Utility.	Perform gardening duties. Provide advice on planning and plant maintenance. Attend to indoor plants, conduct recycling and re-potting schedules

Attend to routine urinalysis, blood pressure, temperature and pulse checks; Blood sugar level checks etc and assist and support diabetic residents in the management of their insulin and diet, recognising the signs of both Hyper and		Carry out physical inspections of property and premises and report.
---	--	---

Hypo-Glycemia.		
Recognise, report and respond appropriately to changes in the condition of residents, within the skills and competence of the employee and the policies and procedures of the organisation.		
Assist in the development and implementation of resident care plans Assist in the development and implementation of programs of activities for residents, under the supervision of a Care Service Employee Grade 3 or above, or a Diversional Therapist.		

**GRADE 3.**

An employee who holds either a Certificate Level III in Care Support Services or other appropriate Qualification/Experience acceptable to the employer and:

is designated by the employer as having the responsibility for leading and/or supervising the work of others; or

is required to work individually with minimal supervision and has been designated by the employer as having overall responsibility for a particular function within the facility.

An employee who holds appropriate Trade Qualifications and is required to act on them. Where the work of such employee requires the holding of a licence, the licence allowance from the applicable State trades award shall be paid.

Employees at this level may be required to plan, direct, and train staff and comply with documentation requirements as determined by the employer and assist in the development of budgets.

Indicative tasks an employee at this level may perform are as follows.

**Typical Duties.**

CARE STREAM	SUPPORT STREAM	MAINTENANCE STREAM
Coordinate and direct the work of staff.	Responsible for the planning, ordering and preparing of all meals.	Carry out maintenance, repairs, gardening and other tasks falling within the scope of trades skills.
Schedule work programs on a routine and regular basis.	Responsible for the provision of domestic services.	Undertake the more complicated repairs to equipment and appliances calling for trade skills.
Develop and implement programs of activities for residents.	Schedule work programs on a routine and regular basis.	Coordinate and direct the work of staff performing gardening duties.
Develop resident care plans.	Coordinate and direct the work of staff.	Schedule work programs on a routine and regular basis.
	Drive a Minibus or Larger Vehicle.	

**GRADE 4**

## Level One

An employee who holds a Certificate IV in Aged Care Work (CHC40102) or other appropriate Qualification/Experience acceptable to the employer and is required to act on it, and

is designated by the employer as having responsibility for leading and/or supervising the work of others in excess of that required of a CSE 3; and

is required to work individually with minimal/ indirect supervision.

Employees at Grade 4 may be required to exercise any/all managerial functions in relation to the operation of the facility and comply with documentation requirements as determined by the employer.

Indicative tasks an employee at this level may perform are as follows.

## Typical Duties

CARE STREAM	SUPPORT STREAM	MAINTENANCE STREAM
Overall responsibility for the provision of personal care to residents.	Coordinate and direct the work of staff involved with the preparation and delivery of food.	Coordinate and direct the work of staff performing gardening duties.
Coordinate and direct the work of staff.	Schedule work programs.	Schedule gardening work programs.
Schedule work programs.		Where required, let routine service contracts associated with gardening.

## Level Two

An employee who is required to deliver medication to residents in facilities:

previously defined as Nursing Homes (as at 31 December 2004) by the, *Nursing Homes Act 1988*; or

in which more than 80% of places are "allocated high care places" as defined in the Aged Care Act.

An employee at this level must hold the following qualifications, which may be varied from time to time by the relevant National Vocational, Education and Training Body:

a Certificate III in Aged Care Work (CHC30102); and

a Certificate IV in Aged Care Work (CHC40102); and

medication module - "Provide Physical Assistance with Medication" (CHCCS303A); or

Hold other appropriate qualification acceptable to the employer.

Employees at this level may be required to perform the duties of a CSE 4 - Level 1.

## GRADE 5.

This grade shall only apply to employees having responsibility for supervision of the entire facility.

An employee who may be required to have and use any additional qualifications than would be required for a grade 4 employees.

Employees at this level may be required to exercise any/all managerial functions in relation to the operation of the Facility and comply with documentation requirements as determined by the employer.

"Catering Officer" -means a person who is responsible for catering services.

"Diversional Therapist" -shall mean a person who provides, facilitates and co-ordinates group and individual leisure and recreational activities. This person must be a graduate from an approved university course which includes: the Associate Diploma and Diploma of Applied Science (Diversional Therapy) at the University of Sydney; Bachelor of Applied Sciences (Leisure and Health) at the University of Sydney; Bachelor of Applied Science (Diversional Therapy) at the University of Western Sydney, Macarthur; the Diploma or Bachelor of Health Sciences (Leisure and Health) at Charles Sturt University; the Associate Diploma course in Diversional Therapy conducted by the Cumberland College of Health Sciences; or who has such other qualifications deemed to be equivalent.

"Maintenance Supervisor (Tradesperson)" - means an employee who has trade qualifications and has overall responsibility for maintenance at the place of employment and may be required to supervise other maintenance staff.

"Maintenance Supervisor (Otherwise)" - means an employee who is required to perform maintenance duties as required and who may be required to supervise other maintenance staff and has overall responsibility for maintenance at the place of employment.

Note: -Employees classified and paid as Recreational Activities Officers as at 10 November, 1998 be reclassified in accordance with the new definitions of Care Services Employee. Employees reclassified at Level 2 by virtue of the above exercise, shall be paid at Level 3 from the effective date of this award, and continue to be so paid whilst employed in the provision of recreational activities by their current employer. These employees may be required to perform the duties of a Level 3 Care Services Employee where they have the skill and competence to do so.

(ii) Homecare Employees.

(a) Homecare Worker:

"Homecare Worker" -means an employee who performs the duties associated with the provisions of Homecare Services to Homecare Clients in the private residence, which may include cleaning, child minding, gardening, handywork (within the employees skills and competencies), cooking, laundry, shopping, personal errands, escorting clients and associated driving, personal care services and general upkeeping services. A Homecare Worker would not normally live at the client's residence for periods in excess of 48 hours.

An employee employed as a homecare employee may be offered additional hours (over and above their guaranteed minimum hours) at a facility and would be paid the rate applicable to the classification worked.

An employee employed at a facility may be offered additional hours (over and above their guaranteed minimum hours) in homecare duties and this employee would be paid the rate applicable to that of a homecare employee.

GRADE 1.

Shall mean a person without previous relevant experience in personal care delivery. This is a trainee level, which applies to new employees. The employer shall provide training. At the end of a period of six months or 250 hours employment, which ever is first completed, employees who have satisfactorily completed the requirements of grade 1 shall progress to grade 2.

Should an employee at this grade 1 level not satisfactorily complete the requirements of grade 1, he/she shall be notified in writing by the employer two weeks prior to the date on which he/she would have proceeded to grade 2.

An employee may seek the assistance of the union during these discussions and if there is a disagreement between the parties as to the employee's future, the matter shall be resolved as per clause 31 - Grievance and Disputes Resolution procedure.

A grade 1 employee shall work under general supervision.

Notwithstanding the above, employees who choose only to carry out general housekeeping duties and are not prepared to multi skill shall be paid at this grade.

## GRADE 2.

Shall mean a person who satisfies the requirements of grade 1 and has progressed to grade 2.

An employee at this level shall be competent in carrying out simple personal care, housekeeping and tasks relevant to assisting clients to maintain their independence in their own homes and may be required to perform the duties of Handyperson as defined.

Optional training shall be provided to employees at the request of the employees at this level to equip employees to apply for positions at grade 3.

Grade 2 employees may be required to perform complex tasks required of a grade 3 employee from time to time, within their competence, and shall be paid at the rate for grade 3 whenever such duties are performed for periods in excess of 5 hours per week.

Where the employer requires the employee to perform any or all of the tasks set out below, relevant to a Grade 2 position, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be provided.

### Typical Duties - Grade 2

#### Showering/Bathing.

Excepting where client has severely limited/uncontrollable body movements;

- Assisting clients to shower/bath self or totally showering/bathing client;
- Assisting with mobility or transferring to and from shower/bath;
- Assisting or transferring client to commode chair,
- Supervising children's bath.
- Bathing a baby.
- Total bed bath/sponge - exception level 3.

#### Toileting.

- Helping people to the toilet.
- Assisting people to use the toilet by loosening clothing.
- Assisting client to change own incontinence and sanitary pads.
- Assisting clients with bottles.
- Assisting self-catheterisation by holding mirror or positioning legs except where there is severely limited/uncontrollable body movements.
- Changing babies, nappies, toileting children.

#### Menstrual Care.

- Assisting with menstrual care.

#### Skin Care.

- All skin care (e.g. application of cream, rubbing pressure areas with lotion etc. except where dressings are involved).

**Grooming.**

All hair care.  
Limited care of nails.  
Shaving;

- (i) where there are uncontrollable body movements use electric razors only
- (ii) all other shaving - electric razors recommended.

All dressing/undressing or assistance with dressing/undressing except where there is uncontrollable body movements.

**Oral Hygiene.**

Assisting clients with their own care of teeth or dentures.  
Care of teeth and dentures for the client by using tooth brush/tooth paste/oral solution only.

**Oral Medication.**

Assisting client with or administering liquid medicines, pills, powders, nose and eye drops.

**Transferring/Mobility.**

Transferring client in and out of bed/chair/car and assisting with mobility- exceptions see level 3.  
Assisting clients to turn or sit up - exceptions level 3.

**Fitting Of Aids/Appliances.**

Such as splints and callipers.

**Therapy.**

Assisting with therapy in any of the following circumstances;  
Low level of assistance is required.  
Carer/therapist is not on site and client is able to take responsibility for the therapy or carer/therapist is on site.  
Simple instructions required rather than specialised training knowledge.

**Assistance With Eating.**

Assisting where there are no eating difficulties.

**GRADE 3.**

Shall mean a person who performs the duties of a grade 2 and is required to directly attend to a client's needs, as opposed to assisting the client to do for himself/herself because of the client's behaviour or the clients condition and/or household environment.

Where the employer requires the employee to perform any or all of the tasks set out below, relevant to a Grade 3 position, the employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be provided.

Grade 3 employees will be involved in on the job training of homecare employees where required.

**Typical Duties - Grade 3**

### Showering/Bathing.

Showering/Bathing adults and children with severely limited/uncontrollable body movements.  
Total bed bath/sponge where there is severely limited/uncontrollable body movements or serious comfort/health consideration.

### Toileting.

Assisting in placement/removal/emptying/care/cleaning of sheaths and leg baths.  
Assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site.  
Changing or assisting with urinary diversion - colostomy and drainage bags.  
All bowel management.  
Continual caring of someone with bowel incontinence including washing the person and changing bowel incontinence pads.  
Assisting the resident with the sterilising of glass catheters.

### Menstrual Care.

Changing tampons and sanitary pads.

### Skin Care.

Changing simple wound dressing.  
Application of treatment creams to genital area.

### Nasal Care.

Cleaning noses.

### Grooming.

All dressing/undressing where there are severely limited/uncontrollable body movements.

### Medication

Suppositories.

Assist and support diabetic residents in the management of their insulin and diet and recognising the signs of both Hyper and Hypo-Glycemia.

### Transferring/Mobility.

Assisting clients to turn/sit where clients can offer limited/no assistance with weight bearing.  
Using mechanical aids to lift and transfer clients.  
Assisting clients with transfers/mobility where:

- (i) Clients can offer limited/no assistance with weight bearing.
- (ii) Careful handling is required because of the client's health/disability.
- (iii) Some lifting or physically awkward movement is involved for employees in transfer/mobility.

### Therapy.

Assisting with therapy in any of the following circumstances:

- (i) High degree of assistance is involved.

- (ii) Employees have total responsibility because client is unable to take responsibly for the therapy and carer/therapist is not on site.
- (iii) Specialised training knowledge is required.

Assisting With Eating.

Assisting with eating where a risk of choking, vomiting or other eating difficulty is involved.

(b) Live-In Housekeeper.

"Live-in Housekeeper" - shall mean an employee who would normally live at the client's premises for a period in excess of 48 hours.

(1)

- (A) Live-in Housekeeper - Grade 1 is an employee employed to perform general housekeeping duties only. General Housekeeping means preparing meals, cleaning, laundry, shopping and household duties of a like nature and handyperson work within the skill, competence and training of the employee and excludes personal care.
- (B) Live-in Housekeeper/Carer - Grade 2 is an employee employed to perform housekeeping duties as defined in Grade 1 and the personal care duties of a Grade 2 as described in sub-clause 4 (ii) (a) above.
- (C) Live-in Housekeeper/Carer - Grade 3 is an employee employed to perform general housekeeping duties as defined in Grade 1 and the personal care duties of a Grade 2 and 3 as described in sub-clause 4 (ii) (a) above.

(2) Designated commencement and cessation of work insofar as place, date and time are concerned shall be calculated by the employer. Provided that time spent travelling shall be regarded as time worked.

(3) In the event of work appropriate to a Live-in Housekeeper not being available:

- (A) A Live-in Housekeeper can be required to undertake work performed by other Homecare Employees. Provided that where such work is directed and carried out it shall be paid at the rates and conditions for a live-in housekeeper; and,
- (B) In the event of work not being available the Secretary or other responsible officer of the Health Services Union will be contacted. During this period of time the Live-in Housekeeper will not suffer any reduction in pay. Discussions will commence as soon as possible between the employer and the said Union. From the date of contact with the said Union, the Live-in Housekeeper will not suffer any reduction in pay, although such time will be limited to two (2) weeks.

(iii) Clerical & Administrative Employees.

- (a) Grades: All employees shall be graded in one of the following grades and informed accordingly in writing within 14 days of appointment to the position held by the employee and subsequent graded positions.
- (b) An employee shall be graded in the grade where the principal function of his/her employment, as determined by the employer, is of a clerical nature and is described in subclauses (c) to (g) of this clause.
- (c) A Grade 1 position is described as follows:



- (1) The employee may work under direct supervision with regular checking of progress.
- (2) An employee at this grade applies knowledge and skills to a limited range of tasks. The choice of actions required is clear.
- (3) Usually work will be performed within established routines, methods and procedures that are predictable, and which may require the exercise of limited discretion.

Indicative tasks of a Grade 1 position are:

UNIT	ELEMENT
Information Handling	Receive and distribute incoming mail Receive and dispatch outgoing mail Collate and dispatch documents for bulk mailing File and retrieve documents
Communication	Receive and relay oral and written messages Complete simple forms
Enterprise	Identify key functions and personnel Apply office procedures
Technology	Operate office equipment appropriate to the tasks to be completed Open computer file, retrieve and copy data Close files
Organisational	Plan and organise a personal daily work routine
Team	Complete allocated tasks
Business Financial	Record petty cash transactions Prepare banking documents Prepare business source documents

(d) A Grade 2 position is described as follows:

- (1) The employee may work under routine supervision with intermittent checking.
- (2) An employee at this grade applies knowledge and skills to a range of tasks. The choice of actions required is usually clear, with limited complexity in the choice.
- (3) Work will be performed within established routines, methods and procedures, which involve the exercise of some discretion and minor decision making.

Indicative tasks of a Grade 2 position are:

UNIT	ELEMENT
Information Handling	Update and modify existing organisational records Remove inactive files Copy data on to standard forms
Communication	Respond to incoming telephone calls Make telephone calls Draft simple correspondence
Enterprise	Provide information from own function area Re-direct inquiries and/or take appropriate follow-up action Greet visitors and attend to their needs
Technology	Operate equipment Identify and/or rectify minor faults in equipment Edit and save information Produce document from written text using standard format

	Shutdown equipment
Organisational	Organise own work schedule Know roles and functions of other employees
Team	Participate in identifying tasks for team Complete own tasks Assist others to complete tasks
Business Financial	Reconcile invoices for payment to creditors Prepare statements for debtors Enter payment summaries into journals Post journals to ledger

(e) A Grade 3 position is described as follows:

- (1) The employee may work under limited supervision with checking related to overall progress.
- (2) An employee at this grade may be responsible for the work of others and may be required to co-ordinate such work.
- (3) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. Usually work will be performed within routines, methods and procedures where some discretion and judgement is required.

Indicative tasks of a Grade 3 position are:

UNIT	ELEMENT
Information Handling	Prepare new files Identify and process inactive files Record documentation movements
Communication	Respond to telephone, oral and written requests for information Draft routine correspondence. Handle sensitive inquiries with tact and discretion
Enterprise	Clarify specific needs of client/other employees Provide information and advice Follow-up on client/employee needs Clarify the nature of a verbal message Identify options for resolution and act accordingly
Technology	Maintain equipment Train others in the use of office equipment Select appropriate media
	Establish document structure Produce documents
Organisational	Co-ordinate own work routine with others Make and record appointments on behalf of others Make travel and accommodation bookings in line with given itinerary
Team	Clarify tasks to achieve group goals Negotiate allocation of tasks Monitor own completion of allocated tasks
Business Financial	Reconcile accounts to balance Prepare bank reconciliations Document and lodge takings at bank Receive and document payment/takings Dispatch statements to debtors Follow up and record outstanding accounts Dispatch payments to creditors Maintain stock control records

- (f) A Grade 4 position is described as follows:
- (1) The employee may be required to work without supervision, with general guidance on progress and outcomes sought. Responsibility for the organisation of the work of others may be involved.
  - (2) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks, and the range and choice of actions required will usually be complex.
  - (3) An employee at this grade applies competencies usually applied within routines, methods and procedures where discretion and judgement is required, for both self and others.

Indicative tasks of a Grade 4 position are:

UNIT	ELEMENT
Information Handling	Categorise files Ensure efficient distribution of files and records Maintain security of filing system Train others in the operation of the filing system Compile report Identify information source(s) inside and outside the organisation
Communication	Receive and process a request for information Identify information source(s) Compose report/correspondence
Enterprise	Provide information on current service provision and resource allocation within area of responsibility Identify trends in client requirements
Technology	Maintain storage media Devise and maintain filing system Set printer for document requirements when various setups are available Design document format Assist and train network users Shutdown network equipment
Organisational	Manage diary on behalf of others Assist with appointment preparation and follow up for others Organise business itinerary Make meeting arrangements Record minutes of meeting
	Identify credit facilities Prepare content of documentation for meetings
Team	Plan work for the team Allocate tasks to members of the team Provide training for team members
Business Financial	Prepare financial reports Draft financial forecasts/budgets Undertake and document costing procedures

- (g) A Grade 5 position is described as follows:
- (1) The employee may be supervised by professional staff and may be responsible for the planning and management of the work of others.
  - (2) An employee at this grade applies knowledge with substantial depth in some areas, and a range of skills, which may be varied or highly specific. The employee may receive assistance with specific problems.

- (3) An employee at this grade applies knowledge and skills independently and non-routinely. Judgement and initiative are required.

Indicative tasks of a Grade 5 position are:

UNIT	ELEMENT
Information Handling	Implement new/improved system Update incoming publications Circulate publications Identify information source(s) inside and outside the organisation
Communication	Obtain data from external sources Produce report Identify need for documents and/or research
Enterprise	Assist with the development of options for future strategies Assist with planning to match future requirements with resource allocation
Technology	Establish and maintain a small network Identify document requirements Determine presentation and format of document and produce it
Organisational	Organise meetings Plan and organise conference
Team	Draft job vacancy advertisement Assist in the selection of staff Plan and allocate work for the team Monitor team performance Organise training for team
Business Financial	Administer PAYE salary records Process payment of wages and salaries Prepare payroll data

- (h) Clerks who are paid at a grade above that of Grade 5 as at 10 November, 1998 shall have the difference between that grade, inclusive of the 1998 State Wage Case Increase, and the new agreed grade preserved whilst employed in a clerical position with their current employer.

### 5. Wages

- (i) Employees shall be paid not less than the rates for the appropriate classification set out in Part B, Monetary Rates of this award.
- (ii) Nothing in this Award shall be deemed or construed to reduce the wages, conditions or allowances of any employee below that level accorded him/her prior to the date of operation of this Award.

### 6. Remuneration Packaging

Where agreed between the employer and an employee, an employer may introduce remuneration packaging. The terms and conditions of such a package may make provision for a salary greater than that contained in the salary band. The package overall shall not be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:

- (i) the employer shall ensure that the structure of any package complies with taxation and other relevant laws.
- (ii) the employer shall confirm in writing to the employee the classification level and the current salary payable as applicable to the employee under this award;
- (iii) the employer shall advise the employee in writing of his/her right to choose payment of that salary referred to in sub-clause (ii) above instead of a remuneration package;

- (iv) the employer shall advise the employee, in writing, that all award conditions, other than the salary and those conditions as agreed in sub-clause (v) below shall continue to apply;
- (v) where packaging arrangements apply, the employer and employee may by mutual agreement delete the application of certain award clauses, excepting Clauses 19-Annual Leave, 22-Sick Leave, 21- Long Service Leave, 23-Personal/Carer's Leave, 18-Public Holidays, 33-Grievance and Disputes Resolution Procedures, and 38-Parental Leave;
- (vi) when determining the remuneration package, the non-salary fringe benefit shall be in accordance with relevant Australian Taxation Office legislation.
- (vii) a copy of the agreement shall be made available to the employee;
- (viii) the employee shall be entitled to inspect details of the payments made under the terms of this agreement;
- (ix) the configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer;
- (x) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, an unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
- (xi) Salary packaging is only offered on the strict understanding and agreement that in the event existing taxation law is changed regarding Fringe Benefit Tax or personal tax arrangements, and that change may impact on this agreement, all salary packaging arrangements may at the discretion of the employer be terminated. Upon termination in these circumstances the employee's rate of pay will revert to the rate of pay that applied immediately prior to a salary packaging agreement made pursuant to this clause, or the appropriate award rate of pay whichever is greater.
- (xii) where changes are proposed to salary packaging arrangements other than to flow on wage increases, or salary packaging arrangements are to be cancelled for reasons other than legislative requirements, then the employer and/or the employee must give three months notice of the proposed change.
- (xiii) in the event that employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination and all leave entitlements due on termination shall be paid at the rates in accordance with sub-clause (ii) above. Any outstanding benefit shall be paid on or before the date of termination.
- (xiv) any pay increases granted to employees under this award shall also apply to employees subject to remuneration packaging arrangements within this clause.

## 7. Hours

- (i)
  - (a) The ordinary hours of work for day workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight to be worked Monday to Friday and to commence on such days at or after 6:00 a.m. and at or before 10:30 a.m.
  - (b) The ordinary hours of work for shift workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight or an average of 38 hours per week in each roster cycle.
- (ii)
  - (a) The hours of work prescribed in sub-clause (i) shall be arranged as follows:
    - (1) 152 hours in a 28 calendar-day cycle to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 28 calendar-day cycle; or

- (2) 190 hours per 35 calendar days to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 35 calendar-day cycle.
  - (b) Following consultation and discussion with the Union the hours of work may also be arranged in one of the following ways:
    - (1) 76 hours per fortnight to be arranged so that each employee shall not work their ordinary hours on more than ten days in the fortnight; or
    - (2) 38 hours per week to be arranged so that each employee shall not work their ordinary hours on more than five days in the week.
- (iii)
  - (a) Each employee shall be entitled to not less than four full days in each fortnight free from duty or two full days in each week free from duty (rostered days off), and every effort shall be made for such rostered days off to be consecutive, unless otherwise agreed.
  - (b) A Live-in Housekeeper shall after each five (5) consecutive days of duty, be entitled to two (2) consecutive days off provided that:
    - (1) Such days may accumulate to a limit of six (6) and in any case must be taken at the conclusion of such service.
    - (2) Where it is mutually agreed between the employer and the employee that under such circumstances the days of duty should continue, such days may accumulate to a limit of eight (8) to be taken at the conclusion of such service.
    - (3) Provided that the Live - in Housekeeper shall continue to receive the normal weekly wage during such days off.
- (iv) Each shift shall consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the employer agrees.
- (v)
  - (a) Full-time employees shall receive a minimum payment of four hours for each start in respect of ordinary hours of work.
  - (b) Permanent part-time and casual employees, other than Homecare Employees, shall receive a minimum payment of two hours for each start.
  - (c) Permanent part time homecare employees and casual homecare employees shall receive a minimum of one hour for each engagement
- (vi)
  - (a) An employee whose ordinary hours of work are arranged in accordance with sub-clause (a) of sub-clause (ii) above shall be entitled to an allocated day off in each cycle of 28 days or 35 days as the case may be. The ordinary hours worked on each of those days shall be arranged to include a proportion of one hour on the basis of 0.4 of one hour for each 8-hour shift worked and 0.5 of one hour for each 10-hour shift worked which shall accumulate towards the employee's allocated day off duty on pay.
  - (b) A full-time employee's allocated day off duty (ADO) shall be determined by mutual agreement between the employee and the employer having regard to the needs of the place of employment

- or sections thereof. Such allocated day off duty shall, where practicable, be consecutive with the rostered days off prescribed in subclause (iii) of this clause. Provided that allocated days off shall not be rostered on public holidays.
- (c) Where the employer and the employee agree, up to five (5) allocated days off may be accumulated and taken in conjunction with the employee's annual leave or at another agreed time.
  - (d) In a hostel which has a bed capacity of 40 or less, the employer shall have the option of granting an employee a nineteen-day four-week cycle or accumulating 12 allocated days off per annum which may be taken in conjunction with the employee's annual leave or at another agreed time.
  - (e) No time towards an allocated day off shall accumulate during periods of workers' compensation, unpaid parental leave, long service leave, any period of unpaid leave or the statutory four weeks annual leave.
  - (f) Credit towards an allocated day off shall continue to accumulate whilst an employee is on paid sick leave. Where an allocated day off duty falls during a period of sick leave, the employee's available sick leave shall not be debited for that day.
- (vii) The ordinary hours of work for a permanent part-time employee will be a specified number of hours, which are less than those prescribed for a full-time employee. The specified number of hours may be balanced over a week or fortnight, provided that the average weekly hours worked shall be deemed to be the specified number of hours for the purposes of accrual of leave provided for by this award. Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee working on a "week-on", "week-off" basis in accordance with this subclause.
  - (viii) Two separate ten-minute tea breaks (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked employees shall be allowed one 10-minute tea break in each four-hour period. Subject to agreement between the employer and the employee, the two ten-minute tea breaks may alternatively be taken as one 20-minute tea break, or by one ten-minute tea break with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such tea break(s) shall count as working time.
  - (ix) Employees must receive a minimum break of eight (8) hours between ordinary rostered shifts, which are not broken shifts.
  - (x) Except for meal breaks, all time from the commencement to the cessation of duty each shift shall count as working time, except for shifts being worked as broken shifts.
  - (xi) With respect to broken shifts:
    - (a) A "broken shift" for the purposes of this sub clause means a single shift worked by an employee that includes one or more breaks in excess of that provided for meal breaks, where the time between the commencement and termination of the broken shift shall not exceed 12 hours.
    - (b) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.
    - (c) Where broken shifts are worked, employees shall receive an allowance of the amount set out in Item 1 of Table 2 of Part B, Monetary Rates per shift.
    - (d) Payment for a broken shift shall be at ordinary pay with penalty rates and shift allowances in accordance with Clause 15, with shift allowances being determined by the commencing time of the broken shift.
    - (e) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double ordinary pay.

- (f) Broken shifts may be introduced for up to four weeks without the permission of the Union.
- (g) Where the employer seeks the approval of the Union to work broken shifts in excess of four weeks, it must be in writing, which the Union will accept or decline within fourteen days. The Union will not decline such an application without good cause.
- (h) Where an employee works a broken shift and at least part of that shift involves the work of a Homecare Employee, the employer is not required to seek the exemption from the Union as prescribed by Clause 7(xi)(g) above.

#### **8. Roster of Hours**

- (i)
  - (a) The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees. Such roster shall be displayed two weeks prior to the commencing date of the first working period in any roster subject to sub-clause (b) below.
  - (b) In the case of Homecare Employees, alternative means of communicating changes of rosters such as telephone communication, direct contact, mail or facsimile will be accepted.
- (ii) Sub-clause (i) shall not make it obligatory for the employer to display any roster of ordinary hours of work of members of the casual or relieving staff.
- (iii) Provided that a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency. Where such alteration involves an employee working on a day which would have been his/her rostered day off, such employee may elect to be paid at overtime rates or have a day off in lieu which shall be mutually arranged.

Provided also that this provision shall not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.

Provided further that any alteration to the roster of hours of a day worker must be consistent with the definition of a day worker contained in clause 2-Definitions.

- (iv)
  - (a) Where a home care client cancels for reasons other than those outlined in (iv)(b), permanent employees shall be entitled to receive payment for their minimum specified hours in that pay period. The employer may direct the employee to make-up time equivalent to the cancelled time, in that or the subsequent fortnightly period. This time may be made up working with other home care clients or in a facility.
  - (b) Where the employer is unable to meet the minimum specified hours of a permanent employee for reasons associated with death, hospitalisation or other like extenuating circumstances, the following procedures shall be followed in the sequence provided:
    1. work shall be re-allocated from casual employees to the permanent employee; or
    2. hours shall be reallocated from another employee who is working hours additional to their minimum specified hours; or
    3. where the employee agrees, the employee may have access to annual or long service leave; or
    4. the employee and employer may agree to a period of unpaid leave; or



5. failing agreement in (4) above, refer to the dispute procedure.
  6. Notwithstanding the provisions in sub-clauses (1) to (5) inclusive, if after six weeks - or earlier if by mutual agreement - the employer is unable to provide the minimum specified hours, the employee shall be entitled to the provisions set out in Clause 42-Redundancy.
- (v) Where an employee is entitled to an allocated day off duty in accordance with clause 7-Hours of this award, that allocated day off duty is to be shown on the roster of hours for that employee.
- (vi) Each sleepover shall appear on the roster.

### **9. Meals**

- (i)
- (a) Employees shall not be required to work more than six (6) hours without a meal break. Such meal break shall be of between 30 and 60 minutes duration and shall not count as time worked.
  - (b) However, employees engaged in homecare duties may be rostered to have a paid 20-minute break in the place of the meal break where they are required to remain with the client during such break.
  - (c) In the event that all or some of the meals of breakfast, lunch and dinner are not provided for a live-in housekeeper, the employer shall reimburse such reasonable amounts for same, upon proof of expenditure.
- (ii) Notwithstanding the provisions of sub-clause (i), an employee required to work shifts in excess of 10 hours shall be entitled to a 60-minute meal break. Such time shall be taken as either two thirty-minute meal breaks or one 60-minute meal break, subject to agreement between employer and employee.
- (iii) An employee who is required to work overtime for more than two hours and such overtime goes beyond 7:00 a.m., 1:00 p.m., and 6:00 p.m. shall, at the option of the employer, be supplied with a meal or shall be paid:
- (a) an amount set out in Item 2 of Table 2 of Part B, Monetary Rates for breakfast;
  - (b) an amount set out in Item 3 of Table 2 of Part B, Monetary Rates for luncheon;
  - (c) an amount set out in Item 4 of Table 2 of Part B, Monetary Rates for the evening meal.

### **10. Overtime**

- (i) All time worked by employees outside the ordinary hours in accordance with clause 7-Hours and clause 8-Roster of Hours of this award, shall be paid time and one half ordinary pay up to two (2) hours each day and thereafter double ordinary pay; provided however, that all overtime worked on Sunday shall be paid at double ordinary pay and all overtime worked on public holidays shall be paid for at double time and one-half ordinary pay
- (ii) An employee must receive an eight or ten hour break between rostered shifts, in accordance with clause 7-Hours. Where the next shift is due to commence before the employee has had their appropriate eight or ten hours break, one of the following will apply:
- (a) The employee will be released prior to, or after the completion of their shift to permit them to have their appropriate break under clause 7-Hours without loss of pay for the working time occurring during such absence.
  - (b) If at the request of the employer an employee works without their appropriate break, they shall be paid until they are released from duty at overtime rates. Once released from duty such employees

shall be entitled to be absent from work until they have had their appropriate break in accordance with clause 7-Hours without loss of pay for working time occurring during such an absence.

- (iii) Employees who are recalled to work overtime after leaving the employer's place of work shall be paid a minimum of four hours at the applicable overtime rate for each time so recalled. Provided that, except in unforeseen circumstances, an employee shall not be required to work the full four hours if the tasks they were recalled to perform are completed within a shorter period.
  - (a) An employee recalled to work overtime pursuant to sub-clause (ii) shall be reimbursed reasonable travel expenses incurred in respect of the recall to work.
  - (b) Provided that where an employee elects to use their own vehicle they shall be paid an allowance of the amount set out in Item 5 of Table 2 of Part B, Monetary Rates.
  - (c) An employee who agrees to be on call, requiring to make themselves ready and available to return to work whilst off duty, shall be paid an allowance of the amount set out in Item 6 of Table 2 of Part B, Monetary Rates.
  - (d) Employees will not be required to be on call in excess of ten days in any twenty-eight day period.
- (iv) For the purposes of assessing overtime, each day shall stand alone, provided that where any one period of overtime is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if they had occurred within the one-day.
- (v) All time worked by permanent part-time employees in excess of the hours prescribed in subclause (iv) of clause 7, Hours, of this award shall be paid for at overtime rates.
- (vi) In lieu of receiving payment for overtime in accordance with this clause, employees may be compensated by way of time off in lieu of overtime on the following basis:
  - (a) Time off in lieu of overtime is taken on the basis of hour for hour at ordinary pay, that is for example, one hour off for each hour of overtime worked. However, any applicable shift and weekend penalties shall still be paid as if the time was worked when taking such time in lieu. It must be taken within four months of it being accrued at a mutually agreed time.
  - (b) Where it is not possible for an employee to take the time off in lieu of overtime within the four month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
  - (c) Employees cannot be compelled to take time off in lieu of overtime.
  - (d) The employer must maintain records of all time in lieu of overtime owing and taken by employees.
  - (e) Where no election is made the employee shall be paid overtime rates in accordance with the award.

### **11. Permanent Part-Time Employee**

- (i) A permanent part-time employee is one who is permanently appointed by a facility to work for a specified number of hours, which are less than those prescribed for a full-time employee.
- (ii) At the request of an employee, the hours worked by the employee will be reviewed annually. Where the employee is regularly working more than their specified contract hours then such contract hours shall be adjusted by the employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment.
  - (a) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and

- (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident.
- (iii) Any adjusted contracted hours resulting from a review identified in subclause (ii) of this clause should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.
- (iv) The hours worked by the employee will be reviewed annually and if the employee is regularly working more than the specified number of hours then a new number of specified hours may be agreed to.

This review will be unnecessary where an increase in hours is as a direct result of a staff member being absent on leave; eg. Workers Compensation, Sick Leave, Annual Leave, etc.
- (v) Permanent part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth (1/38th) of the appropriate rate prescribed by Part B, Monetary Rates of this award.
- (vi) Permanent Part-Time Employees shall be entitled to All Other Benefits of This Award Not Otherwise Expressly Provided for Herein in the Same Proportion as Their Ordinary Hours of Work Bear to Full-Time Hours.
- (vii) Permanent part time employees engaged in the provision of home care services shall:
  - (a) Have a minimum specified number of hours of ten per week or twenty per fortnight.
  - (b) Have a minimum payment per engagement of one hour.
  - (c) Notwithstanding the provisions in sub-clause (a) of this clause, where there is a genuine agreement in writing between the employer and employee the minimum contract hours may be reduced.
  - (d) Have hours of engagement maintained as per clause 8-Roster of Hours.

## 12. Casual Employees

- (i)
  - (a) A casual employee is one engaged on an hourly basis otherwise than as a full-time employee or permanent part-time employee.
  - (b) A casual employee may only be engaged in the following circumstances: for short term periods where there is a need to supplement the workforce arising from fluctuations in the needs of the facility; or in the place of another employee who is absent; or in an emergency.
- (ii) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth (1/38th) of the appropriate rate prescribed by Part B, Monetary Rates of this award, plus ten (10) per centum thereof, with a minimum payment of two hours for each start, (where the casual is employed in the place of a homecare employee who is absent then the minimum payment per engagement may be one (1) hour) and one thirty-eighth of the uniform and laundry allowances where a uniform is not supplied in accordance with clause 30-Uniforms and Protective Clothing.
- (iii) For weekend and public holiday work, casual employees shall, in lieu of all other penalty rates and the 10% casual loading, receive the rates prescribed in clause 15-Penalty Rates and Shift Allowances and clause 18-Public Holidays.
- (iv) Overtime rates shall be payable on the hourly rate (1/38th) in lieu of the 10% casual loading only when a casual works in excess of 38 hours per week or 76 hours per fortnight depending on the pay period.

- (v) For the entitlement to annual leave, a casual shall receive an additional amount equivalent to one-twelfth of the sum of their ordinary pay plus payments received in accordance with clause 15-Penalty Rates and Shift Allowances. No other allowances or payments are to be included for the calculation of this annual leave entitlement. Further, this amount will be itemised separately on the employee's pay records.
- (vi) For the entitlement to long service leave, see *Long Service Leave Act, 1955*.
- (vii) With respect to a casual employee, the provisions of the following clauses shall not apply:

Clause 8-Roster of Hours; clause 19-Annual Leave; clause 20-Annual Leave Loading; clause 21-Long Service Leave; clause 22-Sick Leave; clause 24-Compassionate Leave; clause 25-Leave Without Pay, clause 27-Service Allowance; clause 28-Leading Hands; clause 29-Higher Duties; clause 32-Live-In; clause 36-Promotions and Appointments; clause 37-Emergency Telephone Calls; clause 39-Repatriation Leave; clause 41-Apprentices.
- (viii) Personal Carers Entitlement for casual employees
  - (a) Subject to the evidentiary and notice requirements in Clauses 23(i)(b) and 23(i)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Clause 23(i)(c)(2) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (ix) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in Clause 24(ii)(a)(2) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 23(i)(c)(2).
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **13. Temporary Employment**

- (i) Fixed term or task contracts of employment may be offered and such temporary employees engaged where necessary to meet the genuine occupational requirements of the employer, which may include but not be limited to parental leave, limited term funding arrangements, long term relief, or forthcoming service reductions.
- (ii) The provision of clause 42-Redundancy will not apply to such employees.

### **14. Climatic and Isolation Allowance**

- (i) Subject to sub-clause (ii) of this clause persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance of the amount set out in Item 7 of Table 2 of Part B, Monetary Rates per week in addition to the salary to which they are otherwise entitled.

The line shall be drawn as follows: viz., commencing at Tocumwal and thence to the following towns in the order stated, namely: Lockhart; Narrandera; Leeton; Peak Hill; Gilgandra; Dunedoo; Coolah; Boggabri; Inverell; and Bonshaw.

- (ii) Persons employed in organisations in places situated upon or to the west of a line drawn as herein specified shall be paid an allowance of the amount set out in Item 8 of Table 2 of Part B, Monetary Rates per week in addition to the salary to which they are otherwise entitled.

The line shall be drawn as follows: viz., commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria) and thence to the following towns in the order stated, namely: Hay; Hillston; Nyngan; Walgett; Collarenebri; and Mungindi.

- (iii) The allowances prescribed by this clause are not cumulative.
- (iv) Except for the computation of overtime the allowances prescribed by this clause shall be regarded as part of salary for the purposes of this award.
- (v) An employee who works less than thirty-eight hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to thirty-eight ordinary hours.

#### **15. Penalty Rates and Shift Allowances**

- (i) Employees Shall be Paid the Following Percentages in Addition to Their Ordinary Pay, and Where Applicable, the 10% Casual Loading, for Shifts Rostered as Follows:
- (a) 10% for afternoon shift commencing after 10:30 a.m. and before 1:00 p.m.
  - (b) 12.5% for afternoon shift commencing at or after 1:00 p.m. and before 4:00 p.m.
  - (c) 15% for night shift commencing at or after 4:00 p.m. and before 4:00 a.m.
  - (d) 10% for night shift commencing at or after 4:00 a.m. and before 6:00 a.m.

Provided that laundry staff working afternoon or night shift as at 30 September 1993 shall be paid 20% in addition to the ordinary pay for such shift. Laundry staff employed after 30 September 1993, and who work afternoon or night shift shall receive the penalty rates prescribed in sub-clauses (a) to (d) above.

- (ii) Notwithstanding sub-clause (i), employees working less than the hours prescribed for a full-time employee within clause 7-Hours of this award shall only be entitled to the additional rates where their shifts commence prior to 6:00a.m. or finish subsequent to 7:00 p.m.
- (iii) Employees shall be paid the following penalties for ordinary hours of work occurring on a Saturday or a Sunday:
- (a) for work between midnight on Friday and midnight on Saturday - time and one half.
  - (b) for work between midnight on Saturday and midnight on Sunday - time and three-quarters.

These extra rates shall be in substitution for and not cumulative upon the shift allowances prescribed in the preceding sub-clauses (i) and (ii) of this clause.

#### **16. Live-in Housekeeper - Remuneration**

## (i) Live - in Housekeeper.

The terms and conditions contained herein shall be in substitution for and not cumulative upon the following clauses: Clause 7-Hours; Clause 10-Overtime; Clause 15-Penalty Rates and Shift Allowances; Clause 18-Public Holidays

## (a) Live - in Housekeeper - Grade 1

The total weekly remuneration for a Live - in Housekeeper Grade 1 shall be calculated as follows:

Total Weekly Rate = Weekly Rates for a Homecare Employee Grade 1 + All incidents Loading

The All Incidents Loading for a Live - in Housekeeper Grade 1 is calculated by obtaining 30% of the relevant weekly rate.

The All Incidents Loading of 30% takes into account all incidents of employment inherent in the work and conditions of employment of Live - in Housekeepers, including but not limited to, the requirement to reside at the client's premises. Such tasks that are required to be performed by the employee will be performed at times of day, which are mutually agreed between the employer and the employee.

## (b) Live - in Housekeeper/Carer - Grade 2

The total remuneration for a Live - in Housekeeper/ Carer Grade 2 shall be calculated as follows:

Total Weekly Rates = Weekly Rates for a Homecare Employee Grade 2 + All Incidents Loading

The All Incidents loading for a Live - in Housekeeper/Carer Grade 2 is calculated by obtaining 40% of the relevant weekly rate. The All Incidents Loading of 40% takes into account all incidents of employment inherent in the work and conditions of employment of Live - in Housekeepers, including but not limited to, the requirement to reside at the client's premises. The employee will normally perform duties at times of the day, which are mutually agreed between the employer and employee.

## (c) Live - in Housekeeper/Carer - Grade 3

The total remuneration for a Live - in Housekeeper/ Carer Grade 3 shall be calculated as follows:

Total Weekly Rate = Weekly Rates for a Homecare Employee Grade 3 + All Incidents Loading

The Special Loading is calculated by obtaining 3.5% of the relevant weekly rate. The special loading is in recognition of all factors, including but not limited to, the special pressures, responsibilities and climate inherent in the work of a Live - in Housekeeper Grade 3.

The All Incidents loading is calculated by obtaining 50% of the sum of the relevant weekly rate plus the Special Loading. The All Incidents Loading of 50% takes into account all incidents of employment inherent in the work and conditions of employment of Live - in Housekeepers, including but not limited to, the requirement to reside at the client's premises and to perform work, and be available for the performance of work at all such times of the day as the job and client's needs may require.

## (ii) Wages - Daily Rates

## (a) Permanent Part time Employees - The daily rate for a Live - in Housekeeper/Carer (any grade) shall be calculated as follows:

Daily Rate =  $\frac{\text{Housekeeper Appropriate Weekly rate for Live-in}}{5}$

Provided that by mutual agreement up to three employees may be engaged as Live - in Housekeeper (any grade) per client.

For the purpose of this sub clause a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this sub-clause shall be two days at the daily rate. Thereafter the minimum payment will be at the daily rate.

- (b) Casual Employees - The casual rate for a Live - in Housekeeper/Carer (any grade) shall be calculated as follows:

$$\text{Daily Rate} = \frac{\text{Appropriate Weekly rate for Live-in Housekeeper} + 15\%}{5}$$

For the purpose of this sub clause a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this sub-clause shall be one day at the daily rate. Work performed under this sub-clause shall be for relief, emergency and temporary purposes only.

### 17. Allowances for Special Working Conditions

- (i)
- (a) Employees engaged in work of a dirty or offensive nature and/or cleaning or scraping work in confined spaces (such as inside ventilator shafts, air conditioning ducts or the like) shall, whilst so employed, be paid an allowance of the amount set out in Item 9 of Table 2 of Part B, Monetary Rates per hour extra.
- (b) Provided however that employees engaged in cleaning or scraping work inside the gas or water space of any boiler, flue or economiser shall, whilst so employed, be paid an allowance of the amount set out in Item 10 of Table 2 of Part B, Monetary Rates per hour extra.
- (ii) Employees who are required to assist tradespersons on work of a dirty or offensive nature shall be paid disability allowances under the same terms and conditions as the disability allowances that may be payable to the tradespersons they are assisting.
- (iii) Employees shall be paid an allowance of the amount set out in Item 11 of Table 2 of Part B, Monetary Rates per hour or part thereof for all time during which they are engaged in handling linen of a nauseous nature other than linen sealed in bags.
- (iv) An employee, other than a Homecare Employee, sent for duty to a place other than his/her regular place of duty shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.
- (v) Vehicle Allowance: Where an employee is called upon and agrees to use his/her private vehicle for official business, payment of an allowance shall be made by utilising the rate in item 12 of Table 2 of Part B Monetary Rates per kilometre excluding travel to and from the employee's home to the first place of work and return to home at the end of his/her duties. This rate shall remain in force for the duration of this award. This sub-clause shall apply to all employees.
- (vi) Where an employee is required to use public transport for travel on official business such employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the employee's home to the first place of work and return to home at the cessation of his/her duties.
- (vii) No payment shall be made under sub-clause (v) & (vi) unless the employer is satisfied that the employee has incurred expenditure for such travel.

- (viii) Where homecare employees are rostered to work with consecutive clients they shall be paid for the time taken to travel between locations at the rate of 3% of the ordinary pay per hour per kilometre travelled, excluding travel from the employee's home to the first place of work and return to home at the cessation of his/her duties; provided that this payment shall not be made if the employee is being paid at the hourly rate of pay for the time between consecutive clients.
- (ix) An employee in possession of, and required to act on, a Laundry and Dry Cleaning Certificate, shall be paid an allowance in the nature of a salary as set out in item 13, of Table 2, Other Rates and Allowances.
- (x) An employee who works less than thirty-eight hours per week shall be entitled to this allowance identified in sub clause (ix) above in the same proportion as the average hours worked each week bears to thirty-eight ordinary hours.

### **18. Public Holidays**

- (i) Public holidays shall be allowed to employees without loss of ordinary pay.
- (ii) For the purposes of this award, the following shall be deemed to be public holidays: New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day.
- (iii) In addition to those public holidays specified in sub-clause (ii) employees shall be entitled to an extra public holiday each year. Such public holiday shall occur on one of the following days as determined by the employer:
  - (a) On the day on which the August Bank Holiday is observed; or
  - (b) On a day between Christmas and New Year within the days Monday to Friday inclusive and not coinciding with a date that is already a gazetted public holiday for that calendar year; or
  - (c) On a gazetted and proclaimed local public holiday. In areas where only one half-day is proclaimed and observed, the whole day will be regarded as a public holiday for the purposes of this award. In these circumstances if a further one half day local public holiday occurs in that calendar year, it will not be observed for the purposes of this clause.
  - (d) The employer shall nominate before July 1 of each calendar year, the date on which this extra public holiday is to be observed. Once such an election is made, such date then becomes the date on which the extra public holiday is to be observed for all workers in that establishment covered by this award, provided however that if no such election is duly made, the extra public holiday will be observed on the August Bank Holiday.
- (iv) Employees shall also be entitled to any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated, beyond those days already observed in accordance with subclauses (ii) and (iii) above.
- (v) An employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift allowances (except broken shift allowances), weekend penalties, casual loading and part-time loading, as follows:
  - (a) Full-time Employees -
    - (1) Time and one half for all ordinary time worked in addition to the weekly rate. Alternatively, if the employee elects:
    - (2) Half-time extra for all time worked in addition to the weekly rate and have one ordinary working day added to be taken in conjunction with the period of annual leave.
  - (b) Permanent Part-time Employees -



- (1) Double and a half for all time worked on the public holiday, although where the time worked by agreement is less than the rostered shift, the balance of the rostered shift will be paid at ordinary pay. Alternatively, if the employee elects:
- (2) Half-time extra for all time worked in addition to the weekly rate and have the equivalent number of hours worked added to be taken in conjunction with the period of annual leave.
- (c) Casual Employees:  
Double time and one-half for all time worked.
- (vi) Full-time shift-workers rostered off duty on a public holiday shall:
- (a) be paid one day's pay in addition to the weekly rate; or
- (b) if the employee so elects have one day added to be taken in conjunction with their period of annual leave.
- (vii) The election referred to in sub-clauses (iv) and (v) is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during that period of employment.

### 19. Annual Leave

- (i) All employees shall be entitled to the provisions of the *Annual Holidays Act 1944*.
- (ii)
- (a) Full-time employees and permanent part-time employees who are rostered to work their ordinary hours on Sundays and/or public holidays shall be entitled to receive additional annual leave if, during a qualifying period of employment for annual leave purposes they have worked:

	Full-time Employees	Permanent part-time Employees
3 shifts or less	Nil	Nil
4 - 10 shifts	one day	0.2 weeks
11 - 17 shifts	two days	0.4 weeks
18 - 24 shifts	three days	0.6 weeks
25 - 31 shifts	four days	0.8 weeks
32 or more shifts	five days	1 week.

Provided that an employee, entitled to additional annual leave by virtue of this sub-clause, may elect to be paid an amount equivalent to the value of his/her additional leave entitlements in lieu of taking the additional leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) Live-in Housekeepers employed and paid as such shall accrue an additional weeks leave for every twelve (12) months of continuous service on a pro-rata basis.
- (iii) Provided that on termination of employment, employees shall be entitled to payment for any untaken annual leave due under sub-clause (ii) together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with subclause (i).
- (iv) Employees entitled to allocated days off duty in accordance with sub-clause (vi) of clause 7-Hours of this award, shall accrue credits towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with sub-clause (ii) of this clause and sub-clauses (iv) and (v) of clause 18-Public Holidays.

### 20. Annual Leave Loading

- (i) Employees shall be entitled to annual leave loading of 17.5% on four weeks of the appropriate weekly rate of pay, or shift allowances and weekend penalties as set out in sub-clause (ii) of this clause, whichever is the greater.
- (ii) A shift worker, as defined in clause 2-Definitions of this award, shall be paid whilst on annual leave his/her ordinary pay plus shift allowances and weekend penalties relating to ordinary time the shift worker would have worked if he/she had not been on annual leave. Provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave, for days which have been added to annual leave in accordance with the provisions of clause 18-Public Holidays or clause 19(ii)(a)-Annual Leave of this award.
- (iii) No loading is payable where the annual leave is taken wholly or partly in advance, provided however, that if the employment of such an employee continues until their next anniversary date, the loading then becomes payable.
- (iv) Where the employment of an employee is terminated for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of the annual leave accrued as at their last anniversary date, they shall be paid the leave loading for such leave on termination. No leave loading is payable on pro rate leave on termination.

## **21. Long Service Leave**

- (i)
  - (a) Each employee shall be entitled to two months long service leave on ordinary pay after ten years' service; thereafter additional long service leave shall accrue on the basis of five months long service leave for each ten years' service. This additional leave may be taken on a pro-rata basis each five years after completing the initial 10 year period of service.
  - (b) Where the services of an employee with at least five years' service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, he/she shall be entitled to be paid a proportionate amount on the basis of two months for ten years service.
- (ii) For the purpose of sub-clause (i) of this clause:
  - (a) service shall mean continuous service with any one employer/organisation;
  - (b) service shall not include:
    - (1) any period of leave without pay except in the case of employees who have completed at least ten years service (any period of absence without pay being excluded therefrom) in which case service shall include any period without pay not exceeding six months taken after 1 June, 1980;
    - (2) any period of service as a part-time worker except as provided for in sub-clause (vi) of this clause.
- (iii)
  - (a) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken. Long service leave shall be taken as soon as practicable having regard to the needs of the facility, or where the employer and the employee agree, such leave may be postponed to an agreed date.
  - (b) Where the employer and the employee agree in writing that the taking of a period of leave be postponed at the request of an employee to an agreed future date, the period of leave at the time

of this agreement being made will, when taken, be paid at the rate applicable at the time of the agreement.

(iv)

- (a) On the termination of employment of an employee, otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination.
- (b) Where an employee who has acquired a right to long service leave, or after having had five years' service and less than ten years' service dies, the widow or the widower of such employee or if there is no such widow or widower, the children of such employee, or if there is no such widow, widower or children such person who, in the opinion of the employer, was at the time of the death of such an employee, a dependent relative of such employee shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee had his/her services terminated as referred to in sub-clause (b) of sub-clause (i) of this clause and such monetary value shall be determined according to the salary payable to the employee at the time of his/her death.

Where there is a guardian of any children entitled under this sub-clause the payment to which such children are entitled may be made to such guardian for their maintenance, education and advancement.

Where there is no person entitled under this sub-clause to receive the monetary value of leave payable under the foregoing provisions payment in respect thereof shall be made to the legal personal representative of such employee.

- (v) Full-time and permanent part-time employees shall be entitled to have previous part-time service as a part-time worker which is the equivalent of at least two full days' duty per week taken into account for long service leave purposes in conjunction with full-time and/or permanent part-time service on the basis of the proportion that the actual number of hours worked each week bears to forty hours up until 30 April, 1985 and bears to thirty-eight hours on and from 1 May, 1985, provided the part-time service as a part-time worker merges without break with the subsequent full-time service or permanent part-time employment.
- (vi) Where an employee has been granted a period of long service leave prior to the coming into force of this award, the amount of such leave shall be debited against the amount of leave due under this award.
- (vii) Employees of the employer previously covered by alternative awards will have their long service leave accrued entitlement carried over but the accrual and access to long service leave entitlements from the date of transfer will be in accordance with this award.

e.g. an employee with 15 years continuous service under an alternative award at the time of transfer may have an accrued entitlement of 3 months long service leave. From this time onwards employees would accrue their entitlements in accordance with this award, at the rate of 2.5 months for each five years service as the continuity of service is not affected by the change of award coverage. Thus, after 20 years continuous service the employee would be entitled to 5.5 months leave, made up of 3 months under the previous award and a further 2.5 months under this award.

## 22. Sick Leave

(i)

- (a) An employee during his/her first year of employment with an employer shall be entitled to sick leave at the rate of 7.6 hours or pro rata thereof on the anniversary date of each of the first three (3) months of continuous service.

- (b) Upon completion of four (4) months continuous service the employee shall be entitled to a further 53.2 hours or pro rata thereof sick leave
- (ii) A full-time employee shall be entitled to sick leave on ordinary pay by allowing 76 rostered ordinary hours of work for each year of continuous service.
- (iii) Part-time employees shall be entitled to sick leave in the same proportion of seventy six hours as the average weekly hours worked over the preceding 12 months or from the time of the commencement of employment, whichever is the lesser, bears to 38 ordinary hours of one week for each year of continuous service. Such entitlements shall be subject to all the conditions applying to full-time employees.
- (iv)
  - (a) An employee, other than a homecare employee, shall notify his/her employer of an absence from work due to illness or injury prior to the commencement of his/her rostered shift or as soon as practicable thereafter, and shall inform the employer of the expected duration of the absence.
  - (b) A Homecare Employee shall notify his/her employer of an absence from work due to illness or injury at least 3 hours prior to the commencement of his/her rostered shift but in any case no later than 1 hour before the first client where the employee is not prevented from doing so and shall inform the employer of the expected duration of the absence.
  - (c) An employee who is working in two (2) different classifications shall be paid the relevant pay for the classification he/she would have been working on the day of their sick leave.
- (v) Periods of sickness shall not be required to be certified to by a legally registered medical practitioner, excepting where the absence exceeds two (2) consecutive days or where in the employer's opinion the circumstances are such as to warrant such requirements.
- (vi) The employer shall not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the seven days immediately following the commencement of sick leave merely by reason of the fact that the employee is on sick leave.
- (vii) An employee shall not be entitled to sick leave on ordinary pay for any period in respect of which such employee is entitled to workers' compensation payments at full ordinary rate; provided however, that where an employee is not in receipt of such full ordinary compensation rate, an employer shall pay to an employee who has sick leave entitlements under this clause, the difference between the amount received as workers' compensation and full pay.

The employee's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by the proportion of hours which the difference bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.

Provided that this sub-clause shall not apply where an employee unreasonably refuses to undergo a rehabilitation program.

- (viii) For the purpose of determining a full-time employee's sick leave credit as at 1 May, 1985, sick leave entitlement shall be proportioned on the basis of 76:80.
- (ix) For the purposes of this clause, service shall mean continuous service with any one employer/organisation.
- (x) Any unused sick leave shall remain to the employee's credit.

### **23. Personal/Carer's Leave**

- (i) Use of Sick Leave
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in sub-clause (ii) of sub-clause (c), who needs the employee's care and support, shall be

entitled to use, in accordance with this sub-clause any current or accrued sick leave entitlement, provided for in clause 22-Sick Leave, for absences to provide care and support, for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (b) The employee shall, if required,
- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned or that the illness is such as to require care by another person, or
  - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this sub-clause where another person has taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this sub-clause is subject to:
- (1) the employee being responsible for the care of the person concerned; and
  - (2) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (E) a relative of the employee who is a member of the same household, where for the purposes of this sub-clause:
      1. "relative" means a person related by blood, marriage or affinity;
      2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
      3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.
- (e) An employee, in addition to the circumstances and manner stated in subclauses (a)-(d), shall also be entitled to access accrued sick leave for the purposes of personal/carer's leave in the following situation:

- (1) one permanent employee only per facility each calendar year shall be entitled to access two (2) days of such leave to attend training facilitated by the Union to increase awareness and knowledge of workplace issues and/or consultative mechanisms and/or statutory entitlements and obligations, which will contribute to a more productive, aware and harmonious workplace environment;
- (2) such an employee will give a minimum of four weeks notice to the employer of attendance at such training, unless a lesser notification period is agreed to by the employer, and the employer shall be entitled to request written confirmation from the Union as to the time and nature of the training;
- (3) access to this two (2) days per year in this subclause is not cumulative; and
- (4) such an employee may, with the consent of the employer, access additional or alternative leave, as prescribed in subclauses (ii)-(vi) of this clause, for the purposes of attending such training as stated in subclause (e)(1) above.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 33 should be followed.

(ii) Unpaid Leave for Carer's Leave Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in sub-clause (i) (c) (2) above, who is ill or who require care due to an unexpected emergency.

(iii) Annual Leave

- (a) An employee may elect with the consent of the employer, to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in sub-clause (a) of this sub-clause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due

(iv) Time Off in Lieu of Payment for Overtime

- (a) 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 within 12 months of the said election.
- (b) Overtime taken as time off during ordinary time hours shall be taken as set out in clause 10(vi)-Overtime.
- (c) If, having elected to take time as leave in accordance with sub-clause (a) of this sub-clause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
- (d) Where no election is made in accordance with the said sub-clause (a), the employee shall be paid overtime rates in accordance with the award.

- (v) **Make-up Time**
  - (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours payable at the ordinary rate of pay, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate, which would have been applicable to the hours taken off.
- (vi) **Allocated Days Off**
  - (a) An employee may elect with the consent of the employer, to take an allocated day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take allocated days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all allocated days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee or subject to reasonable notice by the employee or the employer.
  - (d) This sub-clause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of ADO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

#### **24. Compassionate Leave**

- (i) Compassionate leave with pay shall be granted only in extraordinary or emergent circumstances where an employee is forced to be absent from duty because of an urgent pressing necessity, and such leave as is granted should be limited to the time necessary to cover the immediate emergency.

An absence occasioned by personal exigencies which might fairly be regarded as an obligation on the employee, rather than the employer, may be covered by the grant of leave without pay, or if the employee so desires, charged against available annual leave credits.

- (ii) Compassionate leave shall be granted on the following principles:
  - (a) **Bereavement Leave**
    - (1) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay, on each occasion of the death of a person as prescribed in subparagraph (3) of this paragraph, provided that where the employee is involved in making funeral arrangements, travelling, etc., leave may be allowed for up to three days. Leave with pay would not ordinarily be granted for the death or attendance at a funeral for relatives not outlined in the said subparagraph (3) unless special circumstances exist, e.g., the employee resided with the deceased.
    - (2) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
    - (3) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (c) of subclause (i) of clause 23, Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

- (4) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
  - (5) Bereavement leave may be taken in conjunction with other leave available under subclauses (ii), (iii), (iv), (v) and (vi) of the said clause 23. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (b) Where an illness in the family causes an immediate emergency, sufficient leave should be granted to meet the immediate emergencies and to allow the employee to make any other arrangements considered necessary. Except in very special cases, such leave with pay should be limited to one day and where no one but the employee was available to care for the sick family member.
  - (c) Compassionate leave may also be granted in cases of unforeseen emergencies, which clearly prevent attendance for duty, e.g., flood, bush fires etc.
- (iii) Only under the most exceptional circumstances shall compassionate leave be granted for a period exceeding three working days within any one year. This is provided that additional leave may be granted by the employer in exceptional circumstances.

#### **25. Leave Without Pay**

- (a) By agreement between an employer and a permanent employee, an employee may be granted a period of leave without pay.
- (b) The period of leave without pay will not break the continuity of service but will not count for the purpose of:
  - (i) accruing annual leave, incremental progression, sick leave and public holidays;
  - (ii) accruing long service leave except in the case of employees who have completed at least ten years service (any period of absence without pay being excluded therefrom) in which case service shall include any period without pay not exceeding six months taken after 1 June, 1980;
  - (iii) qualifying period for paid and unpaid paternity leave; and
  - (iv) the calculation of notice and severance pay in accordance with clause 42, Redundancy and clause 43, Termination of Employment.

#### **26. Payment and Particulars of Wages**

- (i) Wages shall be paid weekly or fortnightly, provided that, for the purpose of adjustments of wages related to alterations in the basic wage, from time to time effective, the pay period shall be deemed to be weekly.
- (ii) On each pay day the pay shall be made up to a day not more than five days prior to the day of payment.
- (iii) Employees shall have their wages paid by direct deposit or electronic transfer into one account with a bank or other financial institution in New South Wales as nominated by the employee except where agreement as to payment by cash or cheque has been reached between the Union and the employer due to the isolation of the place of employment and/or the limited number of employees.
- (iv) Wages shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees by the close of business on pay day. Where the wages are not available to the employee by such time due to circumstances beyond the employer's control, the employer shall not be held accountable for such delay.



- (v) Where the services of an employee are terminated with due notice, all moneys owing shall be paid upon cessation of employment, but in the case of termination without due notice, within three working days.
- (vi) On payday each employee shall be provided with a pay slip, which specifies the following particulars:
  - (a) name and date of payment;
  - (b) the period for which the payment is made;
  - (c) the gross amount of wages, including overtime and other earnings and annual leave payments for casuals;
  - (d) the ordinary pay per hour;
  - (e) the amount paid as overtime or such information as will enable the amount paid as overtime to be calculated by the employee;
  - (f) the amount of other earnings and the purpose for which they are paid;
  - (g) the amount deducted for taxation purposes;
  - (h) the particulars of all other deductions; and
  - (i) the net amount paid.
- (vii) Where an employer has overpaid an employee, the employer shall notify the employee of such overpayment and how such overpayment is made up, in writing, and may recover such amounts, with the agreement of the employee as to the amount of the overpayment and method of such recovery. This sub-clause authorises the use of deductions from wages for the purpose of such recovery. All such deduction from wages must be authorised in writing by the employee.

#### **27. Service Allowance**

- (i) All full-time employees appointed prior to 1 June, 1980, shall after 10 years' continuous service with the same organisation, be paid by the said organisation in addition to the rates prescribed in Part B, Monetary Rates of this award, a service allowance in the following manner:
  - For 10 years of service but less than 15 years - 5%
  - For 15 years of service but less than 20 years - 7½%
  - For 20 years of service and over - 10%.
- (ii) Payments due under this clause will be made on the usual pay day when other payments under the award are made.
- (iii) Continuous service in the same organisation, prior to the commencement of this award shall be taken into account when computing service for the purposes of this clause.
- (iv) Continuous service shall be deemed not to have been broken by absence from the organisation due to membership of the defence forces of the Commonwealth in time of war or during any period of special leave for members of the Military Reserve Forces.

#### **28. Leading Hands**

- (i) A leading hand is an employee who is placed in charge of not less than two (2) other employees of a substantially similar classification, but does not include any employee whose classification denotes supervisory responsibility.
- (ii) A leading hand shall be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

	Item Number of Table 2, of Part B, Monetary Rates
in charge of two to five other employees	Item 14
in charge of six to ten other employees	Item 15
in charge of eleven to fifteen other employees	Item 16
in charge of sixteen to nineteen other employees	Item 17

- (iii) This allowance shall be part of salary for all purposes of this award.
- (iv) An employee who works less than thirty-eight hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to thirty-eight ordinary hours.

### 29. Higher Duties

- (i) An employee when called upon by the employer to undertake duties carrying a higher rate of pay than their ordinary classification shall be paid the higher rate for the time so spent performing the higher duties.
- (ii) This clause shall not apply when an employee in a higher grade is absent from duty by reason of their allocated day off duty.

### 30. Uniforms and Protective Clothing

- (i)
  - (a) Subject to sub-clause (c) of this sub-clause, sufficient suitable and serviceable uniforms or overalls shall be supplied free of cost, to each employee required to wear them. An employee to whom a new uniform or part of a uniform has been supplied by the organisation, who fails to return the corresponding article last supplied, shall not be entitled to have such article replaced without payment for it at a reasonable price, in the absence of a satisfactory reason for the loss of such article or failure to produce such uniform or part thereof.
  - (b) Upon termination, an employee shall return any uniform or part thereof supplied by the organisation, which is still in use by the employee, immediately prior to leaving.
  - (c) In lieu of supplying a uniform to an employee, an employer shall pay the said employee the sum set out in Item 18 of Table 2 - of Part B, Monetary Rates per week;
  - (d) In lieu of supplying special-type shoes where required to an employee, an employer shall pay the said employee the sum set out in Item 19 of Table 2 - of Part B, Monetary Rates per week;
  - (e) In lieu of supplying a cardigan or jacket where required to an employee an employer shall pay the said employee the sum per week set out in Item 20 of Table 2 - of Part B, Monetary Rates per week;
  - (f) If the uniform of the employee is not laundered at the expense of the organisation, an allowance of the amount set out in Item 21 of Table 2 of Part B, Monetary Rates per week shall be paid to the employee.
  - (g) An employee who works less than thirty-eight hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to thirty-eight ordinary hours.
- (ii) Each employee whose duties require them to work out of doors shall be supplied with overboots. Sufficient raincoats shall also be made available for use by these employees.

- (iii) Each employee whose duties require them to work in a hazardous situation with or near machinery shall be supplied with appropriate protective clothing and equipment.
- (iv) For employees engaged in homecare services the following shall apply;
  - (a) On request, the employer shall supply free of charge two sets of full body aprons or other attire as agreed by the parties;
  - (b) The attire supplied in (a) above, shall be replaced by the employer on the basis of fair wear and tear;
  - (c) The attire supplied in (a) above, shall remain the property of the employer at all times and any employee applying for a new issue supplied by the employer who fails to return their last issue shall not be entitled to a new issue without payment thereof;
  - (d) All new employees at time of engagement and all existing employees at the time of the next issue of uniforms may be required to sign an authorisation permitting the employer to deduct the value of uniforms and/or employer property from termination monies if the uniform and/or employer's property is not returned. Employer property is property personally given to an employee and where such property can reasonably be expected to remain in the employee's personal control;
  - (e) Where the client supplies equipment, materials and tools, the employer shall ensure that they are of reasonable quality and comply with safety standards;
  - (f) Where an employee is required to work outdoors the employer shall provide a suitable broad-brimmed hat.

### 31. Sleepovers

- (i) Employees may, in addition to normal rostered shifts, be required to sleepover. A sleepover means sleeping in at night in order to be on call for emergencies.
- (ii) The following conditions shall apply to each night of sleepover:
  - (a) The span for a sleepover shall be not less than 8 hours nor more than 10 hours on any one night.
  - (b) Employees shall be provided with free board and lodging for each night on which they are required to sleep over.
  - (c) Employees shall be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.
  - (d) In addition to the provision of free board and lodging for such nights, the employee shall be entitled to a sleepover allowance of the amount set out in Item 22 of Table 2 of Part B, Monetary Rates for each night on which they sleepover.
  - (e) No work other than that of an emergency nature shall be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
  - (f) An employee directed to perform work other than that of an emergency nature during any sleepover shall be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in sub-clause (d).
  - (g) All time worked during any sleepover shall count as time worked and be paid for in accordance with the following provisions:
    - (1) All time worked by full-time employees during any sleepover shall be paid for at overtime rates.

- (2) All time worked by permanent part-time employees during any sleepover shall be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or eleven hours where there are no such full-time employees, then the excess hours worked on that day shall be paid for at overtime rates; and provided further that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
  - (3) All time worked by casual employees during any sleepover shall be paid for at ordinary pay plus applicable shift and weekend penalties; provided that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight as the case may be, then the excess hours worked in that week or fortnight, as the case may be, shall be paid for at overtime rates.
  - (4) And provided further that where the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of sub-clause (j) of this sub-clause will apply.
- (h) A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
  - (i) No employee shall be required to sleepover during any part of their rostered days off and/or allocated days off provided for in sub-clauses (iii) and (vi) of clause 7-Hours.
  - (j) An employee (whether a full-time employee, permanent part-time employee or casual employee) who performs so much work during sleepover periods between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times shall, subject to this sub-clause, be released after completion of such work until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such eight consecutive hours off duty they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
  - (k) Casual employees may only be used for sleepovers when full-time employees or permanent part-time employees are not available for that duty and in no case shall casual employees be used exclusively or almost exclusively for sleepovers.
- (iii) Nothing in this clause shall preclude the employer from rostering an employee to work shift work in lieu of undertaking sleepovers.

### **32. Live-in**

Hostel Supervisors and Live-in Housekeepers required to live in shall be provided with full board and lodging free of charge. Where, in these circumstances, supervisors are rostered off duty, other appropriate staff shall be available.

### **33. Grievance and Dispute Resolution Procedures**

- (i) The following procedures shall be followed in relation to grievances of individual employees:
  - (a) The employee is required to notify the employer, preferably in writing, as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.

- (b) A grievance must initially be dealt with as close to the source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (ii) The following procedure shall be followed in relation to disputes, etc., between employers and their employees:
    - (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
    - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (iii) In the case of employers who employ not more than 20 employees, or where the management structure is such that all employees are subject to the direct supervision and control of the employer, graduated steps for further discussion and resolution at higher levels do not apply.
  - (iv) While the above procedure is being followed, work will continue as normal where it is agreed there is an existing practice, but in other cases work will continue on the employer's instructions. No party will be prejudiced as to the final settlement by continuation of work.
  - (v) For any of the above procedures, the employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an industrial organisation of employees.
  - (vi) The industrial organisation representing employees reserves the right to vary this procedure where it is considered a safety factor is involved.

#### **34. Attendance at Meetings**

Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive ordinary pay per hour for the actual time spent in attendance at such meetings. In lieu of receiving payment, employees may, with the agreement of the employer, be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent shall not be viewed as overtime for the purposes of this award.

#### **35. Labour Flexibility and Mixed Functions**

- (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training
- (ii) The 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 or has otherwise acquired the necessary skills in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to sub-clause (i) and/or (ii) shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees and the employer's duty of care to residents.

#### **36. Promotions and Appointments**

Promotion and/or appointment shall be by merit, provided however that no employee with a claim to seniority shall be passed over without having his/her claim considered.

### 37. Emergency Telephone Calls

An employee required to answer emergency telephone calls outside of ordinary working hours, but not recalled to duty, shall be reimbursed rental charges on such telephone calls on production of receipted accounts. Provided that, where an employee is required to answer out of hours telephone calls on a relief basis, he/she shall be paid one-twelfth (1/12th) of his/her yearly telephone rental for each month or part thereof he/she is so employed.

### 38. Parental Leave

(i) All employees are entitled to parental leave in accordance with the provisions of the *Industrial Relations Act, 1996*.

(ii)

(a) Full-time employees and permanent part-time employees are eligible for paid parental leave in accordance with the following provisions:

(1) Permanent employees are eligible for paid parental leave when they have completed at least 40 weeks' of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.

(b) Employees who are eligible for paid parental leave are entitled to such leave as follows:

(1) Paid Leave

(A) Paid Maternity Leave - an eligible employee is entitled to nine weeks paid maternity leave at ordinary pay from the date the maternity leave commences.

Maternity leave may commence up to nine weeks prior to the expected date of birth. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during this period, it is subject to the employee being able to satisfactorily perform the full range of normal duties.

(B) Paid Paternity Leave - an eligible employee is entitled to one week paid paternity leave in any one year at ordinary pay which must commence within four weeks of the birth of the child. (Eligible employees will be as defined in the *Industrial Relations Act 1996*.)

(C) Paid Adoption Leave - an eligible employee is entitled to paid adoption leave of three weeks from and including the date of taking custody of the child.

(D) Such leave may be paid:

(i) on a normal fortnightly basis;

(ii) in advance in a lump sum;

(iii) at the rate of half pay over a period of 18 weeks on a regular fortnightly basis for maternity leave and at the rate of half pay over a period of six weeks on a regular fortnightly basis for adoption leave.

Annual and/or long service leave credits can be combined with periods of maternity leave or adoption leave on half pay to enable an employee to remain on full pay for that period.

- (2) Unpaid Leave
- (A) Unpaid Maternity Leave - An employee is entitled to a further period of unpaid maternity leave of not more than twelve months after the actual date of birth of the child.
- (B) Unpaid Paternity Leave - An employee is entitled to a further period of unpaid paternity leave of not more than three weeks, to be taken in conjunction with a period of paid paternity leave, unless otherwise agreed by the employer and employee.
- (C) Unpaid Adoption Leave - An employee is entitled to unpaid adoption leave as follows:
- (i) where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
- (ii) where the child is over the age of 12 months - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.
- (c) An employee who has once met the conditions for paid maternity leave and paid adoption leave will not be required to again work the 40 weeks' continuous service in order to qualify for a further period of maternity leave or adoption leave, unless:
- (1) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
- (2) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Workers' Compensation Act.
- (d) An employee who intends to proceed on maternity or paternity leave should formally notify the employer of such intention as early as possible, so that arrangements associated with the absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.
- (e) In the case of notification of intention to take adoption leave, due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.
- (f) After commencing maternity leave or adoption leave, an employee may vary the period of her maternity leave or adoption leave, once, without the consent of the employer and otherwise, with the consent of the employer. A minimum of four weeks' notice must be given, although an employer may accept less notice if convenient.
- (g) Any person who occupies the position of an employee on parental leave must be informed that the employee has the right to return to her former position. Additionally, since an employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the employee elects to return to duty, whichever occurs first.

- (h) When an employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual and long service leave and any period of maternity leave or adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.
- (i) Except in the case of employees who have completed ten years service the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six months.
- (j) Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
- (k) Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.
- (l) If because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
- (m) Where an employee is entitled to paid maternity leave, but because of illness, is on sick, recreation, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of the birth. The employee then commences maternity leave with the normal provisions applying.
- (n) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.
- (o) In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.
- (p) In the case of stillbirth, an employee may elect to take sick leave, subject to the production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
- (q) An employee who gives birth prematurely, and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.
- (r) An employee returning from parental leave has the right to resume their former position. Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and for which the employee is capable or qualified.
- (s) Employees may make application to their employer to return to duty for less than the full-time hours they previously worked by taking weekly leave without pay. Such return to work is to be according to the following principles:
  - (1) the period is to be limited to twelve months after which the full-time duties must be resumed;
  - (2) the employee is to make an application for leave without pay to reduce her full-time weekly hours of work. This application should be made as early as possible to enable the



employer to make suitable staffing arrangements. At least four weeks' notice must be given;

- (3) the quantum of leave without pay to be granted to individual employees is to be at the absolute discretion and convenience of the employer;
  - (4) salary and conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work, that is for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
  - (5) Full-time employees who return to work under this arrangement remain full-time employees.
- (t) Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.
- (iii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996* (NSW)) because:
- (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (iv) Right to request
- (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (2) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (3) to return from a period of parental leave on a part-time basis until the child reaches school age;
 to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under Clauses 38(iv)(a)(2) and 38(iv)(a)(3) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under Clause 38(iv)(a)(3) such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (v) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return or other contact details which might affect the employer's capacity to comply with Clause 38(v)(a).
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### 39. Repatriation Leave

- (i) Employees who are ex-servicemen or ex-service women may be granted special leave in one or more periods up to a maximum of 6½ working days in any period of twelve months without deduction from annual or sick leave credits for the following purposes in connection with an accepted war-caused disability or in connection with an application to the Repatriation Department for a disability to be so accepted:
- (a) to attend a hospital or clinic or visit a medical officer in that regard;
  - (b) to attend a hospital, clinic or medical officer or to report for periodical examination or attention;
  - (c) to attend limb factories for the supply, renewal and repair of artificial replacements and surgical appliances.
- (ii) Employees are to provide the employer with documentary evidence as to the attendance prior to the payment of special leave being granted.

### 40. Union Representative

An employee-appointed Union representative shall, upon notification thereof in writing to the organisation, within 14 days of such appointment, or as soon as practicable thereafter, be recognised as the accredited representative of the Union and shall be allowed the necessary time, during working hours, to interview the employer on matters affecting employees.

### 41. Apprentices

- (i) Contracted Apprentice means an employee who is serving a period of training under a training contract for the purpose of rendering him/her fit to be a qualified worker in the industry. Apprentices may be contracted to an organisation as Cooks or Gardeners.
- (ii) Apprenticeship means an apprenticeship established under Division 3 of Part 2 of the *Apprenticeship and Traineeship Act 2001*.
- (iii) The minimum rates of wages for apprentice cooks shall be the following percentages of the rate applicable to the classification of Care Service Employee Grade 3 as varied from time to time:

First year	60%
------------	-----

Second year	82.5%
Third year	92.5%.

- (iv) The minimum rates of wages for apprentice gardeners shall be the following percentages of the rate applicable for the classification of a Care Service Employee Grade 3 as varied from time to time:

First year	50%
Second year	60%
Third year	80%
Fourth year	90%.

- (v) Apprentices attending college for training shall be entitled to fares to and from home to college.
- (vi) An apprentice who obtains and hands to his/her employer a certificate or statement of having passed his/her first year technical college examination and in respect of whom a satisfactory report as to conduct, punctuality and progress is furnished shall be paid an allowance of the amount in Item 23 of Table 2 of Part B, Monetary Rates per week in addition to the rates prescribed in the ensuing twelve months, plus an additional allowance of the amount in Item 23 of Table 2, Part B, Monetary Rates per week if he/she passes each subsequent year.
- (vii) The ordinary hours of work for apprentices shall be as prescribed in clause 7-Hours. No apprentice shall be permitted or required to perform work, which would prevent the apprentice from attending classes at TAFE.
- (viii) Wages for school based apprentice
- (a) The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off the job training.
- (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
- (c) Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.
- (ix) Progression through Wage Structure for school based apprentice
- (a) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- (b) The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.
- (x) Conversion from a school based to a full time apprenticeship
- Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.
- (xi) Conditions of Employment
- Except as provided by this award, School based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.
- (xii) Disputes and Disciplinary Matters

The provisions of the *Apprenticeship and Traineeship Act 2001* shall apply for the resolution of disputes and disciplinary matters.

#### 42. Redundancy

- (i) For the purposes of this Clause, "Continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955* as at 22 July 1996. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this award.
- (ii) Introduction of Change
  - (a) Employer's duty to notify -
    - (1) Where the 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 the Union.
    - (2) "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, promotion 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.
  - (b) Employer's duty to discuss change -
    - (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in sub-clause (a) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
    - (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in sub-clause (a) of this clause.
    - (3) For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.
- (iii) Redundancy
  - Discussions before terminations -
    - (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision may lead to termination of the employee's employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
    - (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of sub-clause (a) of this clause and, in any case, prior to the beginning of the period of notice required by sub-clause (iv), Termination of Employment

of this clause. These discussions shall cover, inter alia, any reasons for the proposed terminations, and measures to avoid or minimise the terminations, and measures to mitigate any adverse effects of any terminations on the employees concerned.

- (c) For the purposes of the discussion the employer shall, as soon as practicable and, in any case, prior to the beginning of the period of notice required by sub-clause (iv), Termination of Employment of this clause, provide to the employees concerned and to the union to which they belong, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.

(iv) Termination of Employment

- (a) Notice for changes in production, program, organisation or structure - This sub-clause sets out the notice provisions to be applied to terminations or proposed terminations of the employment of an employee by the employer in circumstances where the employer no longer wishes the job which the employee has been doing to be done by anyone, for any reason (other than technological change), and for reasons arising from production, program, organisation or structure in accordance with sub-clause (ii)(a)(1), shall be at least the minimum periods of notice as provided in Clause 43-Termination of Employment.
- (b) Notice for technological change - This subclause sets out the notice provisions to be applied to terminations or proposed terminations by the employer for reasons arising from technology in accordance with sub-clause (ii) (a) (1) Introduction of Change.
- (1) An employer shall not terminate the employment of an employee unless the employer has given to the employee at least three months' notice of termination.
- (2) Payment in lieu of the period of notice specified in sub-clause (iv) (b) (1) Termination of Employment shall be made if the said period of notice is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu of the period of notice specified.
- (3) The period of notice required by this sub-clause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any act amending or replacing either of these Acts.
- (c) Time off during the notice period -
- (1) During the period of notice of termination given by the employer, each affected employee shall be allowed up to one day's time off without loss of pay for each week of notice, up to a maximum of five days off, for the purposes of seeking other employment.
- (2) If an employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, if the employer so requests, the employee shall be required to produce proof of attendance at an interview. If the employee is so required to produce such proof of attendance and fails to do so, the employee shall not be entitled to receive payment for such time.
- (d) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments to which the employee shall be entitled had the employee remained with the employer until the expiry of such notice.

- (e) Statement of employment - The employer shall provide to each employee whose employment has been terminated, a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (f) Notice to Centrelink - Where a decision has been made to terminate the employment of 15 or more employees, the employer shall notify Centrelink of this, as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (g) Centrelink Employment Separation Certificate - The employer shall provide to an employee whose employment has been terminated an Employment Separation Certificate in the form required by Centrelink.
- (h) Transfer to Lower Paid Duties - Where an employee is genuinely transferred to a lower paid classification for reasons set out in subclause (ii) (a) Introduction of Change, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment has been terminated. The employer will however in addition continue to pay the employee their former ordinary pay for a period equivalent to one week for each year of service completed with the employer to a maximum of six weeks.

(v) Retrenchment Pay

Unless the Industrial Relations Commission of New South Wales subsequently orders otherwise pursuant to sub-clause (vi), Incapacity to Pay, where the employment of an employee is to be terminated, for reasons set out in sub-clause (ii) Introduction of Change, the employer shall pay, in addition to other payments due to that employee, the following retrenchment pay in respect of the following continuous periods of service:

- (a) Where the employee is under 45 years of age, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	7 weeks pay
3 years and less than 4 years	10 weeks pay
4 years and less than 5 years	12 weeks pay
5 years and less than 6 years	14 weeks pay
6 years and over	16 weeks pay.

- (b) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	5 weeks pay
2 years and less than 3 years	8.75 weeks pay
3 years and less than 4 years	12.5 weeks pay
4 years and less than 5 years	15 weeks pay
5 years and less than 6 years	17.5 weeks pay
6 years and over	20 weeks pay

- (c) "Week's pay" means the rate of pay for the employee concerned at the date of termination, and shall include in addition to the ordinary pay any overaward payments:

- (1) shift allowances as prescribed in sub-clauses (i) and (ii) of clause 15-Penalty Rates and Shift Allowances;

- (2) weekend penalties as prescribed in sub-clause (iii) of clause 15- Penalty Rates and Shift Allowances;
- (3) service allowances as prescribed in subclause (i) of clause 27-Service Allowance;
- (4) broken shift allowances as prescribed in clause 7-Hours;
- (5) sleepover allowances as prescribed in clause 31- Sleepovers;
- (6) apprentices' TAFE examination allowances as prescribed in clause 41-Apprentices;
- (7) climatic and isolation allowances as prescribed in clause 14-Climatic and Isolation Allowances;
- (8) leading hand allowances as prescribed in clause 28- Leading Hands;
- (9) Laundry and Dry Cleaning Certificate allowance as prescribed in Table 2 of Part B Monetary Rates of this Award.

(vi) Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission an employer may pay a lesser amount (or no amount) of retrenchment pay than that contained in subclause (v) Retrenchment Pay.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of retrenchment pay in the said sub-clause (v) will have on the employer.

(vii) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in sub-clause (v) Retrenchment Pay, above if the employer obtains acceptable alternative employment for an employee.

### 43. Termination of Employment

- (i) Employment, other than of a casual, will be terminated only by appropriate notice on either side or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified.

(ii) Notice of termination by employer -

(a)

(1)

Period of Continuous Service	Minimum Period of Notice
1 year or less	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

- (2) A Care Service Employee Grade 4 who has responsibility for the overall management of a facility and a Care Service Employee Grade 5 shall be entitled to four weeks notice.
- (b) Employees aged 45 years or older will be entitled to an additional one week's notice in the following circumstances:

- (1) On completion of at least five years continuous service, for Care Service Employees Grade 4 who have responsibility for the overall management of a facility, and Care Service Employees Grade 5; and
  - (2) On completion of at least two years continuous service for all other employees other than casuals.
  - (c) Casuals are to be given notice to the end of the current shift worked.
- (iii) Notice by Employee -
- (a) Subject to sub-clauses (iii) (b) and (c) of this clause, employees shall give the employer one weeks notice of termination in writing.
  - (b) A Care Service Employee Grade 4 who has responsibility for the overall management of a facility and a Care Service Employee Grade 5 shall give four (4) weeks notice of termination in writing.
  - (c) Casuals shall only be required to give notice to the end of the current shift worked.
- (iv) The employer may, without notice, summarily dismiss an employee at any time for misconduct or wilful disobedience. Payment is up to the time of dismissal only. Serious misconduct is where it would be unreasonable to require the employer to continue the employment during a notice period.
- (v) The employer will give the employee a statement signed by the employer stating the period of employment and when the employment was terminated if the employee requests.
- (vi) Abandonment of Employment -
- (a) Where an employee is absent from work for a continuous period of two working days without the consent of the employer, and without notification to the employer, the employer shall be entitled to inform the employee by written correspondence that unless the employee provides a satisfactory explanation for her/his absence within two days of the receipt of such a request, the employee will be considered to have abandoned employment.

#### 44. Notice Board

- (i) The employer shall permit a notice board of reasonable dimensions to be erected in a prominent position upon which the Union representatives shall be permitted to post Union notices.
- (ii) The employer shall keep exhibited a copy of this award in accordance with Section 361 of the *Industrial Relations Act 1996*.

#### 45. Accommodation and Amenities

- (i) The minimum standards as set out in all relevant occupational health and safety legislation shall be met in the provision of amenities to employees.
- (ii) Such amenities must include:
  - (a) change rooms and lockers;
  - (b) meal room;
  - (c) facilities for boiling water, warming and refrigerating food and for washing and storing, dining utensils;
  - (d) rest room;
  - (e) washing and bathing facilities;



- (f) sanitary conveniences; and
  - (g) Safe and secure workplace.
- (iii) sub-clauses (i) & (ii) above shall not apply to homecare employees.
  - (iv) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### **46. Inspection of Lockers**

Lockers may only be opened for inspection in the presence of the employee but in cases where the employee neglects or refuses to be present or in any circumstances where notice to the employee is impracticable, such inspection may be carried out in the absence of the employee by an officer of the employer and a union representative where practicable, otherwise by any two officers of the facility appointed by the employer for that purpose.

#### **47. Consultative Arrangements**

The parties support the development of consultative arrangements in the aged care industry and to that end recommend that facilities establish consultative teams and that those teams meet regularly. The number of management representatives should not exceed the number of staff representatives. The meetings are a forum to allow the exchange of ideas and information on policies, procedures, etc. Members should encourage the development of skills by attendance at recognised training forums and greater participation of all employees in the consultative process.

#### **48. No Extra Claims Commitment**

It is a term of this award that the Union undertakes, for a two year period commencing 1 September 2005, not to pursue any extra claims.

#### **49. Training**

- (i) Employees will be given on-going training as necessary, relevant to their roles and responsibilities.
- (ii) Each employee shall provide to his/her employer details of their attendance at training and the employer shall keep a record of this attendance.
- (iii) Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of training attended by the employee.
- (iv) Where practicable, such training shall be provided to employees during their normal rostered hours of work. Where this is not practicable:
  - (a) Employees shall attend training outside their normal rostered working hours when required to do so by the employer;
  - (b) An employer shall provide employees with two (2) weeks notice of the requirement to attend training outside of their normal rostered working hours;
  - (c) Notwithstanding clause 10-Overtime, attendance at such training shall be paid ordinary pay for the period of training.
  - (d) An employer requiring an employee to attend training shall also pay to the employee ordinary pay for time travelling to and from a period of training referred to in sub clause (c) that is in excess of the time normally taken for that employee to attend work.

- (e) When receiving travelling time as set out in subclause (d) above in this clause, any employee using their own vehicle for attendance at such training shall be reimbursed as set out in Item 5 of Table 2, Part B of this Award.
- (f) Training provided outside the normal rostered hours of work shall be arranged so as to allow full-time employees to have at least eight or ten hours off-duty before or after training and the end or beginning of their shift, whichever is applicable as set out in Clause 7-Hours. Where practicable, similar arrangements should also be made available to all other employees.
- (g) Any training undertaken by an employee that occurs at a workplace is not intended to replace or supplement staffing levels and the normal levels of service delivery at such a workplace.
- (h) Notwithstanding sub-clause (ix) of Clause 7-Hours, sub-clause (ii) of Clause 10-Overtime will not apply where attendance at such training is outside the normal rostered working time of other than full-time employees and where it interrupts the applicable eight or ten hour break between shifts.

#### **50. Leave Reserved**

The parties agree to the following:

- (a) continue to review the classification structures within the Award to ensure their on-going currency and relevance to the industry; and
- (b) continue discussions regarding reasonable workloads.

#### **51. Reasonable Hours**

- (i) Subject to subclause (ii) of this clause, an employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the award.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of the said subclause (ii), what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the workplace or enterprise;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.

#### **52. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
  - (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
  - (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
  - (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
  - (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
    - (1) whether the employee will convert to full-time or part-time employment; and
    - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.
  - (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:

- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

### **53. Area, Incidence and Duration**

- (i) This award shall apply to all employees employed by employers that are members of the A.C.S. and/or C.C.E.R., excluding those in the County of Yancowinna, who are:
- (a) within the jurisdiction of the Voluntary Care Association Employees' (State) Conciliation Committee who come within the Constitution Rule of the Health Services Union; and/or
  - (b) employed by or in connection with voluntary, religious, charitable and non-profit making private retirement villages, nursing homes and hostels for the aged in the private health, health-related and aged care industries, and nursing homes for the disabled in the private disability services industry, and who come within the Constitution Rule of the Health Services Union; and/or
  - (c) employed by or in connection with other accommodation support services and/or community residential units for disabled persons owned, managed or conducted by voluntary, religious,

- charitable and other non-profit making organisations in the private disability services industry and who come within the Constitution Rule of the Health Services Union.
- (ii) Provided that this award shall not apply to persons substantially engaged in counselling, social welfare advice and referral, assessment of disability, design of disability services programs, or community development work in connection with services for the disabled or social workers or social educators properly so-called; provided this exclusion does not apply to persons eligible to become members of the Health Services Union who are employed as Residential Care Workers or Residential Services Assistants, and persons primarily engaged in supervising the work performed by disabled persons, or in domestic duties in Sheltered Workshops for the disabled.
- (iii) Provided that, with respect to the Grand United Centenary Nursing Homes, employees employed prior to 15 July 1996 shall continue to be entitled to receive any benefit or benefits obtained in the Aged Care General Services (State) Award as varied which are greater than the benefit or benefits that are contained in this award.
- (iv) This award shall not apply to:
- (a) Novices, aspirants or persons who have taken the vows of religious orders.
- (b) Persons who are employed in providing home care services to clients in private residences which are not operated as an adjunct to a retirement village, nursing home, hostel, accommodation support service or community residential unit or where the provisions of the Miscellaneous Workers Home Care Industry (State) Award, as varied, apply.
- (v) This award rescinds and replaces the Charitable, Aged and Disability Care Services (State) Award published on 25 January 2002 (330 I.G. 1023) and all variations thereof. This award shall take effect on 26 October 2001 but by administrative action will commence from the beginning of the first pay period on or after 1 July 2001 and shall have a nominal term till 30 June 2003.
- (vi) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 November 2007.
- (vii) This award remains in force until varied or rescinded, the period for which it was made already having expired.

## PART B

The rates contained herein shall be deemed to apply from the first full pay period to commence on or from the dates shown in each column.

**Table 1 - Monetary Rates**

Classifications	Current Rate per week \$	Award variation per week %	Wage Rate as from 8.10.09 per week \$
Care Service Employees:			
New Entrant Grade 1 Junior	529.30	2.8	544.10
Grade 1	617.80	2.8	635.10
Grade 2	656.60	2.8	675.00
Grade 3	695.90	2.8	715.40
Grade 4			
- Level 1	732.10	2.8	752.60
- Level 2	794.60	2.8	816.80
Grade 5 from	847.60	2.8	871.30
to	1,252.30	2.8	1,287.40

<p>Note: Employees classified and paid as Recreational Activities Officers as at 10 November 1998 be reclassified in accordance with the new definitions of Care Service Employee. Employees reclassified at Grade 2 by virtue of the above exercise shall be paid at Grade 3 from the effective date of this award, and continue to be so paid whilst employed in the provision of recreational activities by their current employer. These employees may be required to perform the duties of a Level 3 Care Services Employee where they have the skill and competence to do so.</p>			
<p>Note: Salary Band - Grade 5 - Employers and employees may negotiate a rate within the salary band as shown. For the purposes of this award, the rate so negotiated shall be deemed to be the employee's award rate of pay. Salaries in excess of the salary band may also be negotiated between the parties.</p>			
Maintenance Supervisors -			
Maintenance Supervisor (Otherwise)	726.90	2.8	747.30
Maintenance Supervisor (Otherwise) - in charge of staff	742.70	2.8	763.50
Maintenance Supervisor (Tradesperson)	788.30	2.8	810.40
Catering Officer:			
Trainee Catering Officer -			
1st year	643.10	2.8	661.10
2nd year	654.80	2.8	673.10
3rd year	668.10	2.8	686.80
Assistant Catering Officer -			
80-120 beds	674.50	2.8	693.40
120-300 beds	718.50	2.8	738.60
300-500 beds	770.80	2.8	792.40
500-1000 beds	791.50	2.8	813.70
Catering Officer -			
80-120 beds	750.30	2.8	771.30
120-200 beds	770.80	2.8	792.40
200-300 beds	791.50	2.8	813.70
300-500 beds	831.00	2.8	854.30
500-1000 beds	897.00	2.8	922.10
Diversional Therapist:			
1st year of experience	671.00	2.8	689.80
2nd year of experience	704.40	2.8	724.10
3rd year of experience	737.40	2.8	758.00
4th year of experience	770.30	2.8	791.90
5th year of experience and thereafter	801.90	2.8	824.40
Apprentices:			
Apprentice Cook -			
1st year	417.60	60% of CSE 3	429.20
2nd year	574.10	82.5% of CSE 3	590.20
3rd year	643.70	92.5% of CSE 3	661.70
Apprentice Gardener			
1st year	358.40	50% of CSE 3	357.70
2nd year	417.60	60% of CSE 3	429.20
3rd year	556.70	80% of CSE 3	572.30
4th year	626.30	90% of CSE 3	643.90
Homecare Employees:			
Homecare Employee -			
Grade 1	621.50	2.8	638.90
Grade 2	651.90	2.8	670.20
Grade 3	697.00	2.8	716.50
Live-in Housekeeper -			
Grade 1	808.00	130% of Home Care Grade 1 140% of Home	830.60
Grade 2	912.70	Care Grade 2	938.30

Grade 3	1057.70	Refer Formula	1087.30
Clerical & Administrative Employees:			
Juniors -			
At 16 years of age and under	337.90	2.8	347.40
At 17 years of age	383.10	2.8	393.80
At 18 years of age	439.30	2.8	451.60
At 19 years of age	494.90	2.8	508.80
At 20 years of age	545.70	2.8	561.00
Adults			
Grade 1	666.80	2.8	685.50
Grade 2	706.50	2.8	726.30
Grade 3	747.90	2.8	768.80
Grade 4	781.00	2.8	802.90
Grade 5	816.30	2.8	839.20

## Note 1:

Any employee paid on a classification/grade carrying a higher wage rate as at 10 November 1998 shall have the difference between the higher rate and the new agreed grade/rate preserved whilst remaining to undertake the duties associated with the classification held prior to the date referred to above.

## Note 2:

Clerks who are paid at a grade above that of Grade 5 as at 10 November 1998 shall have the difference between that grade, inclusive of the 1998 State Wage Case Increase, and the new agreed grade preserved whilst employed in a clerical position with their current employer.

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description		Amount from 8.10.09 \$
1	7(xi)(c)	Broken Shift	per shift	8.11
2	9(iii)(a)	Overtime - Breakfast	per meal	11.02
3	9(iii)(b)	Overtime - Luncheon	per meal	14.25
4	9(iii)(c)	Overtime - Evening Meal	per meal	20.80
5	10(iii)(b)	Overtime - recall use of own vehicle	per klm	0.30
6	10(iii)(c)	On Call Allowance	p.d. (24 hrs)	13.20
7	14(i)	Climatic and Isolation Allowance	per week	5.26
8	14(ii)	Climatic and Isolation Allowance	per week	9.93
9	17(i)(a)	Cleaning/Scraping Work - confined space	per hour	0.50
10	17(i)(b)	Cleaning/Scraping Work - boiler/flue	per hour	0.80
11	17(iii)	Linen Handling - nauseous nature	per hour	0.24
12	17(v)	Use of Own Vehicle	per klm	0.58
13	17(ix)	Laundry and Dry Cleaning Certificate Allowance	per week	8.74
14	28(ii)	Leading Hand Allowance - in charge 2-5 employees	per week	21.50
15	28(ii)	Leading Hand Allowance - in charge 6-10 employees	per week	30.73
16	28(ii)	Leading Hand Allowance - in charge 11-15 employees	per week	38.81
17	28(ii)	Leading Hand Allowance - in charge 16-19 employees	per week	47.41
18	30(i)(c)	Uniform Allowance	per week	5.64
19	30(i)(d)	Special Type Shoes Allowance	per week	1.75

20	30(i)(e)	Cardigan or Jumper Allowance	per week	1.68
21	30(i)(f)	Laundry Allowance - Uniform	per week	4.69
22	31(ii)(d)	Sleepover Allowance	per shift	40.00
23	41(vi)	Apprentice - TAFE Examination Allowance	per week	1.87

---

Printed by the authority of the Industrial Registrar.



**CLERICAL AND ADMINISTRATIVE EMPLOYEES (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C4375	17/03/2006	First full pay period on or after 30/1/2006	358	69
Erratum to C4375	C4458	11/08/2006		360	663
4	C4781	06/10/2006	From 21/03/2006	361	136
7, Part B	C5211	29/12/2006	First full pay period on or after 13/07/2006	361	1337
7, Part B	C5944	12/10/2007	First pay period on or after 13/07/2007	363	1489
7, Part B	C6681	26/09/2008	First pay period on or after 31/07/2008	366	761
15, 16	C6903	27/02/2009	On and from 06/11/2008	367	213
7, Part B	C7158	25/09/2009	First pay period on or after 06/08/2009	369	5
7, Part B	C7579	02/09/2011	First pay period on or after 16/12/2011	371	601

**PART A****1. Arrangement**

Clause No.      Subject Matter

## PART A

- 13. Allowances and Expenses
- 14. Annual Leave
- 2. Anti-Discrimination
- 34. Area, Incidence and Duration
- 1. Arrangement
- 22. Award Display
- 17. Bereavement Leave
- 5. Casual Employees
- 8. Classification Structure - Clerical and Administrative Employees Only
- 23. Deduction of Union Membership Fees
- 3. Definitions
- 31. Dispute Avoidance and Grievance Procedure
- 26. Enterprise Consultative Mechanism
- 29. Exemptions
- 10. Hours of Work - Shift Workers

9. Hours of Work - Weekly Employees
19. Jury Service
24. Labour Flexibility
33. Other Legislation
12. Overtime
18. Parental Leave
6. Part-Time Employees
7. Payment of Wages
16. Personal/Carer's Leave
28. Redundancy
30. Salary Packaging
15. Sick Leave
11. Sundays and Public Holidays
20. Superannuation
32. Telephone Canvassers (Other Than for the Sale of Goods)
27. Termination of Engagement
4. Terms of Engagement
25. Training
21. Union Notice Board

#### PART B - MONETARY RATES

Table 1 - Adult Wages

Table 2 - Juniors Wages

Table 3 - Telephone Canvassers (Other Than for the Sale of Goods)

Table 4 - Other Rates And Allowances

## 2. Anti-Discrimination

- 2.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 2.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which by its terms or operation, has a direct or indirect discriminatory effect.
- 2.3 Under the *Anti-Discrimination Act 1977*, 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.
- 2.4 Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 2.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### 3. Definitions

- 3.1 Union shall mean the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (United Services Union).
- 3.2 Trainee is an individual who is a signatory to a training agreement registered with the relevant NSW Training Authority and is involved in paid work and structured training, which may be on or off the job. A trainee can be full-time, part-time or school-based. Trainees are employed in accordance with the Training Wage (State) Award 2002.

### 4. Terms of Engagement

- 4.1 All employees shall be employed as weekly, casual or part-time employees.
- 4.2 An employer shall inform each employee as to the terms of his/her employment and, in particular, whether he/she is a weekly, part-time or casual employee, employed on day and/or shift work or a combination thereof as provided for in Clause 9 - Hours of Work - Weekly employees and/or Clause 10 - Shiftwork.

#### 4.3 Secure Employment

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
  - (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
    - (1) whether the employee will convert to full-time or part-time employment; and
    - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.
  - (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
  - (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
    - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements:

- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 5. Casual Employees

- 5.1 "Casual Employee" shall mean an employee who is engaged and paid as such.
- 5.2 Subject to this clause, the hours of work shall be those prescribed by Clause 9 - Hours of work or Clause 10 - Shift work.
- 5.3 Casual employees shall be paid at an hourly rate equal to the appropriate weekly rate divided by thirty-eight or by the number of ordinary hours worked by clerical employees, other than casual and part-time employees in the establishment, whichever is the lesser, plus 20 per cent.
- 5.4 Casual employees shall be entitled to a minimum payment of four hours' work at the appropriate rate.
- 5.5 Where overtime and shift loadings are payable as provided for in Clause 10 and Clause 12, these shall be paid in addition to the rate provided for in subclause 5.3.
- 5.6 Personal Carers Entitlement for Casual Employees
- (i) Subject to the evidentiary and notice requirements in Clauses 16.2.2 and 16.2.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 16.2.3 of Clause 16 who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child
  - (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### 5.7 Bereavement Leave for Casual Employees

- (i) Subject to the evidentiary and notice requirements in Clause 17.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 16.2.3.
- (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The right of an employer to engage or not engage a casual employee are otherwise not affected.

## 6. Part-Time Employees

- 6.1 A part-time employee shall mean an employee who is employed to work regular days and regular hours, either of which are less than the number of days or hours worked by weekly clerical employees employed by the employer, but such days shall not be less than 2 per week and such hours shall not be less than 12 per week.
- 6.2 Subject to this clause, the provisions of Clause 9 - Hours of Work or Clause 10 - Shift Work shall apply to part-time employees.
- 6.3 Part-time employees shall be paid at an hourly rate equal to the appropriate weekly rate divided by thirty-eight or by the number of ordinary hours worked by clerical employees, other than casual and part-time employees, in the establishment whichever is the lesser.
- 6.4 The terms of this award shall apply pro rata to part-time employees.
- 6.5 Notwithstanding the provisions of this clause, the Union and an employer may agree, in writing, to observe other conditions in order to meet special cases.

## 7. Payment of Wages

- 7.1 Wages shall be paid weekly or fortnightly, in cash, by cheque or electronic funds transfer. Prior to its introduction the employer should discuss the implementation of fortnightly pay with the employees.
- 7.2 The minimum rates of wages per week for adult employees shall be as set out in Part B Table 1 - Monetary Rates.
- 7.3 The minimum rates of wages for junior employees shall be as set out in Part B - Monetary Rates - Table 2 - Juniors. Junior rates shall be calculated to the nearest five cents.
- 7.4 State Wage Case Adjustment

The rates of pay in this award include the adjustments payable under State Wage Case 2010. These adjustments may be offset against:

- (i) any equivalent over award payments, and/or;
- (ii) Award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.

## 8. Classification Structure - Clerical and Administrative Employees Only

NOTE: For the classification and conditions relating to Telephone Canvassers (other than for the sale of goods) see Clause 32.

All adult employees shall be graded in one of the following grades and informed accordingly in writing within 14 days of appointment to the position held by the employee and subsequent graded positions.

An employee shall be graded in the grade where the principal function of his/her employment, as determined by the employer, is of a clerical nature and is described in subclauses 8.1.1, 8.2.1, 8.3.1, 8.4.1 or 8.5.1 of this clause.

## 8.1 Grade 1

8.1.1 A Grade 1 position is described as follows

- (i) The employee may work under direct supervision with regular checking of progress.
- (ii) An employee at this grade applies knowledge and skills to a limited range of tasks. The choice of actions required is clear.
- (iii) Usually work will be performed within established routines, methods and procedures that are predictable, and which may require the exercise of limited discretion.

8.1.2 Indicative tasks of a Grade 1 position are:

Unit	Element
Information Handling	Receive and distribute incoming mail Receive and dispatch outgoing mail Collate and dispatch documents for bulk mailing File and retrieve documents
Communication	Receive and relay oral and written messages Complete simple forms
Enterprise	Identify key functions and personnel Apply office procedures
Technology	Operate office equipment appropriate to the tasks to be completed Open computer file, retrieve and copy data Close files
Organisational	Plan and organise a personal daily work routine
Team	Complete allocated tasks
Business Financial	Record petty cash transactions Prepare banking documents Prepare business source documents

## 8.2 Grade 2

8.2.1 A Grade 2 position is described as follows:

- (i) The employee may work under routine supervision with intermittent checking.
- (ii) An employee at this grade applies knowledge and skills to a range of tasks. The choice of actions required is usually clear, with limited complexity in the choice.
- (iii) Work will be performed within established routines, methods and procedures, which involve the exercise of some discretion and minor decision making.

8.2.2 Indicative tasks of a Grade 2 position are:

Unit	Element
Information Handling	Update and modify existing organisational records Remove inactive files Copy data on to standard forms

Communication	Respond to incoming telephone calls Make telephone calls Draft simple correspondence
Enterprise	Provide information from own function area Re-direct inquiries and/or take appropriate follow-up action Greet visitors and attend to their needs
Technology	Operate equipment Identify and/or rectify minor faults in equipment Edit and save information Produce document from written text using standard format Shutdown equipment
Organisational	Organise own work schedule Know roles and functions of other employees
Team	Participate in identifying tasks for team Complete own tasks Assist others to complete tasks
Business Financial	Reconcile invoices for payment to creditors Prepare statements for debtors Enter payment summaries into journals Post Journals to ledger

### 8.3 Grade 3

#### 8.3.1 A Grade 3 position is described as follows:

- (i) The employee may work under limited supervision with checking related to overall progress.
- (ii) An employee at this grade may be responsible for the work of others and may be required to co-ordinate such work.
- (iii) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. Usually work will be performed within routines, methods and procedures where some discretion and judgement is required.

#### 8.3.2 Indicative tasks of a Grade 3 position are:

Unit	Element
Information Handling	Prepare new files Identify and process inactive files Record documentation movements
Communication	Respond to telephone, oral and written requests for information Draft routine correspondence Handle sensitive inquiries with tact and discretion
Enterprise	Clarify specific needs of client/other employees Provide information and advice Follow-up on client/employee needs Clarify the nature of a verbal message Identify options for resolution and act accordingly
Technology	Maintain equipment Train others in the use of office equipment Select appropriate media Establish document structure Produce documents
Organisational	Co-ordinate own work routine with others Make and record appointments on behalf of others Make travel and accommodation bookings in line with given itinerary



Team	Clarify tasks to achieve group goals Negotiate allocation of tasks Monitor own completion of allocated tasks
Business Financial	Reconcile accounts to balance Prepare bank reconciliations Document and lodge takings at bank Receive and document payment/takings Dispatch statements to debtors Follow-up and record outstanding accounts Dispatch payments to creditors Maintain stock control records

## 8.4 Grade 4

8.4.1 A Grade 4 position is described as follows:

- (i) The employee may be required to work without supervision, with general guidance on progress and outcomes sought. Responsibility for the organisation of the work of others may be involved.
- (ii) An employee at this grade applies knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks, and the range and choice of actions required will usually be complex.
- (iii) An employee at this grade applies competencies usually applied within routines, methods and procedures where discretion and judgement is required, for both self and others.

8.4.2 Indicative tasks of a Grade 4 position are:

Unit	Element
Information Handling	Categorise files Ensure efficient distribution of files and records Maintain security of filing system Train others in the operation of the filing system Compile report Identify information source(s) inside and outside the organisation
Communication	Receive and process a request for information Identify information source(s) Compose report/correspondence
Enterprise	Provide information on current service provision and resource allocation within area of responsibility Identify trends in client requirements
Technology	Maintain storage media Devise and maintain filing system Set printer for document requirements when various set-ups are available Design document format Assist and train network users Shutdown network equipment
Organisational	Manage diary on behalf of others Assist with appointment preparation and follow up for others Organise business itinerary Make meeting arrangements Record minutes of meeting Identify credit facilities Prepare content of documentation for meetings
Team	Plan work for the team Allocate tasks to members of the team Provide training for team members

Business Financial	Prepare financial reports Draft financial forecasts/budgets Undertake and document costing procedures
--------------------	---

## 8.5 Grade 5

8.5.1 A Grade 5 position is described as follows:

- (i) The employee may be supervised by professional staff and may be responsible for the planning and management and evaluation of the work of others.
- (ii) An employee at this grade applies knowledge with substantial depth in some areas, and a range of skills, which may be varied or highly specific. The employee may receive assistance with specific problems.
- (iii) An employee at this grade applies knowledge and skills independently and non-routinely. Judgement and initiative are required.

8.5.2 Indicative tasks of a Grade 5 position are:

Unit	Element
Information Handling	Implement new/improved system Update incoming publications Circulate publications Identify information source(s) inside and outside the organisation
Communication	Obtain data from external sources Produce report Identify need for documents and/or research
Enterprise	Assist with the development of options for future strategies Assist with planning to match future requirements with resource allocation
Technology	Establish and maintain a small network Identify document requirements Determine presentation and format of document and produce it
Organisational	Organise meetings Plan and organise conference
Team	Draft job vacancy advertisement Assist in the selection of staff Plan and allocate work for the team Monitor team performance Organise training for team
Business Financial	Administer PAYE salary records Process payment of wages and salaries Prepare payroll data

## 8.6 List of Employees Graded

An employer shall keep a list of employees and the grade in which they are employed pursuant to 4.1, and each employee shall be notified in writing within 14 days of appointment to that and subsequent graded positions.

### 9. Hours of Work - Weekly Employees

9.1 Subject to paragraph 9.2 the ordinary hours of work exclusive of meal hours shall not exceed an average of 38 hours per week and except as provided in Clause 10 - Shift Work, shall be worked between the hours of 6:00am and 7:00pm, Monday to Friday inclusive, and between the hours of 6:00am and 12:00 noon on a Saturday and shall be worked in one of the following ways:

- (i) on 19 days over a 4-week cycle; or

- (ii) on 10 days over a 2-week cycle; or
- (iii) on 5 days in any week; or
- (iv) on 5 and one-half days in any week; or
- (v) where the employer and employee agree, rostered days off, which occur as a result of employees working in accordance with the provisions of this subclause, may accumulate to a maximum of 5 days. These accumulated days may be taken at any time mutually agreed between the employer and employee and shall be taken within six months of accrual.

Notwithstanding any other provision of this award the ordinary hours of work prescribed herein may be worked up to 10 hours on any day. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day but no more than 10, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned.

9.2 An employer shall adopt working hours other than a 5½ day week in any case in which the ordinary week's work of 38 hours can be performed as aforesaid without:

- (i) detriment to the public interest;
- (ii) loss in the value of goods handled or to be handled;
- (iii) reducing the efficiency of production; or
- (iv) reducing the efficiency of the necessary services

and provided that a majority of the employees in such establishment desire to work their ordinary hours in other than five and a half days as aforesaid. Any dispute as to whether the ordinary hours of work can in any case or cases be worked in other than 5½ days without detriment, loss or reduction as aforesaid shall be determined by the Industrial Relations Commission of New South Wales or the Clerks (State) Conciliation Committee upon application made by or on behalf of the employees. Upon such an application, proof of such detriment, loss or reduction as aforesaid shall be upon the employer.

It is a condition of the allowing of a 19 day/4 week cycle, a 10 day/2 week cycle or a 5 day week that, if required, employees shall comply with the reasonable and lawful orders of the employer as to working overtime including working of overtime on Saturday.

9.3 Where a 19 day/4 week cycle is worked, the ordinary hours of work shall not exceed 8 hours per day, Monday to Friday inclusive, between the hours of 6:00am and 7:00pm.

9.4 Where a 10 day/2 week cycle is worked, the ordinary hours of work shall not exceed 8 hours per day, Monday to Friday, on 9 days of the cycle and 4 hours on any one day of the cycle, between the hours of 6:00am and 7:00pm.

9.5 Where a 5 day week is worked the ordinary hours of work shall be worked between the hours of 6:00am and 7:00pm, Monday to Friday inclusive, such that either:

- (i) the ordinary hours of work on 4 days of any one week shall not exceed 8 hours and on one day of the week shall not exceed 6 hours; or
- (ii) the ordinary hours of work on each day of the week shall not exceed 7 hours and 36 minutes.

9.6 Where a 5½ day week is worked the ordinary hours of work shall be worked so that they shall not exceed 6 hours and 48 minutes per day, Monday to Friday inclusive, and 4 hours on Saturday.

- 9.7 The starting time when once fixed in accordance with this subclause shall not be altered without seven days' notice being given by the employer to the employees. However, in an emergency, an employer and an employee may agree to change such employee's commencing and ceasing times with less than seven days' notice; provided that the employee shall be entitled to have the union delegate present when such matters are discussed.
- 9.8 Meal Breaks
- 9.8.1 Employees whose ordinary working hours fall between 6.00 a.m. and 7.00 p.m. Monday to Sunday inclusive shall be allowed a meal break of not less than thirty minutes nor more than one hour between the hours of 11.00 a.m. and 2.30p.m.
- 9.8.2 Provided that for ordinary time worked between 6.00am and 6.00pm Saturday or Sunday, an employer and employee may agree to observe the twenty minute paid meal break provided for in clause 10.3.8 of this award in lieu of the unpaid meal break provided for in clause 9.8.1 above.
- 9.8.3 An employee shall not be required to work more than five hours without a break for a meal, except in the following circumstances where up to six hours may be worked without a break for a meal:
- (i) Where employees are working in accordance with subclause 9.5(i); or
  - (ii) where a casual employee or a part-time employee is engaged to work no more than six hours in any one day.
- 9.8.4 The employer and employee may, by mutual agreement, alter the commencing time of the lunch break.
- 9.9 Saturday Loadings
- 9.9.1 For each Saturday a weekly employee works ordinary hours of work as part of a 5 ½ day week as provided in clause 9.1(iv), he/she shall be paid the amounts set out in Item 1 of Table 4 - Other Rates and Allowances, of Part B, Monetary Rates, by way of a fixed loading in addition to the appropriate pay.
- 9.9.2 Such amounts shall not be taken into consideration in calculating any payments for overtime or public holidays or for any periods of long service leave or sick leave.
- 9.10 6pm to 7pm Loading
- 9.10.1 Where an employee is rostered to work between 6pm and 7pm, she/he shall be paid an additional loading of 17% of the appropriate hourly rate of pay for the hour worked.
- 9.10.2 Such amounts shall not be taken into consideration in calculating any additional payments for overtime or public holidays or for any periods of long service leave or sick leave.

## **10. Hours of Work - Shift Workers**

### 10.1 Definitions

An employee who works day work may also perform shift work or a combination of day and shift work.

- 10.1.1 A "shift worker" means an employee whose ordinary hours of work include any of the shifts defined in paragraph 10.2.
- 10.1.2 "Seven-day shift worker" means an employee who is rostered to work regularly on Sundays and public holidays.

## 10.2 Shifts

- 10.2.1 "Afternoon shift" means any shift finishing after 7:00pm and at or before 11:00pm provided that where the majority of employees in an establishment finish afternoon shift at a later time, up to 12 midnight, clerical employees may be required to work the same hours.
- 10.2.2 "Night shift" means any shift starting at or after 11:00pm and at or before 5:00am or finishing subsequent to 11:00pm and at or before 6:00am.
- 10.2.3 "Permanent night shift" means a night shift which does not rotate with another shift or shifts or day work and which continues for a period of not less than four consecutive weeks.
- 10.2.4 "Early Morning shift" applies to an employee whose ordinary hours on a regular shift commence between 5:00am and 6:00am except where such a shift is part of a shift system and preceding an afternoon shift finishing at 11:00pm.
- 10.2.5 "Saturday shift" means all ordinary time worked on a Saturday in accordance with the defined shifts in clauses 10.2.1 to 10.2.4 above, or between the hours of 6.00am and 6.00pm, except that worked between 6am and noon by a weekly employee in accordance with Clause 9.1(iv).
- 10.2.6 "Sunday shift" means all ordinary time worked on a Sunday in accordance with the defined shifts in clauses 10.2.1 to 10.2.4 above, or between the hours of 6.00am and 6.00pm.

## 10.3 Hours, Shift Allowances, Special Rates, Meal Interval

- 10.3.1 Notwithstanding any other provisions of this award and subject to the provisions of subclause 10.1, an employee may be employed upon shifts, in which case the ordinary hours shall not exceed eight in any consecutive twenty-four; or forty per week; or eighty in fourteen consecutive days; or one hundred and fifty-two in any twenty-eight consecutive days.

Provided that the ordinary hours of work prescribed herein may be worked up to 10 hours on any day. In any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day but not more than 10, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned. In addition the arrangement shall average 38 hours per week over the shift cycle.

- 10.3.2 Times of beginning and ending the shift of any employee may in any case be varied by agreement between the employer and the employee or in the absence of agreement may be varied by at least one week's notice given by the employer to the employee.
- 10.3.3 A shift worker employed on shift shall for work done during the ordinary hours of any such shift be paid ordinary rates prescribed by Clause 7 - Payment of Wages, plus the following additional percentage of the graded rate of pay applicable .

Afternoon shift	at the rate of 17 per cent
Night shift	at the rate of 20 per cent
Permanent night shift	at the rate of 26 per cent
Early morning shift	at the rate of 10 per cent

Allowances in accordance with this clause shall be calculated in multiples of 10 cents, amounts of less than 5 cents being taken to the lower multiple and amounts of 5 cents or more being taken to the higher multiple.

10.3.4 Juniors - Junior employees working Shift Work shall be paid as follows:

- (i) A junior who is equivalent to Grade 3 or higher, shall be paid the additional percentage of the Grade 3, Adult Rate.
- (ii) All other junior employees shall be paid the additional percentage of the Grade 1, Adult Rate.

10.3.5 A shift worker whose rostered day off coincides with a public holiday shall be paid a day's pay additional to his/her weekly wage, or have a day added to his/her annual leave.

10.3.6 A shift worker whose ordinary working period includes a Saturday, Sunday or holiday as an ordinary working day shall be paid:

Saturday	time and one-half
Sunday	time and three-quarters
Holidays	double time and one-half

10.3.7 Where ordinary shift hours commenced between 11:00pm and midnight on a Sunday or holiday, the ordinary time worked before midnight shall not entitle the shift worker to the Sunday or holiday rate. Provided that the ordinary time worked by a shift worker on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as ordinary time worked on such Sunday or holiday.

10.3.8 At least twenty minutes shall be allowed to a night shift, afternoon shift or early morning shift worker for a meal during each shift before the expiration of five hours. Such meal break shall be counted as time worked.

#### 10.4 Overtime

10.4.1 All time worked by a shift worker in excess of the hours provided in 10.3.1 shall be paid time and one-half for the first two hours and double time thereafter. In computing overtime, each day shall stand-alone.

10.4.2 A shift worker required to work overtime in excess of one hour on any shift shall be paid meal money, as set in Item 2 of Table 2 - Other Rates and Allowances of Part B - Monetary Rates. If overtime exceeds five hours on any shift a further meal allowance of the same amount shall be paid.

#### 10.5 Work on a Rostered Day Off

10.5.1 An employee required to work on a rostered day off shall be paid the rate prescribed in subclause 10.4 except for time worked on Sundays, which shall be paid for at the rate of double time and time worked on public holidays, which shall be paid for at the rate of double time and one-half.

10.5.2 Where work is performed as prescribed in paragraph 10.4.1 on a Sunday or a holiday, such employee shall be paid a minimum of four hours at the appropriate rate.

#### 10.6 Special Rates Not Cumulative

10.6.1 The penalties herein prescribed are in substitution for and not cumulative upon the shift allowances prescribed in 10.3.

#### 10.7 Casual and Part-Time Shift Workers

10.7.1 Casual and part-time shift workers shall receive the allowances prescribed in paragraph 10.3.3 and 10.3.6.

## 10.8 Restrictions on Shift Work

- 10.8.1 No employee under 18 years of age shall be employed on night, afternoon or early morning shifts.
- 10.8.2 Employees under 21 years of age shall not be employed on the night shift, except employees not younger than 19 years of age whilst working on a training programme. The restriction on night shift shall not apply in these cases.

## 11. Sundays and Public Holidays

- 11.1 New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day, Boxing Day and an additional day's holiday to be observed pursuant to subclause 11.2, and any other day gazetted as a public holiday for the State shall be holidays for the purposes of this award.
- 11.2 In addition to the holidays specified in 11.1, an employee shall be entitled to one additional day as a holiday in each calendar year. Such additional holiday shall be observed on the day when the majority of employees in an establishment observe a day as an additional holiday or on another day mutually agreed between the employer and employee. The additional holiday is not cumulative and must be taken within each calendar year.
- 11.3 Any dispute concerning the day on which an additional holiday is to be taken by an employee may be referred to the Industrial Committee.
- 11.4 No deductions shall be made from the wages of weekly or part-time employees for the week in which any of the holidays, referred to in 11.1 of this clause, fall.
- 11.5 For work done on any of the holidays, referred to in subclause 11.1 of this clause, an employee shall be paid double time and one-half and shall be paid for a minimum of four hours' work.
- 11.6 For overtime performed on a Sunday an employee shall be paid double time with a minimum payment of four hours.
- 11.7 Where an employee is absent on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday.

## 12. Overtime

- 12.1 All time worked outside the ordinary hours of work prescribed by Clause 9 or 10 of this award, shall be overtime and shall be paid for at the rate of time and one-half for the first two hours and double time thereafter. Provided that overtime at the rate of double time shall be paid for all time worked after 12:00 noon on a Saturday. In calculating overtime each day's work shall stand alone.
- 12.2 When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days. An employee, other than a casual employee, who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had ten consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues work without having had such ten consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she then shall be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 12.3 Notwithstanding anything contained in Clause 9 - Hours, and subclause 12.1, employees whose fixed hours of employment are less than thirty-eight hours per week, may be worked without the payment of

overtime up to two hours after the fixed finishing time on any one day, on not more than four days in any calendar month, or eight days in any two consecutive calendar months; provided that, in any case, an employee shall not be required to work more than nine hours in any one day nor more than thirty-eight hours in any one week without the payment of overtime provided further that such nine hours shall be worked between 6:00am and 7:00pm Monday to Friday, inclusive.

12.4 In computing overtime any portion of an hour of less than thirty minutes shall be reckoned as thirty minutes and any portion in excess of thirty minutes shall be reckoned as one hour.

#### 12.5 Reasonable Overtime

12.5.1 Subject to Clause 12.5.2 an employer may require an employee to work reasonable overtime at overtime rates.

12.5.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

12.5.3 For the purposes of Clause 12.5.2 what is unreasonable or otherwise will be determined having regard to:

- (i) Any risk to employee health and safety;
- (ii) The employee's personal circumstances including any family and carer responsibilities;
- (iii) The needs of the workplace or enterprise;
- (iv) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (v) Any other relevant matter.

#### 12.6 Time Off in Lieu of Payment for Overtime

12.6.1 An employee may elect, with consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within twelve months of this election.

12.6.2 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.

12.6.3 If, having elected to take time off as leave in accordance with subclause 12.6.1 above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve (12) month period or on termination.

12.6.4 Where no election is made in accordance with subclause 12.6.1 the employee shall be paid overtime rates in accordance with the award.

### **13. Allowances and Expenses**

#### 13.1 Meal Allowance

An employee working overtime shall be paid a meal allowance as set out in Table 4 - Other Rates and Allowances of Part B - Monetary Rates in any of the following circumstances:

Employees other than shift workers:

When required to work beyond 7:00pm.

If overtime continues beyond 10:00pm - a further allowance.



Shift workers:

When required to work overtime in excess of one hour on any shift

If overtime exceeds five hours on any shift - a further allowance.

Where the union agrees, an employer may supply employees with a suitable meal in which case the allowance shall not be payable.

### 13.2 Higher Duties

An employee, when required to perform any of the duties in a classification higher than their usual classification in the absence of the employee normally exercising such duties or when required to perform such duties on a temporary basis, shall be paid at least the rate which would be applicable if such duties were performed on a permanent basis; provided that this clause shall not apply when the time period is less than one day.

### 13.3 Finishing At Night

When an employee, working overtime, finishes work at a time when the usual means of transport are not available, then the employer shall:

- (i) provide transport or shall pay the employee at his/her ordinary rate for the time taken to reach home; or
- (ii) pay the employee any additional expense incurred in reaching his/her home by reasonable means of transport.

### 13.4 Travelling Expenses

13.4.1 An employee who, in the course of his/her duty, is required to go to any place away from their usual place of employment, shall be paid all reasonable expenses actually incurred.

13.4.2 When an employee, in the course of his/her duty, is required other than in ordinary working hours to go to any place away from his/her usual place of employment he/she shall be paid all reasonable expenses actually incurred and in addition shall be paid at the ordinary rates for half of any time occupied in travelling outside ordinary working hours which is in excess of the time normally occupied by him/her in travelling from his/her home to his/her usual place of employment.

### 13.5 Car Allowance

Any employee required to provide a car shall be paid the weekly allowances as set out in Table 4 - Other Rates and Allowances of Part B - Monetary Rates.

Where an employee is required to use his/her car by his/her employer on a casual or incidental basis, he/she shall be paid the allowance as set out in Item 5 of Table 4 of Part B - Monetary Rates per kilometre travelled, during such use.

If the employer provides a vehicle he/she shall pay the whole of the cost of the upkeep, registration, insurance, maintenance and running expenses.

### 13.6 Uniforms

Where an employee is required or encouraged by the employer to wear a distinctive uniform, coat, overall or dress, this shall be supplied by the employer, free of charge, to the employee. Where the nature of the work performed by the employee requires the provision of protective clothing this shall be supplied by the employer, free of charge, to the employee. Such uniform or other clothing shall remain

the property of the employer and thereof shall be returned to the employer in the event of the termination of the employment.

#### 13.7 First-Aid Allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first-aid qualifications, such as a certificate from the St. John's Ambulance or similar body shall be paid a weekly allowance as set out in Item 6 of Table 4 - Other Rates and Allowances of Part B - Monetary Rates if the employee is appointed by an employer to perform first-aid duty.

### 14. Annual Leave

#### 14.1 Entitlement:

14.1.1 Employees other than seven-day shift workers: See *Annual Holidays Act* 1944 ("the Act").

14.1.2 In addition to the leave provided for by subclause 14.1.1, seven-day shift workers, that is, shift workers who are rostered to work regularly on Sundays and holidays, shall be allowed one week's leave; provided that if during the year of employment an employee has served for only a portion of it as a seven-day shift worker, the additional leave shall be one day for every thirty-six ordinary shifts worked as a seven-day shift worker. In this subclause reference to one week and one day shall include holidays and non-working days.

#### 14.2 Annual Leave Loading

14.2.1 Before an employee is given and takes his/her annual holiday, or, where by agreement between the employer and employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods, the employer shall pay his/her employee a loading determined in accordance with this clause.

(NOTE: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see 14.2.4.)

14.2.2 The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act and this award.

14.2.3 The loading is to be calculated in relation to any period of annual holiday to which the employee becomes entitled under the Act and this award, or, where such a holiday is given and taken in separate periods then in relation to each such separate period.

(NOTE: See 14.2.5 as to holidays taken wholly or partly in advance.)

14.2.4 The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause 14.4 at the rate per week of 17½ per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his/her annual holiday, but shall not include the amount prescribed in 9.9.1 of this award, or any other allowances, penalty rates, shift allowances, overtime or any other payments prescribed by this award.

14.2.5 No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such employee continues until the day when he/she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with 14.2.4 applying the award rates of wages payable on that day. This subclause applies where an annual holiday has been taken wholly or partly in advance.

- 14.2.6 Where, in accordance with the Act, the employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned:
- (i) an employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with 14.2.4;
  - (i) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him/her under the Act, such proportion of the loading that would have been payable to him/her under this clause if he/she had become entitled to an annual holiday prior to the close-down as his/her qualifying period of employment in completed weeks bears to 52.
- 14.2.7
- (i) Where the employment of an employee is terminated by the employer, for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, the employee shall be paid a loading calculated in accordance with 14.2.3 for the period not taken.
  - (ii) Except as provided in 14.2.7(i), no loading is payable on the termination of an employee's employment.
- 14.2.8 This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker, if he/she had not been on holiday; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

### 15. Sick Leave

- 15.1 This clause shall not apply to employees covered by the Clerical and Administrative Employees (Catholic Personal/Carer's Leave) (State) Award
- 15.2 Weekly employees shall, subject to the production of a medical certificate or other evidence satisfactory to the employer (which may include a statutory declaration) be entitled to five days' sick leave during the first year of service and eight days during the second and subsequent years of service on full pay: Provided that a statutory declaration shall be sufficient proof of sickness in respect of the first two single days' absence of an employee in any year.
- 15.3 Provided further that where an employee works more than eight ordinary hours in any day, the employee shall not be entitled to leave in excess of 38 hours of ordinary working time in the first year of service and 60.8 hours of ordinary working time in the second and subsequent years of service.
- 15.4 The employee shall, wherever practicable, before the commencement of absence, inform the employer of such employee's inability to attend for duty and, as far as possible, state the nature of the injury or illness and the estimated duration of the absence.
- 15.5 Where an employee does not notify the employer of the employee's inability to attend for duty prior to the commencement of the absence the employee shall produce a medical certificate or the said employee shall not be entitled to payment for the first eight hours of such absence.

(NOTE: An employee's entitlement to sick leave in accordance with 15.2 shall not be reduced as a consequence of the operation of this paragraph.)

- 15.6 The payment for any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the employer until the employee completes such three months of employment at which time the payment shall be made.
- 15.7 An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to worker's compensation, provided, however, that an employer shall pay to an employee who has sick leave entitlement under this clause, the difference between the amount received as workers' compensation, and full pay. If an employer pays such difference, the employee's sick leave entitlement under this clause shall for each week during which such difference is paid be proportionately reduced.
- 15.8 If the full period of sick leave is not taken in any year, the whole or any untaken portion shall be cumulative from year to year provided that an employer shall not be bound to credit an employee for sick leave which accrued more than twelve years before the end of the last completed year of service.
- 15.9 Part-time employees shall, subject to the provisions of this clause, be entitled to a proportionate amount of sick leave. The amount of sick leave to which a part-time employee is entitled in any year shall bear the same ratio to sick leave prescribed during that year of service for weekly employees, as the part-time employee's normal ordinary hours of work for a week during such year would have borne to the number of ordinary hours worked by weekly clerical employees in the section or department in which the part-time employee is employed.
- 15.10 Service with the employer before the date of coming into operation of this award shall be counted as service for the purpose of this clause.
- 15.11 If an award holiday occurs during an employee's absence on sick leave then such award holiday shall not be counted as sick leave.

#### **16. Personal/Carer's Leave**

- 16.1 This clause shall not apply to employees covered by the Clerical and Administrative Employees (Catholic Personal/Carer's Leave) (State) Award
- 16.2 Use of Sick Leave

16.2.1 An employee other than a casual employee, with responsibilities in relation to a class of person set out in 16.2.3(ii) who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for at Clause 15 of the award, for absences to provide care support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

16.2.2 The employee shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

16.2.3 The entitlement to use sick leave in accordance with this subclause is subject to:

- (i) the employee being responsible for the care and support of the person concerned; and
- (ii) the person concerned being:

- (1) a spouse of the employee; or
- (2) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (3) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (5) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
  - (a) "relative" means a person related by blood, marriage or affinity;
  - (b) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (c) "household" means a family group living in the same domestic dwelling.

16.2.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

NOTE: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and the employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 42 should be followed.

### 16.3 Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in 16.2.3(ii) above who is ill or who requires care due to unexpected emergency.

### 16.4 Annual Leave

16.4.1 An employee may elect with the consent of the employer, to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

16.4.2 Access to annual leave as prescribed in 16.4.1 shall be exclusive of any shutdown period provided for elsewhere under this award.

16.4.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

16.4.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

### 16.5 Make-Up Time

16.5.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

16.5.2 An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

### 16.6 Rostered Days Off

16.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.

16.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

16.6.3 Where the employer and employee agree, rostered days off may be accumulated which occur as a result of employees working in accordance with the provisions of this subclause. These accumulated days may be taken at any time mutually agreed between the employer and the employee.

16.6.4 This subclause is subject to the employer informing the union if it has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

## 17. Bereavement Leave

17.1 An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death in Australia of a person prescribed in 16.2.3(ii). Where the death of a person as prescribed by 16.2.3(ii) occurs outside Australia the employee shall be entitled to two days bereavement leave where such employee travels outside Australia to attend the funeral.

17.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide, to the satisfaction of the employer, proof of death.

17.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in 16.2.3(ii), provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

17.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.

17.5 Bereavement leave may be taken in conjunction with other leave available under Clause 16. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

## 18. Parental Leave

18.1 Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

18.2 An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- 18.2.1 the employee or employee's spouse is pregnant; or
- 18.2.2 the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

### 18.3 Right to Request

- 18.3.1 An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
  - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
  - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- 18.3.2 The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- 18.3.3 Employee's request and the employer's decision to be in writing.

The employee's request and the employer's decision made under 18.3.1(ii) and (iii) must be recorded in writing.

- 18.3.4 Request to return to work part-time

Where an employee wishes to make a request under 18.3.1(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

### 18.4 Communication During Parental Leave

- 18.4.1 Where an employee is on parental leave and a definite decision has been made to introduce significant changes at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- 18.4.2 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- 18.4.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with Clause 18.4.1.

### 19. Jury Service

- 19.1 An employee on weekly hiring required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wage he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.
- 19.2 An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service. Further, the employee shall give his/her employer proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.

### 20. Superannuation

- 20.1 Superannuation Legislation The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993* and s124 of the *Industrial Relations Act 1996* (NSW). This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- 20.2 Subject to the requirements of this legislation, superannuation contributions must be made to:
- (i) CARE (Clerical Administrative and Retail Employees Superannuation Plan); or
  - (ii) ASSET (Australian Superannuation Savings Employment Trust); or
  - (iii) any industry or multi-employer superannuation fund which has application to the employees in the main business of the employer where employees covered by this award are a minority of award covered employees, provided that such fund complies with the Occupational Superannuation Guidelines and has joint employer/union management such as A.R.F. (Australian Retirement Fund), L.I.S.T. (Law Industry Superannuation Trust), M.T.A.A.I.S.F. (Motor Traders' Association of Australia Industry Superannuation Fund), P.I.S.F. (Printing Industry Superannuation Fund), R.E.S.T. (Retail Employees Superannuation Trust), S.T.A. (Superannuation Trust of Australia) and T.I.S.S. (Timber Industry Superannuation Scheme); or
  - (iv) any superannuation fund which has application to the employees in the main business of the employer, pursuant to a superannuation arrangement approved by an industrial tribunal prior to 18 July 1989, and where employees covered by this award are a minority of award covered employees. Where freedom of choice is provided for in such arrangement the principle of that provision shall apply and wherever practicable CARE shall be included in such choice; or
  - (v) any superannuation fund which improves or provides superannuation to employees covered by this clause provided that the employer commenced contributions to such fund prior to 14th February, 1992; or
  - (vi) such other funds that comply with the requirements of this legislation; or
  - (vii) any other approved occupational superannuation fund to which an employer or employee who is a member of the religious fellowship known as The Brethren elects to contribute.

### 21. Union Notice Board

- 21.1 Each employer shall permit the union to display notices dealing with legitimate union business on notice boards provided that such notices are authorised by an accredited union representative. Any such notice not so authorised may be removed by the accredited union representative or the employer.



## 22. Award Display

- 22.1 A copy of this award shall be exhibited and kept exhibited in accordance with the provisions of the *Industrial Relations Act 1996*.

## 23. Deduction of Union Membership Fees

- 23.1 The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
- (i) the employee has authorised the employer to make such deductions in accordance with this clause;
  - (ii) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount.
  - (iii) deduction of Union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (iv) there shall be no requirement to make deductions for casual employees with less than two (2) months' service (continuous or otherwise).
- 23.2 The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 23.3 Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to the employee's membership account, provided that:
- (i) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to 5 per cent of the money deducted; and
  - (ii) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- 23.4 Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- 23.5 The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the employer a minimum of two month's notice of any such change.
- 23.6 An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- 23.7 Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the Union's rules, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of Union membership fees to cease.

## 24. Labour Flexibility

- 24.1 For the purpose of increasing productivity and flexibility, as well as enhancing career opportunities for employees, multi-skilling may extend by agreement between an employer and an employee to allow the employee to perform any work in an enterprise within the scope of his/her skills and competence.
- 24.2 Discussion shall take place at the enterprise with a view to reaching agreement for employees to perform a wider range of tasks, removal of demarcation barriers and participation of employees in additional training.
- 24.3 Notwithstanding the provisions of 24.2, employees shall perform a wider range of duties including work, which is incidental or peripheral to their main tasks or functions.
- 24.4 Employees shall perform such work as is reasonable and lawfully required of them by the employer, including accepting instruction from authorised personnel.
- 24.5 Employees shall comply with all reasonable requests to transfer or to perform any work provided for by the award.
- 24.6 Employees shall take all reasonable steps to ensure the quality, accuracy and completion of any job or task assigned to the employee.
- 24.7 Employees shall not impose or continue to enforce existing demarcation barriers between the work covered by this Award provided that it is agreed that the work lies within the scope of the skill and competence of the employee concerned.
- 24.8 Employees shall not unreasonably impose any limitation or continue to enforce any limitations on supervisors or technical personnel demonstrating the use of new equipment or machinery: Provided that the appropriate consultation in relation to the introduction of new technology has taken place.
- 24.9 Employees shall not impose any restrictions or limitations on the measurement and/or review of work methods or standard work times: Provided that appropriate consultation between employer and employees has taken place.

## 25. Training

- 25.1 The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required. Accordingly the parties commit themselves to:
- (i) developing a more highly skilled and flexible workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills required.
- 25.2 Following consultation with employees an employer should develop a training programme consistent with:
- (i) the current and future skill needs of the plant or enterprise;
  - (ii) the size, structure and nature of the operations of the enterprise;
  - (iii) the need to develop vocational skills relevant to the enterprise through courses conducted on-the-job or by accredited institutions and providers.

- 25.3 In developing a training programme the employer should:
- (i) disseminate information on the training program and the availability of training courses and career opportunities to employees;
  - (ii) monitor and advise on the on-going effectiveness of the training;
  - (iii) make suggestions on the specific training needs.
- 25.4 If training is undertaken at the employer's request during ordinary working hours the employee concerned shall not suffer any loss of ordinary pay.
- 25.5 Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress.
- 25.6 Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.
- 25.7 Employees should undertake such training and retraining as required by the employer.

## **26. Enterprise Consultative Mechanism**

- 26.1 Enterprises shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

## **27. Termination of Engagement**

- 27.1 The employment of a weekly or part-time employee may be terminated only by one week's notice on either side which may be given at any time or by the payment by the employer or forfeiture by the employee of a week's pay in lieu of notice. This shall not affect the right of the employer to dismiss an employee without notice in the case of an employee guilty of misconduct.
- 27.2 An employee with more than two months' service on leaving or being discharged shall, upon request, be given a reference or certificate of service in writing. Such reference or certificate of service shall at least contain information as to the length and nature of the employment of the employee. It shall be the property of the employee and shall be returned to him/her unnoted by a subsequent employer within seven days of the engagement.
- 27.3 On termination the employer shall pay all monies due to the employee. Such monies shall be paid during the employee's working hours on the day of termination by cash, cheque or Electronic Funds Transfer or posted by pre-paid registered post to the employee on the next working day; provided that an employee may elect to return to collect any monies outstanding to the employee on the next working day.
- 27.4 Where an employee is required to wait beyond the employee's ordinary ceasing time for payment of weekly or fortnightly wages or termination payment and such waiting time exceeds fifteen minutes, the employee shall be paid at ordinary rates for the full period during which such employee is required to wait, except where such waiting time is occasioned by reasons beyond the control of the employer.

## **28. Redundancy**

- 28.1 Application
- 28.1.1 This clause shall apply in respect of full-time and part-time employees.
  - 28.1.2 This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.

28.1.3 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.

28.1.4 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, trainees or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

## 28.2 Introduction of Change

### 28.2.1 Employer's duty to notify

- (1) 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 employee who may be affected by the proposed changes and the union to which they belong.
- (2) '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, promotion 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.

### 28.2.2 Employer's duty to discuss change

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (a) above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in paragraph (a) of this clause.
- (3) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## 28.3 Redundancy

### 28.3.1 Discussions before terminations

- (1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to 28.2.1(1), and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.

- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of 28.3.1(1) and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (3) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## 28.4 Termination of Employment

### 28.4.1 Notice for changes in production, programme, organisation or structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "production", "programme", "organisation" or "structure" in accordance with 28.3.1(1):

- (1) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (2) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

### 28.4.2 Notice for technological change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with 28.3.1(1):

- (1) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.
- (2) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

## 28.4.3 Time off during the notice period

- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
- (2) 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.

## 28.4.4 Employee leaving during the notice period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.

## 28.4.5 Statement of employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

## 28.4.6 Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## 28.4.7 Centrelink Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

## 28.4.8 Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause above, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.

## 28.5 Severance Pay

28.5.1 Where an employee is to be terminated pursuant to subclause 28.4 of this award, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

- (1) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil

1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (2) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (3) 'Weeks pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

#### 28.5.2 Incapacity to pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in 28.5.1.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in 28.5.1 will have on the employer.

#### 28.5.3 Alternative employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in 28.5.1 if the employer obtains acceptable alternative employment for an employee.

#### 28.6 Savings Clause

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### 29. Exemptions

#### 29.1 Except as to the provisions of:

Clause 2 - Anti Discrimination

subclauses 11.1, 11.2, 11.4 and 11.5, Sundays and Public Holidays,

Clause 14 - Annual Leave,

Clause 33 - Other Legislation,

Clause 15 - Sick Leave,

subclauses 16.1, 16.2, 16.3 and 16.4, Personal/Carer's Leave

Clause 17 - Bereavement Leave

Clause 19 - Jury Service

Clause 20 - Superannuation

Clause 28 - Redundancy

Clause 30 - Salary Packaging,

this award shall not apply to employees employed by the week who are in receipt of a weekly wage in excess of 15% above the rate set out in Table 1 - Wages of Part B, Monetary Rates for the highest grade in this award; provided that the wage is not inclusive of overtime payments and/or shift allowances due to the employee under this award.

- 29.2 The exemption rate shall be calculated in multiples of one dollar, amounts of less than 50 cents being taken to the lower multiple and amounts of 50 cents or more being taken to the higher multiple.

### **30. Salary Packaging**

- 30.1 Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- 30.2 Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- 30.3 The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
- (i) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
  - (ii) the employee will be given the opportunity by the employer to seek independent advice including advice from the union prior to entering into any salary packaging agreement;
  - (iii) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
  - (iv) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
  - (v) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
  - (vi) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
    - (a) The ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or



- (b) The applicable rate specified in Table 1 - Wages of Part B - Monetary Rates of this Award;
- (vii) notwithstanding any of the above arrangements, the employer of employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (viii) the calculation of entitlements concerning occupational superannuation and annual leave loading on annual leave pursuant to Clause 14.2 - Annual Leave Loadings, will be based on the ordinary time rate of pay that the employee would have received in the absence of the salary packaging arrangement;
- (ix) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

### **31. Dispute Avoidance and Grievance Procedure**

The procedure for the resolution of grievances and industrial disputation concerning matters arising under this award shall be in accordance with the following procedural steps:

#### **31.1 Procedure relating to grievance of an individual employee**

- 31.1.1 The employee shall notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- 31.1.2 The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 31.1.3 Reasonable time limits must be allowed for discussion at each level of authority. Initial discussions should be held within two working days wherever possible.
- 31.1.4 At the conclusion of the discussion, the employer must provide a response to the employees' grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- 31.1.5 While a procedure is being followed, normal work must continue.
- 31.1.6 The employer may be represented by an Industrial Organisation of Employers and the employee may be represented by the Union for the purpose of each procedure.
- 31.1.7 if the dispute relates to issues of training in relation to a trainee then the matter may be referred to the NSW Commissioner for Vocational Training in accordance with the *Apprenticeship and Training Act 2001*

#### **31.2 Procedure for a Dispute Between an Employer and the Employees**

- 31.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 31.2.2 Reasonable time levels must be allowed for discussion at each level of authority. Initial discussions should be held within two working days wherever possible.
- 31.2.3 While a procedure is being followed, normal work must continue.
- 31.2.4 The employer may be represented by an Industrial Organisation of Employers and the employee may be represented by the Union for the purpose of each procedure.

- 31.2.5 Subject to the *Industrial Relations Act* 1996, in the event that a dispute cannot be settled by the above procedures, the Commission may be notified of an industrial dispute for the purpose of resolving the dispute.

### **32. Telephone Canvassers (Other Than for the Sale of Goods)**

- 32.1 This clause shall apply to telephone canvassers (other than for the sale of goods).

#### **32.2 Full-Time Telephone Canvassers**

- 32.2.1 A full-time telephone canvasser is a telephone canvasser who works 38 hours per week.
- 32.2.2 The minimum rates of wages per week for full-time telephone canvassers shall be as set out in of Table 3 - Wages of Part B - Monetary Rates.

#### **32.3 Part-Time Telephone Canvassers**

- 32.3.1 A part-time telephone canvasser is a telephone canvasser who works a fewer number of hours than constitutes full-time work under this clause. Part-time employment may be limited to a specified period or periods of part-time employment, but need not be so limited.
- 32.3.2 A part-time telephone canvasser shall be paid at an hourly rate as set out in (iv) of Table 1 - Wages of Part B - Monetary Rates, equal to the appropriate weekly rate of pay for a full-time telephone canvasser divided by 38.

#### **32.4 Casual Telephone Canvassers**

- 32.4.1 A casual telephone canvasser is a telephone canvasser who is engaged and paid as such.
- 32.4.2 A casual telephone canvasser shall be paid an hourly rate as set out in Table 3 - Wages of Part B - Monetary Rates, equal to the appropriate weekly rate of pay for a full-time telephone canvasser divided by 38 plus 20% loading. This loading compensates casual telephone canvassers for entitlements and benefits otherwise available to full-time employees, including sick leave, annual leave, personal/carers leave, etc.

To be clear, this loading is inclusive of the 1/12th annual leave payment arising under the *Annual Holidays Act* 1944 (NSW) which would otherwise be payable to casual employees.

#### **32.5 Commission Payments**

- 32.5.1 This clause applies to full-time, part-time and casual telephone canvassers.
- 32.5.2 Commission payments may be made to a telephone canvasser in addition to the base weekly or hourly rates set out in Table 3 - Wages of Part B - Monetary Rates.
- 32.5.3 A telephone canvasser shall not be remunerated solely by way of commission, nor shall commission payments be offset against any other statutory or award entitlements.

#### **32.6 Hours of Work**

- 32.6.1 The ordinary span of hours of work for a telephone canvasser shall be between 8:30am to 8:30pm Monday to Friday and 8:30am to 2:30pm on Saturday.
- 32.6.2 The ordinary hours of work for a telephone canvasser shall not exceed 8 hours on any day, nor exceed 38 hours in any one week.

- 32.6.3 Where a telephone canvasser works ordinary hours, a minimum start of 2½ hours shall apply.
- 32.6.4 All time worked in excess of the ordinary hours of work prescribed by 32.6.1 and 32.6.2 shall be overtime and paid at the rate of time and one half for the first two hours and double time thereafter.
- 32.7 Part A of this award shall not apply to telephone canvassers with the exception of the following clauses:
- Clause 2 - Anti-Discrimination
  - Clause 4 - Terms of Engagement
  - Clause 7 - Payment of Wages
  - Clause 9.8.2 and 9.8.3 - Meal Break
  - Clause 11.1, 11.2 11.4 and 11.5 - Sundays and Holidays
  - Clause 13 - except 13.1 - Allowances
  - Clause 14 - Annual Leave
  - Clause 15 - Sick Leave
  - Clause 16.1, 16.2 and 16.3 - Personal/Carer's Leave
  - Clause 17 - Bereavement Leave
  - Clause 19 - Jury Service
  - Clause 20 - Superannuation
  - Clause 21 - Award Display
  - Clause 22 - Notice Board
  - Clause 23 - Deduction of Union Membership Fees
  - Clause 24 - Labour Flexibility
  - Clause 25 - Training
  - Clause 26 - Enterprise Consultative Mechanism
  - Clause 27 - Termination of Engagement
  - Clause 28 - Redundancy
  - Clause 30 - Salary Packaging
  - Clause 31 - Dispute Avoidance Procedure
  - Clause 34 - Area, Incidence and Duration
  - Clause 33 - Other Legislation

### 32.8 Savings Clause

Nothing in this award shall act to, on balance, reduce the overall wages and conditions of telephone canvassers currently being paid or observed as a result of the award.

### 33. Other Legislation:

33.1 Long Service Leave - See *Long Service Leave Act 1955*

33.2 Right of Entry - See *Industrial Relations Act 1996*

33.3 Workers Compensation - See *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998*

33.4 Parental Leave - See Clause 18, in addition to *Industrial Relations Act 1996*

33.5 Occupational Health and Safety - See *Occupational Health and Safety Act 2000*

33.6 Record Keeping - See *Industrial Relations (General) Regulation 2001*

### 34. Area, Incidence and Duration

34.1 This award shall apply in respect of all persons employed in any clerical capacity whatsoever and without limiting the generality of the foregoing shall include telephonists, receptionists, cashiers, messengers, copy boys, telephone canvassers (other than for the sale of goods), persons employed on machines designed to perform or to assist in performing any clerical work whatsoever and all classes of employees engaged in any clerical capacity in or in connection with payroll preparation, cash handling and processing in the state of New South Wales excluding the County of Yancowinna, within the jurisdiction of the Clerical and Administrative Employees (State) Industrial Committee, excepting employees covered by industry or employer specific awards .

34.2 This award rescinds and replaces the Clerical and Administrative Employees (State) Award, published 14 February 1997 (296 I.G. 619), and all variations thereof. This award shall take effect from the first full pay period commencing on or after 30 January 2006 and shall remain in force for a period of 12 months.

34.3 The provisions of Clauses 27 and 28 of this award shall apply in respect of employees otherwise covered by the Mirror and Telegraph Publications Clerical Award 2000 and the Clerical and Administrative Employees (John Fairfax Publications) Award 2000.

### 34.4 Savings - Hours of Work

34.4.1 Shift workers employed on or before 30 January 2006 who were entitled to receive an afternoon shift loading shall continue to be entitled to receive the shift loading on all time worked on an afternoon shift or during a period which would have been part of an afternoon shift under the previous award.

34.4.2 Employees employed on or before 30 January 2006 in receipt of overtime, or any other additional allowance or payment for working hours on weekends as part of a regular pattern of hours, shall not suffer a reduction in pay as a result of the introduction of this Award. This savings provision shall remain in force until 31 December 2006.

34.4.3 28 days notice is required if the regular pattern of hours of a weekly employee employed on or before 30 January 2006 is to be changed by their employer to include work on a Saturday and/or Sunday as part of their regular pattern of hours.

**PART B****MONETARY RATES****Table 1 - Adult Wages**

The following Minimum rates of wages shall take effect from the first pay period to commence on or after 16 December 2010.

Grade	Weekly Rate Pre SWC 2010 \$	SWC 2010 %	Weekly Rate \$
1	602.50	4.25	628.10
2	624.90	4.25	651.50
3	660.90	4.25	689.00
4	705.50	4.25	735.50
5	770.30	4.25	803.00

**Table 2 - Junior Wages**

The minimum rates of wages per week for junior employees shall be as follows:

(a) Equivalent to grade 3 or above

Age	Weekly Rate Pre SWC2010 \$	SWC 2010 %	Weekly Rate \$
At 17 years of age	318.05	4.25	331.55
At 18 years of age	393.00	4.25	409.70
At 19 years of age	449.20	4.25	468.30
At 20 years of age	530.35	4.25	552.90

(b) All other junior employees

Age	Weekly Rate Pre SWC 2010 \$	SWC 2010 %	Weekly Rate \$
Under 17 years of age	238.75	4.25	248.90
At 17 years of age	298.90	4.25	311.60
At 18 years of age	366.35	4.25	381.90
At 19 years of age	415.35	4.25	433.00
At 20 years of age	488.80	4.25	509.55

**Table 3 - Telephone Canvassers (Other than For The Sale Of Goods)**

Classification	Weekly Rate pre SWC 2010 \$	SWC 2010 %	Weekly Rate Full-time \$	Weekly Rate Part-time (Weekly rate divided by 38) \$	Hourly rate Casual (Weekly rate divided by 38 plus 20% loading Includes 1/12 holiday pay) \$
Telephone Canvasser	578.50	4.25	603.10	15.87	19.04

**Table 4 - Other Rates and Allowances**

Item No.	Clause	Brief Description	Amount \$
1	9.9.1	Saturday Loadings: Adult	18.00
		Employees under 21 years of age	12.15
2	10.3.2	Meal Money (shift Work)	12.90
3	13.1	Meal Allowance (Overtime)	12.90
4	13.5	Own Car Allowance: For vehicle 1,500cc and under	95.25
		For a vehicle over 1,500cc	117.70
5	13.5	Own Car allowance For use on a casual or incidental basis	0.63c per km
6	13.7	First-Aid Allowance	10.75

---

Printed by the authority of the Industrial Registrar.

**CLOTHING TRADES (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar*.

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C6534	09/05/2008	On and from 18/01/2008	365	1236
7, 63, Part B	C6650	29/08/2008	First pay period on or after 29/07/2008	366	404
7, 63, Part B	C7356	25/12/2009	First full pay period on or after 18/12/2009	369	1054
7, 63, Part B	C7592	02/09/2011	First full pay period on or after 16/12/2010	371	604
Correction to C7592	C7648			371	965

**PART A****1. Title**

This award shall be known as the Clothing Trades (State) Award.

**2. Arrangement**

## PART A

Clause No.	Subject Matter
1.	Title
2.	Arrangement
3.	Locality
4.	Dispute Settlement Procedure
5.	Demarcation of Work
6.	Rates of Pay
7.	Absorption Commitment
8.	Skill Levels
9.	Apprentices or Improvers - Rates of Pay
10.	Apprenticeship and Improvership
11.	State Training Wage
12.	Aged, Infirm or Slow Workers
13.	Workers Eligible for a Supported Wage
14.	Hours of Employment
15.	Midday Meal Interval
16.	Overtime

17. Meal Money
18. Rest Period
19. Mixed Functions
20. Terms of Engagement
- 20A. Deduction of Union Membership Fees
21. Annual Leave
22. Trade Union Training Leave
23. Sick Leave
24. Personal/Carer's Leave
25. Payment by Results
26. Casual Workers
- 26A. Secure Employment
27. Part-time Employees
28. Holidays
29. Payment for Work Done on Holidays
30. Payment for Work Done on Sundays
31. Contract Work
32. Outworkers
33. Registration of Employers
34. Entry and Inspection by Officers of Industrial Organisations
35. Time Book, Sheet or Records
36. Seating Accommodation
37. Amenities
38. First-aid Ambulance Chest
39. Award Posted
40. Industrial Committee
41. Shop Stewards and Representatives
42. Uniforms
43. Notice Boards
44. Protective Clothing
45. Tools of Trade
46. Disability Allowance
47. Bereavement Leave
48. Accident Pay
49. Jury Service
50. Blood Donors
51. Attendance at Hospital
52. Parental Leave
53. Introduction of Change
54. Redundancy
55. Superannuation
56. Enterprise Bargaining
57. Anti-Discrimination
58. Area, Incidence and Duration

Pseudo Clauses:

59. Appendix A - Form of Indenture of Apprenticeship
60. Appendix B - Form of Declaration - Amenities
61. Schedule A - Consultative Committees
62. Schedule B - Request to the Union by the Outworker to Reduce the Number of Hours Worked Part-time
63. Schedule C - Information to be Given to Outworkers
64. Schedule D - Broadbanding Arrangements\*

\*Former transitional wages classification system to facilitate the introduction of skill levels in 1994. Retained for historical reference only.



65. Schedule E - Procedure to be adopted in Developing an Enterprise Bargaining Agreement

PART B

MONETARY RATES

Table 1 - Rates of Pay

Table 2 - Other Rates and Allowances

**3. Locality**

This award shall apply in the State of New South Wales.

**4. Dispute Settlement Procedure**

Where a dispute arises, the following steps shall be taken:

- 4.1 Step One - As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the worker or workers concerned and the Union delegate who shall attempt to settle the dispute.
- 4.2 Step Two - If the dispute is not resolved, the issue or claim shall be considered jointly by the appropriate senior management representative in conjunction with the Union delegate who shall attempt to settle the dispute.
- 4.3 Step Three - If the dispute is not resolved, the issue or claim shall be considered jointly by the employer and an official of the Union who shall attempt to settle the dispute.
- 4.4 Step Four - If the dispute is not resolved, the dispute may then be notified to the Industrial Relations Commission of New South Wales. The parties may request that the matter be dealt with in accordance with clause 40, Industrial Committee, or by a member of the Commission who shall resolve the dispute by conciliation or arbitration.

**5. Demarcation of Work**

5.1

- 5.1.1 In the manufacture of knitted piece goods and (excepting babywear) the making up there from of suits, coats, trousers, culottes, frocks, dresses, dressing gowns, tracksuits, slack suits, blouses, shorts, and/or like garments:

Where the knitting and making up are carried out by one employer in the same establishment, the knitting work shall be subject to the Textile Industry (State) Award, and the work of making up to the Clothing Trades (State) Award.

- 5.1.2 In the manufacture of knitted piecegoods and the making up therefrom of all garments other than those specified in subclause 5.1.1:

Where the piecegoods are knitted by an employer and the making up is completed at the same or another establishment by that same employer, both the work of knitting of the piecegoods and making up shall be subject to the Textile Industry (State) Award.

- 5.1.3 In the manufacture of knitted piecegoods and the making up of all garments:

Where piecegoods are knitted by one employer and garments are made up by another employer the knitting shall be subject to the Textile Industry (State) Award and the work of making up shall be subject to the Clothing Trades (State) Award.

- 5.2 Provided that in an establishment where the making up of knitted piecegoods constitutes such a minor amount of the employer's total operations so as to render the observance of subclause 5.1.1 unreasonable the employer may, on application to the Industrial Relations Commission of New South Wales, be exempt from the obligation to observe the provisions of the Clothing Trades (State) Award.

## **6. Rates of Pay**

- 6.1 Adult rates of pay shall be as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates.
- 6.2 Where such an employee has been absent from duty in a week in circumstances entitling the employee's employer to deduct payment for the time of non-attendance, the employee shall be paid for the ordinary hours worked during such week at the rate of the said appropriate amount per week.
- 6.3 Calculations for overtime, payments by results rates, penalty rates, shift work and other payments under the award shall be made at the rate prescribed by subclause 6.1 for the classification in which the employee is employed.
- 6.4 For the purpose of this clause, "overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "payment by results bonus", "service increment", or any term whatsoever) which an employee would receive in excess of the award rate specified in subclause 6.1.
- 6.5 Examiner - An examiner is an employee required to examine for faults in the construction of any garment or part of a garment made or being made by other employees.
- 6.6 An employee who is the head of a table or bench of machines in charge of 4 or more employees must be paid an amount above their skill level rate of pay as follows;
- 6.6.1 if working in connection with order tailoring or order dress making, the amount set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- 6.6.2 for all others, the amount set out in Item 2 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates.

## **7. Absorption Commitment**

- 7.1 The rates of pay in this Award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
- (i) any equivalent over award payments, and/or
  - (ii) award wage increase since 29 May 1991 other than Safety Net, State Wage Case, and minimum wage adjustments.
- 7.2 The rates in Tables 1 - Rates of Pay, and the rates in Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, shall operate from the beginning of the first pay period to commence on or after 16 December 2010.

## **8. Skill Levels**

Trainee - Employees at this level:

Shall be new entrants into the industry.

Shall for a period of up to three months undergo approved (including induction) training so as to enable them to achieve the level of competence<sup>9</sup> required to be classified at Skill Level 1.

Shall work under the following conditions:

- Totally defined procedures and methods;
- Constant direct supervision;
- Constant direct training;
- Progressive assessment and feedback.

Training for new entrants will be determined in accordance with the needs of the enterprise, but shall involve instruction aimed at assisting trainees to achieve the range of competencies required at Skill Level 1, including:

- The knowledge and skills required to apply relevant Occupational Health and Safety practices and procedures.
- The knowledge and skills required to apply specified quality control<sup>20</sup> standards to their own work.
- The knowledge and skills required to apply specified operation practices and procedures and to meet efficiency requirements.
- The knowledge and skills required to apply minor equipment/machine maintenance<sup>17</sup> relevant to the equipment involved in the performance of their own work.

Skill Level 1 - Employees at this level:

1. Shall work to defined procedures/methods <sup>14</sup> either individually or in a team environment; and
2. Shall exercise skills to perform basic tasks <sup>1</sup>; and
3. Shall be aware of and apply basic quality control skills in the receipt and completion of their own work to the specified quality standards <sup>23</sup>

In addition, according to the needs and operational requirements of the enterprise, employees at this level

4. May be required to exercise the skills necessary to assist in providing basic on-the-job instruction <sup>18</sup> by way of demonstration and explanation;
5. May be required to record basic information on production and/or quality indicators <sup>22</sup> as required;
6. May be required to work in a team environment <sup>24</sup>;
7. May be required to apply minor equipment/machine maintenance;
8. May be required to exercise key pad skills <sup>11</sup>;
9. May be required to exercise the level of English literacy and numeracy skills to effectively perform their tasks;
10. May commence training in additional skills required to advance to a higher skill level.

Skill Level 2 - Employees at this level exercise the skills required to be graded at Skill Level 1; and

1. Shall work to defined procedures/methods, either individually or in a team environment; and
2. Shall exercise the skills to perform intermediate tasks <sup>2</sup>; and

3. Shall understand and apply quality control skills in their own work and component parts <sup>10</sup> (including understanding of the likely cause(s) of deviations to specified quality standards in their own work).

In addition, according to the needs and operational requirements of the enterprise, employees at this level:

4. May be required to exercise the skill necessary to assist in providing on-the- job instruction to employees in skills required at Skill Level 2 and below by way of demonstration and explanation;
5. May be required to record detailed information in production and/or quality indicators as required;
6. May be required to exercise team work skills;
7. May be required to identify and rectify minor equipment/machine faults, and report problems that cannot be rectified to a mechanic or supervisor;
8. May be required to exercise basic computer skills <sup>12</sup>;
9. May commence training in additional skills required to advance to a higher skill level.

Skill Level 3 - Employees at this level exercise the skills required to be graded at Skill Level 2; and

1. Shall exercise discretion, initiative and judgement on the job in their own work, either individually or in a team environment; and
2. Shall exercise skills to:
  - (a) perform a complex task(s) <sup>3</sup> or
  - (b) perform a series of different operations on a machine(s) <sup>4,5</sup> or
  - (c) use a variety of machine types <sup>6</sup> three of which require the exercise of level 2 skills and
3. (a) Shall be responsible for quality assurance<sup>19</sup> in their own work and assembly of component parts including having an understanding of how this work relates to subsequent production processes and its contribution to the final appearance of the garment.

In addition, according to the needs and operational requirements of the enterprise, employees at this level:

- (b) May be required to investigate causes of quality deviations <sup>21</sup> to specified standards and recommend preventative action.
4. May be required to exercise the skills necessary to assist in providing on-the-job instruction to employees in skills required at Skill Level 3 and below by way of demonstration and explanation.
5. May be required to record detailed information on, and recommend improvements to, production and/or quality.
6. May be required to take a co-ordinating role <sup>13</sup> for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedures and methods), where the members of the group or team are at Skill Level 3 and below.
7. May be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults).
8. May commence training in additional skills required to advance to a higher skill level.

Skill Level 4 - Employees at this level exercise the skills required to be graded at Skill Level 3 and have a comprehensive knowledge of product construction. Employees at this level shall also:

- \* Apply skills and knowledge, equivalent to that of a qualified tradesperson, that have been acquired as a result of training or experience; or
  - \* Hold a relevant trade certificate; and
1. Shall work largely independently <sup>15</sup> (including developing and carrying out of a work plan to specifications), and
  2. Shall exercise a range of skills involving planning, investigation and resolution of problems, and/or training and/or supervision, and/or specialised technical tasks, or shall make a whole garment to specifications, or exercise equivalent skills <sup>7</sup>.  
In addition, according to the needs and operational requirements of the enterprise, employees at this level:
  3. May be required to apply quality control/assurance techniques to their work group or team.
  4. May have designated responsibility<sup>16</sup> for the training of other employees (and if so shall be trained trainers).
  5. May be responsible for quality and production records relating to their own work group or team.
  6. May be required to take a co-ordinating role for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedures and methods), where the members of the group or team are at Skill Level 4 and below.
  7. May be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults and organisation or performance of necessary repair).
  8. May commence training in additional skills required to advance to a higher skill level.

#### Explanation of Terms -

1. Basic Tasks - Uncomplicated tasks which are easily learned and involve little decision making whether machine or non- machine.  
Basic machine tasks are those where the positioning of the work may be controlled by guidebars and sensor lights, or other such guiding devices or where there is uncomplicated feeding of the fabric.
2. Intermediate Tasks - Tasks which are more difficult to learn, involve more decision making than Skill Level 1 tasks and which may require fabric knowledge, whether machine or non-machine.  
Intermediate machine tasks require skill in positioning, feeding and handling of work involving directional changes, contouring or critical stopping points, or require feeding and handling skills beyond those of a Skill Level 1 operator because of fabric variation.  
Intermediate non-machine tasks require skills to perform a sequence of related tasks.
3. Complex Tasks - Tasks which are more difficult to learn and involve a higher level of decision making than Skill Level 2 tasks, whether machine or non-machine.  
Complex machine tasks require fabric manipulation skills and knowledge beyond those of a Skill Level 2 operator to perform more difficult tasks or to handle and align the sections while ensuring correct shaping of the end result because of the complexity of combining parts or because of frequent variation in fabrics.
4. Series of different operations on a machine(s) - Performing a sequence of different operations on a machine(s) to complete the majority of a complex garment.

5. Machine - Any piece of equipment which performs a significant part of an operation in:  
designing/grading of patterns;  
marker spreading;  
spreading of fabric;  
cutting, sewing, finishing, pressing and packaging of products,  
and which is powered by an external source, i.e., electricity, steam or compressed air or combinations of these.  
Hand tools are not machines and refer to those items which are primarily powered by the operator, e.g., scissors, shears, staplers, tagging guns and tape dispensers.
6. Variety of machine types - Three or more different types of machines which are sufficiently different in their operation to require the exercise of different skills (i.e., a button holer and a button sewer are the same machine type for this purpose, whereas a button holer and an overlocker are different machine types).
7. Whole garment machinist or equivalent skills - A machinist who works largely independently in producing a complex garment from written specifications and patterns. Examples of "equivalent skills" include:  
  
sample machinist;  
  
a machinist who performs each of the operations required to complete a complex whole garment from specifications;  
  
a fully multi-skilled machinist who is required to perform any of the operations involved in the making of a complex whole garment to specification.
8. Skill - The application of a combination of abilities, knowledge and attributes to competently perform a given activity or activities.
9. Competence - The ability to perform a particular activity or activities to a prescribed standard (or standards) and under a prescribed set of circumstances.
10. Component parts - The parts of the product which the operator receives in order to perform the operator's job.
11. Key pad skills - Ability to use a small panel of keys, either numerical or with symbols, to operate equipment.
12. Basic computer skills - Use of a computer to enter, retrieve and interpret data.
13. Co-ordinating role - A role which involves responsibility for organising and bringing together the work and resource requirements of a work group or team.
14. Defined procedures/methods - Specific instructions outlining how an operator is to do the operator's job.
15. Largely independently - Where the employee is accountable for the employee's own results including:  
  
carrying out assigned task;  
  
co-ordinating processes;  
  
setting and working to deadlines.
16. Designated responsibility - Identified by management as a person with a specific role or

- responsibility.
17. Minor equipment/machine maintenance - Includes cleaning and minor adjustments to the equipment involved. In the case of sewing machines, for example, it may include:
    - changing needles;
    - cleaning;
    - lubrication;
    - tension and stitch adjustment.
  18. On-the-job instruction - Demonstrating, showing, explaining and/or guiding other employees as to how to perform a particular task or operation to a competent standard.
  19. Quality assurance - The overall system and plans used to provide confidence that goods and services will satisfy given requirements.
  20. Quality control - The activities used to check that materials and products meet quality specification; includes the grading of product into acceptable and unacceptable categories.
  21. Quality deviations - Departures from a quality standard.
  22. Quality indicators - Information used to determine whether a quality standard has been met.
  23. Specified quality standards - Detailed standards against which quality is measured.
  24. Team environment - An environment involving work arrangements in which a group of people work closely, flexibly and in co-operation with each other to ensure efficient and effective performance.

### 9. Apprentices Or Improvers - Rates of Pay

The minimum weekly rates of wages to be paid to apprentices or improvers shall be as follows:

#### 9.1 Apprentices - All groups in the industry -

	Percentage of Skill Level 4
1st year -	
1st six months	50
2nd six months	55
2nd year -	
1st six months	60
2nd six months	65
3rd year -	
1st six months	70
2nd six months	75
4th year -	
1st six months	80
2nd six months	85
Thereafter - the appropriate adult rate.	

## 9.2 Improvers - All groups in the industry -

	Percentage of Skill Level 2
16 years and under	50
16.5 years	55
17 years	60
17.5 years	65
18 years	69
18.5 years	72
19 years	75
19.5 years	80
20 years	85

The percentage wages set out in subclauses 9.1 and 9.2 shall be calculated in multiples of 5 cents, amounts of 2 cents or less being taken to the lower multiple and amounts in excess of 2 cents being taken to the higher multiple. Provided that any improver:

- 9.2.1 with at least three years' and not more than four years' experience in the clothing trades industry shall be paid not less than the percentage of the appropriate rate for a 20 year old improver;
- 9.2.2 after four years' experience in the clothing trades industry shall be paid the appropriate rate for an adult employee respectively in the classification in which the employee is employed;
- 9.2.3 having attained 20 years of age and who has had more than two years' experience in the clothing trades industry shall be paid the appropriate adult rate.
- 9.3 Time served by an apprentice or improver in the clothing trades industry or similar experience in the textile industry or in any full-time government sponsored training course which is approved by the appropriate State Industry Training Committee shall be counted as experience for the purpose of apprenticeship or improvership, both as regards wages and the terms to be served in respect of the continuation of the employment of such apprentice or improver. Provided that such person having attained the age of 21 years shall, unless that person is the holder of a permit granted pursuant to clause 12, Aged, Infirm or Slow Workers, be paid the wage herein prescribed for an adult employee.
- 9.4 Limitation - only employees of skill level 3 or greater shall work on a Hoffman type manually operated press.

### 10. Apprenticeship and Improvership

#### 10.1 Apprenticeship

- 10.1.1 Subject to subclause 10.2 an employer shall not employ improvers in the following classifications of this award otherwise than under an indenture of apprenticeship as hereinafter provided:

Group A - Order Tailoring for Males - Adult Classification -

Cutter marking in and/or cutting out

Tailor or tailoress (as defined)

Group B - Order Tailoring for Females - Adult Classification -

Cutter marking in and/or cutting out

Tailor or tailoress (as defined)



- 10.1.2 Employees other than those referred to in subclause 10.1.1 may be apprenticed, and if engaged as apprentices shall be engaged under an indenture of apprenticeship.
- 10.1.3 Apprentices shall be indentured in accordance with Appendix "A" (Form of Indenture of Apprenticeship) and the said indenture shall be subject to any variation hereof. A copy of the indenture shall be lodged by the employer with the Industrial Registrar.
- 10.1.4 It shall be the duty of the employer to see that the form of indenture of any apprentice is duly completed and to deliver to the apprentice a complete original copy within seven days of it being signed by the parties.
- 10.1.5 The proportion of apprentices who may be taken on by an employer shall be one to each employee of the classification referred to in subclause 10.1.1 receiving the adult rate.
- 10.1.6 The term of an apprenticeship shall be four years.
- 10.1.7 Juniors may be taken on probation for three months and, if apprenticed, such time shall count as part of the term of apprenticeship.
- 10.1.8 An apprentice who cannot complete the full term of apprenticeship before reaching their twenty-second birthday may, by agreement with the employer, serve as an apprentice until the apprentice reaches the age of 23 years.
- 10.1.9 An indenture of apprenticeship may be assigned, suspended or cancelled:
- (i) by mutual consent of the parties after seven days' notice by either party; or
  - (ii) by the employer (subject to the approval of the Industrial Committee) if through lack of orders or financial difficulties:
    - (1) the employer is unable to find suitable employment for the employer's apprentice; or
    - (2) the employer is desirous of transferring the apprentice to another employer but such transfer cannot be arranged; or
  - (iii) by the Industrial Committee.
- 10.1.10 Where existing indentures are inconsistent with indentures herein prescribed the existing indentures shall be deemed to be amended accordingly.
- 10.1.11 Attendance at Technical Schools - Apprentices attending technical colleges or schools and presenting reports of satisfactory conduct shall be reimbursed all fees paid by them.
- 10.1.12 Operation of State Laws - In New South Wales any statute relating to apprentices or any authority with statutory power which has issued or may issue any regulations relating to apprentices, including any provisions relating to proficiency payments, shall operate provided that the provisions thereof are not inconsistent with this award.

The provisions of any statute, award or regulation relative to the attendance of apprentices at technical schools during ordinary working hours or to disciplinary powers of apprenticeship authorities over apprentices and employer shall not be deemed to be inconsistent with this award.

- 10.2 Improvership - Subject to subclause 10.1.1 improvers may be employed by an employer in any section of the industry. The proportion of improvers who may be employed by an employer shall be: two to each employee within that classification receiving the adult rate.

- 10.3 Calculation of Proportion - In calculating the proportion of the number of employees receiving the adult rate working proprietors shall be included. Each classification shall be considered separately and a proprietor shall be counted in only one classification.

### 11. State Training Wage

The parties to this award shall observe the terms of the Training Wage (State) Award 2002, as amended. Each breach of the Training Wage (State) Award 2002 is a distinct and separate breach of this clause.

### 12. Aged, Infirm Or Slow Workers

- 12.1 Any person who by reason of age, inability or infirmity is not capable of performing all the duties ordinarily required of the person's position may be employed at a rate less than the rate fixed in this award with the consent in writing of the Secretary of the Union or the Industrial Registrar or Deputy Industrial Registrar. The consent must state the name of the person to be employed, the nature of the proposed employment, the name of the employer, the wages to be paid and the grounds upon which the consent is given. Each consent shall relate to one employee only and shall state a term of not longer than six months.
- 12.2 When the Industrial Registrar or Deputy Industrial Registrar has issued a permit, the Industrial Registrar or Deputy Industrial Registrar (as the case may be) shall notify the Secretary of the Union.

### 13. Workers Eligible for a Supported Wage

- 13.1 This clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:
- 13.1.1 "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process".
- 13.1.2 "Accredited assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's production capacity within the Supported Wage System.
- 13.1.3 "Disability support pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- 13.1.4 "Assessment instrument" means the forms provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
- 13.2 Eligibility Criteria - Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension. This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provisions of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

This award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under section 10 or section 12(A) of the *Disability Services Act 1986* or, if a part only has received recognition, that part.

- 13.3 Supported Wage Rates - Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing, according to the following schedule:

Percentage Assessed Capacity (subclause 13.4)	Percentage of Prescribed Award Rate
*10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

(Provided that the minimum amount payable shall not be less than \$53 per week.)

\*Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

- 13.4 Assessment of Capacity - For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

13.4.1 the employer and the Union in conjunction with the employee or, if desired by any of these:

13.4.2 the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

- 13.5 Lodgement of Assessment Instrument

13.5.1 All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission of New South Wales.

13.5.2 All assessment instruments shall be agreed and signed by the parties to the assessment; provided that, where the Union is not a party to the assessment, it shall be referred by the said Registrar to the Union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

- 13.6 Review of Assessment - The assessment of the applicable percentage should be subject to annual review, or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

- 13.7 Other Terms and Conditions of Employment - Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of this clause shall be entitled to the same terms and conditions of employment as all other workers covered by this award paid on a pro rata basis.

- 13.8 Workplace Adjustment - An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation, in consultation with other workers in the area.

- 13.9 Trial Period -

- 13.9.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 13.9.2 During the trial period, the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
- 13.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$53 per week.
- 13.9.4 Work trials should include induction or training as appropriate to the job being trialled.
- 13.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause 13.4.
- 13.10 Provided that any person currently employed under the provisions of clause 12, Aged, Infirm or Slow Workers, at a rate fixed with the consent of the Secretary of the Union or of the Industrial Committee should continue to be paid at that rate as if the insertion of this clause had not been made.

#### **14. Hours of Employment**

##### 14.1

- 14.1.1 Subject to any clause of this award which prescribes otherwise, all employees other than casual employees and part-time employees shall be engaged by the week. Except where an arrangement has been made in accordance with 14.1.2, 38 hours shall constitute a week's work to be worked within five days, Monday to Friday, inclusive, and within the following hours: time of beginning 6.00 a.m. time of ending 6.00 p.m. No employee shall be rostered for duty for longer than eight hours without payment of overtime unless an arrangement has been made in accordance with the last proviso to this subclause. Provided further that any other starting and finishing times, other than those herein prescribed, and the number of hours in excess of eight on any day which may be worked without the payment of overtime, may be agreed upon by the employer and at least 75 per cent of the employees concerned and assented to by the Union in writing or as approved by the Industrial Committee.
- 14.1.2 Subject to the daily limitations prescribed in subclause 14.1.1, where the employer and a majority of employees agree, the hours of work may be arranged by any one of the following methods:
- (i) By working shorter hours on one or more days of each week.
  - (ii) Fix a day on which all employees will be off during a particular work cycle.
  - (iii) Roster employees off on various days of the week during a particular work cycle.
  - (iv) Where employees are entitled to a rostered day or days off in accordance with subclauses 14.1.2(ii) or 14.1.2(iii), the employer shall notify such employees at least four weeks in advance of the weekday the employee is to take off. Where an employee has not accumulated a full day's entitlement when a rostered day off occurs, such employee shall for that day receive payment for the actual time accrued.
  - (v) Where the employer and the employees agree, rostered days off may accumulate to a maximum of seven days which shall be taken in one or two continuous periods within one month of such accrual.

Notwithstanding this, accumulated rostered days off may be taken in more than two continuous periods by agreement in writing from the Secretary of the Union.

- (vi) Where an arrangement is made in accordance with this clause, starting and finishing times and the daily and weekly hours so determined shall constitute the ordinary working hours and work performed outside or in excess of such times and hours will constitute overtime for the purpose of this award.
- (vii)
  - (1) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with an arrangement pursuant to subclause 14.1.2 for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
  - (2) An individual employee, with the agreement of the employer, may substitute the day they are to take off for another day.
- (viii) Where an employer wishes to arrange working hours by fixing a day on which all employees will be off during a particular work cycle the employer shall approach the Secretary of the Union to seek the agreement of the Union. The Secretary shall not unnecessarily withhold such agreement.

14.2 Except in the case of an emergency, the employer shall give one week's notice of any alteration to the starting and ceasing times of ordinary work.

14.3 The ordinary working hours shall be prominently displayed in each workshop or factory.

14.4 Shift Work - Permanent Press Plant - Employees working as hot head press operators and curing oven attendants directly connected with the operation of permanent press plant may be employed on afternoon shifts, subject to the following conditions:

14.4.1 An afternoon shift shall only be introduced by an employer subject to the matter being referred to the Industrial Relations Commission of New South Wales and approval obtained.

14.4.2 "Afternoon shift" shall mean a shift finishing after 6.00 p.m. but not later than midnight.

14.4.3 An employee when working on such afternoon shift shall be paid as follows:

- (i) when on time work, at the employee's ordinary rate plus 15 per cent;
- (ii) when under any system of payment by results, the employee's earnings under such system plus an additional amount of 15 per cent.

14.4.4 Any time worked by a shift worker in excess of eight hours in any one day or 38 hours in any one week, shall be paid for at the penalty rates prescribed in clause 16, Overtime.

14.4.5 Twenty minutes shall be allowed to afternoon shift workers each shift for crib which shall be counted as time worked and which shall be arranged at a convenient time as near as practicable to the middle of the shift.

14.4.6 Shift workers shall not receive the shift penalty prescribed in 14.4.3 in respect of payment for sick leave, public holidays or annual leave.

14.5

- 14.5.1 Shift Work - Adult employees employed by the employer(s) listed in subclause 14.5.2 may be employed on a weekly afternoon shift basis, subject to the following conditions which have been agreed between the Union and the aforesaid employer(s):
- (i) For the purpose of this subclause, "afternoon shift" shall mean a shift finishing after 5.00 p.m. but not later than 11.00 p.m.
  - (ii) Part-time employees may be employed to work on afternoon shift for a lesser number of hours per week than 38.
  - (iii) Part-time employees employed under subclause 14.5.1(ii) will be employed subject to the terms and conditions of clause 27, Part-time Employees.
  - (iv) An employee when working afternoon shift shall, in addition to the employee's ordinary rate, be paid in respect of each hour an amount equivalent to 22.5 per cent of the rate applicable to the work performed.
  - (v) Any time worked by a shift worker in excess of 7.6 hours in any one day or 38 hours in any one week shall be paid for at the penalty rates prescribed in clause 16, Overtime, provided that the number of hours worked on any day may exceed 7.6 hours without the payment of overtime if such hours are worked in accordance with a program of working hours agreed upon by the employer and the employees concerned and assented to by the Union in writing.
  - (vi)
    - (1) For a shift of greater than five hours' duration, twenty minutes shall be allowed to employees on an afternoon shift for a break, which shall be counted as time worked, and which shall be arranged at a convenient time as near as practicable to the middle of the shift.
    - (2) For a shift of five hours or less duration, fifteen minutes shall be allowed to employees on an afternoon shift for a break, which shall be counted as time worked, and which shall be arranged at a convenient time as near as practicable to the middle of the shift.
  - (vii)
    - (1) In the case of absenteeism or other emergency situation, an employee who is not usually engaged on an afternoon shift basis, and who is required to work shift work on a temporary basis, shall, in addition to the employee's ordinary rate of pay, be paid one thirty-eighth of the rate prescribed in subclause 14.5.1(iv), for each hour worked on afternoon shift. Provided any time worked on any afternoon shift on that day by an employee who had already completed a shift on that day shall be paid for at the overtime penalty rates prescribed by the said clause 16 of this award.
    - (2) An employee being recalled to work overtime in accordance with subclause 14.5.1(vii)(1) after leaving the employer's business premises shall be paid a minimum of four hours' work at the appropriate overtime rate for each time the employee is so recalled.
    - (3) When an employee working overtime on a shift in accordance with subclauses 14.5.1(vii)(1) or 14.5.1(vii)(2) for which the employee has not been regularly rostered, finishes work at a time when the employee's usual or other reasonable means of transport are not available, the employer shall provide the employee with conveyance to the employee's home or pay the employee's ordinary wages for the time reasonably occupied in reaching the employee's home.

- (viii) In relation to the matter of transfers between afternoon shift and ordinary working hours, the employer shall give preference to all employees who have notified in writing to the employer their desire for such transfer.

Provided that the employer shall be excused from the obligation to give preference in accordance with this paragraph in the case of any particular vacant situation where the employer has reasonable grounds to believe (and does believe) that the employee(s) desirous of transfer are unsuitable for performing the duties of that vacant position.

- 14.5.2 Employers the subject of this subclause are listed below:

(NOTE: None listed as at date of gazettal.)

- 14.5.3 Procedure to be followed by employers who wish to be covered by this clause is as follows:

- (i) An employer who wishes to employ employees on a weekly afternoon basis shall write to the Secretary of the Union seeking the agreement of the Union.

The Secretary of the Union shall deal expeditiously with the request for shiftwork and if agreement is reached shall confirm that agreement in writing to the employer.

### **15. Midday Meal Interval**

- 15.1 An interval of not more than one hour and not less than 30 minutes shall be allowed for the midday meal.
- 15.2 The meal interval shall be observed between the hours of 11.30 a.m. and 2.00 p.m.
- 15.3 An employer shall be in breach of the award if they allow an employee to perform any work during that employee's meal time.

### **16. Overtime**

- 16.1 All time worked by a weekly employee, including a part-time employee, in excess of the employee's normal number of daily hours or outside the daily limits prescribed in clause 14, Hours of Employment, shall be paid for at the rate of time and a half for the first three hours and double time thereafter. Each day shall stand alone for the purpose of calculating overtime and any overtime worked on any day of the week shall be paid for on a daily basis.
- 16.2 An employee paid under any system of payment by results, when working overtime, shall be paid, in addition to the ordinary earnings paid under such system for work done in excess time, such sum per hour as is equivalent to the award rate divided by 76. Provided that, for work in excess of three hours' overtime on any day, the employee shall be paid, in addition to ordinary earnings, such sum per hour as equivalent to the award rate divided by 38.
- 16.3 Requirement to work reasonable overtime
- 16.3.1 Subject to paragraph 16.3.2 an employer may require an employee to work reasonable overtime at overtime rates.
- 16.3.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- 16.3.3 For the purposes of paragraph 16.3.2 what is unreasonable or otherwise will be determined having regard to:
- (a) Any risk to employee health and safety;

- (b) The employee's personal circumstances including any family and carer responsibilities;
- (c) The needs of the workplace or enterprise;
- (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it;
- (e) Any other relevant matter.

16.3.4 The Union shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with this subclause.

16.4 No employee under the age of 16 years shall be employed on overtime beyond 6.00 p.m.

16.5 An employee required to work for longer than one and a half hours after the usual ceasing time shall be allowed at least 30 minutes for a meal break. Provided that this provision shall not apply to employees on any day where there is an early ceasing time, unless a total of five and a half hours or more, inclusive of overtime, is to be worked following the midday meal break.

16.6 An employee, other than an employee subject to subclause 16.5, who is required to work overtime for more than one hour beyond the ordinary ceasing time on any day, other than on a working day of less than eight ordinary hours, shall be entitled to a rest period of ten minutes paid for at the appropriate rate.

#### **17. Meal Money**

17.1 Subject to subclause 17.3, an employee required to work overtime for more than one hour after the employee's usual ceasing time or beyond 6.00 p.m. (whichever is the later) on any day, Monday to Friday inclusive, shall either be supplied with an adequate recognised evening meal by the employer from an established canteen on the premises or paid as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in lieu thereof.

17.2 If the notice is given and overtime is not worked (except as a result of a breakdown in machinery or plant) the tea money prescribed herein shall be paid.

17.3 An employee who works under an arrangement set in accordance with subclause 14.1.2 which provides for that employee to cease ordinary hours of work early on a Friday, shall not be entitled to receive a meal allowance or be supplied with an adequate meal pursuant to this clause in respect of any period of overtime in excess of one hour carried out on that Friday where such overtime is completed before 6.00 p.m. on that day.

#### **18. Rest Period**

18.1 Employees shall be entitled to two daily rest periods, each of ten minutes, without loss of pay.

18.2 These rest periods must be taken between the hours of 9.30 a.m. and 11.00 a.m., and 2.30 p.m. and 4.00 p.m., at the discretion of the employer.

18.3 In the circumstances where a rest period would otherwise occur after the cessation of an employee's daily work, such rest period will occur prior to the cessation of work.

18.4 During such rest periods, employees may leave their work stations but may not leave the premises.

#### **19. Mixed Functions**

19.1 The following conditions shall apply to an employee engaged on time work and employed for various periods on duties carrying a higher rate than the employee's ordinary classification:



- 19.1.1 For two hours or less of one day, payment shall be at the higher rate for the time so worked.
- 19.1.2 For more than two hours of one day, payment shall be at the higher rate for such day.
- 19.1.3 For more than two days of a week, payment shall be at the higher rate for the full week.
- 19.2 Where an employee engaged on time work is employed on higher tasks than the employee is normally employed, the employer shall keep an accurate record of the time worked by such an employee on each class of work. In the absence of an accurate record, the employee shall be entitled to the higher rate of pay for the whole of the week.

## 20. Terms of Engagement

20.1 Method of Engagement - Subject to the provisions of this award, employees may be engaged either on a weekly (including part-time) or a casual basis.

20.2 Termination of Employment -

20.2.1 Notice of termination by employer -

(i)

- (1) In order to terminate the employment of an employee, the employer shall give to the employee the following notice (except where the employment is terminated in accordance with subclause 20.2.1(i)(2)):

Period of Continuous Service	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years	4 weeks

- (2) Where an employer terminates the employment of an employee for reasons arising from "technology" in accordance with subclause 53.1.1, and that employer employs more than 15 employees immediately prior to the termination of employment, the employer shall give to the employee three months' notice of termination. (This period of notice to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.)
- (ii) In addition to the notice in subclause 20.2.1(i), employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice (except where the employment is terminated in accordance with subclause 20.2.1(i)(2)).
- (iii) Payment in lieu of the notice prescribed in subclauses 20.2.1(i) and/or 20.2.1(ii), shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (iv) In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice, had the employee's employment not been terminated, shall be used.
- (v) The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.

- (vi) For the purpose of this clause notice given not later than 10.00 a.m. on any day shall be regarded as a full day's notice, otherwise a further day's notice is required.
- (vii) For the purposes of this clause, continuity of service shall be calculated in the manner prescribed by 21.4, Calculation of Continuous Service, of clause 21, Annual Leave.
- (viii) When employment is terminated by an employer, the employer shall, upon the date of such termination, pay to the employee (weekly or piece worker) all monies due to him or her. When employment is terminated by an employee in accordance with the terms of this award the employer shall, upon the date of termination, pay the employee (weekly or piece worker) all monies due to him or her. Monies due shall include a payment in lieu for any time which may have accrued in accordance with an arrangement pursuant to 14.1.2, Hours of Employment.
- (ix) An employee shall not be given notice or dismissed, except for misconduct, whilst legitimately absent from duty on accrued sick leave or on annual leave, and the days on which an employee is absent from duty on account of such sick leave or annual leave shall not be counted as within a working week's notice for the purpose of this award, unless, in the case of sick leave, an employee had been given notice prior to the employer being informed that paid sick leave was to be taken. Alternatively, an employee shall not be entitled to give an employer notice while absent on account of paid sick leave and paid annual leave.
  - (1) Notice of Termination by Employee - The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice the employer shall have the right to withhold the monies due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice. Provided that where an employee, employer and the Union agree, the employee may be released prior to the expiry of the notice period, with payment of wages to the date of termination only.
  - (2) Time Off During Notice Period - Where an employer has given notice of termination to an employee, the employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.
  - (3) Statement of Employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
  - (4) Summary Dismissal - The provisions of this clause shall not affect the right of an employer to dismiss any employee without notice for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty. Where an employee is so dismissed payment shall be made from time actually worked to the time of dismissal.
  - (5) Unfair Dismissals - Termination of employment by an employer shall not be harsh, unjust or unreasonable.

For the purposes of this clause, termination of employment shall include terminations with or without notice.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy,

religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.

(6) Transmission of Business -

(A) Where a business is, before or after the date of this award, transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee"), and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:

- (1) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (2) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(B) In this subclause "business" includes trade, process, business or occupation and includes part of any such business, and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

20.3 Other Terms of Employment -

20.3.1 In the event of the work of the factory or section of the factory or workshop being stopped by a breakdown of machinery or for any cause for which the employer cannot reasonably be held responsible other than on account of lack of orders and/or a shortage of material, all weekly hands who present themselves for work shall be found work for that day or paid one day's wages in lieu thereof. However, an employer may, when such causes occur, give notice to an employee that their services will not be required on the following day or days, and the employee shall not be entitled to any further payment in respect of any further days that they are out of employment by reason of such causes.

Provided that, for any day upon which an employee cannot be usefully employed because of any strike or lockout by any persons whatsoever, or any failure or lack of power arising away from the premises of the employer, or any restriction or shortage of power for which an employer cannot justly be held responsible, all weekly employees who are required to attend for work and do so attend on that day shall be paid a minimum of two hours' pay at ordinary rates. If required to perform work or remain at work for longer than two hours, payment shall be made at ordinary rates for all time standing by and time worked.

20.3.2 During the first two weeks of employment, the services of an employee may be terminated by the giving of one hour's notice by either the employer or the employee, or by the payment or forfeiture of one hour's pay in lieu of notice. Provided that, after the first day and during the balance of the first two weeks of an employment, where on any day the employer terminates the services of an employee other than for malingering, neglect of duty or misconduct, the employer shall be required to pay the employee not less than a day's pay for that day.

20.3.3 No employee shall, without just cause, be absent from their employment during the prescribed hours whilst there is work ready to be done by them, and the employee must be available, ready and willing to work on the days and during the hours fixed by this award.

20.3.4 An employee not attending for duty shall, except as provided in clause 23, Sick Leave, lose their pay for the actual time of such non attendance.

20.3.5 Where at least 90 per cent of the employees in a factory, workshop or section reach agreement with an employer, and with the assent of the Union, to take a period of leave of

absence without pay on the working day before or after a public holiday, the employer shall be entitled to stand down without pay for that day the remaining employees in such factory, workshop or section.

- 20.3.6 Payment of Wages - Subject to 32.2.5, Outworkers, which sets out the requirements for the payment of wages to outworkers, employees shall be paid in full all wages due to them during the ordinary working hours not later than two working days following the termination of the working week. Provided, however, that where at least 50 per cent of the employees in a factory, workshop or section agree, and with the consent in writing of the Secretary of the Union, payment in full of all wages due may be made in the form of a cash transfer to the employee's nominated account. Such transfer shall occur not later than during the forenoon of the second working day following the termination of the working week. Provided that where there are circumstances of genuine hardship caused by this method of payment the employer shall pay the wages due to the particular employee in cash.

Where an arrangement is made on the basis that ordinary working hours shall average 38 per week over a particular work cycle, wages may be paid on the basis of 38 ordinary hours worked in each week even though in some weeks during that cycle, the ordinary working hours may be more or less than 38 hours.

On or prior to pay day the employer shall state in writing to each employee details of the payment to which the employee is entitled, the amount of each deduction made therefrom and the net amount being paid to the employee.

#### **20A. Deduction of Union Membership Fees**

- 20A.1 The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that
- 20A.1.1 the employee has authorised the employer to make such deductions in accordance with subclause 20A.2 herein;
  - 20A.1.2 the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - 20A.1.3 deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - 20A.1.4 there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- 20A.2 The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 20A.3 Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
- 20.A.3.1 where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - 20.A.3.2 where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.

- 20A.4 Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- 20A.5 The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly or monthly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.
- 20A.6 An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- 20A.7 Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.

## **21. Annual Leave**

- 21.1 **Period of Leave** - A period of 28 consecutive days' leave shall be allowed annually to an employee, other than a casual or part-time employee, after 12 months continuous service (less the period of annual leave).
- 21.2 **Annual Leave Exclusive of Public Holidays** - The annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by clause 28, Holidays. If any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, an amount equivalent to the ordinary time which the employee would have worked if such day had not been a holiday shall be added to the period of annual leave.

Where an employee without reasonable cause, proof whereof shall lie upon the employee, is absent from their employment on the working day or part of the working day prior to the commencement of their annual leave, and fails to resume work at their ordinary starting time on the working day immediately following the last day of the period of their annual leave, the employee shall not be entitled to payment for the public holidays which fall within the employee's period of annual leave.

- 21.3 **Broken Leave** - The annual leave shall be given and taken in one or two continuous periods.

If the annual leave is given in two continuous periods, then one of those two periods must be of at least 12 working days, exclusive of public holidays.

Provided that if the employer and an employee so agree, then the employee's annual leave entitlement may be given and taken in three separate periods.

- 21.4 **Calculation of Continuous Service** - For the purpose of this clause, service shall be deemed to be continuous notwithstanding:
- 21.4.1 any interruption or termination of employment by the employer, if such interruption or termination has been made merely with the intention of avoiding the employer's obligations hereunder in respect of leave of absence;
- 21.4.2 any absence from work on account of personal sickness or accident or on account of leave granted by the employer or absence due to long service leave. Provided that any continuous period of unpaid leave in excess of four weeks shall not be deemed to be service for the calculation of annual leave; or
- 21.4.3 any absence with reasonable cause, proof whereof shall be upon the employee.

In cases of personal sickness or accident or absence with reasonable cause - For the employee to become entitled to the benefit of this subclause they shall inform the employer in writing, if

practicable, within 48 hours of the commencement of such absence, of their inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of their absence. A notification given by an employee pursuant to clause 23, Sick Leave, shall be accepted as a notification under this subclause.

Any absence from work by reason of any cause, not being a cause specified in this subclause, shall not be deemed to break the continuity of service for the purposes of this clause unless the employer, during the absence or within fourteen days of termination of the absence, notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

In cases of individual absenteeism, such notice shall be given in writing to the employee concerned by delivering it to the employee personally or by posting it by registered or certified mail to the employee's last recorded address, in which case it will be deemed to have reached the employee in due course of post.

In cases of concerted or collective absenteeism, notice may be given to employees by the posting up of a notification in the factory in the manner in which general notifications to employees are usually made in the factory and by posting to each union whose members have participated in such concerted or collective absenteeism a copy thereof not later than the day it is posted up in the factory.

In calculating the period of twelve months' continuous service, any such absence as aforesaid (other than long service leave) shall not, except to the extent of not more than 25 days in a twelve-month period in the case of sickness or accident, be taken into account in calculating the period of twelve months' continuous service.

- 21.5 Calculation of Service - Service before the date of this award shall be taken into consideration for the purpose of calculating annual leave. However, an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or a payment in lieu thereof has been allowed or made under the award hereby superseded. The annual leave shall be allowed at the rate of twelve and two-thirds hours for each completed month of continuous service. The period of annual leave to be allowed under this subclause shall be calculated to the nearest day, with any broken part of a day in the result not exceeding half a day to be disregarded.

Where the employer is a successor or assignee or transmittee of a business, if an employee was in the employment of the employer's predecessor at the time when the employer became such successor or assignee or transmittee, the employee, in respect of the period during which the employee was in the service of the predecessor shall, for the purpose of this clause, be deemed to be in the service of the employer.

- 21.6 Calculation of Month - For the purpose of this clause the first completed month of service shall be reckoned as commencing with the beginning of the first working day of an engagement and as ending on a corresponding day so as to ensure that the employee concerned has completed four weeks of working time or time regarded as working time with an employer.
- 21.7 Leave to be Taken - The annual leave provided for by this clause shall be allowed and shall be taken and, except as provided by 21.11 and 21.12, payment shall not be made or accepted in lieu of annual leave.
- 21.8 Time of Taking Leave - Subject to the provisions of 21.3, 21.9, 21.11 and 21.12, annual leave shall be given at a time fixed by the employer within a period not exceeding three months from the date when the right to annual leave accrued and after at least three months' notice to the employee. Provided that where the leave is taken in two or three periods, the first period shall be taken within a period not exceeding three months, and the balance shall be taken not later than six months from the date when the right to leave accrued or 30 September next following, whichever is the later.

- 21.9 Leave Allowed before Due Date -

- 21.9.1 An employer may allow an employee who so agrees to take annual leave either wholly or partly in advance. In such case a further period of annual leave shall not commence to accrue until after the expiration of the twelve months in respect of which the annual leave or part thereof had been taken.
- 21.9.2 Where annual leave or part thereof has been granted pursuant to 21.9.1, before the right to annual leave has accrued, and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' continuous service in respect of which the leave was granted, and the amount paid by the employer to the employee for the annual leave or part so taken in advance exceeds the amount which the employer is required to pay the employee under 21.11 of this clause, the employer shall not be liable to make any payment to the employee under 21.11, and shall be entitled to deduct the amount of excess from any remuneration payment to the employee upon the termination of employment.

#### 21.10 Payment for Period of Leave -

- 21.10.1 Each employee before going on leave shall be paid all wages which would normally become due and payable during the period of leave. For the purposes of 21.11, wages shall, subject to the provisions hereinafter contained, be at the rate prescribed by clauses 6, Rates of Pay, and 9, Apprentices or Improvers - Rates of Pay, for the occupation in which the employee was ordinarily employed immediately prior to the commencement of the employee's leave or the termination of the employee's employment, as the case may be.
- 21.10.2 An employee who is not working under an incentive scheme based on production but who is receiving a weekly overaward payment shall be entitled to receive the whole of such weekly overaward payment for each week of annual leave to which they are entitled. Provided that all amounts paid in respect of overtime, shift work or penalty rates shall be excluded. Provided further that the overaward payment shall not apply where the employee receives pro rata payment in lieu of annual leave on termination of employment with less than twelve months' service in any twelve-month qualifying period for annual leave, except in cases where an employee with more than six months' service with an employer is terminated by that employer other than for misconduct or where an employee terminates during the year on account of personal illness, substantiated by a medical certificate, or where an employee terminates on the day that the factory closes down for annual leave.
- Where an employee has accrued a full entitlement to annual leave after a qualifying twelve-month period of service and their employment ceases for any reason before the whole or any part of such leave entitlement has been taken, the weekly overaward payment referred to in this paragraph shall apply in respect to that full entitlement or any remaining portion thereof.
- 21.10.3 Payment in the case of an employee under any system of payment by results shall be at the time rate, provided that:
- (i) When taking annual leave the employee, for the purpose of paid leave, shall, for each week or part thereof of annual leave to which the employee is entitled, receive an additional payment based on the average weekly incentive payment earned in excess of the appropriate award wage for the classification concerned. The average shall be calculated on a forty-week qualifying period and applied to ordinary hours only in respect of any incentive scheme based on production during the "qualifying period of employment" in each year.
  - (ii) The "qualifying period of employment" means -
    - (1) In the case of an employee taking annual leave at Christmas, the period of 40 consecutive weeks commencing with the first pay period in February. If annual

leave is taken in two or three periods the same average additional payment for the first period shall also apply to the second and/or third period.

- (2) In the case of an employee taking annual leave at any other time, the first 40 consecutive weeks in the twelve months immediately preceding the date of the taking of annual leave.
  - (3) Where an employee is not employed during the whole of the "qualifying period" the employee shall still be eligible for such additional payment but the average incentive payments earned shall be calculated on the period of employment falling within the said 40 consecutive weeks.
- (iii) In the case of an employee absent on long service leave during any "qualifying period of employment" both the period of such leave and the payment in respect thereof shall be excluded from the calculation of average incentive payments earned.
  - (iv) Payment of any bonus or incentive in respect of "unrated work" shall be regarded as payment in respect of an incentive scheme for the purpose of 21.10.3(i).
  - (v) In calculating the average incentive payments earned, all amounts paid in respect of overtime, shift work or penalty rates shall be excluded.
  - (vi) The additional payment as specified in 21.10.3(i) shall not apply to employees receiving pro rata payment in lieu of annual leave on termination of employment with less than twelve months' service in any twelve-month qualifying period for annual leave, except in the case where an employee with a total of 6 months' service with an employer is terminated by that employer, other than for misconduct, or where an employee terminates during the year on account of personal illness, substantiated by a medical certificate, or where an employee terminates on the day that the factory closes down for annual leave.

Where an employee has accrued a full entitlement to annual leave after a qualifying twelve-month period of service, and their employment ceases for any reason before the whole or any part of such leave entitlement has been taken, the additional payment referred to in 21.10.3(i) shall apply in respect of that full entitlement or any remaining portion thereof.

21.10.4 Loading on Annual Leave - During a period of annual leave (including any period of leave allowed before due date) an employee shall receive a loading calculated on the award rate of wage prescribed by clauses 6, Rates of Pay, and 9, Apprentices or Improvers - Rates of Pay, for the occupation in which the employee was ordinarily employed immediately prior to the commencement of the employee's leave.

This loading, applicable to both time workers and payment by results workers, shall be as follows:

- (i) Employees on Day Work - An employee who would have worked on day work had the employee not been on leave shall receive a loading of 17.5 per cent.
- (ii) Employees on shift work - An employee who would have worked on shift work had the employee not been on leave shall receive a loading of 17.5 per cent.

Provided that where the employee would have received a shift loading prescribed by 14.4 and 14.5, Hours of Employment, had the employee not been on leave during the relevant period and such shift loading would have entitled the employee to a lesser amount than the loading of 17.5 per cent, then such loading of 17.5 per cent shall be added to the award rate of wage prescribed herein in lieu of the shift loading.

The loading prescribed by this paragraph is payable when services terminate in the following circumstances and not otherwise:



- (1) in respect of any untaken part of a full entitlement to annual leave for which payment in lieu is made;
- (2) in respect of any uncompleted twelve-month period for which proportionate leave on termination is payable, if services are terminated by the employer for reasons other than malingering, inefficiency, neglect of duty or misconduct, after 25 August in any year, or in the case of an employee who would not normally be taking any annual leave over the Christmas/New Year period if such termination by the employer is within four calendar months of the date the employee would normally have taken the employee's annual leave; or
- (3) in respect of any employee entitled to payment pursuant to 21.11.3.

#### 21.11 Proportionate Leave -

- 21.11.1 If after one month's continuous service in any qualifying twelve-month period an employee leaves their employment or is discharged for malingering, inefficiency, neglect of duty or misconduct, they shall be paid at their ordinary rate of wage for twelve and two-thirds hours in respect of each completed month of continuous service with the employer as from the commencement of the employment and the service shall be service for which leave has not already been granted.
- 21.11.2 If after one month's continuous service in any part of a qualifying twelve-month period an employee is terminated by the employer except for malingering, inefficiency, neglect of duty or misconduct, the employee shall be paid for leave for 2.923 hours for each completed week of continuous service with the employer, the service being service in respect of which leave has not already been granted.
- 21.11.3 If during the second or any subsequent year of an employee's continuous service with an employer their service terminates for any reason at the close of business on the day on which the plant or that section thereof in which such employee is employed closes for the December annual close down and the employee was involved in a similar close down in the December of the previous year, then such employee shall be paid on termination the equivalent of four weeks' annual leave pay in respect of continuous service during the then current calendar year. Provided that such employee had not previously been allowed any annual leave in respect of service during that calendar year. Where any period of leave had already been allowed in respect of such service, the employee's entitlement upon termination shall be the difference between four weeks and the period so allowed. Any payment made pursuant to this paragraph shall be in substitution for and not cumulative upon any entitlement which would otherwise have arisen pursuant to 21.11.1 and 21.11.2 in respect of service during the then current calendar year. In addition, the employee shall be paid the annual leave loading prescribed by 21.10.4 applicable to the quantum of leave for which payment in lieu is to be made upon termination pursuant to this paragraph. In calculating the period of continuous service as aforementioned, reference should be made to subclause 21.4.
- 21.11.4 For the purposes of this subclause the rate of wage shall be calculated in accordance with 21.10.1, 21.10.2 and 21.10.3.

#### 21.12 Annual Closedown - Where an employer closes down their plant, or a section or sections thereof, for the purpose of allowing annual leave to all or the bulk of the employees in the plant or section or sections concerned, the following shall apply:

- 21.12.1 The employer may, by giving at least three months' notice of their intention so to do, stand off for the duration of the closedown all employees in the plant or section or sections concerned and allow to those who are not then qualified for a full entitlement to annual leave paid leave on a proportionate basis of 2.923 hours for each completed week of continuous service, subject to and then including the initial qualifying period of one

- month of continuous service with the employer. Provided that where in any establishment a ballot indicates that at least 75 per cent of employees agree, and with the consent of the union, the period of closedown may be extended and all employees stood down without pay for a further period of not more than two days.
- 21.12.2 An employee who has then qualified for a full entitlement to annual leave for twelve months' continuous service pursuant to 21.1, and has also completed a further week or more of continuous service shall be allowed the employee's leave and shall, subject to 21.5, also be paid for 2.923 hours in respect of each completed week of continuous service performed since the close of the employee's last twelve-month qualifying period.
- 21.12.3 Except where annual leave is allowed before the due date in accordance with 21.12.1, the next twelve-month qualifying period for each employee affected by such close down shall commence from the day on which the plant or section concerned is re-opened for work. Provided that all time during which an employee is stood down without pay for the purposes of this subclause shall be deemed to be time of service in the next twelve-month qualifying period.
- 21.12.4 If, in the first year of the employee's service with an employer, an employee who is allowed proportionate leave under 21.12.1 subsequently within such year leaves their employment or their employment is terminated by the employer, they shall be entitled to the benefit of 21.11, subject to adjustment for any proportionate leave which the employee may have been allowed.
- 21.13 An outdoor worker subject to the qualifying period of one month's continuous service shall be paid on termination of employment or, when taking annual leave an amount equal to one-twelfth of the employee's total earnings for that period of employment in respect of which leave has not already been granted.
- When taking annual leave there shall be added to the aforementioned amount a loading of 17.5 per cent. Provided, however, that the monetary amount of such loading shall not exceed the amount which an ordinary weekly employee in the same classification would receive by way of an annual leave loading in respect of the same period of employment.
- 21.14 Proportionate payment for annual leave shall be made by an employer in respect of each completed month of continuous service when the employee leaves their employment or, in accordance with 21.11.2, where an employee is terminated by the employer before the completion of any twelve-month qualifying period under this clause. Payment shall be made on the employee so leaving or on their employment being so terminated, as the case may be.
- 21.15 An employer may close down the plant or section thereof in two periods, for the purpose of granting annual leave. Provided that the longer of the two periods of leave shall be at least twelve working days exclusive of public holidays. Such longer period shall be granted by the employer during the December-January period unless otherwise agreed in writing by the employer and the Secretary of the union or, in the event of a dispute, as decided by the Industrial Relations Commission of New South Wales. Provided that the employer may close down the plant or section thereof in three separate periods, subject only to the following conditions:
- 21.15.1 That at least 75 per cent of the employees in the plant as a whole or a section thereof, as the case may be, mutually agree with an employer on three separate periods of leave and mutually agree upon the date when the third closure is to be made. An employer in conjunction with an accredited representative of the Union may seek such an agreement with their employees in the plant as a whole or a section thereof, as the case may be, by means of secret ballot and not otherwise.
- 21.15.2 That the employees concerned be given at least three months' notice of the proposed closures.

- 21.15.3 That the longest of the three periods of leave shall be at least twelve days exclusive of public holidays.
- 21.15.4 That the second and/or third closedown period shall take place not later than 30 September, in the year following the first close down period.
- 21.15.5 Subject to the special provisions contained in this subclause, all other provisions of the annual leave clause shall apply in respect to the obligations and rights of employers and employees.

## **22. Trade Union Training Leave**

- 22.1 Subject to 22.2, a Union delegate or elected employee work place representative shall, upon application in writing, be granted up to five days' leave with pay each calendar year, non-cumulative, to attend courses conducted or approved by the Australian Trade Union Training Authority which are designed to promote good industrial relations and industrial efficiency within the clothing industry.

This notice to the employer must include details of the type, content and duration of the course to be attended.

- 22.2 Employers may approve leave in accordance with this clause, subject to the following limitations:
- 22.2.1 Where the employer employs up to and including 49 employees in a workplace, 5 union delegates or elected workplace representatives may be granted 5 days' leave per calendar year.
- 22.2.2 Where the employer employs between 50 and 150 employees inclusive in a workplace, 10 union delegates or elected work place representatives may be granted 5 days' leave per calendar year.
- 22.2.3 Where the employer employs 150 or more employees in a workplace, 15 union delegates or elected workplace representatives may be granted 5 days' leave per calendar year.
- 22.2.4 The numbers contained in this clause may be varied by mutual agreement between the Union and an employer.
- 22.3 The granting of such leave shall be subject to the employee or the Union giving at least one calendar month's notice of the intention to attend such course, or such lesser period as may be agreed between the employer, the Union and the employee concerned.
- Provided that the taking of such leave shall be arranged so as to minimise any adverse effect on the employer's operations.
- 22.4 Leave of absence granted pursuant to this clause shall count as service for all purposes.
- 22.5 Each employee on leave approved in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of the leave, such wages to be calculated in accordance with 21.10, Annual Leave.
- 22.6 All expenses (such as travel, accommodation and meals) associated with or incurred by the employee attending a training course during leave approved pursuant to this clause shall be the responsibility of the employee or the Union unless otherwise agreed between the employer, the Union and the employee concerned.
- 22.7 Should an employee granted leave pursuant to this clause fail to attend the nominated course, the employer shall be notified by the Union as soon as practicable, and no payment is to be made by the employer in respect of leave for the employee concerned.
- 22.8 In the event that a scheduled rostered day off resulting from a work arrangement established in accordance with clause 14, Hours of Employment, falls within a period of leave approved pursuant to this clause, no alternative day shall be substituted in lieu.

- 22.9 Employees granted leave pursuant to this clause shall inform their employer after the completion of the course of the nature of the course and their observations on it.

### 23. Sick Leave

A weekly employee and a part-time employee (to the extent specified) who is absent from work on account of personal illness or on account of injury shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations -

- 23.1 The employee shall not be entitled to paid leave of absence unless the employee has been in the service of the employer concerned for at least one month immediately prior to such absence.
- 23.2 The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to workers' compensation.
- 23.3 The employee shall, no later than the working day following the commencement of such absence, inform the employer of the inability to attend for duty and, as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.
- 23.4 In the case of an employee employed subject to 14.1, Hours of Employment, that employee shall, prior to the commencement of work or as soon as it is reasonably practicable and during the ordinary hours of the first day or shift, inform the employer of the employee's inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence the employee shall inform the employer within 24 hours of the commencement of the absence.
- 23.5 The employee shall prove to the satisfaction of the employer that they were unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed. For such purpose the employer may require the employee to make a statutory declaration or produce other reasonable evidence which is satisfactory to the employer, justifying the cause of absence.
- 23.6

- 23.6.1 An employee shall be entitled to paid leave of absence for not more than 38 hours of working time owing to such ill health or injury during their first sick leave year of continuous service with an employer. Such sick leave year shall be as defined in 23.12.

Provided that an employee, after one month's continuous service, shall only be entitled to paid sick leave proportionate to the period of employment from the date of engagement until 31 December next following calculated on the basis of 3.17 hours ordinary pay for each complete month or part thereof. If such employee subsequently leaves their employment of their own accord other than on account of personal illness substantiated by a medical certificate or is dismissed for misconduct the employer may deduct from any monies due to the employee an amount equivalent to the value of any paid sick leave allowed in excess of that to which the employee would be entitled if calculated on the basis of 3.17 hours ordinary pay for each completed month of service or part thereof.

- 23.6.2 The employee shall be entitled during the second sick leave year of continuous service with an employer to paid leave of absence for not more than 46 hours of working time, subject to any accumulated leave to which the employee may be entitled in accordance with 23.9.
- 23.6.3 The employee shall be entitled during the third or subsequent sick leave year of continuous service with an employer to paid leave of absence for not more than 61 hours of working time, subject to any accumulated leave to which the employee may be entitled in accordance with 23.9.

- 23.7 An employee under any system of payment by results entitled to paid leave of absence under this clause shall be paid at the time work rate applicable to the classification. The time work rate "applicable to the classification" is the award rate applicable to that classification defined in 6.1, Rates of Pay.
- 23.8 For the purpose of this clause, a month shall be reckoned as commencing with the beginning of the first day of the employment or period of employment in question and as ending at the beginning of the day which has the same day number as the commencing day. If there be no such day in the subsequent month, it shall be reckoned as ending at the end of the subsequent month.
- 23.9 For the purpose of this clause, where an employee is terminated by the employer and is re-employed by that employer within a period not exceeding three months, the service with the employer immediately prior to the dismissal shall be taken into account in calculating the employee's entitlement to sick leave. That is to say, the employee's entitlement to sick leave shall be calculated as though their period of service has been continuous, and any sick leave credits accrued to the employee at the time of termination shall not be affected to the detriment of the employee.
- 23.10 Cumulative Sick Leave - Sick leave shall accumulate from year to year and may be claimed by the employee and, shall be allowed by the employer in a subsequent year without diminution of the sick leave prescribed in respect of that year. Provided that sick leave which accumulated pursuant to this subclause shall be available to the employee for a period of eight years but not longer from the end of the year in which it accrues.
- 23.11 For the purpose only of sick leave entitlements provided in this clause, and where a clothing industry business is transmitted from an employer to another employer and a worker who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transferee within two weeks of such transmission:
- 23.11.1 the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission;
- 23.11.2 the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be employment of the employee with the transferee;
- 23.11.3 "transmission", for the purpose of this subclause, includes transfer, conveyance, assignment or succession (whether by agreement or by operation of law) and "transmitted" has a corresponding interpretation.
- 23.12 For the purpose of this clause, a year shall be deemed to be from the first day of January to the 31st day of December inclusive.
- 23.13 Sickness on Rostered Day Off - Where an employee is absent on account of illness or injury on the weekday they are to take off in accordance with an arrangement pursuant to 14.1.2, Hours of Employment, the employee shall not be entitled to sick pay nor shall the employee's sick pay entitlement be reduced as a result of their absence on that day.

## **24. Personal/Carer's Leave**

- 24.1 Use of Sick Leave -
- 24.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 24.1.3(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 23, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day
- 24.1.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

24.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:

- (i) the employee being responsible for the care of the person concerned; and
- (ii) the person concerned being:
  - (1) a spouse of the employee; or
  - (2) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
  - (3) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
  - (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
  - (5) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
    - (A) "relative" means a person related by blood, marriage or affinity;
    - (B) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other;
    - (C) "household" means a family group living in the same domestic dwelling.

24.1.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 4, Dispute Settlement Procedure, should be followed.

24.2 Unpaid Leave for Family Purpose -

- 24.2.1 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 24.1.3(ii) above who is ill or who requires care due to an unexpected emergency.
- 24.3 Annual Leave -
- 24.3.1 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- 24.3.2 Access to annual leave, as prescribed in 24.3.1, shall be exclusive of any shutdown period provided for elsewhere under this award.
- 24.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- 24.3.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- 24.4 Time Off in Lieu of Payment for Overtime -
- 24.4.1 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 within 12 months of the said election.
- 24.4.2 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.
- 24.4.3 If, having elected to take time as leave in accordance with 24.4.1, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
- 24.4.4 Where no election is made in accordance with 24.4.1, the employee shall be paid overtime rates in accordance with the award.
- 24.5 Make-up Time -
- 24.5.1 An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
- 24.5.2 An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- 24.6 Rostered Days Off -
- 24.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- 24.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- 24.6.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.

- 24.6.4 This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

24.7 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 24.1.2 and 24.1.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 24.1.3(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### **25. Payment By Results**

- 25.1 Operation of PBR Systems - An employer may maintain, alter or institute a system of payment by results, subject only to the provisions and limitations set out in this clause.

The existence and operation of a system of payment by results shall be subject to the consultative mechanisms specified in this clause and, where appropriate or necessary, to the provisions of Schedule "A", Consultative Committees.

25.2 Payment by Results Earnings -

- 25.2.1 The employer shall pay an employee working under a payment by results system a minimum amount each week equal to the award wage appropriate to the employee's Skill Level.
- 25.2.2 The employer shall pay the employee for each hour worked an amount not less than one thirty-eighth of the award wage appropriate to the employee's Skill Level.
- 25.2.3 Where a employee does not work for thirty-eight hours in any week, the employer shall pay the employee a pro rata amount of money according to the number of hours worked by the employee appropriate to the employee's Skill Level.
- 25.2.4 The employer shall calculate the minute pay rate for each standard time minute by dividing the total award wage for skill Level 1 by 2280.  
  
Where an employer is currently paying a higher rate than this the higher rate shall continue to be applied and shall not be increased until such time as the rate, as calculated by this subclause, meets or exceeds the higher rate.
- 25.2.5 An employer shall calculate the payment by results earnings of a worker by multiplying the minute pay rate by the excess of the standard time produced over real time worked under payment by results.
- 25.2.6 The employer shall pay the worker the worker's payment by results earnings calculated in accordance with subclause 25.2.4 in addition to the total award wage appropriate to the worker's Skill Level.



- 25.2.7 Where a worker earns payment by results earnings for work performed in any day, such earnings shall be credited to the worker and shall not be reduced because the worker fails to earn payment by results earnings in any other day.
- 25.2.8 An apprentice or improver employed pursuant to clause 10, Apprenticeship and Improvership, shall be deemed to be producing bonus minutes when they have produced that number of minutes in proportion to the ordinary daily adult number of minutes as their rate of pay is in proportion to the appropriate adult award rate.
- 25.2.9 An employer, subject to the provisions of subclause 25.3, may fix or alter a time standard in respect of any garment or part of a garment, or any article or part of an article, provided such time standard is set consistent with the objective that 75% of workers (excluding trainees being new entrants to the clothing industry employed as trainees for up to three months) in any given period earn at least 20% more than the total award wage for skill Level 1.
- This subclause shall not act in any way to impose a guarantee on the amount of an individual worker's payment by results earnings.
- 25.3 Time Standards - An employer shall calculate the time standard allowed for the performance of work in accordance with the following:
- 25.3.1 An employer shall consult with the payment by results workers and union representative(s) prior to the finalisation of any time standard fixed in accordance with this clause and shall provide to the payment by results workers and the union representative(s) the basis upon which the payment by results system is calculated, including appropriate allowances and the likely weekly earnings on such time standard.
- On application by the Secretary of the Union, the employer shall make available the basis of such a system.
- 25.3.2 The setting of a time standard shall take into account the nature and method of the work to be completed and the conditions under which it is performed, including appropriate allowances.
- 25.3.3 Time standards shall be set to provide the consistent and similar earnings by workers with similar training, instruction, skill method and performance in a work area in an enterprise using a system of payment by results.
- 25.3.4 Once a time standard has been fixed in accordance with this clause, it shall not be altered except where any of the following circumstances occur:
- there is a change in the manufacturing methods;
  - there is a change in the materials used;
  - there is a change in the machines or equipment used;
  - there is a change in the quality requirements;
  - to correct an agreed error in the existing time standard;
  - by agreement between the employer, the payment by results workers, and union representative(s).
- 25.3.5 An employer shall clearly display a copy of the time standard for each payment by results operation in each work area in each enterprise. The copy of the time standard shall be updated within twenty-four hours of any changes to the time standards.

- 25.3.6 Once a time standard has been fixed in accordance with this clause, it shall be recorded in a register and signed and dated by the employer and union representative(s).
- 25.3.7 The employer shall also display in each work area in each enterprise a conversion table to enable a worker to convert time standards into monetary amounts.
- 25.4 Implementation, Review and Alteration of a PBR System - For the purpose of this clause, "workers affected" means a person or persons whose work is directly involved in any way whatsoever by the implementation of a payment by results system.
- 25.4.1 The existence and operation of a system of payment by results shall be subject to the consultative mechanism specified in this clause and, where appropriate or necessary, to the provisions of Schedule "A", Consultative Committees.
- 25.4.2 An employer may, with the agreement of seventy-five per cent of the workers affected, operate a payment by results system for the workers.
- 25.4.3 The employer shall, every six months, table a summary of the results of the payment by results system to allow the consultative committee and union representative(s) to assess whether the payment by results system meets the criteria of subclause 25.2.9 of this clause.
- 25.4.4 Every calendar year in the month of February the employer shall, in consultation with the workers whose work is directly involved in any way whatsoever, conduct a vote of such workers on whether the payment by results system will continue. If seventy-five per cent of such workers vote to discontinue the payment by results system, the employer shall do so. The outcome of this review shall be reported to the Secretary of the Union.
- 25.4.5 If, in accordance with the vote of workers whose work is directly involved in any way whatsoever, the payment by results system is discontinued, the employer may, after three months, in consultation with the consultative committee and the union representative(s), introduce a new payment by results system in accordance with the provisions of this subclause.
- 25.4.6 The consultative committee and the Union may seek the assistance of an agreed independent expert on payment by results systems and the employer shall engage the expert chosen and pay all expenses associated with the engagement of the expert.
- 25.5 Training - An employer implementing a payment by results system pursuant to this clause shall provide each worker with appropriate training to ensure that individual performance is the only variable distinguishing workers within a skill level as outlined clause 8, Skill Levels.
- 25.6 Work Records - An employee shall complete work records in accordance with the employer's directions. Any wilful falsification of such records will be sufficient ground for instant dismissal of the employee concerned. Where necessary the employer shall make arrangements for collecting the work records without loss of time to the employee concerned.

## 26. Casual Workers

- 26.1 An employer shall only engage a casual worker during one 8-week period in any 12-month period, unless in accordance with subclause 26.2.
- 26.2 An employer may engage a casual worker for a specific period of time to replace a designated person where the period of engagement does not exceed 13 weeks in aggregate in any 12-month period. The period of time for which the casual worker is engaged, together with any other special conditions of employment, shall be confirmed in writing at the time of engagement.
- 26.3 An employer shall pay a casual worker one thirty-eighth of the award wage for the worker's classification plus 33.33 per cent per hour.

26.4 An employer shall apply all the provisions of this award to a casual worker, including the provisions of clause 16, Overtime, with the exception of the following clauses:

Clause 21, Annual Leave;

Clause 23, Sick Leave;

Clause 28, Holidays.

26.5 An employer shall not require a casual worker to attend for duty more than once on any one day.

26.6 The employment of a casual worker may be terminated by the employer or the casual worker by the giving of one hour's notice.

## **26A. Secure Employment**

### 26A.1 Occupational Health and Safety

26A.1.1. For the purposes of this subclause, the following definitions shall apply:

- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

26A.1.2. Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

- (a) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (b) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (c) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (d) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

26A.1.3. Nothing in this subclause 26A.3 is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

### 26A.2. Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

26A.3. This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council

### **27. Part-Time Employees**

- 27.1 An employer may employ a part-time employee on a weekly basis in accordance with clause 20, Terms of Engagement.
- 27.2 For the purposes of this clause a part-time employee is a person who is employed for less than 38 hours per week.
- 27.3 An employer shall pay a part-time employee one thirty-eighth of the award wage for the employee's classification per hour.
- 27.4 An employer shall apply all the provisions of this award to a part-time worker, including the provisions of clause 21, Annual Leave, clause 23, Sick Leave, and clause 28, Holidays, on a pro rata basis according to the number of hours worked by the employee.
- 27.5 Provided that -
- 27.5.1 by agreement in writing signed by the employer and the employee, the provisions of clause 21, Annual Leave, clause 23, Sick Leave, and clause, 28, Holidays, shall not apply and in lieu of these provisions the employer shall pay the part-time employee an additional twenty per cent of the award wage for the employee's classification per hour;
- 27.5.2 where, for a period not exceeding two calendar months or by an agreement in writing for a longer period, signed by the employer and the employee, the part-time employee genuinely works an irregular number of hours each week, the employer may pay the part-time employee in accordance with subclause 27.5.1.
- 27.6 An employer may employ a part-time employee within the ordinary spread of hours applicable to full-time employees. Where such part-time employee works for more hours in a day than the number of hours for which the part-time employee is ordinarily employed or is employed at a time outside the ordinary spread of hours, the hourly rate (exclusive of the 20 per cent loading, if paid) shall be increased in accordance with clause 16, Overtime.
- 27.7 An employer shall pay a part-time employee employed under a payment by results system in accordance with clause 25, Payment by Results, but in no case shall any part-time employee be paid less than the award wage for their classification as is proportionate to the time worked by them.
- 27.8 An employer shall calculate the payment or deduction of payment in lieu of notice, the entitlement to severance pay, the entitlement to annual leave and the entitlement to sick leave provided by this award on a proportionate basis. The basis for this calculation shall be the average weekly number of hours worked by the part-time employee during the preceding 12 months or, if there is not a 12-month period of the employment, then the average of the actual hours worked during the period of employment.
- 27.9 An employer shall grant a part-time employee the holidays provided in clause 28, Holidays, where such holiday falls on a day that the part-time employee would normally have worked. An employer shall pay a part-time employee for the number of hours the part-time employee would normally have worked on that day.
- 27.10 An employer shall not require a part-time employee to attend for duty more than once on any one day.

- 27.11 An employee who was engaged as a casual worker in accordance with clause 26, Casual Workers, prior to 1 May 1990, and who is now engaged as a part-time employee in accordance with clause 27, shall, for the duration of their employment, be paid 33.33 per cent loading in lieu of a twenty per cent loading as provided in this clause.

## 28. Holidays

- 28.1 All employees, other than casual employees, shall be granted the following holidays without deduction of pay, which is the ordinary rate of pay an employee would have received for the hours that they would have worked had the day not been a holiday: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Easter Tuesday, Labor Day, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that if any other day is by State Act of Parliament or State Proclamation substituted for any of the said holidays, the day so substituted shall be observed.

Where a special public holiday is proclaimed by Order-in-Council or otherwise gazetted by the authority of the Australian Government or of a State Government under any State Act and generally observed throughout New south Wales, such day shall be deemed to be a holiday for the purpose of this award.

### 28.2

28.2.1 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

28.2.2 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

28.2.3 When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

- 28.3 Where public holidays are declared or prescribed on days other than those as set out in subclauses 28.1 and 28.2 of this clause, those days shall constitute additional holidays for the purpose of this award.

### 28.4 Changing Public Holidays by Agreement -

28.4.1 An employer, with the agreement of the Union, may substitute another day for any prescribed in this clause.

#### 28.4.2

- (i) An employer and the employer's employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.
- (ii) An agreement pursuant to 28.4.1 shall be recorded in writing and be available to every affected employee.
- (iii) The Union shall be informed of an agreement pursuant to clause 28.4.2(i) and may, within seven days, refuse to accept it. The Union will not unreasonably refuse to accept the agreement.
- (iv) If the Union, pursuant to clause 28.4.2(iii), refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the Union.
- (v) If no resolution is achieved pursuant to clause 28.4.2(iv), the employer may apply to the Clothing Trades (State) Industrial Committee for approval of the agreement. Such an application must be made at least 14 days before the prescribed holiday. After giving the

employer and the Union an opportunity to be heard, the Industrial Committee will determine the application.

- 28.5 Payment by Results Employees - An employee working under any system of payment by results shall be paid for such holidays at the ordinary rate payable to an employee working as a time worker doing the same class of work.
- 28.6 Rostered Day Off or Accumulated Time Off Falling on a Holiday - In the case of an employee whose ordinary hours of work are arranged in such a manner as to entitle the employee to a rostered day off, the weekday to be taken off shall not coincide with a holiday fixed in accordance with this clause. Provided that, in the event that a holiday is prescribed after an employee has been given or gives notice of a weekday off and the holiday falls on such weekday, the employer shall allow the employee to take an alternative weekday off in lieu of the holiday.
- 28.7 Termination Within 14 Days of a Holiday -
- 28.7.1 Where an employee, with at least one week's service with the employer, is terminated through no fault of their own within 14 days prior to a holiday, and is re-engaged by the same employer within three months of such holiday, the employee shall be paid for any such holiday the amount they would have received had they not been terminated.
- 28.7.2 Where an employee, with at least one month's service with the employer, is terminated through no fault of their own on or after the last working day of the last pay period in November each year or within 14 days prior to Good Friday, the employee shall receive payment for the relevant Christmas, New Year or Easter holidays.
- 28.7.3 No employee shall be entitled to be paid more than once for the same holiday whilst working in the industry and shall be in breach of the award in accepting a double payment without informing the employer in relation thereto.
- 28.8 Full-time Employees Working Non-standard Hours - Approved employers only - This subclause applies only to full-time employees employed by approved employers who do not regularly work a five-day, Monday to Friday week, as provided for elsewhere in this award.
- 28.8.1 When a prescribed holiday falls upon a day when the employee would not be working in any event, the employee shall receive:
- (i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or
  - (ii) an additional day's wage.
- 28.8.2 If an employee is rostered to work on the public holiday or its substitute day (except Christmas Day), the following provisions shall apply:
- (i) If the employee is not required to work on the public holiday, the employee shall receive the payment the employee would ordinarily receive for that day and is not entitled to the substituted day off.
  - (ii) If the employee is required to work on the public holiday, the employee is entitled to receive the normal rates of pay for working that day and the substitute day as a holiday. (If the substitute day is a non-working day for the employee, the employee shall receive the compensation as set out in clause 28.8.1).
  - (iii) If the employee is required to work on the substitute day, the employee shall receive the rates of pay for working on a public holiday.

- 28.8.3 If any employee is rostered and required to work on both the "actual" public holiday and its substituted day (this would only occur if the holiday was to fall on a Saturday or a Sunday) the employee would be entitled to:
- (i) a day's paid leave to be taken on another day or added to annual leave (to be mutually agreed between the employer and the employee); or
  - (ii) payment at public holiday rates for the day's work for the substituted day, and payment at the normal rates for Saturday or Sunday for the actual public holiday.
- 28.8.4 Christmas Day Loading - If the employee is rostered to work on a Saturday or Sunday that is Christmas Day and is required to work, the employee shall receive the normal Saturday or Sunday rate, plus a loading of one-half of a normal day's wages for the full day's work and be entitled to the substitute day.
- 28.9 Permanent Part-time Employees (Non-casual) - Where the normal roster of a part-time employee includes a day that is a holiday, the employee shall receive the normal pay the employee would have received on that day, subject to subclause 28.5, and shall be granted the holiday or receive the appropriate public holiday rate for working whatever hours the employee worked.
- 28.9.1 For part-time employees whose normal roster includes a Saturday or Sunday that would be a prescribed holiday but for the substitution of an alternative day, the following shall apply:
- (i) The employee shall be granted leave with pay on the "actual day" without any substitution; or
  - (ii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day, the Christmas Day loading will apply) and is allowed to take another day with pay, which may or may not be the prescribed substitute day, as a holiday; or
  - (iii) the employee works on the "actual day" at normal Saturday or Sunday rates (if the Saturday or Sunday is Christmas Day, the Christmas Day loading will apply) and receives, in addition, payment at ordinary-time rates for an additional day of equal length (with no substitution of an alternative day).
- 28.9.2 If any of these benefits applies, the employee who works on the prescribed substitute day should do so at ordinary-time rates.
- 28.10 Casual Employees Working on Public Holidays - A casual employee who works on the day prescribed as the public holiday shall be paid the appropriate public holiday pay as provided for elsewhere in this award. The employee should receive the ordinary casual rate plus the applicable penalty. That is, the casual loading of 33.33 percent and the prescribed holiday rate for non-casual employees of 2.5 times ordinary rates. The casual will be paid 2.833 times the ordinary rate for non-casual employees.
- 28.11 Absences Before or After Public Holidays - Where an employee is absent from employment on the working day or part of the working day before and the working day or part of the working day after a public holiday without reasonable excuse or without the employer's consent, the employee shall not be entitled to payment for the relevant public holiday.
- 28.12 Unpaid Leave and Public Holidays - Any continuous period of unpaid leave in excess of four weeks shall not be deemed to be service and the employee shall not be entitled to payment for any holiday falling within this period of leave.

### **29. Payment for Work Done on Holidays**

- 29.1 Any weekly employee who works on any holiday provided for in clause 28, Holidays, shall, for all time worked on that day, be paid at the rate of double time and one-half of the ordinary rate.

29.2 Any employee working under any system of payment by results who works on any holiday provided for in the said clause 28 shall, for all time worked on that day, be paid the employee's ordinary earnings under such system of payment by results, and an amount calculated on the basis of half of the ordinary rate for the class of work being performed, in addition to the ordinary rate payable to employees on time work doing the same class of work.

29.3 The minimum payment for work performed on public holidays shall be four hours.

### **30. Payment for Work Done on Sundays**

30.1 Work in any factory or workshop is prohibited on Sundays unless in extraordinary circumstances and then only with the consent of the Secretary of the Union.

30.2 Any employee who works on a Sunday shall for that day be paid at the rate of double ordinary rates.

### **31. Contract Work**

31.1 Contract work may only be undertaken subject to the following conditions:

31.1.1 An employer may give out work to another employer provided that, where the employer undertaking such work causes some or all of such work to be performed outside a factory or workshop registered in compliance with the appropriate State Acts or regulations, the employer to whom work is given shall be a registered employer of outworkers pursuant to clause 33, Registration of Employers.

31.1.2 An employer giving out work to other employers shall, on the last working day of May and the last working day of November each year, file with the Industrial Registrar or Deputy Industrial Registrar in New South Wales, a list of the employers to whom work is given, and a copy of such list shall be forwarded to the Union.

31.1.3 The Industrial Registrar or the Deputy Industrial Registrar in New South Wales may allow an organisation with a legitimate interest in the clothing manufacturing industry to peruse the list submitted in accordance with clause 31.1.2.

31.2 Employer giving out work to another employer where the other employer does not employ outworkers:

31.2.1 An employer bound by this award may give out work to another employer, to be carried out in the other employer's workshop or factory registered in accordance with the appropriate State Acts and Regulations.

31.2.2 An employer giving out work pursuant to this subclause shall, on the following dates in each year, file with the Industrial Registrar or the Deputy Industrial Registrar in New South Wales, a list of the other employers to whom work has been given in each preceding three-month period, and a copy of such list shall be forwarded to the Union:

Last working day of February.  
Last working day of May.  
Last working day of August.  
Last working day of November.

31.2.3 The Industrial Registrar or the Deputy Industrial Registrar in New South Wales may allow an organisation with a legitimate interest in the clothing manufacturing industry to peruse the list submitted in accordance with clause 31.2.2.

31.3 Employer contracting with a person who alone will perform work - Employer giving out work to another employer or another person where the other employer or other person employs others outside a factory or workshop:



- 31.3.1 For the purpose of this subclause, "work" means hand or machine sewing in the construction of a garment or part thereof being work performed other than in a factory or workshop.
- 31.3.2 An employer shall:
- (i) not contract with any person pursuant to this subclause unless that employer is registered pursuant to clause 33, Registration of Employers;
  - (ii) when desirous of contracting with any person pursuant to this subclause, make application for registration, in accordance with the said clause 33, to the Clothing Trades (State) Industrial Committee.
- 31.3.3
- (i) An employer contracting with a person who alone will perform work shall contract to provide and shall provide terms and conditions no less favourable than those prescribed by this award for persons engaged under a contract of service pursuant to clause 32, Outworkers.
  - (ii) An employer contracting with another employer, or with another person who gives out the work, or with a person who alone will perform work shall make a record in writing of the following details:
    - (1) The name of the other employer (or the other person) who gives out the work and the registration number of the other employer (or the other person) who gives out the work.
    - (2) The address of the other employer (or the other person) who gives out the work.
    - (3) The name(s) and address(es) of the person(s) to whom the work is given.
    - (4) The address(es) where the work is to be performed.
    - (5) The date of giving out the work and the date for completion of the work.
    - (6) A description of the nature of the work to be performed (including construction, seam type, finishing and fabric type).
    - (7) A description and, where available, a rough drawn outline of the garments or articles of each type being given out to the other employer (or the other person) who gives out the work.
    - (8) The number of garments or articles of each type being given out to the person.
    - (9) The sewing time allowed for each type of garment or article to be done.
    - (10) The price to be paid for each garment or article. The Union shall not divulge any details concerning the price to be paid for each garment or article in any circumstances to any party, save for enforcement proceedings in a court or industrial dispute proceedings in the Industrial Relations Commission of New South Wales.
    - (11) Where the work is given to a person who alone will perform the work, the total amount to be paid to the person calculated in accordance with subclauses 31.3.3(ii)(8), (9) and (10).
  - (iii) A copy of this record shall be given to the person doing the work and the employer's copy shall be available for inspection by a person duly authorised in accordance with clause 34,

Entry and Inspection by Officers of Industrial Organisations, as if it was a record as described in clause 35, Time Book, Sheet or Records.

31.3.4

- (i) No employer shall enter into any contract or arrangement with another person (hereinafter called "the second person") concerning the performance of work pursuant to which contract or arrangement the second person will not personally or alone perform the work unless the contract or arrangement is entered into on terms whereby any work to be performed by a person other than the second person is carried out pursuant to a written agreement made between the second person and the person who will actually perform the work, such written agreement to:
  - (1) specify the matters referred to in clause 31.3.3(ii); and
  - (2) provide for wages and conditions no less favourable than those provided by this award for persons engaged under a contract of service pursuant to clause 32, Outworkers.
- (ii) Any employer who enters into a contract pursuant to subclause 31.3.3(i) or pursuant to subclause 31.3.4(i) shall notify the Industrial Registrar or the Deputy Industrial Registrar in New South Wales and the Union, within seven days of the last working day of February, May, August and November of each year of the existence of such contract and the names and addresses of the persons who enter into the contract. The Industrial Registrar, or the Deputy Industrial Registrar in New South Wales may allow an organisation with a legitimate interest in the clothing manufacturing industry to peruse such records.

31.3.5

Where a person has performed work either directly for an employer pursuant to subclause 31.3.3 or for a second person (being work in respect of a contract or arrangement between the second person and an employer pursuant to subclause 31.3.4), such person may make a claim for payment for such work by serving upon the relevant employer a statutory declaration specifying the identity of the person performing the work, the work performed, the date or dates on which the work was performed and the payment claimed. Such statutory declaration, if served within six months of completion of that work, shall be accepted as proof of liability on the part of that employer to pay the sum claimed, unless that employer against whom the claim is made is able to prove:

- (i) that the work was not in fact done; and/or
- (ii) the payment claimed was not the correct payment due for the work that was actually done.

31.3.6

An employer shall not in any way, whether directly or indirectly, be a party to or concerned in conduct that:

- (i) hinders, prevents or discourages the observance of this clause; or
- (ii) causes or encourages, or is likely to cause or encourage, a breach or non-observance of this clause.

31.4 An employer contracting with a person who alone will perform work shall provide to that person, each time work is given out, information as to their entitlements as per Schedule "C" of this award.

## 32. Outworkers

32.1 For the purpose of this clause -

"Employer" means an employer bound by this award.

"Ordinary working week" means the hours and days occurring between midnight on Sunday and midnight on Friday in any week.

"Outworker" means a person who performs work as herein defined for an employer outside the employer's workshop or factory under a contract of service.

"Work" means hand or machine sewing in the construction of a garment or part thereof being work performed other than in a factory or workshop.

32.2 Employers bound by this award shall -

32.2.1 not employ any person to perform work covered by this award under a contract of service outside the employer's workshop or factory unless that respondent employer is a registered employer of outworkers, pursuant to clause 33, Registration of Employers;

32.2.2 when desirous of employing outworkers, make application to the Industrial Committee for registration in accordance with clause 33, Registration of Employers;

32.2.3 not employ a person to perform work covered by this clause outside the workshop or factory unless prior agreement in writing has been reached between that respondent and the person as to whether that person is to be employed on a full-time or part-time basis and if on a part-time basis, the agreed number of hours. Provided that nothing in this clause shall prevent the parties to any such agreement varying the same by consent from employment on a full-time basis to employment on a part-time basis or vice versa. Provided further that any such variation shall not take effect until the expiry of at least three days from the date of the agreement to that variation;

32.2.4 not employ more than 10 outworkers at any one time. Provided that an employer may employ a specified greater number of outworkers with the consent of the Union or if, in the absence of that consent, the Industrial Committee in the exercise of its discretion grants permission to the employer to employ a specified greater number of outworkers;

32.2.5 pay any outworkers employed at the rates prescribed by clauses 6, Rates of Pay, and 25, Payment by Results, (as appropriate) for the classification in which the outworker is engaged. Provided that working time allowed for work to be performed shall be fair and reasonable and that the time standards set for the work to be performed by outworkers will in every case be longer than the time standards that would be set for the same work if done in the factory to include a reasonable component to cover time spent on ancillary tasks, such as bundling and unbundling, sorting, packing and the like. Provided further that in the event that the employer has no factory, a factory undertaking the same or comparable work shall be used for the purpose of setting the time standards;

32.2.6 pay for outwork performed in the ordinary working week at the minute rate of:

- (i) 1/2280 of the weekly award rate for the classification in which the outworker is employed for the first 38 hours worth of work; and
- (ii) the minute rate in clause 32.2.6(i), multiplied by 1.5 for the classification in which the outworker is employed, for each hour thereafter;

32.2.7 pay for outwork performed or deemed to have been performed on a Saturday or Sunday or a public holiday, at the minute rate in clause 32.2.6(i), multiplied by 2 for the classification in which the outworker is employed. An outworker shall not be entitled to penalty payment for work performed on a Saturday, Sunday or award holiday unless there is prior agreement with the employer for the performance of work on any such day(s) in accordance with clause 32.2.13(xii);

- 32.2.8 apply all provisions of clause 25, Payment by Results, to outworkers working under any system of payment by results unless expressly excluded from such operation either in this clause or in the said clause 25;
- 32.2.9 provide sufficient work (that is, 38 hours worth of work each week for full-time outworkers and at least 20 hours worth of work each week for part-time outworkers) in the ordinary working week where the outworker is ready, willing and able to perform such work.
- Provided that an outworker under any system of payment by results who is ready, willing and able to work:
- (i) on a full-time basis (i.e., 38 hours or more) in the ordinary working week, but receives in any such week less than 38 hours worth of work from the employer, shall be paid in accordance with the following formula:
    - (1) if the employee receives no work at all, the weekly award rate for the classification in which the outworker is employed;
    - (2) if the employee receives less than 38 hours worth of work, the weekly award rate for the classification in which the outworker is employed;
  - (ii) on a part-time basis (i.e., at least 20 hours) in the ordinary working week (for one or more employers) but receives in any such week fewer hours worth of work than the number of hours for which the outworker was employed from any one such employer, shall be paid (by each employer) for the number of hours for which the outworker was employed. Such payment to be so much of the weekly award rate as is proportionate to the number of hours the worker was employed to work in any ordinary working week;
  - (iii) may be stood down by an employer without pay for up to ten days but for no more than two days in any four consecutive working weeks where no work can be offered as a result of circumstances beyond the employer's control, proof of which shall lie with the employer. In such circumstances the employer shall keep a record of the name and address of the outworker stood down, the commencing date and duration of the stand down and the reason for the stand down. A copy of this record shall be given to the person doing the work and the Union within two working days of the stand down and the employer's copy shall be available for inspection by a person duly authorised in accordance with clause 34, Entry and Inspection by Officers of Industrial Organisations, as if it was a record described in clause 35, Time Book, Sheet or Records.
- 32.2.10 not require any full-time outworker to complete more than 38 hours worth of work, or any part-time outworker to complete more hours worth of work than the number of hours for which the outworker was employed in any ordinary working week;
- 32.2.11 subject to clause 32.2.13 not require any outworker to perform work on a Saturday or a Sunday or on any public holidays;
- 32.2.12 pay the outworker for each public holiday prescribed by this award an amount equal to 1/5 of the applicable weekly award rate for full-time outworkers and on a proportionate basis for part-time outworkers;
- 32.2.13 at the time of delivery of any work to an outworker provide full details of the following matters and shall keep true and correct records thereof in writing:
- (i) the name of the employer bound by this award and the registration number of the employer;
  - (ii) the address of the employer bound by this award;

- (iii) the name of the person to whom the work is given;
- (iv) the address where the work is to be done;
- (v) the date of delivery of the work;
- (vi) the description of the garments or articles upon which work is to be done (e.g., skirts, dresses, jeans);
- (vii) a description of the nature of the work to be performed (e.g., overlocking);
- (viii) the number of garments or articles of each description being given out to the person;
- (ix) full details of the appropriate time standard in accordance with subclause 32.2.5 which when considered with the minute rate set out in clause 32.2.6 will enable the price to be paid for each garment or article to be calculated;
- (x) the number of working hours that will therefore be necessary to be worked to complete the said garments or articles, and accordingly;
- (xi) the number of days that will therefore be needed to perform the work with such calculation being undertaken (consistent with subclause 32.2.10) on the basis of 7.6 hours worth of work being performed each day; and
- (xii) the appropriate time and date for the work to be picked up from the outworker. The pickup time and date shall be set on the basis that no work will need to be performed on any Saturday, Sunday or award holiday which may occur between delivery and pickup unless there is prior agreement between the employer and the outworker that work will be performed on any or all of such days. If there is such agreement, the written record referred to in this subclause must specify the actual date of any Saturday, Sunday or award holiday on which it has been agreed that work will be performed and the number of hours to be worked on any such day. In the absence of any specification as to the number of hours to be worked on a Saturday, Sunday or award holiday on which work has been authorised pursuant to this paragraph, the outworker shall be deemed to have worked and shall be entitled to payment in respect of any such day at the rate specified in clause 32.2.7.
- (xiii) The total amount to be paid to the outworkers shall be calculated in accordance with subclauses 32.2.13(viii), (ix) and (x).

Provided that a copy of this record shall be given to the person doing the work and the employer's copy shall be available for inspection at the employer's premises by a person duly authorised in accordance with clause 34, Entry and Inspection by Officers of Industrial Organisations, as if it was a record described in clause 35, Time Book, Sheet or Records.

Provided always that if the time period between delivery and pickup (arrived at via calculations under subclause 32.2.13(xi)) will necessarily include a Saturday and/or a Sunday and/or a public holiday(s) then the first agreed pickup date shall be reset (i.e., put back) to ensure, consistent with clause 32.2.10 and given the number of days needed to do the work arrived at in subclauses 32.2.13(xi) and (xii), that the employee will not be required to work on any of the days set out in this proviso that fall within the period set under subclause 32.2.13(xi) to complete the work delivered (the reset pickup date to be hereinafter referred to as "the second agreed pickup date").

Provided further that if an outworker who has work delivered to be performed in a time period that includes either a weekend day(s) or a public holiday(s) expressly agrees or simply elects to complete that work by the first agreed pickup date rather than by the second agreed pickup date then the worker will, for the purpose of payment, be deemed to

- have completed 7.6 hours (but no more) worth of the work on each of the weekend and/or public holiday days occurring in the period between delivery and pickup;
- 32.2.14 pay annual leave to outworkers in accordance with the provisions of clause 21, Annual Leave.
- 32.2.15 pay all wages due not later than two working days following the end of the working week, at a time and by a method mutually agreed between the outworker and employer.
- On or before the pay day, the employer shall provide to the outworker in writing, details of the wage payment to which the outworker is entitled, the amount of each deduction made therefrom and the net amount being paid to the outworker;
- 32.2.16 except as otherwise provided in this clause, apply to outworkers the terms and conditions of employment provided by the award, excluding the following clauses:
14. Hours of Employment
  15. Midday Meal Interval
  16. Overtime
  17. Meal Money
  18. Rest Period
  20. Terms of Engagement 20.3.6
  23. Sick Leave
  26. Casual Workers
  34. Entry and Inspection by Officers of Industrial Organisations
  35. Time Book, Sheet or Records
  37. Amenities
  38. First-aid Ambulance Chest
  39. Award Posted
  41. Shop Stewards and Representatives
  43. Notice Boards
  45. Tools of Trade
  46. Disability Allowance
  50. Blood Donors
  51. Attendance at Hospital
- 32.2.17 provide outworkers with all necessary materials, trimmings and sewing threads.
- 32.3 Where a person has performed work for an employer as an outworker, such person may make a claim for payment for such work by serving upon the employer a statutory declaration specifying the identity of the person, the work performed and the payment claimed therefore. Such statutory declaration, if served within six months of completion of that work, shall be accepted as proof of liability on the part of the employer to pay the sum claimed, unless that employer against whom the claim is made is able to prove:
- 32.3.1 that the work for which the claim is made was not, in fact, done; and/or
- 32.3.2 the payment claimed as due was not the correct payment for the work that was actually done.
- 32.4 In any proceedings commenced concerning work performed pursuant to this clause, it lies upon any person alleging that the person performing such work was not an employee to prove that this was the case.
- 32.5 An employer bound by this clause shall not in any way, whether directly or indirectly, be a party to or concerned in conduct that:
- 32.5.1 hinders, prevents or discourages the observance of this clause; or

- 32.5.2 causes or encourages or is likely to cause or encourage, a breach of, or non-observance of, this clause.
- 32.6 An employer shall provide to the outworker, each time work is given out, information as to their entitlements as per Schedule "C" of this award.

### 33. Registration of Employers

- 33.1 Except as prescribed in clause 31.1, Contract Work, an employer bound by this award having or proposing to have work performed away from the employer's own factory or workshop pursuant to clauses 31, Contract Work, and 32, Outworkers, shall make application for registration to the Industrial Committee.
- 33.2 The Industrial Committee may register the employer on conditions as determined by it for a twelve-month period. The Industrial Committee may revoke the registration if any or all of such conditions have not been complied with.
- 33.3 Upon registration the employer will be given a registration number.
- 33.4 The Industrial Registrar shall maintain a record of employers registered pursuant to this clause.
- 33.5 Upon registration and at yearly intervals thereafter, such employer shall cause a notice to be placed in the public notices column of a metropolitan daily newspaper circulating throughout the State in which the work is to be performed, notifying such registration. Such notice shall:
- 33.5.1 specify the identity of the employer and the registration number; and
- 33.5.2 specify where all documents in the employer's possession or custody containing the terms of any agreement or contract to perform work made in accordance with the provisions of this award may be inspected by a person entitled under the award to do so.
- 33.6 An employer, by application to the Industrial Committee or (subject to any order by the said Committee or the Industrial Relations Commission of New South Wales) by agreement in writing with the Secretary of the Union, may be exempted from the requirement to comply with the provisions of clause 33.5. Where any such agreement is made a copy shall be lodged with the Industrial Registrar.

### 34. Entry and Inspection By Officers of Industrial Organisations

- 34.1 The *Industrial Relations Act* 1996 (New South Wales) ("the Act") provides for Right of Entry in the following terms:
- 34.1.1 Definitions
- (i) In this Part:
- authorised industrial officer means an officer or employee of an industrial organisation of employees who holds an instrument of authority for the purposes of this Part issued by the Industrial Registrar under section 299 of the Act
- employees' records includes records of the remuneration of employees, part-time work agreements with the employees or other records relating to the employees that are required to be kept by the employer by or under the industrial relations legislation or an industrial instrument.
- officer of an industrial organisation includes any person who is concerned in, or takes part in, the management of the organisation.

relevant employee, when used in connection with the exercise of a power by an authorised officer of an industrial organisation, means an employee who is a member of the organisation or who is eligible to become a member of the organisation.

- (ii) This Part does not confer authority on an authorised industrial officer to enter any premises for the purposes of holding discussions with employees or of an investigation if:
  - (1) the persons employed at that place are employed by a person who holds a certificate of conscientious objection under section 212 (3) of the Act because of membership of a religious society or order (such as the Brethren), and
  - (2) none of the persons employed at those premises are members of an industrial organisation, and
  - (3) there are no more than 20 persons employed at those premises.

34.2 Right of entry for discussion with employees - An authorised industrial officer may enter, during working hours, any premises where relevant employees are engaged, for the purpose of holding discussions with the employees at the premises in any lunch time or non-working time.

34.3 Right of entry for investigating breaches

34.3.1 An authorised industrial officer may enter, during working hours, any premises where relevant employees are engaged, for the purpose of investigating any suspected breach of the industrial relations legislation, or of any industrial instrument that applies to any such employees.

34.3.2 For the purpose of investigating any such suspected breach, the authorised industrial officer may:

- (i) require any employer of relevant employees to produce for the officer's inspection, during the usual office hours at the employer's premises or at any mutually convenient time and place, any employees' records and other documents kept by the employer that are related to the suspected breach, and
- (ii) make copies of the entries in any such records or other documents related to any such suspected breach.

34.3.3 An authorised industrial officer must, before exercising a power conferred by this section, give the employer concerned at least 24 hours' notice.

34.3.4 The Commission or the Industrial Registrar may, on the ex parte application of an authorised industrial officer, waive the requirement to give the employer concerned notice of an intended exercise of a power conferred by this section if the Commission or the Industrial Registrar is satisfied that to give such notice would defeat the purpose for which it is intended to be exercised.

34.3.5 If the requirement for notice is waived under subclause 34.3.4:

- (i) the Commission or Industrial Registrar is to give the authorised industrial officer a warrant authorising the exercise of the power without notice, and
- (ii) the authorised industrial officer must, after entering the premises and before carrying out any investigation, give the person who is apparently in charge of the premises the warrant or a copy of the warrant

34.4 Provisions relating to authorities issued to officers -



- 34.4.1 The Industrial Registrar may, on application, issue an instrument of authority for the purposes of this Part to an officer or employee of an industrial organisation of employees.
- 34.4.2 An authorised industrial officer is required to produce the authority:
- (i) if requested to do so by the occupier of any premises that the officer enters, or
  - (ii) if requested to do so by a person whom the officer requires to produce anything or to answer any question.
- 34.4.3 The authority:
- (i) remains in force until it expires or is revoked under this section, and
  - (ii) expires when the person to whom it was issued ceases to be an officer or employee of the industrial organisation of employees concerned.
- 34.4.4 The Industrial Registrar may, on application, revoke the authority if satisfied that the person to whom it was issued has intentionally hindered or obstructed employers or employees during their working time or has otherwise acted in an improper manner in the exercise of any power conferred on the person by this Part.
- 34.4.5 An application for the revocation of an authority is to set out the grounds on which the application is made.
- 34.4.6 A person to whom an authority has been issued under this section must, within 14 days after the expiry or revocation of the authority, return the authority to the Industrial Registrar for cancellation.
- Maximum penalty: 20 penalty units.
- 34.5 No entry to residential premises without permission - An authorised industrial officer does not have authority under this Part to enter any part of premises used for residential purposes, except with the permission of the occupier.
- 34.6 Offences -
- 34.6.1 An authorised industrial officer must not deliberately hinder or obstruct the employer or employees during their working time.
- 34.6.2 A person must not deliberately hinder or obstruct an authorised industrial officer in the exercise of the powers conferred by this Part.
- 34.6.3 A person must not, without lawful excuse, fail to comply with a requirement of an authorised industrial officer under this Part.
- 34.6.4 A person must not purport to exercise the powers of an authorised industrial officer under this Part if the person is not the holder of a current authority issued by the Industrial Registrar under this Part.
- Maximum penalty: 100 penalty units.
- 34.7 Powers of Commission - The Commission may deal with an industrial dispute about the operation of this Part, but does not have any jurisdiction to make an award or order conferring additional or inconsistent powers of entry or inspection.

Industrial relations legislation means any of the following Acts and the regulations made under any such Act:

*Industrial Relations Act 1996*  
*Annual Holidays Act 1944*  
*Employment Protection Act 1982*  
*Long Service Leave Act 1955*  
*Long Service Leave (Metalliferous Mining Industry) Act 1963.*

An industrial instrument means an award, an enterprise agreement, a public sector industrial agreement, a contract determination or a contract agreement.

### **35. Time Book, Sheet Or Records**

- 35.1 The employer shall provide in each factory, workshop or place where work is being performed, a time and wages book or sheet or records, which shall have correctly recorded in ink, or by other means except pencil and in the English language, the following particulars:
- 35.1.1 The initials and surname and classification or classifications (when engaged on mixed functions) of each employee.
- 35.1.2 The date of birth and experience and time work rate of pay of improvers in respect of new employees at the date of engagement.
- 35.1.3 The number of hours of ordinary time worked by each employee each day and each week and the amount of weekly superannuation contributions paid in accordance with clause 55, Superannuation.
- 35.1.4 The number of hours of overtime worked by each employee each day and each week.
- 35.1.5 The total amount of wages paid to each employee each week.
- 35.1.6 The actual name of the day and the date of each day of each week and also the name of the day and the date on which each week ends.
- 35.1.7 All holiday, annual leave, long service and sick leave payments.
- 35.2 Where any employee is employed under any system of payment by results, the employer shall keep a correct record of the rates and of the class and number of articles or parts of articles on which work is done by such employee each week.
- 35.3 For further information, see the *Industrial Relations Act 1996*.

### **36. Seating Accommodation**

- 36.1 When it is necessary for employees to sit at their work, seats shall be provided for the employees by the employer. Such seats shall be reasonably comfortable seats.
- 36.2 A seat provided for any employee shall have a back to it, unless the work of such employee cannot be conveniently done in such a seat, or unless the employee requests to be allowed to use a seat without a back to it.

### **37. Amenities**

- 37.1 Lighting and Heating - In connection with every factory or workshop, the employer shall make provision for adequate warmth during cold weather and cooling during hot weather where necessary (fans or the like) and adequate light for the employees to perform their work, and as far as possible artificial light shall be avoided.
- 37.1.1 For the purposes of this clause a factory or workshop shall include any building, establishment, depot or place where any person is employed upon any work to which this award is applicable.

- 37.1.2 The requirements specified by this subclause shall also apply to any dining room and/or rest room provided by the employer in accordance with the provisions of subclauses 37.6 or 37.7.
- 37.2 Floor Covering - The working areas of factory floors, when used by employees, shall be covered by suitable floor coverings, other than in passageways which hydraulic lifts and mechanical motorised equipment such as fork lifts traverse, to ensure that no employee shall be called upon to work on bare concrete, brick, stone or wooden floor. Such floors shall be covered in a manner to adequately ensure comfortable conditions. Provided that in the case of wooden floors, an employer may be exempted from such requirements by agreement of the Union in writing or as approved by the Industrial Relations Commission of New South Wales, if it is considered such wooden floor is in good condition, is well maintained and ensures comfortable working conditions.
- 37.2.1 The requirements specified by this subclause shall also apply to the dining room and/or rest room provided by the employer in accordance with the provisions of subclause 37.6. Linoleum or vinyl or rubber, all of a heavy weight, or materials with similar qualities shall be considered suitable. Seamless in situ composition floor surfacing of sufficient thickness fully covering the specified areas shall also be considered suitable.
- 37.3 Drinking Water - Refrigerated, clean and wholesome drinking water shall be provided in places easily accessible to all employees. Drinking water kept in a refrigerator shall constitute compliance with this subclause.
- 37.4 State Regulations - The laws and regulations in force on 1 February 1983 in New South Wales relating to factories and workshops in respect to sanitation, lavatories, factory cleanliness, heating and light and limitations as to the weights females shall be permitted to lift or carry, shall be incorporated into and be read as part of this award insofar as such laws and regulations do not conflict with this award. Provided, however, and it is hereby expressly declared that nothing in this clause shall be deemed to abrogate, effect, repeal, amend or in any degree render inoperative any State law except of any inconsistency of such State law with this award.
- 37.5 Toilet Accommodation - Notwithstanding the foregoing, a separate toilet shall be provided in factories where mixed sexes are employed, and approaches thereto properly separated for the sexes, shall be provided.
- 37.6 Dining Accommodation -
- 37.6.1 An employer of more than 10 employees shall provide a separate room (reasonably convenient to the working area) or portion of the factory or workshop as a dining room and keep the same and its facilities hygienically clean.
- (i) Dining room tables shall be of laminated plastic top construction or be covered by some material which can be kept hygienically clean.
  - (ii) The seating provided shall be fitted with backs.
  - (iii) An adequate supply of boiling water shall be made readily available to employees without charge at the time at which their meal break or rest period commences. The employer shall also provide a refrigerator and a facility for heating food.
  - (iv) The size of the dining room, the number of tables and its seating accommodation shall be adequate if at least three quarters of the employees taking a meal break at the one time are able to use the same in reasonable manner and without congestion.
  - (v) The dining room shall not be used for work room or work room storage purposes.

The words "reasonably convenient to the working area" shall have the meaning set out in Appendix "B" Form of Declaration - Amenities to this award.

37.6.2 An employer of more than 10 employees may make an application to the Industrial Relations Commission of New South Wales for exemption from any of the provisions of clause 37.6.1 and the Commission may grant such exemption provided that it is satisfied either:

37.6.2.1 that it is impracticable for such employer to provide the said dining room and/or facilities; or

37.6.2.2 that for some other good reason exemption from the provisions of such paragraph ought to be granted to such employer

Provided that where such an exemption is obtained, the disability payments prescribed in clause 46, Disability Allowance, shall still be payable.

37.6.3 Without affecting the rights of any party before the Industrial Relations Commission of New South Wales, the Commission shall consider and, if necessary, make recommendations as to the suitability or otherwise of the dining room and/or dining room facilities of a particular employer before proceedings for breach of this clause or clause 46 may be taken.

### 37.7 Rest Room -

37.7.1 In any factory or workshop in which females are employed, a separate properly ventilated room (reasonably convenient to the working area) with seating and a couch or folding lounge shall be provided as a rest room.

An area enclosed by permanent partitioning of hardboard or the like, at least six feet high, with a door or curtained doorway shall be acceptable as a separate room. Where a folding lounge is provided, it shall be set up for immediate use. A pillow, blanket and hot water bottle shall be provided. The rest room and its facilities shall be kept ready for immediate use.

With the approval of the Union a common rest room may be provided for employees of two or more employers, subject to the stipulation contained in Appendix "B" to this award.

The rest room shall not be used for work room or work room storage purposes.

The words "reasonably convenient to the working area" shall have the meaning set out in Appendix "B".

37.7.2 An employer of less than 10 female employees may make an application to the Industrial Relations Commission of New South Wales for exemption from any of the provisions of clause 37.7.1 and such a tribunal may grant such exemption provided that it is satisfied either:

37.7.2.1 that it is impracticable for such employer to provide the said rest room and/or facilities; or

37.7.2.2 that for some other good reason an exemption from the provisions of such paragraph ought to be granted to such employer.

Provided that where such an exemption is obtained, the disability payments prescribed in clause 46, Disability Allowance, shall still be payable.

37.7.3 Without affecting the right of any party before the Industrial Relations Commission of New South Wales, the Commission shall consider and, if necessary, make recommendations as to the suitability or otherwise of the dining and/or rest room facilities

of a particular employer before proceedings for breach of this clause and/or clause 46 may be taken.

- 37.8 Hanging Facilities - Each employer shall at some reasonably convenient place on the employer's premises provide proper hanging facilities which afford reasonable protection for employees' clothes.

### **38. First-Aid Ambulance Chest**

Every factory or workshop shall have, in some accessible place, a first-aid ambulance chest which shall be a suitable dust-proof receptacle made of either metal or wood for the use of the employees. Such chest shall be equipped and supplied with those articles prescribed by the Occupational Health and Safety Regulation 2001, as amended from time to time.

### **39. Award Posted**

A copy of this award and its amendments when available shall be posted and kept posted by the employer in a prominent place in the workshop or factory.

### **40. Industrial Committee**

- 40.1 For the purposes of this award, power is given to the Industrial Registrar to appoint an Industrial Committee.
- 40.2 An Industrial Committee shall consist of two representatives of the Union, two representatives of the employer and the Industrial Registrar or Deputy Industrial Registrar (as the case requires), or such other person as the Industrial Registrar or the Deputy Industrial Registrar may nominate as Chairperson of the Industrial Committee. In the event of the representative members of the Industrial Committee being equally divided in opinion, the Chairperson may cast a vote to give a majority decision.
- 40.3 Any person appointed a member of the Industrial Committee by the Registrar may appoint a substitute to act in that person's stead at any time.
- 40.4 Three members, one of whom may be the Registrar or Deputy Registrar or a Deputy therefore as provided in subclause 40.2, shall constitute a quorum.
- 40.5 An Industrial Committee may sit at such times and places as the members may agree or the Registrar or Deputy Registrar (as the case requires) may fix and may adjourn from time to time and from place to place.
- 40.6 The functions of the Industrial Committee shall be:
- 40.6.1 To settle disputes as to matters under this award.
  - 40.6.2 To deal with any dispute affecting the amicable relations of the parties.
  - 40.6.3 To hear and decide any dispute referred to it by the Industrial Relations Commission of New South Wales as to or arising out of the weekly output or task or any dispute referred to it by the Commission as to the fixation of the amount of work to be done by employees, or any dispute arising out of the fixation of the rates to be paid to payment-by-results workers or outdoor workers.
- 40.7 The decision of the Industrial Committee may be reviewed and altered by the Industrial Relations Commission of New South Wales on the application of any party to this award, provided that notice of an application to the Commission to review such decision be given within 14 days of such decision and an application be lodged with the Registrar or Deputy Registrar asking for such review within 21 days of such decision. The Commission may give extended time for such notice and application at any time.

40.8 Nothing in this clause shall take away from any party the right to apply to the Industrial Relations Commission of New South Wales or to the court, given by the Industrial Relations Act 1996, whether for a variation or an interpretation of this award.

#### **41. Shop Stewards and Representatives**

Shop stewards and official union representatives shall be recognised by the employer and shall be allowed time off during working hours to interview the employer if there is any legitimate complaint. Shop stewards shall have reasonable access to a telephone during working hours.

#### **42. Uniforms**

If an employer requires an employee to wear a uniform they shall pay for the provision and cleaning of such uniform .

#### **43. Notice Boards**

The employer shall make facilities available in a prominent position in the workshop or factory, upon which representatives of the Union shall be allowed to post union notices. Any notice so posted shall be countersigned by the representative of the Union and, in the absence of a countersignature, may be removed by the Union representative or the employer.

#### **44. Protective Clothing**

Where any person is required to work under wet or dirty conditions, suitable protective clothing, including footwear, shall be supplied free of charge by the employer to the employee concerned.

Any dispute as to the necessity or suitability of such clothing shall be determined by the Industrial Committee.

#### **45. Tools of Trade**

The employer shall provide all necessary tools for employees in each workshop or factory.

#### **46. Disability Allowance**

46.1 Subject to subclauses 37.6.2 and/or 37.6.3 where a dining room and/or its facilities, in any establishment having more than ten employees, are inadequate in that they do not satisfy the provisions of subclause 37.6 the employer shall, in addition to the rates set out elsewhere in this award, pay to each employee in that establishment a disability allowance as set in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, per day for each day worked by such employee whilst suffering such disability of inadequate conditions.

Where such dining room and its facilities are only adequate for a lesser number of employees than the required minimum prescribed by clause 37.6.1, the disability referred to shall be deemed to have been suffered by the balance of the total employees in that establishment taking a meal break at the one time. In such case the total amount of the disability payments due to the number of employees who suffered such disability shall be shared equally amongst all the employees in that establishment.

46.2 Subject to subclauses 37.7.2 and/or 37.7.3 where a rest room and/or its facilities, in an establishment, are inadequate in that they do not satisfy the provisions of clause 37.7 the employer shall, in addition to the rates set out elsewhere in this award, pay to each female employee in that establishment a disability allowance as set in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, per day for each day worked by such employee whilst suffering such disability of inadequate conditions.

The disability referred to shall be deemed to have been suffered by all female employees in that establishment during that period of their respective employment when the rest room and its facilities were not of the prescribed standard.

Provided that an employer shall not be held liable for payment of such disability allowance should any of the equipment specified in subclause 37.7.1 supplied by the employer be subsequently missing through no fault of such employer.

- 46.3 Any excess wages payable to an employee on account of work performed or for any other reasons shall not be off-set against the disability payments prescribed in this clause.

#### **47. Bereavement Leave**

- 47.1 An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay up to and including the day of the funeral on each occasion of the death of a person prescribed in subclause 47.3.
- 47.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- 47.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in clause 24.1.3(ii), Personal Carers Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 47.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- 47.5 Bereavement leave may be taken in conjunction with other leave available under clauses 24.2, 24.3, 24.4, 24.5, and 24.6. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 47.6 Bereavement entitlements for casual employees
- 47.6.1 Subject to the evidentiary and notice requirements in 47.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 24.1.3(ii) of clause 24, Personal/Carer's Leave.
- 47.6.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- 47.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

#### **48. Accident Pay**

- 48.1 An employer shall pay and an employee shall be entitled to receive accident pay in accordance with this clause.
- 48.2 Definitions - For the purposes of this clause and subject to the terms thereof the words hereunder shall bear the respective definitions set out hereunder:
- 48.2.1 *Workers' Compensation Act* - The Workers' Compensation Acts applicable in New South Wales are the *Workers' Compensation Act 1987* as amended from time to time, and the *Workplace Injury Management and Workers Compensation Act 1998* as amended from time to time.
- 48.2.2 Injury - Injury shall be given the same meaning and application as applying under the respective Workers' Compensation Acts. No injury occurring at the place of employment

shall result in the application of accident pay unless an entitlement exists under such Acts

#### 48.2.3 Accident Pay -

- (i) Total Incapacity - In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the *Workers Compensation Acts* means a weekly payment of an amount representing the difference between, on one hand, the total amount of compensation, including other allowances, paid to the employee during incapacity for the week in question and, on the other hand, the total weekly award rate and weekly overaward payment, if any, being paid to such employee at the date of the injury. Provided that, in making such calculation, any payment for overtime earnings, shift premiums, attendance bonus, incentive earnings under any system of payment of results, fares and travelling time allowances, penalty rates and any other ancillary payments payable by the employer shall not be taken into account.
- (ii) Partial Incapacity - In the case of an employee partially incapacitated within the meaning of the *Workers' Compensation Acts*, means a weekly payment of an amount representing the difference between, on the one hand, the total amount of compensation paid to the employee during incapacity for the week in question, together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business (as determined expressly or by implication by the appropriate Accident or Workers' Compensation Tribunal or its equivalent in the State or Territory of employment or as agreed between the parties) and, on the other hand, the total weekly award rate and weekly overaward payment, if any, being paid to such employee at the date of the injury. Provided that, in making such calculation, any payment for overtime earnings, shift premiums, attendance bonus, incentive earnings under any system of payment by results, fares and travelling time allowances, penalty rates and any other ancillary payments payable by the employer shall not be taken into account.

The total weekly award rate and weekly overaward payment abovementioned shall be the same as that applying for a total incapacity. Provided that, where an employee receives a weekly payment of compensation under the *Workers Compensation Acts* and subsequently such payment is reduced pursuant to the said Act, such reduction shall not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

- (iii) Payment for Part of a Week - Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount shall be a direct pro rata.

48.3 Qualifications for Payment - Always subject to the terms of this clause, an employee covered by this award shall, upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the *Workers' Compensation Acts*, be paid accident pay by their employer who is liable to pay compensation under the respective Acts. The liability by the employer for accident pay may be discharged by another person on the employer's behalf, provided that:

48.3.1 Accident pay shall only be payable to an employee whilst they remain in the employment of the employer by whom they were employed at the time of the incapacity. Provided that if an employee on partial incapacity cannot obtain suitable employment from their employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.

Provided further that, in the case of the termination by an employer of an employee who is incapacitated and receiving accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where:

- (i) the termination is due to serious and/or wilful misconduct on the part of the employee; or
- (ii) arises from a declaration of liquidation of the company, in which case the employee's entitlement shall be determined by the appropriate New South Wales legislation.



In order to qualify for the continuance of accident pay on termination an employee shall, if required, provide evidence to their employer of the continuing payment of weekly workers' compensation payments.

- 48.3.2 Accident pay shall not apply in respect of any injury sustained during the first five normal working days of incapacity.
- 48.3.3 An employee on engagement may be required to declare all workers' compensation and/or accident claims made pursuant to the Acts as herein defined in the previous five years. In the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit their entitlement to accident pay under this award.
- 48.4 Maximum Period of Payment - The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 26 weeks for any one injury as defined in clause 48.2.2
- 48.5 Absences on Other Paid Leave - An employee shall not be entitled to the payment of accident pay in respect of any period of paid annual leave or long service leave or for any paid public holiday in accordance with the appropriate award provisions.
- 48.6 Notice of Injury - An employee upon receiving an injury for which the employee claims to be entitled to receive accident pay shall give notice in writing of the injury to their employer and of its manner of happening as soon as practicable and shall provide in writing all other information as the employer may reasonably require.
- 48.7 Furnishing of Evidence - An employee who has suffered any injury for which they are receiving payment or payments for incapacity in accordance with the provisions of the respective Workers Compensation Acts shall furnish evidence to the employer from time to time as required by the employer of such payments. Compliance with this obligation shall be a condition precedent to any entitlement under this clause.

Any employee who is receiving or who has received accident pay in respect of any injury shall, if required by the employer or other person on the employer's behalf, authorise their employer to obtain any information required concerning such injury or compensation payable from the insurance company.

- 48.8 Medical Examination - Nothing in this clause shall in any way be taken as restricting or removing the employer's rights under the respective Workers Compensation Acts to require the employee to submit themselves to examination by a legally qualified medical practitioner, provided and paid by the employer. If the employee refuses to submit themselves to such examination or in any way obstructs the same, the employee's right to receive or continue to receive accident pay shall be suspended until such examination has taken place.

Where in accordance with the respective Workers Compensation Acts a medical referee gives a certificate as to the condition of the employee and the employee's fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

Where an employer is unable to provide work of the nature stipulated by the medical referee, an employee shall take all reasonable steps to obtain such work with another employer and, in the event of the employee's failure to do so, payment of accident pay shall cease.

- 48.9 Redemption or commutation of Weekly Payment - Where there is a redemption or commutation (as the case may be) of weekly compensation payments by the payment under the respective Act of a lump sum the employer's liability to pay accident pay shall cease as from the date of such redemption or commutation.

- 48.10 Insurance Against Liability - Nothing in this clause shall require an employer to insure against the employer's liability for accident pay nor shall it affect the right of an employer to terminate the employment of the employee.
- 48.11 Variation in Compensation Rates - Any changes in compensation rates under the respective Acts shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.
- 48.12 Death of Employee - All rights to accident pay shall cease on the death of an employee.
- 48.13 Safety Regulations - Without prejudice to the terms of this clause the Union shall use its endeavours to have its members carry out all statutory and other regulations applicable to the employment of such members and to further carry out any orders relating to the preservation of safety given by or on behalf of any employer of its members.
- 48.14 Superannuation - An employer shall pay superannuation contributions paid in accordance with clause 55, Superannuation, to an employee receiving accident pay in accordance with this clause.

#### **49. Jury Service**

An employee required to attend for jury service during their ordinary working hours shall be reimbursed by the employer, until discharged from such service, an amount equal to the difference between the amount paid in respect of the employee's attendance for such jury service and the amount of the award classification rate the employee would have received had the employee not been on jury service. An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. Further, the employee shall give their employer proof of their jury service, the duration of such service and the amount received in respect of such service.

Provided that where an employee is working on afternoon shift and is required to attend for jury service, and is empanelled or is required to remain until the afternoon session of Court, the employee shall not be required to attend for work on the shift occurring on that day and shall be entitled to reimbursement as indicated above.

#### **50. Blood Donors**

A weekly employee who is absent during ordinary working hours to attend a recognised clinic for the purpose of donating blood shall not suffer any deduction of ordinary pay, up to a maximum of two hours on each occasion and subject to a maximum of four separate absences each calendar year. Provided that such employee shall arrange, as far as practicable, for their absence to be as close as possible to the beginning or the ending of their ordinary working hours.

Proof of the attendance of the employee at a recognised place for the purpose of donating blood, and the duration of such attendance, shall first be furnished to the satisfaction of the employer. Further, the employee shall notify their employer as soon as possible of the time and date upon which they are requesting to be absent for the purpose of donating blood.

#### **51. Attendance at Hospital**

An employee suffering an injury through an accident arising out of and in the course of the employee's employment (not being an injury in respect of which the employee is entitled to workers' compensation) necessitating the employee's attendance during working hours at a doctor or at hospital, shall not suffer any deduction from their pay for the time (not exceeding four hours) so occupied on the day of the accident, and shall be reimbursed by the employer all expenses reasonably incurred in connection with such attendance.

#### **52. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

(2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

(a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

(a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **53. Introduction of Change**

#### **53.1 Employer's Duty to Notify -**

53.1.1 Where an employer is planning to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, whether or not a definite decision has been made, the employer shall notify the employees who may be affected by the proposed changes, the Consultative Committee and their union.

53.1.2 "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, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provisions for alterations of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

#### **53.2 Employer's Duty to Discuss Change -**

53.2.1 The employer shall discuss with the employees affected, the Consultative Committee and their union, inter alia, the introduction of the changes referred to in clause 53.1.1, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees, the Consultative Committee and/or their union in relation to the changes.

53.2.2 The discussions with employees affected, the Consultative Committee and their union shall commence as early as practicable after the activities referred to in subclause 53.1.1.

53.2.3 For the purposes of such discussion, the employer shall provide in writing to the Consultative Committee, and to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees; provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

### **54. Redundancy**

#### **54.1 Consultation and Provision of Information -**

54.1.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their Union.

54.1.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of clause 54.1.1 and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

54.1.3 For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and their Union, all relevant information about the

proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

54.2 Transfer to Lower Paid Duties - Where an employee is transferred to lower paid duties for reasons set out in clause 54.1.1, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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.

54.3 Severance Pay - In addition to the period of notice prescribed for ordinary termination in clause 20.2, Terms of Engagement, and subject to further order of the Industrial Relations Commission of New South Wales, an employee whose employment is terminated for reasons set out in clause 54.1.1 shall be entitled to the following amount of severance pay in respect of a continuous period of service:

54.3.1 If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

54.3.2 Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of service	45 years of age and over entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

"Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, overaward payments, shift penalties and allowances paid in accordance with this award.

54.4 Employee Leaving During the Notice Period - An employee whose employment is terminated for reasons set out in subclause 54.1.1, may terminate the employee's employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the 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.

54.5 Alternative Employment - An employer, in a particular redundancy case, may make application to the Industrial Relations Commission of New South Wales to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

54.6 Time Off During Notice Period -

- 54.6.1 During the period of notice of termination given by the employer for reasons set out in clause 54.1.1, an 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.
- 54.6.2 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.
- 54.7 Notice to Centrelink - Where a decision has been made to terminate employees in the circumstances outlined in subclause 54.1.1, the employer shall notify Centrelink thereof as soon as possible, giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- 54.8 Superannuation Benefits - Award superannuation benefits payable upon termination shall not be used in lieu of any severance payments made in accordance with this clause. Any non-award superannuation benefit payable upon termination shall not be used in lieu of any severance payments made in accordance with this clause, other than by further order of the Industrial Relations Commission of New South Wales.
- 54.9 Transmission of Business -
- 54.9.1 Where a business is, before or after the date of this award, transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- 54.9.2 In this subclause "business" includes trade, process, business or occupation and includes part of any such business, and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.
- 54.10 Employees with less than 12 Months Service - This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give the 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.
- 54.11 Employees Exempted - This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency, or neglect of duty or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.
- 54.12 Employers Exempted - Subject to an order of the Industrial Relations Commission of New South Wales, in a particular redundancy case, this clause shall not apply to employers who employ less than 15 employees.
- 54.13 Incapacity to Pay - An employer, in a particular redundancy case, may make application to the Industrial Relations Commission of New South Wales to have the general severance pay prescription varied, on the basis of the employer's incapacity to pay within eight weeks of the termination of the employee(s).

## 55. Superannuation

## 55.1 Preamble - Superannuation Legislation -

55.1.1 The subject of superannuation is dealt with extensively by federal legislation, including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993* and s.124 of the *Industrial Relations Act 1996*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

55.1.2 Notwithstanding subclause 55.1.1, the following provisions shall also apply:

## 55.2 Definitions -

55.2.1 "The Fund", for the purposes of this clause, shall mean the:

- (i) Australian Retirement Fund established and governed by a Trust Deed on 11 July 1986, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto; or
- (ii) subject to the agreement of the Secretary of the Union and its members, an employer-sponsored fund established prior to 1 July 1987 which complies with the *Superannuation Industry (Supervision) Act 1993*, and as set out in clause 55.7.2.

55.2.2 "Ordinary-time Earnings" - For the purposes of this clause, all references to ordinary-time earnings will mean and include:

- (i) award skill level or classification rate;
- (ii) supplementary payment (where relevant);
- (iii) overaward payment;
- (iv) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty, not when worked as overtime;
- (v) payment by results earnings;
- (vi) all non-reimbursable allowances payable under the award.

55.2.3 "The Table", for the purposes of this clause, means the following table:

Financial Year	Percentage	
	Column A	Column B
1992-93 (1 July - 31 December)	4	3
1992-93 (1 January - 30 June)	5	3
1993-94	5	3
1994-95	5	4
1995-96	6	5
1996-97	6	6
1997-98	6	6
1998-99	7	7
1999-2000	7	7
2000-01	8	8
2001-02	8	8
2002-03 and subsequent years	9	9

- (i) Column A in the table above specifies the charge percentages where the employer's national payroll for the base year (the 1991-92 financial year) exceeded \$1,000,000.
- (ii) Column B in the table above specifies the charge percentage where the employer's national payroll for the base year (the 1991-92 financial year) did not exceed \$1,000,000.
- (iii) Subject to amendments to the charge percentages prescribed in the *Superannuation Guarantee (Administration) Act 1992* (SGA Act), the above table is deemed to be changed to reflect amendments.

55.2.4 Red Circled Employee - For the purpose of this clause, a Red Circled Employee is an employee who was:

- (i) in the employ of an employer at 30 June 1995; and
- (ii) whose ordinary-time earnings were less than \$380.60 at 30 June 1995; and
- (iii) the employee's superannuation entitlements prior to 30 June 1995 were greater than the superannuation percentage requirements under the *Superannuation Guarantee (Administration) Act 1992*.

A Red Circled Employee's superannuation entitlements are detailed in subclause 55.5.

#### 55.3 Employers to Become a Party to the Fund -

55.3.1 A respondent employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.

55.3.2 A respondent employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.

55.3.3 Each employee shall be required to complete the membership application and the employer shall forward the completed application to the fund by the end of the calendar month of commencement of this clause or commencement of employment.

#### 55.4 Eligibility of Employees -

55.4.1 Each employee shall be eligible to join the fund upon commencement of employment.

55.4.2 Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in clause 55.3.3 was forwarded to the fund.

#### 55.5 Employer Contributions on Behalf of Each Employee -

55.5.1 Notwithstanding the provisions of subclause 55.5.2, and the legislation referred to therein, a respondent employer must contribute to the fund in respect of each employee, irrespective of the age and/or earnings of the employee, such contributions as required to comply with the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992*. Failure to comply with this paragraph shall constitute a distinct and separate breach of this paragraph.

55.5.2 Red Circled Employee - A Red Circled Employee must not be disadvantaged in the provision of their superannuation entitlements by employers transferring from the Stage 1 system to the Stage 2 system of calculation of superannuation obligations outlined below.



For the purpose of this clause, an employee will be deemed to be a Red Circled Employee if:

- (i)
  - (1) in the employ of an employer at 30 June 1995; and
  - (2) whose ordinary-time earnings were less than \$380.60 at 30 June 1995; and
  - (3) the employee's superannuation entitlements prior to 30 June 1995 were greater than the superannuation percentage requirements under the *Superannuation Guarantee (Administration) Act 1992*.
- (ii) The system of calculating a Red Circled Employee's full superannuation entitlements must be the Stage 1 system outlined in clause 55.5.2 (iii)(1), until such time as the employee's full superannuation entitlements would be equal to or greater under the Stage 2 system of calculation outlined in clause 55.5.2(iii)(2).
- (iii)
  - (1) The Stage 1 system of calculating an employer's full superannuation obligations for an employee is by the provision of superannuation contributions as follows:

Full-time Adult	\$14.00 per week
Juniors and Apprentices	\$10.50 per week

Part-time and Casual:

working up to 30 hours per week	\$10.50 per week
working 30 hours or more per week	\$13.50 per week; and

- (A) 1.32 per cent of ordinary-time earnings as defined in clause 55.2.2 if the employer's payroll was in excess of \$1,000,000 as at 1 July 1992; or
- (B) 0.32 per cent of ordinary-time earnings as defined in clause 55.2.2 if the employer's payroll was less than \$1,000,000 as at 1 July 1992.
- (2) Subject to the provisions of clause 55.5.2(ii), the Stage 2 method of calculating an employer's full superannuation obligations for an employee is by applying the relevant percentage as outlined in the table located in clause 55.2.3 to the employee's ordinary-time earnings.

Failure to comply with this subclause shall constitute a distinct and separate breach of this subclause.

55.5.3 Such contribution shall be made monthly by the last day of the month following, the total of the weekly contribution amounts accruing in the previous month in respect of each employee.

The amount of contributions to the fund shall be calculated to the nearest ten cents, and any fraction below five cents shall be disregarded.

55.5.4 The fund and the amount of contributions paid in accordance with this clause and clause 55.6 shall be included in pay advice notices provided by employers to each employee.

55.5.5 Contributions shall continue to be paid in accordance with this subclause during any period in respect of which an employee is entitled to receive accident pay in accordance with clause 48, Accident Pay.

- 55.5.6 Unpaid Absences - Except as where specified in the rule of the fund, contributions by respondent employers in respect of unpaid absences will be proportional to the wage received by the employee concerned in a particular pay period. For the purpose of this clause, each pay period will stand alone. Accordingly, unpaid absences in one pay period will not carry over to another pay period.
- 55.5.7 Cessation of Contributions - A respondent employer's obligation to make contributions on behalf of the employee ceases on the last day of employment with the employer.
- 55.6 Employee Contributions -
- 55.6.1 An employee may make contributions to the fund in addition to those made by the respondent employer under clause 55.5.
- 55.6.2 An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the fund's Trust Deed and Rules.
- 55.6.3 An employer who receives written authorisation from the employee must commence making payments into the fund on behalf of the employee within 14 days of receiving the authorisation.
- 55.6.4 An employer may vary the additional employee contributions by a written authorisation and the employer must alter the additional contributions within 14 days of receiving the authorisation. An employee may only vary the employee's additional contributions once each month.
- 55.6.5 Additional employee contributions to the fund, requested under this subclause, shall be expressed in whole dollars.
- 55.7 Exemptions -
- 55.7.1 An employer may make an application for exemption from subclause (f) of this clause in respect of contributions to the fund for employees who are not members of the Union.
- Applications for exemption shall be determined in accordance with the Superannuation Test Case (Print L5100) and the December 1994 State Wage Case principles or any decision made in succession thereto.
- 55.7.2 It is recorded that the scheme specified in the first column hereunder is a scheme to which this paragraph applies and that the agreement of the Union and its members has effect on and after 1 July 1987.

(1)	(2)	(3)
Name of Scheme	Covered	Date of Effect of Union Agreement
Pacific Dunlop Superannuation Fund		1 July 1987

### 56. Enterprise Bargaining

- 56.1 The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the clothing industry to enhance the career opportunities, quality of working life and job security of workers in the industry.
- 56.2 An employer, employees and the Union may develop an enterprise bargaining agreement in accordance with the provisions of this clause and Schedule E or such other procedures that are agreed in writing

between the employer and the Secretary of the Union. The agreement shall, to the extent of any inconsistency, take precedence over any provisions of this award.

56.3 In each workplace in the clothing industry seeking to develop an enterprise bargaining agreement, an employer, employees and the Union shall establish a consultative committee in accordance with Schedule E or such other procedures that are agreed in writing between the employer and the Secretary of the Union.

56.4 The basis for the work of the consultative committee shall be to consider matters raised by committee members which impact on employees and/or which contribute to the improved operation and efficiency of the enterprise as outlined in clause 56.1.

56.5 The matters raised for inclusion in an enterprise bargaining agreement may, amongst other things, involve:

- spread of hours
- shift work
- job redesign and work organisation
- work related childcare
- vocational training
- English language training
- foundation education training
- arrangement of leave
- operation of payment by results systems
- occupational health and safety
- leave for special purposes
- parental leave
- job sharing

56.6 An enterprise bargaining agreement shall not act to:

- 56.6.1 reduce the award rate in accordance with clause 6, Rates of Pay;
- 56.6.2 increase the ordinary hours of work in any roster system beyond an average of 38 hours per week;
- 56.6.3 reduce the quantum of meal money in accordance with clause 17, Meal Money;
- 56.6.4 reduce the number or duration of rest periods contained in clause 18, Rest Period;
- 56.6.5 reduce the quantum of period of notice in accordance with clause 20, Terms of Engagement;
- 56.6.6 reduce the quantum of annual leave and annual leave loading in accordance with clause 21, Annual Leave;
- 56.6.7 reduce the quantum of sick leave entitlement in accordance with clause 23, Sick Leave;
- 56.6.8 reduce the quantum of holidays in accordance with clause 28, Holidays;
- 56.6.9 affect the provisions of clauses 31, Contract Work, 32, Outworkers, and 33, Registration of Employers, for the purpose of clauses 31 and 32;
- 56.6.10 reduce the quantum of bereavement leave in accordance with clause 47, Bereavement Leave;
- 56.6.11 reduce the quantum of accident make up pay in accordance with clause 48, Accident Pay;
- 56.6.12 reduce the quantum of unpaid leave in accordance with clause 52, Parental Leave;

- 56.6.13 reduce the quantum of severance pay in accordance with clause 54, Redundancy;
- 56.6.14 reduce the quantum of superannuation contributions in accordance with clause 55, Superannuation.

### 57. Anti-Discrimination

- 57.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex marital status, disability, homosexuality, transgender identity age and responsibilities as a carer.
- 57.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 57.3 Under the *Anti-Discrimination Act 1977*, 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.
- 57.4 Nothing in this clause is to be taken to affect:
- 57.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
- 57.4.2 offering or providing junior rates of pay to persons under 21 years of age;
- 57.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- 57.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 57.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### NOTES:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

### 58. Area, Incidence and Duration

- 58.1 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and replaces the Clothing Trades (State) Award published 19 October 2001 (328 I.G. 952), and all variations thereof.
- 58.2 The award published 19 October 2001 took effect from the beginning of the first pay period to commence on or after 2 July 2001. The award remains in force until varied or rescinded, the period for which it was made having already expired.
- 58.3 It shall apply to employees referred to in clause 6, Rates of Pay, within the jurisdiction of the Clothing Trades (State) Industrial Committee.

58.4 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 18 January 2008.

### 59. Appendix A - Form of Indenture of Apprenticeship

This indenture, made the ..... day of ..... 20 ..... between employer, apprentice, and their executors, administrators or assignees, witnesses that the said employer does hereby covenant with the said apprentice, and the said parent or guardian, that he or she, the said employer will:

- (a) Take and receive the said apprentice as his or her apprentice for the full term of ..... years from the ..... day of ..... 20 .....
- (b) To the best of his or her power, knowledge and ability to teach and instruct, or cause to be taught and instructed, the said apprentice in the art and craft of .....
- (c) Pay to the said apprentice (during such time as he or she shall observe and perform the term of this indenture) at least the wage set forth in this award.
- (d) Pay to the said apprentice such further rates for overtime worked as may be fixed by this award.
- (e) Within 14 days from the date hereof, place the said apprentice under the direction of a qualified person.
- (f) On completion of the term herein named, hand over to the said apprentice a copy of this indenture, with a certificate to the effect that the said term has been served. Provided that this shall be conditional on the said apprentice serving the said term and observing and fulfilling the covenants herein,

and the said apprentice and parent or guardian does covenant with the said employer that he or she, the said apprentice, during the said term will:

- (a) Faithfully and honestly serve the said employer as an apprentice in his or her trade or business aforesaid.
- (b) Willingly obey the lawful order and commands of the said employer or such of his or her representatives as he or she, the said apprentice, shall be placed under the said business.
- (c) Not wilfully do or commit or wilfully suffer to be done or committed, any waste, damage or other injury to the property or goods of the employer or any firm or company of which he or she may be a member, or lend them to any person without the consent of the said employer.
- (d) Not unlawfully absent himself or herself from the services of the said employer during business hours.
- (e) Not by word or action induce other apprentices to disobedience, and it is hereby specially agreed by all parties to this indenture -
  - (i) That this indenture may be assigned, suspended or cancelled:
    - (1) by mutual consent of the parties after seven days notice by either party; or
    - (2) by the employer, subject to the approval of the Industrial Committee if, through lack of orders or through financial difficulties, he or she is unable either to find suitable employment for the apprentice or a transfer to another employer cannot be arranged; or
    - (3) by the Industrial Committee.
  - (ii) That the said apprentice shall not be paid for any time he or she shall be absent from his or her duties through his or her own wilful default and neglect or through illness, except as prescribed in clause 23, Sick Leave, or through absenting himself or herself from his or her employer's

service without leave or licence, but in all other circumstances the said apprentice shall be paid his or her wage in full each week.

- (iii) That the employer may (if authorised by the Industrial Committee) stand down the apprentice without pay at any time when no work is offering or may deduct payment for any time for which the apprentice cannot be usefully employed because of a strike by the Union or any other union, or because of any stoppage of work, or because of any failure or lack of power or any restrictions on the use of, or shortage of power, or for any cause for which the employer cannot reasonably be held responsible.
- (iv) That the said apprentice shall not be entitled to a higher rate of pay until he or she has actually worked for a period of six months in the next preceding rate.
- (v) That, in computing the period of six months, all time worked as overtime shall be allowed as a set-off against any absence during the said period.
- (vi) On the completion of the term of apprenticeship created by the indenture of apprenticeship the employer shall forthwith endorse and sign the former apprentice's copy of the indenture with the notation that the apprenticeship was completed on the ..... day of..... 20 .....

And for the true performance of all and every of the said covenants and agreements each of the said parties binds himself or herself (as the case may be) to the others by these presents. Signed, sealed and delivered by the said

Witness:

Apprentice  
Witness:

Parent or Guardian  
Witness:

Employer

Assignment of the Within Indentures:

The within-named employer does hereby, with the consent of ..... (parent), assign the within indenture and the services thereunder of the within-named

apprentice, ..... unto .....

of ..... for .....the unexpired portion of the within-named terms of .....and the said ..... does hereby declare its acceptance of such apprentice, and acknowledge itself to be bound by the agreement, engagement, obligations and covenants on the part of the employer of such apprentice, to be done and performed as fully as if it had entered into the same as a party under that indenture.

In witness whereof the parties hereunto have set their hands and seals

this ..... day of ..... two thousand and .....

Signed, sealed and delivered by the said:

Witness:

Employer

Witness:

Parent  
Witness:

Apprentice  
Witness:

Assignee Employer

## **60. Appendix B - Form of Declaration - Amenities**

60.1

60.1.1 The terms "reasonably convenient to the working area" as applied to dining rooms in clause 37.6, Amenities, and to rest rooms in subclause 37.7 shall mean that, in any building where no passenger lift is available to the employees, the dining and/or rest room may be located on the same floor as the working area or on the floor immediately above or below the working area.

60.1.2 Where the dining room and/or rest room is more than one floor but less than three floors removed either above or below the working area in any building where no passenger lift is available to the employees, the location shall be deemed to be reasonably convenient if it meets with the approval of the Union and a written declaration to this effect, signed by the employer concerned and by an authorised representative of the Union, in the form as hereinafter contained, is lodged with the Industrial Registrar or a Deputy Industrial Registrar. In the event of the employer being unable to obtain the approval of the union the matter may be referred to the Industrial Relations Commission of New South Wales, which shall then determine whether or not the location is reasonably convenient. If the Commission determines that the location is reasonably convenient it shall make a written declaration to this effect.

60.1.3 Where the dining room and/or rest room is three or more floors removed either above or below the working area in any building where no passenger lift is available to the employees, the location shall be deemed not to be reasonably convenient.

60.2 Where a dining room is located so as to require employees to move in the open without shelter, or to require employees to traverse a considerable distance from the working area or part of the working area to the dining room, the Union or the employer concerned may apply to the Industrial Committee to determine whether or not the location of the dining room is reasonably convenient. If the Committee determines that the location is reasonably convenient, it shall make a written declaration to this effect. Provided that if the Committee determines that the location is not reasonably convenient, the disability allowance as provided in clause 46, Disability Allowance, shall only be payable as from the date of such decision of the Committee.

60.3 Where, pursuant to subclause 37.7.1 Amenities, a common rest room with the approval of the Union is provided for the employees of two or more employers, such rest room shall be deemed to be "reasonably convenient" to the working area and a written declaration to this effect signed by the employer concerned and a representative of the union in the form provided herein shall be lodged with the Industrial Registrar or a Deputy Industrial Registrar.

60.4 Where the Union considers the passenger lift facilities, where provided, to be unsatisfactory the matter may be referred to the Industrial Relations Commission of New South Wales for determination.

60.5 Any declaration made pursuant to the above provisions shall continue to apply until revoked by the parties, the Committee or the Industrial Relations Commission of New South Wales, in the event of a significant change in circumstances to those existing as at the date of the declaration.

#### **FORM OF DECLARATION - CLOTHING TRADES AWARD - AMENITIES**

This declaration made the ..... day of ..... 20 ..... by The Transport Workers' Union of New South Wales and employer(s) declares that the dining room(s) and/or rest room(s) at the premises of the above employer(s) situated at ..... as at the date of this declaration shall be deemed to be acceptable and "reasonably convenient" to the working area for the purpose of clause 37, Amenities, of the Clothing Trades (State) Award.

Signed:

For and on behalf of The Transport Workers' Union of New South Wales.

For and on behalf of the employer.

#### **61. Schedule A - Consultative Committees**

(Subject to the provisions of the *Industrial Relations Act 1996*)

##### 61.1 Composition -

61.1.1 A consultative committee shall include:

at least 50% Union/employee representatives; and

at least one senior management representative.

61.1.2 Management, the Union and the employees will jointly determine the size of the committee. A committee shall consist of no fewer than four members and no more than ten.

61.1.3 The election/appointment of management representatives will be determined by management, and the election of Union/employee representatives will be determined by the Union. Where there is a Union delegate they must be a Union/employee representative.

61.1.4 In the determination of Union/employee representatives on the committee, consideration shall be given to:

the makeup of the workforce, in particular the proportion of women, people from a non-English speaking background and juniors;

the size of the workforce;

the number of distinct operations at the workplace;

shift arrangements;

the corporate structure;

other existing consultative mechanisms.

61.1.5 Where an enterprise is comprised of a number of sites or distinct workplaces, the number of committees to be established shall be determined jointly by management and the Union, depending on the size and operation of the enterprise and its separate components.



- Should more than one committee be established, a peak committee shall be established to ensure a co-ordinated approach.
- 61.1.6 The committee, once established, may invite persons to attend specific meetings.
- 61.1.7 An official of the Union shall have a right to be present and participate in the deliberation of the committee.
- 61.2 Term of Office -
- 61.2.1 Members elected or appointed to the committee shall hold office for a period of twelve months, and will be required to be re-elected or re-appointed each subsequent year. It is the responsibility of each committee member to attend meetings on a regular basis and to represent the views and opinions of those people they represent.
- 61.2.2 If a member of the committee ceases employment with the enterprise or resigns from the committee, a new election or appointment shall be made in accordance with 61.2.1.
- 61.3 Terms of Reference - The following matters shall form the basis for the work of the committees. Each committee will seek to reach agreement on the matters set out below and make recommendations to senior management who will take into account the views and the deliberations of the committee prior to making its final decisions:
- 61.3.1 To implement the restructured award in the workplace.
- 61.3.2 To review the implications and/or impact on the enterprise of major external influences, including the Australian Government textile, clothing and footwear industries development plan.
- 61.3.3 To consider the introduction of new or revised work methods/work arrangements.
- 61.3.4 To give consideration to the impact of technological change and other significant changes in the organisation or workplace, with regard to:
- number of employees, job specifications and current skill base; and
- acquisition of new skills and additional training requirements.
- 61.3.5 To develop a framework for skills development and provisions of training within the workplace, including English language training and the provision of foundation education.
- 61.3.6 To assess proposed changes in product or product orientation for possible impact on work method/work arrangements, employment and skill requirements.
- 61.3.7 To give consideration to equal employment opportunity principles in the context of award restructuring in the workplace.
- 61.3.8 To consider the provision of work related child care and, in particular, the Australian Government work based child care program.
- 61.3.9 To consider other matters raised by consultative committee members which impact on employees or which contribute to the improved operation and efficiency of the enterprise.
- 61.4 Procedural Guidelines -
- 61.4.1 Chairperson - A chairperson shall be elected by the committee from within the committee and shall alternate each meeting between management and Union/employee representatives.

- 61.4.2 Secretary - A Secretary shall be appointed for the purposes of recording minutes, preparation and distribution of agendas and other administrative duties. The administrative requirements of this position shall be provided by the employer. The person appointed to this position shall not be a member of the committee.
- 61.4.3 Agenda - All members of the committee shall have a right and a responsibility to submit agenda items. The agenda, minutes and any relevant background documentation shall be circulated one week prior to the meetings.
- 61.4.4 Preparation - Reasonable time in working hours shall be provided to Union/employee representatives for the purpose of preparing for the meeting. Union/employee representatives and an official of the Union may, at a time convenient to the employer, during working hours, hold meetings with the workforce or part of the workforce prior to meetings of the committee.
- 61.4.5 Meetings - The committee shall meet at least every two months, unless the committee determines that it shall meet on a more frequent basis.
- The meetings of the committee shall be held at a place and time convenient to management, but shall be held during normal working hours. Attendance at committee meetings shall be treated as and paid for as time worked.
- A reasonable time limit shall be placed on the length of meetings. Enough time shall be provided to adequately deal with the agenda items. Meetings shall operate on a consensus basis.
- 61.4.6 Minutes - The Secretary of the committee shall minute the proceedings of each meeting of the committee. The minutes shall be circulated to each member of the committee within one week of the meeting, verified by committee members prior to the next meeting, and signed by the chairperson at the next meeting of the committee as a true and correct record of the proceedings of the committee.
- 61.4.7 Future Meetings - The date of the next meeting of the committee shall be set at the close of the previous meeting.
- 61.4.8 Confidentiality - All members of the Consultative Committee and the Secretary of the committee shall accept that, whilst the spirit of genuine consultation is to be paramount, at no time shall the committee have placed before it any matter, the confidentiality of which is in the company's best interests, or where confidentiality has been specifically agreed with a third party.
- 61.4.9 Management Response - Senior management must formally respond to the committee's recommendations. Normally this will take place prior to the next meeting of the committee.
- 61.5 Feedback -
- 61.5.1 The minutes of the meetings of the committee shall be kept by the Secretary of the committee and shall be available upon request to any employee or any other person approved by the committee. As a matter of course, minutes shall be forwarded to the Secretary of the Union.
- 61.5.2 Minutes of the committee meeting shall be posted on the noticeboards after ratification by the meeting.
- 61.5.3 Reasonable time in working hours shall be provided to Union/employee representatives for the purpose of reporting back on items raised and agreements reached at the meeting. Union/employee representatives may, at a time convenient to the employer, during

working hours, hold meetings with the workforce or part of the workforce following meetings of the committee.

A reasonable time limit shall be placed on the length of meetings. Enough time shall be provided to adequately deal with the agenda items. Meetings shall operate on a consensus basis.

61.6 Training - All members of the committee shall be entitled to training in meeting procedures and relevant related skills required to ensure that they are in a position to represent their constituents and play an active role in the operation of the committee. The nature, time and extent of training provided shall be determined between management and the Union.

61.7 Evaluation - A review of these procedures shall be conducted at the end of each twelve months' operation.

## **62. Schedule B - Request to the Union By the Outworker to Reduce the Number of Hours Worked Part-Time**

Please complete in English

Outworker's Name:

Address:

Telephone:

Employer's Name:

Address:

Telephone

Registration Number:

I wish to reduce the number of hours I work on a part-time basis to a minimum of 15 hours per week over 12 months, starting on

Outworker's Signature

Date

Please send this form to the Secretary of The Transport Workers' Union of New South Wales. A copy, signed by the Secretary of the Union, will be returned to the outworker.

Secretary's Signature

Date

## **63. Schedule C - Information to be Given to Outworkers**

If you work at home or outside a factory making garments or parts of garments or sewing sheets, etc., you may be an outworker.

If you are an outworker, you are entitled to the same wages and conditions, in general, as workers in clothing factories.

The Clothing Trades (State) Award sets out legally enforceable rights and obligations. This applies to all outworkers, including employees, independent contractors, and holders of business name registrations.

According to this law, some of the entitlements outworkers must receive are set out below:

**Hours of Work** - An outworker may only be employed to work full-time, which is 38 hours a week, or part-time, which must be at least 15 hours per week. The hours must be agreed to in advance by the outworker and the employer. This means you are guaranteed payment for the agreed number of hours per week, even if you are not given any work, unless you are stood down in accordance with the award.

You cannot be required to work on Saturdays, Sundays or public holidays. You may agree to work on those days if asked to do so by your employer. You will have to be paid overtime rates if you do work on those days.

As a full-time or part-time worker, you can only be required to work seven hours and 36 minutes each day. If you are asked by your employer to work more than this number of hours, you must be paid overtime. This means that, even if you are paid by the piece, you cannot receive less than the hourly award rate of pay.

**Overtime** - If you agree to work more than seven hours and 36 minutes in a day, Monday to Friday, you must be paid one and a half times the normal hourly rate for each hour over the seven hours and 36 minutes. For every hour you agree to work on a Saturday, Sunday or public holiday, you must be paid double the normal hourly rate.

**Wages** - According to law, as at 16 December 2010 the usual weekly wage for 38 hours, Monday to Friday is \$628.10. The hourly rate is \$16.53. Remember, the law says you must not be paid less than the hourly rate according to the award.

**Annual Leave (Holidays)** - You are entitled to annual leave. You should get 20 working days paid leave for every year you work full-time. You should be paid before you go on holidays, and this holiday pay should include an extra amount - a holiday leave loading - of 17.5 per cent of your pay. This amount of annual leave for part-time workers depends on the hours you work in a 12-month period. The Transport Workers' Union of New South Wales or Department of Industrial Relations or Australian Business Industrial will help you to work this out. Payment for public holidays (such as Christmas or New Year's Day), which occur when you are on leave, should be added on to your holiday pay.

**Public Holidays** - If you normally work on a day on which a public holiday falls, you should receive a day's pay without working on that day. The public holidays that apply in New South Wales are New Year's Day (1 January), Australia Day (26 January), Good Friday, Easter Saturday, Easter Monday and Easter Tuesday in March or April, Labour Day, ANZAC Day (25 April), Queens Birthday in June, Christmas Day and Boxing Day (25 and 26 December).

**Superannuation** - By law, your employer has to make a superannuation contribution of up to eight per cent to an approved fund, for you. Normally this would be the Australian Retirement Fund, which is approved by both union and employer organisations. The Transport Workers' Union of New South Wales or Department of Industrial Relations or Australian Business Industrial will help you to work this out.

**Workers' Compensation** - If you become ill or suffer injury as a result of the work you do you may be entitled to workers' compensation, which helps you pay for any treatment you might need to get better, and for time off work. The laws covering workers' compensation in New South Wales are the *Workers' Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. It is important that you contact The Transport Workers' Union of New South Wales or Department of Industrial Relations or Australian Business Industrial for information and help to make a claim.

**Materials** - Your employer must provide all necessary materials, trimmings and sewing threads for the work you are doing.

**Delivery and Pick Up** - The employer must deliver and pick up the work free of charge to you.

Record of Work - Every time you receive work you should keep a record. This should show:

- employer's name, address and telephone number;
- the date you receive the work and the date the work was completed;
- the number of hours and days it took to do the work;
- the number of items, what the item is and how long it took to make each item;
- the total amount of money paid for the completed work.

For further information on your rights and entitlements, please contact one of the following organisations:

The Transport Workers' Union of New South Wales  
28 Anglo Road, Campsie NSW 2194. Tel. (02) 97895233.  
Fax (02) 9787 1561. Email: tcfuansw@tcfua.org.au

Australian Business Industrial, 140 Arthur Street, North  
Sydney NSW 2059. Tel. (02) 9548 7500.

Department of Industrial Relations, 1 Oxford Street, Darlinghurst NSW 2010. Tel. (02) 9243 8888.

#### 64. Schedule D - Broadbanding Arrangements\*

Former transitional wages classification system to facilitate the introduction of skill levels in 1994. Retained for historical reference only.

Group A - Order Tailoring for Males - The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or work incidental thereto of all male outer garments of any description (including dressing gowns) cut and made to chart measure or cut and made to an individual measure and garments that are fitted on shall be as follows

		Wage band No
1	Cutter, marking in and/or cutting out	5
2	Trimmer, marking in and/or cutting out linings and trimmings	3B
3	Fitter up and/or shaper	3B
4	Head of table or bench of machines in charge of four or more persons - above appropriate machinist rate	As set in Item 1 of Table 2 of Part B
5	Tailor or tailoress employed making and/or altering coats by hand or by machine and who in the ordinary course of employment is performing similar work to that ordinarily performed by an order tailor	4
6	Coat maker engaged on three of any of the following operations:	3B
	(a) canvassing fore-parts by hand;	
	(b) basting-under, basting out facings by hand;	
	(c) inserting pads, basting on undercollars and basting in sleeves for try on;	
	(d) hand felling top collars;	
	(e) basting-in sleeves by hand and working sleeve heads.	
7	Employees employed making and/or altering by hand or by machine any part of a dress coat, tuxedo, frock coat, dinner jacket, or body coats of all descriptions	3B
8	Coat table hand or coat machinist	2B
9	Trouser hand or trouser machinist	2A
10	Vest table hand or vest machinist	2A
11	Embosser, embroiderer, cornelli worker	2B

12	Presser, pressing off and/or underpressing	3A
13	Examiner examining for faults in construction	3B
14	All others not herein classified	3B

Group B - Order Tailoring for Females - The weekly wage for every description of work done in connection with order tailoring for females, which includes the making and/or altering and/or repairing and/or work incidental thereto of tailored female outer garments cut and made to chart measure or cut and made to an individual measure and garments that are fitted on, shall be as follows:

15	Cutter marking in and/or cutting out	5
16	Trimmer marking in and/or cutting out linings or trimmings	3B
17	Fitter up and/or shaper	3B
18	Head of a table or a bench of machines in charge of four or more persons - above appropriate machinist rate	As set in Item 1 of Table 2 of Part B
19	Tailor or tailoress employed making and/or altering coats by hand or by machine and who in the ordinary course of employment is performing similar work to that ordinarily performed by an order tailor	4
20	Coat maker engaged on three of any of the following operations:	3B
	(a) canvassing fore-parts by hand;	
	(b) basting-under, basting out facings by hand;	
	(c) inserting pads, basting on under collars and basting- in sleeves for try on;	
	(d) hand felling top collars;	
	(e) basting-in sleeves by hand and working sleeve heads.	
21	Coat table hand or coat machinist	2B
22	Skirt maker and/or machinist	2A
23	Outer leg wear maker and/or machinist	2A
24	Embossor, embroiderer, cornelli worker	2B
25	Presser pressing off and/or under-pressing	3A
26	Examiner examining for faults in construction	3B
27	All others not herein classified	1A

Group C - Ready Made Clothing for Males - The provisions contained in this group shall not apply to the making of cardigans, pullovers and knitted swimsuits in establishments of employers wherein the principal business of such employer consists of the knitting of materials and the making of garments so knitted. The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or work incidental thereto of all male outer garments of any description (including dressing gowns), excepting those specified in Groups A and I, shall be as follows -

28	Cutter laying up and/or marking in and/or using marker lay and/or cutting out	4
29	Die cutter in cutting room	4
30	Trimmer marking in and/or cutting out linings or trimmings	3B
31	Fitter up and/or shaper	3B
32	Head of a table or a bench of machines, in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
33	Tailor or tailoress	4
34	Alteration or repair hand (tailor or tailoress)	4
35	Alteration hand (other than tailor or tailoress) in retail establishment	3A
36	Coat table hand or coat machinist	2B
37	Trouser table hand or trouser machinist	2A
38	Vest table hand or vest machinist	2A
39	Presser pressing off and/or under pressing garments other than the garment which the employee is making	3A
40	Durable crease setters and/or sprayers	2B
41	Seam presser and/or seam opener by machine or by hand	2A
42	Canvas fuser and/or air operated fusing machine operator other than on	2A

	a Hoffman type press	
43	Embosser, embroiderer, cornelli worker	2B
44	Proofer	2A
45	Examiners examining for faults in construction:	
	(a) tailor or tailoress	3B
	(b) Others	2B
46	Brusher and folder	2A
47	Hand sewer of buttons, hooks, eyes, press studs and the like	2A
48	Operator, electronic welding machine	1B
49	Operator of press stud or riveting machine	1B
50	Transporter operator, i.e., employee operating console	2B
51	All others not herein classified	1A

Group D - Order Dressmaking - The weekly wage for every description of work done in connection with order dressmaking which includes the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of all female outer garments of any description (including dressing gowns) cut and made to an individual measure and garments that are fitted on, other than such items of outer wearing apparel as are specified in Group B hereof, shall be as follows:

52	Cutter, marking in and/or cutting out	5
53	Head of a table or a bench of machines, in charge of four or more persons above appropriate machinist rate	As set in - Item 1 of Table 2 of Part B
54	Table hand or machinist	2B
55	Presser operating Hoffman type press or hand iron more than 3.63 kg (8 lbs) in weight (not counterbalanced)	3A
56	Presser pressing off and/or under- pressing - other	2B
57	Pleater making patterns and pleating by hand or by machine	3B
58	Pleater, rolling in by hand or machine and/or inserting pleat into pattern	2A
59	Embosser, embroiderer, cornelli worker	2B
60	Fitter-on trying on to a customer unfinished or finished garments	3A
61	Hand sewers of buttons, hooks, eyes, press studs and the like	2A
62	All others not herein classified	1A

Group E - Ready Made Dressmaking and Ready Made Tailoring for Females - The provisions contained in this group shall not apply to the making of cardigans, pullovers and knitted swimsuits in establishments of employers wherein the principal business of such employer consists of the knitting of materials and the making of garments so knitted. The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of all descriptions of ready made garments or outer wearing apparel for females, excepting those specified in Groups B, D and I, which shall include tea, dressing or house gowns, blouses, fronts, collars, collarettes, cuffs and children's garments (other than those included in Group F), shall be as follows:

63	Cutter, marking in and/or cutting out	4
64	Die cutter in cutting room	4
65	Trimmer marking in and cutting out linings and/or trimmings	3B
66	Fitter up and/or shaper	3B
67	Head of a table or a bench of machines, in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
68	Tailor or tailoress	4
69	Table hand, finisher or machinist including the making of fronts, collars, collarettes, cuffs or shoulder pads	2B
70	Embosser, embroiderer, cornelli worker	2B
71	Alteration hand (other than tailor or tailoress) in retail establishment	3A
72	Presser pressing off and/or under- pressing operating Hoffman type press or hand iron more than 3.63 kg.(8 lbs.) in weight (not counterbalanced)	3A
73	Presser pressing off and/or under- pressing - other	2B

74	Fusing machine operator	2B
75	Seam presser and/or seam opener by machine or hand	2A
76	Durable crease setter and/or sprayer	2B
77	Pleater making patterns and pleating by hand or by machine	3B
78	Pleater, rolling in by hand or by machine and/or inserting pleat into pattern	2A
79	Examiner, examining for faults in construction	2B
80	Hand sewer of buttons, hooks, eyes, press studs and the like	2A
81	Operator, electronic welding machine	1B
82	Operator of press stud or riveting machine	1B
83	Transporter operator, i.e., employee operating console	2B
84	All others not herein classified	1A

Group F - Underclothing - The provisions contained in this group shall not apply to establishments of employers wherein the principal business of such employers consists of the knitting of goods and making of garments from goods so knitted. The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of all descriptions of underclothing for females which includes corsets, brassieres, nightgowns, pyjamas, pinafores and aprons for females and sunsuits, playsuits and similar garments for children not exceeding eight years of age shall be as follows:

85	Cutter marking in and/or cutting out	4
86	Die cutter in cutting room	4
87	Head of a table or a bench of machines, in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
88	Machinist	2A
89	Adornment worker	2A
90	Table hand and/or finisher	2A
91	Presser and/or ironer operating Hoffman type press or hand iron more than 3.63 kg. (8 lbs.) in weight (not counterbalanced)	3A
92	Presser and/or ironer - other	2A
93	Transferrer	2A
94	Examiner examining for faults in construction	2A
95	Hand sewer of buttons, hooks, eyes, press studs and the like	2A
96	Transporter operator, i.e., employee operating console	2A
97	All others not herein classified	1A

Group G - Whitework - The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of all descriptions of whitework which shall include all descriptions of napery and/or sheets and/or pillow slips and/or pillow shams and/or diapers and/or handkerchiefs and/or towels and/or chenille bedspreads and/or mosquito nets and/or chenille bathmats, and when made in clothing and whitework factories, toys and/or lamp shades and/or cot covers and/or blankets and/or bedspreads, shall be as follows:

98	Cutter marking in and/or cutting out	4
99	Die cutter in cutting room	4
100	Head of a table or a bench of machines, in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
101	Machinist and/or table hand	2A
102	Transferrer and/or adornment worker	2A
103	Presser and/or ironer operating Hoffman type press or hand iron more than 3.63 kg (8 lbs) in weight (not counterbalanced)	3A
104	Presser and/or ironer - other	2A
105	Examiner	2A
106	Dyer and/or bleacher (chenille)	3A
107	Vat attendant (chenille)	2A
108	Divider of material	2A



109	All others not herein classified	1A
-----	----------------------------------	----

Group H - Collars, Shirts, Ties, Scarves and Pyjamas - The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of collars, ties, scarves, cuffs, shirts, shirt fronts, pyjamas for males, singlets or underpants (except knitted goods) shall be as follows:

110	Cutter marking in and/or cutting out	4
111	Die cutter in cutting room	4
112	Head of a table or a bench of machines, in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
113	Machinist and/or table hand and/or adornment 2A Worker	2A
114	Presser and/or ironer operating Hoffman type press or hand iron more than 3.63 kg (8 lbs) in weight (not counterbalanced)	3A
115	Presser and/or ironer - other	2A
116	Fuser	2A
117	Examiner examining for faults in construction	2A
118	Transporter operator, i.e. employee operating console	2A
119	All others not herein classified	1A

Group I - Industrial Clothing - The weekly wage for every description of work done in the making and/or work incidental thereto of industrial clothing for males and females which includes industrial uniforms, overalls (excluding what are known in the trade as shaped garments), boiler suits, dust coats and industrial shorts, made from materials other than woollen or worsted shall be as follows:

120	Cutter marking in and/or cutting out	4
121	Die cutter in cutting room	4
122	Head of a table or a bench of machines, in charge of four or more persons - above machinist rate	As set in Item 2 of Table 2 of Part B
123	Machinist and/or table hand	2A
124	Presser and/or ironer operating Hoffman type press or hand iron more than 3.63kg. (8 lbs.) in weight (not counterbalanced)	3A
125	Presser and/or ironer - other	2A
126	Examiner	2A
127	Operator, electronic welding machine level 1 engaged in the manufacture of other industrial safety equipment or exercising skill with no requirement to reset machine or mould regularly	1B

127A	Operator electronic welding machine level 2 engaged in the manufacture of industrial safety clothing of whatever nature or constructing the whole of a garment or adapting setting of machine regularly to different tasks	2B
128	Operator of press stud or riveting machine	1B
129	Transport operator, i.e., employee operating console	2A
130	All others not herein classified	1A

Group J - Headwear - The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or adorning and/or work incidental thereto of any kind of hats, caps, bonnets, helmets, berets or any other kinds of headwear (except such hats as are made under the provision of the Felt Hatting Award) shall be as follows:

131	Cutter other than milliner	4
132	Head of a table or a bench of machines in charge of four or more persons - above machinist rate	As set in Item 2 of Table 2 of Part B
133	Hand blocker	4
134	Machine blocker	3A

135	Helmet maker	2B
136	Cap maker	2B
137	Machinist and/or table hand	2A
138	Model milliner designing original models	3A
139	Milliner	2A
140	Presser and/or ironer operating Hoffman type press or hand iron more than 3.63kg (8 lbs) in weight (not counterbalanced)	3A
141	Presser and/or ironer - other	2A
142	Operator, electronic welding machine	1B
143	All others not herein classified	1A

Group K - Umbrella - The weekly wage for every description of work done in connection with the making and/or altering and/or repairing and/or work incidental thereto of any description of umbrellas, or parasols, or the like, shall be as follows -

144	Gore cutter, marking in and/or cutting out	3B
145	Machinist	2A
146	Examiner	2A
147	Hand ironer	2A
148	Frame maker	2A
149	Umbrella assembler, including rib assembling, band fixing, topping, clipping in, rolling, studding, pulling up and fitting handles, angle joints, runner, notches, bells and spikes	1B
150	All others not herein classified	1A

Group L - Fur Trade - The weekly wage for every description of work done in connection with the making and/or altering and/or remodelling and/or repairing and/or work incidental thereto of all types of garments or articles such as coats, jackets, capes, headwear, scarves, collars, cuffs, neckwear, muffs, rugs, mats and toys made in the establishment of a furrier from furred and/or haired and woollen skins shall be as follows:

151	Cutter marking in and/or cutting out	5
152	Head of a table or bench of machines in charge of four or more persons - above appropriate machinist rate	As set in Item 2 of Table 2 of Part B
153	Nailer	3A
154	Fur machinist	3A
155	Machinist (other than on fur machine) and/or table hand	2B
156	All others not herein classified	1A

Group M - Artificial Flowers and Brushed Silk Emblems - The weekly wage for every description of work done in connection with the making and/or work incidental thereto of all types of artificial flowers and brushed silk emblems shall be as follows:

157	Cutter and/or stamper	3A
158	Dyer	3A
159	Shaper of petals by hand, with aid of curling iron and/or bowler and assembling the petals so shaped	2B
160	Employee assembling and/or making and/or tying and/or pressing artificial flowers	2B
161	Tiers and/or cutters and/or brushers of emblems	2B
162	All others not herein classified	1A

### TRANSLATION PROCEDURE

#### 64.1 Step 1 - Getting Ready -

- 64.1.1 Arrange and conduct a meeting of the Translation Committee or Consultative Committee to:

- (1) Set date/s for Union/employee training and make the necessary arrangements.
  - (2) Set date/s for joint training and make the necessary arrangements.
- 64.1.2 Conduct a survey of the language needs of the workforce.
- 64.1.3 Carry out an inspection of the factory/workplace to familiarise the committee with the different sections/work areas.
- 64.2 Step 2 - Training and Planning -
- 64.2.1 Undertake Union/employee training.
- 64.2.2 Undertake joint training.
- 64.2.3 Set date/s for information session/s to workforce and make the necessary arrangements.
- 64.2.4 Set date/s for transferring the workforce to the new skill levels.
- 64.2.5 Arrange for suitable interpreters to be available for information sessions and completion of the questionnaire (and checklist where used).
- 64.2.6 Agree on the order in which different sections of the factory/workplace will be translated and establish and prominently display a timetable for translation, including the date/s for information sessions to the workforce and for the completion of the questionnaire (and checklist where used). Translation should commence as soon as possible after the delivery of training, and must be completed within the transition period.
- 64.2.7 Agree on how the completion of the questionnaire (and checklist where used) will be managed, e.g., sections, by language groups.
- 64.2.8 Select appropriate space within the factory/workplace to carry out translation procedures.
- 64.2.9 Obtain all the materials necessary.
- 64.2.10 Provide information to the whole of the workforce on the translation to the new Skill Based Classification Structure. This may be provided verbally and/or in written form and/or by way of a poster. This may be delivered in sections or language groups or to the workforce as a whole.
- 64.2.11 Arrange for the committee to brief supervisors on the translation process and provide copy of written materials.
- 64.3 Step 3 - Preparing the Skills Questionnaire (and checklist where used) -
- 64.3.1 In preparation for the Skills Based Classification Structure, an enterprise may, in consultation with the committee, choose to list machine types and then classify the operations performed on them into:
- (1) basic
  - (2) intermediate
  - (3) complex
- 64.3.2 This information can be used to assist in determining skill levels by identifying technical skills. It cannot be used without the questionnaire.

- 64.3.3 The checklist must be agreed to as accurate by the committee before it can be used in the translation process.
- 64.3.4 Arrange for the questionnaire (and checklist where used) to be copied for each member of the workforce.
- 64.3.5 Number each questionnaire (and its accompanying checklist, where used) consecutively beginning with number 1.
- 64.3.6 Every page of the same questionnaire (and accompanying checklist, where used) should be given the same number so that if pages of a completed questionnaire (and checklist, where used) become detached, they can be identified.
- 64.4 Step 4 - Completing the Questionnaire (and checklist where used) -
- 64.4.1 Responses to the questionnaire (and checklist where used) should relate to recurring activities which an employee is competent in and is expected to carry out. Activities which are carried out infrequently or at unpredictable times should be included as long as they are recurring activities which an employee is competent in and is expected to carry out during a normal twelve-month production cycle.
- 64.4.2 Activities which an employee has been called on to carry out only from time to time, because of extraordinary production requirements, would not be included. In this case, where employees are called on to exercise high level skills, they would be paid in accordance with clause 19, Mixed Functions.
- 64.4.3 For example, an employee called on to carry out the activities of another employee because that employee is temporarily absent for a short period of time would not include these activities in their responses to the questionnaire (and checklist where used).
- 64.4.4 However, if it is part of an employee's specific duties to relieve in the case of absence of other employees, as is the case for utility machinists, then those activities should be included.
- 64.4.5 Periods of training are not to be regarded as part of an employee's usual work.
- 64.4.6 Arrange for the questionnaire (and checklist where used) to be completed by each worker, in manageable groups, during working hours in the manner agreed by the committee, e.g., in section/work area, language group.
- 64.4.7 At least one Union and one employer representative of the committee, with the help of interpreters if necessary, will act as facilitators for each group and the facilitators shall explain the questionnaire (and checklist where used) and how to fill it out.
- 64.4.8 They will answer questions about the questionnaire (and checklist where used) and ensure that all of the relevant questions have been answered. The role of facilitators is to clarify the meaning of questions to enable employees to make their own responses.
- 64.4.9 An employee may request a supervisor to complete the checklist (where used) on behalf of the employee.
- 64.4.10 Facilitators should pay particular attention to filling in the name of the worker, the job title and the wage band number on the skill allocation form.
- 64.4.11 Facilitators should answer any question about what happens next.
- 64.5 Step 5 - Allocating Skill Levels - The committee shall meet and perform the following procedures:

- 64.5.1 Ensure a committee secretary is present and has a skill level allocation form for each worker.
- 64.5.2 Ensure that each member has a copy of the completed questionnaire (and checklist where used) for each worker in the same order and a copy of the skill based classification structure.
- 64.5.3 The committee shall then call in supervisors to endorse the employee responses to the questionnaire (and checklist where used).
- 64.5.4 Where supervisors disagree with certain responses they shall give their reasons for such differences and these shall be discussed with the employee concerned, with the assistance of an interpreter if necessary. The committee may seek any other information in an attempt to determine whether the disputed responses are acceptable and may view the employee at the employee's work station. Where the committee cannot make a decision, the employee's responses must be accepted.
- 64.5.5 For each worker:
- (1) Determine the minimum skill level of the worker by comparing the employee's wage band with the minimum skill level table appearing below. For example, a worker in wage band 2B will have a minimum skill level of Skill Level 2.

64.5.6 Minimum Skill Level Table

Wage Band	Skill Level
1A	1
1B	1
2A	2
2B	2
3A	3
3B	3
4	4
5*	5
*Wage Band	

- 64.5.7 Review the completed questionnaire (and checklist where used) for the worker.
- 64.5.8 Where a worker's questionnaire (and checklist where used) question/s are not answered clearly and members of a committee require clarification of an employee's response this should be sought from the employee and, if necessary, the employee's supervisor.
- 64.5.9 Compare the completed questionnaire (and checklist where used) with the skill level above the minimum skill level for the worker.
- 64.5.10 If the worker cannot be allocated to the skill level above the employee's minimum skill level then the employee remains on the employee's minimum skill level.
- 64.5.11 If the worker can be allocated to the skill level above the employee's minimum skill level then compare the completed questionnaire (and checklist where used) with the next skill level and so on until the worker can be allocated.
- 64.5.12 The skill level allocated is the highest level in which the employee satisfies all the necessary requirements.
- 64.5.13 The committee secretary should record the skill level and key reasons for the decision on the skill allocation form.

- 64.5.14 The questionnaires (and checklists where used) and the skill level allocation forms should be kept in a safe place and be available for any subsequent review processes.
- 64.6 Step 6 - Where consensus on the appropriate skill level is reached -
- 64.6.1 Notify management and the worker of the recommended skill level.
- 64.6.2 If both the management and worker accept the recommendation it becomes the confirmed skill level and shall remain so until at least the expiry of the transition period.
- 64.7 Step 7 - Where consensus on the appropriate skill level cannot be reached or where it is reached but the recommendation is not acceptable to management and/or the worker -
- 64.7.1 The committee will meet with management and the worker separately. It will then review its decision, taking into consideration the additional information it has obtained and attempt to reach a consensus, which will be notified to management and the workers.
- 64.7.2 If consensus still cannot be reached within the committee or its recommendation is still not acceptable to management and/or the worker, the matter shall be referred to senior management and a Union official who shall endeavour to reach agreement.

#### **65. Schedule E - Procedure to be Adopted in Developing an Enterprise Bargaining Agreement**

The procedures to be followed in developing an enterprise bargaining agreement are as follows:

- 65.1 Step One - The party raising a measure or measures for consideration shall place the matter on the agenda of a forthcoming meeting of the Consultative Committee.
- 65.2 Step Two - The party raising the measure or measures for consideration shall outline the proposal at a meeting of the Consultative Committee and the outline shall be recorded in the minutes of the meeting. The party receiving the proposal shall not be required to respond to the proposal at that meeting. At the same time a written outline of the proposal shall be forwarded to the Secretary of the Union.
- 65.3 Step Three - The Consultative Committee shall post the proposal on the noticeboards. They shall endeavour to express the proposal in a manner that enables the proposal to be understood by the workforce. In particular, where there are a number of non-English speaking workers the Consultative Committee shall consider having the proposal translated into the main languages spoken in the workplace so that all employees fully understand the proposal.
- 65.4 Step Four - The Union/employee Consultative Committee representatives shall be granted one day's leave with pay to attend a briefing session conducted by the union to equip them to negotiate each enterprise bargaining agreement with the employer. Where an employee has used the employee's full entitlement to Trade Union Training Leave in accordance with clause 22, Trade Union Training Leave, the one day's leave shall be in addition to the employee's entitlement.
- 65.5 Step Five - The Union/employee Consultative Committee representatives and the relevant official of the Union shall consult with the whole of the workforce or section of the workforce affected by the proposal. An employer shall grant the whole of the workforce reasonable time off with pay to attend a meeting conducted by the union/employee representatives and the relevant official of the Union for the purpose of consultation. In the case of a workplace where there are a number of non-English speaking workers the employer shall favourably consider a request from the Union/employee Consultative Committee representatives or the relevant official of the Union for the engagement of interpreter/s to assist in the meeting so that non-English speaking workers fully understand the proposal. In such cases, reasonable time to conduct the meeting will be longer than in the case where an interpreter/s is not used.
- 65.6 Step Six - The Consultative Committee shall then consider the proposal and the views of the workforce and attempt to reach an enterprise bargaining agreement. As necessary, the employee/Union Consultative Committee representatives will refer the draft to the workforce for comment.

- 65.7 Step Seven - If the Consultative Committee reaches agreement it shall record the agreement in writing and forward it to the Secretary of the Union who shall arrange with the employer to jointly conduct a vote of the workforce affected.
- 65.8 Step Eight - In the case of a proposal which does not affect the provisions of the award, if a majority of the workforce affected are in favour of the proposal, the proposal shall be forwarded as a recommendation to senior management.
- 65.8.1 In the case of a proposal which does affect the provisions of the award, if 75% of the workforce affected are in favour of the proposal, the proposal shall be forwarded as a recommendation to senior management.
- 65.9 Step Nine - If the recommendation is accepted then senior management shall refer the proposed agreement in writing to the Secretary of the Union for approval or otherwise. The union shall not unreasonably withhold agreement.
- 65.10 Step Ten - If the proposed agreement in writing is approved by the Secretary of the Union, then it shall be signed by senior management and the Secretary of the Union.
- 65.11 Step Eleven - The agreement shall then be submitted to the Industrial Relations Commission of New South Wales for approval.

## PART B

### MONETARY RATES

**Table 1 - Rates of Pay**

#### Clause 6 - Rates of Pay

Adult Rates of Pay from the beginning of the first pay period to commence on or after 16 December 2010.

Skill Level	Award Rate SWC 2010 (4.25%) \$
Trainee	584.50
1	603.10*
2	628.10
3	651.50
4	689.00
5#	735.50**

\* Calculation for minute pay rate for PBR purposes

\*\* Note yet determined as to relativity

# Not a skill level

**Table 2 - Other Rates and Allowances**

Allowances payable from the beginning of the first pay period to commence on or after 16 December 2010.

Item No.	Clause No.	Brief Description	Amount SWC 2010 (4.25%) \$
1	6.6.1	Head of table or bench of machines, in charge of four or more persons - above appropriate machinist rate	17.15
2	6.6.2	Head of table or bench of machines, in charge of four or more persons - above appropriate machinist	12.60
3	17.1	Meal Money	9.95

4	46.1	Disability allowances - Inadequate dining facilities	4.20
5	46.2	Disability Allowances - Inadequate rest facilities	4.20

### **Clothing Trades (State) Industrial Committee**

#### **Industries and Callings**

All persons engaged in -

- (a) making and/or repairing and/or altering the whole or any part of any male or female garment or of any article of wearing apparel whatsoever, made from material of any description, including all articles of neckwear and excluding only boots, shoes, slippers, gloves and headwear, except as provided in (b);
- (b) making and/or trimming and/or blocking and/or repairing and/or altering and/or remodelling all articles of women's and girls' headwear, excepting male employees engaged in blocking by hand or machines;
- (c) making and/or repairing and/or altering any description of umbrella other than canvas umbrellas;
- (d) making and/or repairing and/or altering any description of handkerchiefs, serviettes, pillowslips, pillowshams, sheets, tablecloths, towels, quilts, aprons, mosquito nets, bed valances, or bed curtains;
- (e) embroidering or otherwise ornamenting any of the abovementioned articles, including the making and/or manufacturing of such ornamentations as are made of textiles, felts or similar fabrics;
- (f) in or in connection with the manufacture of artificial flowers;
- (g) making and/or altering and/or remodelling and/or repairing of all types of garments or articles, other than toys, made in the establishment of a furrier;
- (h) the making of chenille and the making and/or repairing and/or altering of articles of all descriptions as are made of chenille;

in the State of New South Wales, excluding the County of Yancowinna;

*excepting* employees employed in the making and/or repairing of furnishing drapery and/or quilts in a furniture or furnishing drapery factory or establishment, including retail store or warehouse;

and *excepting* employees within the jurisdiction of the Rubber Workers (State), the Plastic Moulding (State) and the Textile Workers (State) Industrial Committees.

---

Printed by the authority of the Industrial Registrar.



(1361)

**SERIAL C7717**

## ENTERTAINMENT AND BROADCASTING INDUSTRY - LIVE THEATRE AND CONCERT (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Award	C6758	26/12/2008	On and from 3/10/2008	366	1546
Correction to C6758	C6935	30/01/2009		367	32

### PART 1 - APPLICATION AND OPERATION OF AWARD

#### 1. Award Title

This award will be referred to as Entertainment and Broadcasting Industry - Live Theatre and Concert (State) Award.

#### 2. Arrangement

This award is arranged as follows:

#### PART 1 - APPLICATION AND OPERATION OF AWARD

Clause No.	Subject Matter
1.	Award Title
2.	Arrangement
3.	Definitions
4.	Application of Award
5.	Who is Bound by this Award
6.	Relationship with other Awards

#### PART 2 - AWARD FLEXIBILITY

7.	Enterprise Flexibility Provisions
8.	Index of Facilitative Provisions

#### PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

9.	Consultation and Communication Procedures
----	---

## 10. Dispute Resolution

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

- 11. Employment Categories
  - 11.1 Full Time Employees
  - 11.2 Part Time Employees
  - 11.3 Casual Employees
  - 11.4 Seasonal Employees
  - 11.5 Secure Employment
- 12. Traineeships
- 13. Stand Down of Employees
- 14. Termination of Employment
  - 14.1 Notice of Termination by Employer
  - 14.2 Notice of Termination by an Employee
  - 14.3 Time Off During Notice Period
- 15. Redundancy
- 16. Anti-Discrimination

## PART 5 - WAGES AND RELATED MATTERS

- 17. Classifications and Wage Rates
- 18. Payment of Wages
- 19. Higher Duties
- 20. Allowances
  - 20.1 Tools/Equipment
  - 20.2 Laundry
  - 20.3 Shoes
  - 20.4 Uniforms/Special Costumes/Protective Clothing
  - 20.5 Transmission or Recording
- 21. Superannuation

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

- 22. Hours of Work and Time Off
  - 22.1 Weekly Employees
  - 22.2 Casual Employees
  - 22.3 Savings
- 23. Meal Intervals and Allowances
- 24. Overtime
  - 24.1 Weekly Employees
  - 24.2 Casual Employees
  - 24.3 All Employees
  - 24.4 Reasonable Overtime
- 25. Sundays

PART 7 - LEAVE OF ABSENCE AND PUBLIC  
HOLIDAYS

- 26. Annual Leave
  - 26.1 Annual Leave Entitlement
  - 26.2 Time of Taking Annual Leave
  - 26.3 Annual Leave Loading
  - 26.4 Public Holidays During Annual Leave
  - 26.5 Proportionate Annual Leave on Termination

- 26.6 Conversion of Accrued Leave
- 27. Sick Leave
- 28. Bereavement Leave
- 29. Personal/Carer's Leave
- 30. Parental Leave
- 31. Jury Leave
- 32. Public Holidays
- 33. Leave for Consultation Meetings

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

- 34. Travelling
  - 34.8 Accommodation
  - 34.9 Meals
  - 34.10 Incidentals

#### PART 9 - MONETARY RATES

- Table 1 - Rates of Pay
- Table 2 - Other Rates and Allowances
- Table 3 - Reimbursement of Expenses

### 3. Definitions

- 3.1 "Authorised officer of the MEAA" means - the Secretary, a Branch Secretary and any association representative nominated in writing by the Secretary.
- 3.2 "Commission" means - the Industrial Relations Commission of New South Wales.
- 3.3 "Double time" means - in the case of a weekly employee twice the ordinary hourly rate which is obtained by dividing the applicable rate per week by 38 hours, and in the case of an employee engaged by the hour twice the hourly casual rate.
- 3.4 "Full pay" in clause 25 - Annual leave means - the average rate the employee received for the four weeks preceding the taking of annual leave or the average rate received for the twelve months preceding such leave, whichever will be the higher. Provided that such average will be computed by taking into consideration any extra rates prescribed for night work, etc., and penalty rates for Sunday work where such work is part of the employee's normal working week of five days but excluding any amounts received by way of overtime or holiday penalty rates.
- 3.5 "MEAA" and/or "Union" means - the Media, Entertainment and Arts Alliance.
- 3.6 "Short performance" means - a performance which has a duration of 60 minutes or less.
- 3.7 "Time and a half" means - in the case of a weekly employee one and a half times the ordinary hourly rate which is obtained by dividing the applicable rate per week by 38 hours, and in the case of an employee engaged by the hour one and a half times the hourly casual rate.
- 3.8 Theatrical employee - level 1

(Relativity to classification C10 of the Metal Industry Award - 78%)

3.8.1 A Theatrical employee level 1 is a trainee employee who is undertaking:

- (a) 6 weeks induction training in the case of a full-time or part-time employee; or
- (b) 228 hours induction training in the case of a casual employee.

3.8.2 The induction training may include information on the enterprise or production, conditions of employment, introduction of supervisors and fellow workers, training and career path opportunities, venue/workshop/plant layout, work and documentation procedures, basic theatre terminology and etiquette, occupational health and safety, equal employment opportunity and quality control/assurance.

3.8.3 An employee at this level performs routine duties to the level of the employees training:

- (a) works under direct supervision either individually or in a team environment;
- (b) understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
- (c) understands and utilises basic literacy (English) and numeracy skills.

3.8.4 An employee at this level will undertake training in the following indicative tasks:

- (a) safely lift and handle scenery and props and/or equipment;
- (b) uses selected hand tools;
- (c) basic packing and storing techniques;
- (d) repetition work on automatic, semiautomatic or single purpose machines or equipment;
- (e) maintains simple records;
- (f) uses hand trolleys and pallet trucks;
- (g) apply and comprehend basic theatre terminology and etiquette;
- (h) performs general labouring and cleaning duties;
- (i) communicate and interact effectively with staff;
- (j) effective customer/client service.

### 3.9 Theatrical employee - level 2

(Relativity to classification C10 of the Metal Industry Award - 90%)

3.9.1 A Theatrical employee level 2 is an employee who has completed the Level 1 induction training or possesses other equivalent experience so as to enable them to perform work within the scope of this level.

3.9.2 An employee at this level performs work above and beyond the skills of a Level 1 employee and to the level of the employee's training:

- (a) is responsible for the quality of the work allocated to the employee subject to routine supervision;
- (b) works under routine supervision either individually or in a team environment on a limited range of tasks;
- (c) exercises discretion within the employees' level of skills and training;
- (d) makes decisions in regard to routine matters.

3.9.3 Indicative of the tasks which an employee at this level may perform, are the following:

- (a) operates flexibly between work areas;
- (b) operates machinery and equipment within the employees' level of skill and training;
- (c) operates mobile equipment including fork-lifts, overhead cranes, tallescopes and winch operation;
- (d) ability to measure accurately;
- (e) safely lift and handle scenery and props and/or equipment;
- (f) receive, dispatch, distribute, sort, check, pack, document and record goods, materials and components;
- (g) basic keyboard skills;
- (h) telephonist, receptionist, cashier and information services duties;
- (i) laundry and/or dry-cleaning duties;
- (j) intermediate sewing skills and fabric knowledge, whether machine or non- machine, and knowledge of dyeing fabrics;
- (k) cleaning duties using specialised equipment and chemicals;
- (l) ushering, ticket taking, program/concession selling and food and beverage sales;
- (m) applies theatre terminology and etiquette;
- (n) painting and art finishing;
- (o) dressing;
- (p) costume decoration.

### 3.10 Theatrical employee - level 3

(Relativity to classification C10 of the Metal Industry Award - 95%)

3.10.1 A Theatrical employee level 3 is an employee who applies knowledge and skills so as to enable that employee to perform work within the scope of this level and may possess a sub-trade certificate.

3.10.2 An employee at this level performs work above and beyond the skills of an employee at level 2 and to the level of the employees' training:

- (a) solves straightforward problems using readily available information;
- (b) works to complex instructions and procedures;
- (c) as a team member organises allocated materials and equipment in an efficient and effective manner or works individually under general supervision;
- (d) is responsible for the work undertaken;
- (e) assists in the provision of on-the-job training to a limited degree.

3.10.3 Indicative of the tasks which an employee at this level may perform, are as follows:

- (a) uses precision measuring instruments;
- (b) machine setting, loading and operation;
- (c) rigging (certificated);
- (d) pyrotechnics (certificated and licensed);
- (e) welding which requires the exercise of knowledge and skills above level 2;
- (f) inventory and store control including:
  - (i) licensed operation of all appropriate materials/handling equipment;
  - (ii) use of tools and equipment within the scope (basic non-trades) maintenance;
  - (iii) computer operation at a higher level than that of an employee at level 2;
- (g) intermediate keyboard skills;
- (h) performs basic quality checks on the work of others;
- (i) licensed and certificated for fork-lift, engine driving and crane driving operations to a higher level than level 2;
- (j) Stage door duties;
- (k) sewing and cutting skills and fabric knowledge, whether machine or non-machine at a level higher than level 2;
- (l) advanced lifting and scene/props handling skills;
- (m) scenery, building and prop construction techniques above level 2.

### 3.11 Theatrical employee - level 4

(Relativity to classification C10 of the Metal Industry Award - 105%)

3.11.1 A Theatrical employee level 4 is an employee who holds a trade certificate in a relevant discipline and is able to exercise the skill and knowledge of that trade or an employee who has acquired the equivalent experience from on-the-job training in relevant theatrical discipline (/s).

3.11.2 An employee at this level works above and beyond an employee at level 3 and to the level of the employee's training:

- (a) understands and applies quality control techniques;
- (b) exercises good interpersonal and communications skills;
- (c) exercises keyboard skills at a higher level than level 3;
- (d) exercises discretion within the scope of this grade;
- (e) performs work under limited supervision either individually or in a team environment;
- (f) able to inspect products and/or materials for conformity with established operational standards;

- (g) operates all lifting equipment incidental to the employees' work.

3.11.3 Indicative of the tasks which an employee at this level may perform, are as follows:

- (a) works from production drawings, prints or plans;
- (b) operates, maintains, sets-up and adjusts all facility and production equipment, including trade construction processes such as set/prop/electrical making;
- (c) assists in the provision of on-the-job training;
- (d) a fully multi skilled cutter/tailor/milliner/wigmaker who is required to perform any of the operations involved in the making of a complex whole garment to specifications;
- (e) has an advanced understanding of theatre terminology, etiquette and theatre craft;
- (f) perform a range of engineering maintenance functions;

### 3.12 Theatrical employee - level 5

(Relativity to classification C10 of the Metal Industry Award - 110%)

3.12.1 A Theatrical employee level 5 is an employee who holds a trade certificate or equivalent experience and has acquired specialist knowledge of a variety of procedures and/or techniques gained by additional training or experience in the theatre industry.

3.12.2 A Theatrical employee level 5 is required to work above and beyond a tradesperson at level 4 and to the level of the employee's training:

- (a) exercises discretion within the scope of this grade;
- (b) works under minimal supervision either as an individual or part of a team or as a team leader;
- (c) understands and implements quality control techniques;
- (d) provides trade guidance and assistance as part of a work team;
- (e) responsible for providing training in conjunction with trainers;

3.12.3 Indicative of the tasks which an employee at this level may perform, are as follows:

- (a) indicative tasks for level 4 employee;
- (b) interprets detailed instructions and procedures for others;
- (c) insures quality standards are met through consistency, timeliness, correctly following procedures, and responsiveness to the client's needs;
- (d) readily adapts to change in work procedures and associated technologies;
- (e) may use innovation to resolve issues which impact on own work area.

### 3.13 Theatrical employee - level 6

(Relativity to classification C10 of the Metal Industry Award - 120%)

3.13.1 A Theatrical employee level 6 is an employee who holds a trade certificate or equivalent experience together with a relevant Post Trade Certificate or the equivalent skill and competence acquired through a significant period of professional experience in the theatre industry.

3.13.2 A Theatrical employee level 6 is required to work above and beyond a level 5 employee and to the level of the employee's training

- (a) understands and implements quality control techniques;
- (b) exercises discretion within the scope of this grade;
- (c) provides overall supervision and co-ordination of resources and individuals and/or work teams within areas of responsibility;
- (d) plans for and arranges training in procedural, technological change and systems for staff in the area of responsibility;
- (e) effectively handles work that is characterised by occasional peak periods and simultaneous handling of a variety of tasks, usually within one discipline, and with significant interruptions;
- (f) determines priorities and monitors performance for own and teams work, to ensure the efficient and effective use of allocated resources;
- (g) demonstrates accountability and responsibility for enabling the achievement of business goals within budgetary guidelines.

3.13.3 The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post trade training or equivalent experience to enable that employee to perform the particular indicative tasks:

- (a) demonstrates sound communication and/or liaison skills;
- (b) demonstrates a good knowledge of relevant terminology
- (c) interprets and conveys instructions and procedures;
- (d) reliably represents the work unit;
- (e) required to use innovation to resolve issues which impact on own work area;
- (f) accountable for insuring overall quality standards are met through the importance of consistency, timeliness, correctly following procedures, and responsiveness to the needs of the client;
- (g) accountable for the selection and recruitment of staff;
- (h) assesses work performance of staff;
- (i) responsible for occupational, health and safety.

### 3.14 Theatrical employee - level 7

(Relativity to classification C10 of the Metal Industry Award - 130%)

3.14.1 A Theatrical employee level 7 is an employee who has obtained a relevant tertiary qualification together with extensive theatrical experience or equivalent skill and competence acquired through extensive theatrical experience.



- 3.14.2 In addition to the competencies and tasks performed by a level 6 employee, a Theatrical employee level 7 works to the level of the employee's training:
- (a) demonstrates effective and efficient use of production and/or organisational resources, by planning, implementing and monitoring achievement of objectives.
  - (b) responsible for the creating and maintaining of a high level of team work and co-operation and contributes to the overall good management of a production.
  - (c) co-ordinates and controls either the overall performance activities or a variety of related disciplines.
- 3.14.3 The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post trade training or equivalent experience to enable the employee to perform the particular indicative tasks:
- (a) provides advice and guidance to staff, management and clients;
  - (b) prepares correspondence, guidelines and reports;
  - (c) demonstrates superior communication and/or liaison skills;
  - (d) demonstrates superior knowledge of relevant terminology;
  - (e) reliably represents the work unit;
  - (f) responsible for creative planning and the achievement of design standards;
  - (g) recognises the importance of consistency, timeliness, correctly following procedures, and responsiveness to the client's needs;
  - (h) demonstrates accountability and responsibility for enabling the achievement of business goals within budgetary guidelines.
- 3.15 "Suitable accommodation" means single room modern motel or serviced apartment accommodation with private facilities.
- 3.16 "Serviced apartment" means an apartment with cooking facilities for which clean linen is supplied once per week and the apartment cleaned at least once per week at the employer's cost.
- 3.17 "Local show" means a show specified as such by the employer where the production is scheduled to take place in one location only.
- 3.18 "Live theatre and concert industry services" means work performed in or in connection with any form of live entertainment, sound recording (other than recording studios) or rehearsals and may include plays, musicals, variety, live concerts, dancing, retail centres, theatre restaurants, dance halls, circuses, carnivals, karaoke and ticketing agencies. It excludes the work of a performer.
- 3.19 "Weekly employee" and "Engaged by the week", respectively, shall, subject to the operation of clause 12.2.6, mean full-time and part-time employee or employment as the case may be.

#### **4. Application of Award**

This award will apply throughout the state of New South Wales.

#### **5. Who is Bound By This Award**

- 5.1 This award shall apply to all persons employed within the classifications in this award, to provide live theatre and concert industry services (as defined), throughout the state.

5.2 The following are exempt from the provisions of this award:

5.2.1 Registered clubs, hotels and restaurants (excluding theatre restaurants) and all work covered by the Restaurant, & c., Employees (State) Award published 19 January 2001 (321 I.G. 759), as varied. Employees who are classified and engaged under the following awards:

Canteen, & c., Workers (State) Award published 17 March 2000 (314 I.G. 155), Caterers Employees (State) Award published 13 July 2001 (326 I.G. 78), as varied; Cleaning and Building Services Contractors (State) Award published 29 August 2003 (341 I.G. 173), as varied; Club Employees (State) Award published 26 November 2004 (347 I.G. 431), as varied; Club Managers' (State) Award 2006 published 24 February 2006 (357 I.G. 501), as varied; Hotel Employees (State) Award published 10 May 2002 (333 I.G. 317), as varied; Miscellaneous Workers' - General Services (State) Award published 8 December 2000 (320 I.G. 1078), as varied; Musicians (Live Performance) (State) Consolidated Award published 7 December 2001 (330 I.G. 116), as varied; Retail Services Employees (State) Award published 5 October 2001 (328 I.G. 261), as varied; Security Industry (State) Award published 5 November 2001 (329 I.G. 1), as varied; Shop Employees (State) Award published 18 May 2001 (324 I.G. 935), as varied; Theatre Managers (State) Award published 24 November 2000 (320 I.G. 543), as varied; Theatrical Employees Recreation and Leisure Industry (State) Award published 13 October 2000 (319 I.G. 406), as varied; Exhibition Industry (State) Award published 6 October 2000 (319 I.G. 1), as varied;

5.2.2 Wollongong Entertainment Centre.

5.2.3 All persons excluding performers directly employed by the relevant operators in operational, maintenance and administrative functions at the Homebush Bay Olympic games sporting and recreation complexes, ticketing agencies operating out of venues or industries covered by the AWU in the memorandum of understanding between the AWU, ALHMWU and the MEAA.

## 6. Relationship With Other Awards

- 6.1 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Entertainment and Broadcasting Industry - Live Theatre and Concert (State) Award published 12 August 2005 (353 I.G. 73), as varied.
- 6.2 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 3 October 2008.
- 6.3 This award remains in force until varied or rescinded, the period for which it was made having already expired.

## PART 2 - AWARD FLEXIBILITY

### 7. Enterprise Flexibility Provisions

See Chapter 2 of Part 2 of the *Industrial Relations Act 1996*.

### 8. Index of Facilitative Provisions

- 8.1 A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or employee, or the majority of employees, in the enterprise or workplace concerned.
- 8.2 Facilitative provisions in this award are contained in the following clauses: Clause title Clause number  
Part time employees - hours of work 11.2, Payment of wages 18 Hours of work, 22.1.6(a) Meal intervals and allowances 23.3.1 Public Holidays 32.6.1

## **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **9. Consultation and Communication Procedures**

- 9.1 At each enterprise covered by this award the employer and employees and, if appropriate an appropriate representative including the union bound by this award, may establish a mechanism and procedures which enables them to communicate and consult about matters arising out of this award.
- 9.2 The employer may permit a notice board to be erected in the workshop, theatre, hall or other place of amusement, to facilitate communication between employees and/or their union representatives.
- 9.3 This award will be exhibited by each employer in accordance with section 361 of the *Industrial Relations Act 1996*.

### **10. Dispute Resolution**

- 10.1 Subject to the rights of the parties to notify any dispute to the Industrial Relations Commission at any time, any dispute arising from work performed under this award will be dealt with as follows:
- 10.1.1 As soon as practicable after the dispute or claim has arisen, the employee/s concerned will take up the matter with their immediate supervisor affording them the opportunity to remedy the cause of the dispute;
- 10.1.2 Where any such attempt at settlement has failed to achieve a satisfactory resolution, or where the matter in dispute is of such a nature that direct discussions between the employee/s and their immediate supervisor are inappropriate, the employee/s may notify a duly authorised representative of MEAA or other employee representative who will take up the matter with the employer or their representative;
- 10.2 If the matter is not then satisfactorily resolved the matter will be submitted to the Commission for settlement.

## **PART 4**

### **EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

#### **11. Employment Categories**

##### **11.1 Full-time employees**

A full-time employee will be engaged by the week and subject to the provisions of clause 22 - Hours of work and time off will work 38 ordinary hours per week.

##### **11.2 Part-time employees**

11.2.1 A part-time employee will mean an employee engaged by the week and will work an agreed usual number of ordinary hours less than 38 each week.

11.2.2 A part-time employee working ordinary time will be paid per hour 1/38th of the weekly wage prescribed by this award for the level of work performed.

11.2.3 A part-time employee who by agreement works more than the agreed usual number of ordinary hours in any week will be paid at her or his ordinary rate of pay, subject always to the payment of any penalty or overtime payments as provided by this award.

11.2.4 A part-time employee who performs work in excess of the ordinary hours for a full time employee as prescribed in 22 - Hours of work and time off, will be paid at overtime rates in accordance with the provisions of 24 - Overtime.

11.2.5 The minimum time worked for each period of work will be not less than four consecutive hours for which a weekly employee is rostered.

11.2.6 In addition to other award entitlements a part-time employee will receive pro rata annual leave, sick leave and public holiday entitlements.

### 11.3 Casual employees

11.3.1 A casual employee is engaged by the hour for a minimum of 4 consecutive hours. The employment of a casual employee may be terminated without notice by either the employee or employer subject to the payment of the minimum amount of wages and subject to the employee working the time covered by the payment of such wages.

11.3.2 The appropriate per hour rate for casual employees is calculated by dividing the rate per week, as specified in 17 - Classifications and wage rates, for the relevant classification level by 38 and adding a 20 per cent loading on such hourly rates so calculated.

### 11.4 Seasonal employees

11.4.1 A seasonal employee will mean a weekly employee engaged either as full time or part time on a fixed term contract.

11.4.2 The duration of a seasonal contract will be determined in advance by agreement and the following provisions will apply:

- (a) The contract may be renewed as often and for such time periods as agreed between the employer and employee.
- (b) Conditions of employment will be those applying to weekly employees covered by this award.
- (c) Where a new contract is offered and taken up immediately after the expiry of a previous contract, employment is treated as if it was continuous for entitlement purposes.
- (d) Seasonal employees whose engagement is terminated with less than six (6) months service are paid on termination, 15.2 hours pay for each month of service. Annual leave of 76 hours is granted after six months employment. Thereafter, annual leave accrues at the rate of 152 hours per annum.
- (e) Sick leave will be granted and will accumulate in accordance with 27 - Sick Leave, for the whole of the contract period.
- (f) Other leave provisions including but not limited to Jury Leave will apply in accordance with the relevant award provisions for the duration of the contract period.

### 11.5 Secure Employment

#### (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

#### (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of

employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b) (ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi) the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

## (c) Occupational Health and Safety

## (i) For the purposes of this subclause, the following definitions shall apply:

- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

## (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

(iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

## (d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

(e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 12. Traineeships

As to traineeships for persons covered by this award, see the Training Wage (State) Award 2002 published 26 September 2003 (341 I.G. 569) or any successor thereto.

### 13. Stand Down of Employees

13.1 Despite anything contained in the award, an employer may deduct payment of wages for any day on which an employee cannot be usefully employed because of:

13.1.1 any strike;

13.1.2 any breakdown of machinery; or

13.1.3 any stoppage of work for which the employer is not responsible.

### 14. Termination of Employment

14.1 Notice of termination by employer

14.1.1 In order to terminate the employment of an employee the employer will give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

14.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

14.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee part of the required period of notice and by the employer making payment for the remainder of the period of notice.

14.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time he/she would have worked during the period of notice had his or her employment not been terminated will be used.

14.1.5 The period of notice in this clause, will not apply in the case of dismissal for conduct that justifies instant dismissal, including inefficiency within the first fourteen days, neglect of duty or in the case of casual employees or employees engaged for a specific period of time or for a specific task or tasks.

14.2 Notice of termination by an employee

14.2.1 The notice of termination required to be given by an employee is the same as that required of an employer. However, there is no requirement on the employee to give additional notice based on the age of the employee concerned.

14.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

14.3 Time off during notice period

Where an employer has given notice of termination to an employee, an employee will be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off will be taken at times that are convenient to the employer after consultation with the employee.

### 15. Redundancy

(A) Application -

- (i) This clause shall apply in respect of full-time and part-time persons employed under this award.
- (ii) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
- (iii) Notwithstanding anything contained elsewhere in this award, this award shall not apply to employees with less than one year's continuous service, and the general obligation on employers shall be no more than to give such 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.
- (iv) Notwithstanding anything contained elsewhere in this award, this award shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency, or neglect of duty or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

(B) Introduction of Change -

(i) 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 the union to which they belong.
- (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, promotion 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 the alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(ii) Employer's duty to discuss change -

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (i) of this subclause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (b) The discussion shall commence as early as possible after a definite decision has been made by the employer to make the changes referred to in the said paragraph (i) of this subclause.
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees; provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.



## (C) Redundancy - Discussions before terminations -

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subparagraph (a) of paragraph (i) of subclause (B), Introduction of Change, of this clause, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provision of paragraph (a) of this subclause, and shall cover, inter alia, any reasons for the proposed termination, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## (D) Termination of Employment -

- (i) Notice for changes in production, programme, organization or structure - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, programme, organisation or structure, in accordance with subparagraph (a) of paragraph (i) of subclause (B), Introduction of Change, of this clause.

- (a) In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of Continuous	Service Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years continuous service, shall be entitled to an additional week s notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part-payment in lieu thereof.
- (ii) Notice for technological change - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from technology in accordance with subparagraph (a) of paragraph (i) of subclause (B), Introduction of Change, of this clause.
- (a) In order to terminate the employment of an employee, the employer shall give to the employee three months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment shall be terminated by part of the period of notice specified and part payment in lieu thereof.

The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

- (iii) Time off during the notice period -
- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one day s time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes 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.
- (iv) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause to which the employee would have been entitled had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee shall not be entitled to payment in lieu of notice.
- (v) Statement of employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee s employment and the classification of or type of work performed by the employee.
- (vi) Notice to Centrelink - Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (vii) Centrelink Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by Centrelink.
- (viii) Transfer to lower-paid duties - Where an employee is transferred to lower-paid duties for reasons set out in paragraph (i) of the said subclause (B), the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee s employment had been terminated, 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 ordinary-time rates for the number of weeks of notice still owing.

(E) Severance Pay -

- (i) Where the employment of an employee is to be terminated pursuant to subclause (D), Termination of Employment, of this clause, subject to further order of the Industrial Relations Commission of New South Wales the employer shall pay the employee the following severance pay in respect of a continuous period of service:
- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks

5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) "Week s pay" means the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid in accordance with clauses 19, Higher Duties, 17, Classifications and Wage Rates, 26, Annual Leave, 34, Travelling, 20, Allowances, and 24, Overtime.

- (ii) Incapacity to pay - Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (i) of this subclause.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in the said paragraph (i) will have on the employer.

- (iii) Alternative employment - Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in the said paragraph (i) if the employer obtains acceptable alternative employment for an employee.

- (F) Savings Clause - Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the industrial organisation of employees and any employer bound by this award.

## 16. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects..... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### **PART 5 - WAGES AND RELATED MATTERS**

#### **17. Classifications and Wage Rates**

- 17.1 The minimum weekly rates of pay to be paid to an employee are set out in Table 1 - Rates of Pay, of Part 9 - Monetary Rates of this award for the relevant classification level.
- 17.2 Notwithstanding an employee may be engaged and paid for work performed at a particular level, such engagement does not prevent the employee undertaking duties prescribed for lower classification levels during such engagement.
- 17.3 The rates of pay in this award include the adjustments payable under the State Wage Case of 2005, 2006, 2007, 2008. These adjustments may be offset against:
- (i) any equivalent over award payments, and/or
  - (ii) award wage increase since 29 May 1991 other than safety net, State Wage Case, and Minimum rates adjustments.
- 17.4 Over-award payment is defined as the amount (whether it be termed over-award payment or by any other term whatsoever) of any payment made to an employee and which was not made in order to comply with this award.

#### **18. Payment of Wages**

All moneys due to an employee will be made available for payment within 48 hours of the conclusion of the employers pay week, or, in exceptional circumstances, at a time to be mutually agreed upon between the employee and the employer. Provided that if the employee does not present themselves for the payment at that time, it may be deferred until the following day.

## 19. Higher Duties

Where an employee is required to work on duties, the prescribed rate of pay for which is higher than for the employee's ordinary duty, the employee will be paid for the time so worked at the higher rate with a minimum payment at such rate as for three and a half hours.

## 20. Allowances

### 20.1 Tools/Equipment

20.1.1 The employer will pay an allowance per week as set out in Item 1 of Table 2 - Other Rates and Allowances of Part 9 - Monetary Rates of this Award to Heads of departments required to supply their own tools. Other employees required to supply basic tools (limited to hammer, brace/punch driver and wrench), will be paid an allowance cents per day as set out in Item 2 of the said Table 2.

20.1.2 Employees will be reimbursed the cost of all mechanical property or light requirements including torches. Provided that such reimbursement will not be payable where the employer provides all mechanical property or light requirements including torches.

### 20.2 Laundry

The employer will pay a weekly employee an allowance per week as set out in Item 3 of the said Table 2 for blouses and shirts and an amount per week as set out in Item 4 of the said Table 2 for other garments where uniforms are not laundered by the employer. For other than weekly employees a laundry allowance per day as set out in Item 5 of the said Table 2 will be paid up to a maximum amount per week as set out in Item 6 of the said Table 2.

### 20.3 Shoes

The employer will pay a front of house employee an allowance per day as set out in Item 7 of the said Table 2 up to a maximum amount per week as set out in Item 8 of the said Table 2 where the employee is required to wear shoes of a colour other than black.

### 20.4 Uniforms/Special costumes/Protective Clothing

20.4.1 The employer will pay an employee who is required to wear a costume or uniform more unusual than is reasonably necessary for the performance of his or her work, an allowance of

- (a) if engaged by the week - an amount per week as set out in Item 9 of the said Table 2
- (b) if engaged other than by the week - an amount per performance as set out in Item 10 of the said Table 2.

20.4.2 If any question arises as to whether such costume or uniform is so more unusual, it will be dealt with in accordance with clause 11, Dispute Resolution.

20.4.3 An employee will be reimbursed the cost of any special uniforms or staff dresses required to be worn. Provided that such reimbursement will not be payable where the employer provides the special uniforms or staff dresses.

20.4.4 An employee will be reimbursed the cost of dry cleaning and laundering suitable protective clothing for electricians, utility men, cleaners and maintenance men if requested by an employee. Provided that such reimbursement will not be payable where the employer provides and cleans the protective clothing.

## 20.5 Transmission or recording

20.5.1 Where a performance is to be recorded or transmitted by any means, including but not limited to radio or television transmission or film, video or audio recording, and whether transmitted live or recorded for later transmission, exhibition, distribution or sale, all production employees who perform work on that performance will receive an allowance (recording allowance) as set out in Item 11 of the said Table 2 in addition to the rate they would otherwise have received. Provided that:

- (a) The recording allowance will only be paid when the recording transmission takes place during a performance or performances; and
- (b) One payment only will be made under the provisions of 20.5.1 notwithstanding that recording of a production may take place over a series of performances.

20.5.2 Where a performance is recorded for sound only or transmitted by radio only the provisions of 20.5.1 will apply to Sound Technicians only.

20.5.3 The provisions of 20.5.1 will not apply to:

- (a) Extracts of a performance or performances which are recorded or transmitted for news, publicity or promotional purposes, including paid television or radio commercials for that performance or season of performances;
- (b) A performance or performances which are recorded for training, educational or archival purposes, provided that the hirer undertakes in writing to the employer that such recordings will not be used for public broadcast, exhibition, distribution or sale; and
- (c) Occasions when the only purpose of the hiring is the recording or transmission of a performance, even though a non-paying audience may be present.

20.5.4 The recording allowance is not to be recorded as ordinary pay for the purpose of this award insofar as the calculation of overtime, penalty, shift and annual leave loading payments are concerned.

20.5.5 Where the employer proposes an exclusion from payment of the recording allowance as provided for in 20.5.3, the employer will provide all production employees with seven days notice of any such performance provided that where such recording or transmission is arranged with less than seven days notice, all production employees will be provided with notice as soon as arrangements for the relevant recording or transmission are made.

## 21. Superannuation

21.1 In addition to other payments provided for under this award, the employer will, subject to this clause, make a superannuation contribution to the Superannuation Trust of Australia (STA), being a superannuation fund which complies with the Australian Government's operational standards for occupational superannuation funds (the Fund).

21.2 Such payments will be equivalent to that prescribed in Federal Government Superannuation Legislation or three per cent of the employees' actual rate of pay, which ever is the greater, provided that this requirement will not apply to persons employed within Australia who are normally resident outside Australia.

21.3 The employer will establish at the time of the engagement, whether the employee is a member of STA.

21.4 In the event the employee is not a member of STA and the employee has made arrangements for his/her own complying superannuation fund the employer will request the employee to sign the following disclaimer:

- 21.4.1 "I have been supplied with an application form to join STA but I do not wish to become a member of the fund as I have my own fund and I direct the employer to enter contributions into that fund."
- 21.5 In the event the employee is not a member of STA and does not have a personal fund, the employer will request that the employee complete a STA application form.
- 21.6 Where a contribution is made as prescribed in this clause, the employer will forward to the fund administrator of STA the contribution, the name and address of the employee on whose behalf the contribution is made and the Superannuation Fund number of the employee, or in the event the employee is not a member of STA the completed application form.
- 21.7 The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Change Act 1992*, the *Superannuation Industry (Supervisor) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation as varied from time to time, governs the superannuation rights and obligations of the parties.
- 21.8 For the purposes of this clause the normal gross rate of pay refers to:
- 21.8.1 In the case of weekly employees, the usual gross weekly earnings of a weekly employee including all over award payments; Rostered Day Off payments; Sunday where such Sunday is part of the employee's ordinary working week; or the contracted weekly rate of pay including any penalties or loadings where such penalties and loadings are part of the employee's contracted weekly rate. Provided that such rates will exclude overtime and penalty payments other than as provided for above, reimbursement allowances, broadcast allowances and annual leave loading.
- 21.8.2 Contracted weekly rate includes payment in accordance with an agreement involving a specified number of hours of work in excess of the ordinary hours prescribed by the award whether for the whole or a portion of the engagement.
- 21.8.3 In the case of casual employees, the actual gross earnings of such employee but not including any reimbursement allowances or broadcast allowances.
- 21.9 Superannuation contributions remain payable pursuant to this clause notwithstanding that an employee is absent from work on approved sick leave, annual leave, long service leave or other paid leave. Contributions also remain payable in respect of an absence which is the consequence of a bona fide worker's compensation claim.
- 21.10 The superannuation contribution will:
- 21.10.1 In the case of weekly employees, be paid no later than seven days following the end of the last pay period in any month.
- 21.10.2 In the case of casual employees payments will be made no later than 30 days following the engagement.

## **PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFTWORK, WEEKEND WORK**

### **22. Hours of Work and Time Off**

- 22.1 Weekly employees.
- 22.1.1 The ordinary hours of work for weekly employees will, subject to 22.1.6, be 38 per week.
- 22.1.2 Ordinary hours may be worked on any of the days Monday through to and including Sunday between the hours of 7.00 a.m. and 12 midnight. Provided that a Theatrical Employee engaged

specifically as a cleaner may be rostered to work ordinary hours between 12 midnight and 7.00 a.m. and will receive an additional loading of 20% of their ordinary hourly rate for such work.

22.1.3 The number of ordinary hours to be worked on any day will be a minimum of 4 hours and a maximum of 12 hours to be worked in no more than two periods, each period to be continuous except as to meal hours occurring therein.

22.1.4 Full time employees will be entitled to 2 rostered days off work for every period of seven days, which will be consecutive wherever reasonably possible, provided that such rostered days off may by agreement accumulate up to a maximum of 6 days.

22.1.5 Weekly employees must be notified by the employer of their working shifts by means of roster placed in the staff room for each employee's perusal. At least seven days' notice must be given to the employee should any alteration of the working hours be intended, except in the case of emergency.

22.1.6

(a) The implementation of cyclic rostering, that is working hours other than as provided for in sub-clauses 22.1.1 - 22.1.5, will be determined at the enterprise where the employer and the majority of employees concerned agree. The ordinary hours of work will be an average of 38 per week and will not exceed 152 hours over 28 consecutive days.

(b) Different arrangements may apply to different areas of operation within the enterprise.

(c) An agreement pursuant to sub-clause 22.1.6(a) will be recorded in writing and be available to all employees.

22.2 Casual employees

22.2.1 The ordinary hours of work for casual employees will be a minimum of 4 consecutive hours per day. Ordinary hours may be worked on any of the days Monday through to and including Sunday between the hours of 7.00 a.m. and 12 midnight.

22.2.2 Casual employees are not paid per performance. Employees may be required to work on a number of performances during an engagement.

22.2.3 Where casual employees are required to work on the same day on at least 3 short performances (as defined), and there is a break between any two of the short performances of at least 2 hours, those employees will be paid a minimum call for each such performance of 2 hours.

22.3 Savings

Employees engaged as Booking Clerks or Ticket Sellers as at 3 March 1997, will continue to be engaged on the basis of 36 hours per week which will be applied for all purposes under this award.

### **23. Meal Intervals and Allowances**

23.1 Weekly employees, in the ordinary course of work, will be entitled to meal intervals as follows:

23.1.1 Lunch

One hour continuous between 12.00 noon and 3.00 p.m.

23.1.2 Dinner

One hour continuous between 5.00 p.m. and 8.00 p.m.



**23.1.3 Supper**

Half an hour between 10.00 p.m. and 12.00 midnight.

**23.1.4 Breakfast**

One hour continuous between 7.00 a.m. and 9.00 a.m. but for cleaners, half an hour between 8.00 a.m. and 9.00 a.m.

23.2 Casual employees who work for more than four hours will be entitled to a minimum meal break of 30 minutes.

**23.3**

23.3.1 The span of hours during which meal breaks may be taken may be varied where specific work requirements necessitate it.

23.3.2 In the event that an employee is required to work more than five continuous hours without a suitable meal interval, the employee will be paid for the period which should be allowed as the meal interval at the rate of double time. This clause will not apply to employees engaged to work on a continuous shift roster.

23.3.3 Provided that those employees working during the preparation of a stage production for the period of seven days preceding the opening of the production will be paid at the rate of time and a half in lieu of the aforesaid double time except on Sundays when double time and a half will be paid.

23.4 No part of the time that should be allowed as a meal interval will be counted as part of the ordinary hours of work within the meaning of clause 22 - Hours of work and time off.

23.5 The employer will pay an employee (other than a cleaner) a meal allowance as set out in Item 12 of the said Table 2, additional, for each meal interval occurring before the employee's finishing time, where the employee has worked between 12 midnight and 8.00 a.m. and who continues to work beyond 8.00 a.m. Provided that such meal allowance will not be payable where the employee commences work at or after 5.00 a.m.

23.6 The employer will pay an employee a meal allowance as set out in Item 13 of Table 2 - Other Rates and Allowances of Part 9 - Monetary Rates of this Award, where the employee is required to work two performances, back to back. Provided that such meal allowance will not be payable where the employer provides a suitable meal.

**24. Overtime****24.1 Weekly employees**

24.1.1 Weekly employees will receive overtime calculated to the nearest quarter of an hour, as follows:

24.1.2 For all work performed in excess of the rostered daily hours - at the rate of time and on half for the first 2 hours and double time thereafter.

24.1.3 For all work performed on a rostered day off - at the rate of time and a half for the first 4 hours and double time thereafter.

24.1.4 For all the work performed in excess of the weekly total of hours - at the rate of time and a half.

24.1.5 For all work performed after a break in working hours prescribed to be worked consecutively or continuously - at the rate of time and a half.

24.1.6 Part time employees who perform work in excess of 38 ordinary hours per week - time and one half for the first 2 hours and double time thereafter.

#### 24.2 Casual employees

24.2.1 A casual employee will receive overtime calculated to the nearest quarter of an hour.

24.2.2 A casual employee who works in excess of 8 hours per day will be paid overtime at the rate of time and a half for the first 2 hours and double time thereafter.

24.2.3 A casual employee who works more than 38 hours (excluding overtime worked and paid on a daily basis) in any one week will be paid for all hours in excess of 38, time and a half for the first four hours and double time thereafter.

#### 24.3 All employees

24.3.1 Where an employee is detained at work until it is too late to travel home by the last train, tram or other regular public conveyance, the employer will provide proper conveyance to the employee's home for the employee so detained.

24.3.2 An employee will, wherever possible, be given 24 hours' notice that the employee is required to work all night after an evening performance.

24.3.3 For all work performed between 12 midnight and 7.00 a.m. - at the rate of double time other than work performed by employees engaged specifically as cleaners.

24.3.4 An employee who works overtime on any day will be entitled to a break of ten hours before resumption of work on the following day. Should such employee be required to resume work before the expiration of ten hours the employee will be paid at the rate of double time until the employee is released from duty for such period.

#### 24.4 Reasonable overtime:

- (i) Subject to sub-clause (ii) an employer may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of sub-clause (ii) what is reasonable or other wise will be determined having regard to:
  - (a) any risk to employee health and safety.
  - (b) The employee's personal circumstances including any family and carer responsibilities.
  - (c) The needs of the workplace or enterprise.
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) Any other relevant matter.

### 25. Sundays

25.1 All employees who are required to commence work on a Sunday, whether part of an ordinary roster or work cycle, or not part of a roster cycle, or overtime, will be paid at the rate of double time, with a minimum payment for four hours.

- 25.2 Where an employee who commences work on a Saturday and continues to work without a break on Sunday, the minimum 4 hour call for work performed on a Sunday as prescribed in 25.1 will not apply.

## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **26. Annual Leave**

#### 26.1 Annual leave entitlement

All employees engaged by the week will have 152 hours annual leave for each year of service on full pay (as defined in 3 - Definitions) which leave will be taken within six months of the date of entitlement, unless otherwise mutually agreed. The said leave may be taken in two periods by mutual agreement.

#### 26.2 Time of taking annual leave

If the 152 hours annual leave due under 26.1 will not have been given at the expiration of the year, the employee's right thereto will continue and accumulate in respect of each year's service but only to the extent of two years.

#### 26.3 Annual leave loading

26.3.1 Each full time or part-time employee before going on any period of annual leave will be paid an annual leave loading at the rate of 17-1/2 per cent of the rate of full pay prescribed herein for such employee. Such loading will be in addition to the amount paid to the employee under 26.1.

26.3.2 No loading is payable to an employee who takes annual leave wholly or partly in advance. Provided that if the employment of such an employee continues until the day when the employee would have become entitled to annual leave, the loading then becomes payable in respect of the period of such leave and is to be calculated by applying the award rates of pay applicable on that day.

#### 26.3.3

- (a) When the employment of an employee is terminated by the employer for a cause other than misconduct and at the time of the termination the employee has not taken the whole of the annual leave to which the employee has become entitled under the terms of 26.1, the employee will be paid the loading for the period of leave not taken.
- (b) Except as provided by 26.3.3(a) no loading is payable on the termination of an employee's employment.

#### 26.4 Public holidays during annual leave

Where any public holiday as prescribed in 32 - Public holidays occurs during the period of the employee's annual leave, the leave will be increased by 7.6 hours for each such holiday.

#### 26.5 Proportionate annual leave on termination

If the employment of any weekly employee be terminated such employee will be entitled to 15.2 hours pay for each month of service that has been rendered during the employment unless in respect of such service annual leave has been given by the employer or the employee has lost the right thereto under the provisions of this clause. Such payment will be made within fourteen days of the termination of the employment.

## 26.6 Conversion of accrued leave

26.6.1 All accumulated or accrued leave up to and including 2 March 1997, will be credited on the basis of a 38 hour week and rates of pay applicable to such leave will be calculated on the basis of a 38 hour divisor. Consequently credits will be converted as follows:-

If in weeks	x 38 hours;	
If in days	x 7.6 hours;	
If in hours	x No. of hours	x 7.6 / 8

26.6.2 Leave debits on or after 3 March 1997 will be equivalent to the ordinary hours employees would have worked had they not been on paid leave. Such leave will therefore be paid and debited on the basis of hours actually taken.

## 27. Sick Leave

27.1 An employee who is absent from work on account of personal illness, or injury by accident not arising out of and in the course of the employee's employment and who has been in the service of the employer for a period of more than twelve weeks, will be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:

27.2 During each year of service, 76 hours sick leave will be allowed.

27.3 The employee will not be entitled to paid sick leave for any period of absence in respect of which the employee is paid workers' compensation.

27.4 The employee will, within 24 hours of the commencement of such sick leave absence, inform the employer of the employee's inability to report for duty and so far as practicable state the nature of the injury or illness from which the employee is suffering and the estimated period of the employee's absence.

27.5 The employee will, if so required by the employee's employer, provide satisfactory evidence of the nature of the injury and of the employee's inability to attend for duty on any day or days for which sick leave is claimed.

27.6 Subject to the provisions of this clause an employee will be allowed 30.4 hours' sick leave (in the aggregate) per year without having to produce a medical certificate.

27.7 Sick leave will accumulate from year to year so that any balance of the period specified in that clause which has in any year not been taken by the employee as paid sick leave, may be claimed by such employee and will be allowed by the employer in a subsequent year without diminution of the sick leave prescribed in respect of that year. Sick leave that accumulated pursuant to this clause will be available to the employee only for a period of twelve years from the end of the year in which it accrued.

## 27.8 Conversion of accrued leave.

27.8.1 All accumulated or accrued leave up to and including 2 March 1997, will be credited on the basis of a 38 hour week and rates of pay applicable to such leave will be calculated on the basis of a 38 hour divisor. Consequently credits will be converted as follows:-

If in weeks	x 38 hours;	
If in days	x 7.6 hours;	
If in hours	x No. of hours	x 7.6 / 8

27.8.2 Leave debits on or after 3 March 1997 will be equivalent to the ordinary hours employees would have worked had they not been on paid leave. Such leave will therefore be paid and debited on the basis of hours actually taken.

## 28. Bereavement Leave

- 28.1 An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in subclause 28.3 of this clause.
- 28.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide, to the satisfaction of the employer, proof of death.
- 28.3 Bereavement leave shall be available to the employee in respect of the death of the person prescribed for the purposes of personal/carer's leave in accordance with paragraph (c) of subclause (1) of clause 29, Personal/Carer's Leave, provided that for the purposes of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 28.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has already been granted other leave.
- 28.5 Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4) and (5) of the said clause 29. Where such other available leave is to be taken in conjunction with bereavement leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the employer.
- 28.6 Bereavement entitlements for casual employees
- 28.6.1 Subject to the evidentiary and notice requirements in 28.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 29(1)(c)(ii) of clause 29, Personal/Carers' Leave.
- 28.6.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- 28.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 29. Personal/Carer's Leave

- (1) Use of Sick Leave -
- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 29(1)(c)(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 27, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (e) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
      - (1) "relative" means - a person related by blood, marriage or affinity;
      - (2) "affinity" means - a relationship that one spouse, because of marriage, has to blood relatives of the other; and
      - (3) "household" means - a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 10, Dispute Resolution, should be followed.

(2) Unpaid Leave for Family Purpose -

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 29(1)(c)(ii) above who is ill or who requires care due to an unexpected emergency.

(3) Annual Leave -

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences until at least five consecutive annual leave days are taken.
  - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (4) Time Off in Lieu of Payment for Overtime -
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time agreed with the employer within 12 months of the said election. (b) 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.
  - (b) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
  - (c) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time -
- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- (6) Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 29(1)(b) and 29(1)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 29(1)(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### 30. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

(a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

(a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### 31. Jury Leave

31.1 A weekly employee required to attend for jury service during ordinary working hours will 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 amount of wage that would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.

- 31.2 An employee will notify the employer as soon as possible of the date upon which the employee is required to attend for jury service. Further, the employee will give the employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

### **32. Public Holidays**

- 32.1 An employee will be entitled to public holidays without loss of pay on the following days:
- 32.1.1 New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; Australia Day, Anzac Day, Queen's Birthday, and Eight Hour Day, May Day or Labour Day; and
- 32.1.2 the first Monday in August;
- 32.2 When Christmas Day is a Saturday or Sunday, a holiday in lieu thereof will be observed on 27 December.
- 32.3 When Boxing Day is a Saturday or Sunday, a holiday in lieu thereof will be observed on 28 December.
- 32.4 When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof will be observed on the next Monday.
- 32.5 Where in the State, public holidays are declared or prescribed on days other than those set out in this clause, those days will constitute additional holidays for the purpose of this award.
- 32.6 An employer and their employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees will constitute agreement.
- 32.6.1 If an employee is a member of a union bound by the award, the employee may be represented by the union in meeting and conferring with the employer about the implementation of the facilitative provisions.
- 32.6.2 An agreement pursuant to 32.6 will be recorded in writing and be available to every affected employee.
- 32.7 All employees who work on a public holiday, whether part of an ordinary roster or work cycle, or not part of a roster cycle, will be paid at the rate of double time, with a minimum payment as for four hours.
- 32.8 An employee whose rostered time off falls on a public holiday as provided for in this clause will be allowed an additional day off at a time to be agreed between the employer and the employee, or be paid an additional days pay in lieu thereof within seven days of the holiday.

### **33. Leave for Consultation Meetings**

Each employer will allow his/her employees to attend meetings to discuss industrial matters without loss of ordinary pay provided the following conditions are observed:

- 33.1 At least fourteen days notice of such meeting is given to the employer.
- 33.2 The meetings will be held on Mondays, not public holidays and will conclude by 12:30 p.m.
- 33.3 The employer is only obliged to pay wages for the period that the employee was rostered for duty.
- 33.4 The employer is only obliged to pay wages for the period of the meeting if the employer is in receipt of satisfactory evidence of the employee's attendance at the meeting.

- 33.5 The employer is not obliged to pay wages for more than two such meetings in any calendar year in each State.

## **PART 8**

### **TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

#### **34. Travelling**

- 34.1 An employee required by the employer to travel will be reimbursed up to his/ her actual cost of an economy class airfare or equivalent to the destination. This provision will not apply where the employer provides and the employee elects to use employer provided transport.
- 34.2 When travelling on duty, an employee will be paid the full prescribed rate of pay for the whole period of the tour from the time of leaving the place of engagement at the beginning of the tour until the employee returns to that place of engagement at the end of the tour. Broken weeks at the beginning or end of the tour will be paid pro rata and the days of departure and return other than a Sunday, each to be counted as one day worked:
- 34.3 Provided that if either of such days be Sunday, 34.4 will apply to that day.
- 34.4 If an employee engaged by the week is required by the employer to travel on a Sunday the employee will, unless paid in pursuance of 25 - Sundays for working on a Sunday, be paid for travelling, one-tenth of the prescribed per week rate in addition to the travelling allowance payable in respect of the Sunday.
- 34.5 If an employee engaged by the week is on tour and, on any calendar day on which the employee is required to work at a performance held on that day, is also required to travel during any time between 8.00 a.m. and 5.00 p.m. one half of the travelling time will be counted as time worked, providing the maximum number of hours so paid, will be four.
- 34.6 On the day a tour's journey begins the employer will be entitled to the ordinary services of the employee during so much of the day the employee is not travelling.
- 34.7 On the day a tour's journey ends the employer will be entitled to the ordinary services of the employee up to 5.00 p.m. during so much of the day as the employee is not travelling and if the employee fails without reasonable cause to attend when requested for such service, the employer will be entitled to deduct payment proportionate to the time during which the employee so fails to attend.
- 34.8 Accommodation
- 34.8.1 Where an employee is required to travel the following provisions will apply with respect to accommodation.
- 34.8.2 Travel period less than one week
- Where the period of travel is one week or less an allowance per night as set out in Item 14 of Table 2 - Other Rates and Allowances of Part 9 - Monetary Rates of this Award will be payable provided that such allowance will not be payable where the employer provides suitable accommodation.
- 34.8.3 Travel period greater than one week
- The employer will pay to each employee a cash allowance per week as set out in Item 15 of the said Table 2 or an amount per night as set out in Item 16 of the said Table 2 up to the maximum weekly allowance. Where this allowance is payable it should be paid in advance up to a maximum of one week. Provided that:

34.8.4 The above allowance is not payable:

- (a) Where the employer provides suitable accommodation.
- (b) If the employer elects not to provide accommodation and the employee elects to accept reimbursement of the expenses of such accommodation up to the maximum limits as set out in Table 3 - Reimbursement of Expenses of part 9 - Monetary Rates of this award.
- (c) Shared accommodation
  - (i) Where an employer and employees agree in writing, shared accommodation may be provided by the employer. The employer will retain a copy of any such agreement.
  - (ii) Where the employer is not providing accommodation and employees agree in writing to share accommodation, the reimbursement limits set by this clause will be increased by 25% in respect of such shared accommodation. A copy of such agreement will be retained by the employer.
  - (iii) Where there are special circumstances which an employer considers preclude him/her from being able to provide suitable accommodation the employer and employee may agree to shared accommodation without additional payment.

34.8.5 Reimbursement will be made weekly or at such longer intervals as the employer and employee agree and will be made upon presentation by the employee of a receipted account for the accommodation or such other arrangements as are agreed between the employer and the employee.

34.8.6

- (a) In lieu of the provisions of 34.8.4(a) and 34.8.4(b), an employee may elect to take a cash allowance per week as set out in Item 17 of the said Table 2 or an amount per night as set out in Item 18 of the said Table 2 up to a maximum of the weekly cash allowance.
- (b) Where an employee elects to take this allowance it shall be paid in advance up to a maximum of one week.

34.8.7 Any dispute as to the operation of this clause or as to whether accommodation provided by an employer is suitable accommodation as is required by this clause will be dealt with in accordance with 11 - Dispute resolution.

34.8.8 When any travel in excess of one week in duration is required as much notice as is practicable will be given to employees. Such notice will also include, where the employer is providing accommodation in accordance with this clause the details of the accommodation to be provided. The employee will indicate within fourteen days of the offer of accommodation whether they propose to accept the offer unless impractical to do so in the circumstances.

34.9 Meals

An employee required to travel will be an allowance for meals per day as set out in Item 19 of the said Table 2 to a maximum amount per week as set out in Item 20 of the said Table 2. Provided that such allowances will not be paid where the employer provides meals of a satisfactory nature.

34.10 Incidentals

An employee required to travel will be paid an allowance for incidentals per day as set out in Item 21 of the said Table 2 to a maximum amount per week as set out in Item 221 of the said Table 2.

## 34.11 Eligibility

- 34.11.1 The provisions of 34.8, 34.9 and 34.10 above will not apply:
- (a) with respect to an employee who is engaged to work at a single location away from the employees place of residence for a specific period of twelve months or more.
  - (b) where an employee is engaged on a local show.
- 34.11.2 An employer will not knowingly engage on a local show, an employee whose place of residence is not in the local area.
- 34.11.3 The provisions of this clause will be applicable as though the place of residence of the employee or prospective employee had been correctly stated, where an employer:
- (a) avoids or seeks to avoid the operation of this clause by inducing any employee or prospective employee to misrepresent the employees' place of residence; or
  - (b) engages an employee where the employer knows that the place of residence of an employee or prospective employees has been misrepresented.

**PART 9 - MONETARY RATES****Table 1 - Rates of Pay**

Classification Level	Previous Rate	SWC 2005 adjustment per wk	SWC 2006 adjustment per wk	SWC 2007 adjustment per wk	Total min per wk from FFPP after 19/09/08	SWC 2008 adjustment per wk 4%	Total min per wk from FFPP after 19/09/09
	\$	\$	\$	\$	\$	\$	\$
Theatrical Employee Level 1	467.40	17.00	20.00	20.00	524.40	20.98	545.38
Theatrical Employee Level 2	517.50	17.00	20.00	20.00	574.50	22.98	597.48
Theatrical Employee Level 3	538.35	17.00	20.00	20.00	595.35	23.81	619.16
Theatrical Employee Level 4	582.05	17.00	20.00	20.00	639.05	25.56	664.61
Theatrical Employee Level 5	602.90	17.00	20.00	20.00	659.90	26.40	686.30
Theatrical Employee Level 6	642.65	17.00	20.00	20.00	699.65	27.99	727.64
Theatrical Employee Level 7	684.35	17.00	20.00	20.00	741.35	29.65	771.00

**Table 2 - Other Rates and Allowances**

Effective from the first full pay period to commence on or after 19 September 2008.

Item No.	Clause No.		CPI Classification	Total min. per wk from FFPP after 19/09/08 \$	Total min. per wk from FFPP after 19/09/09 \$
1	20.1.1	Heads of Department Supplying Own tools	work related	8.29	8.62
2	20.1.1	Other Employees providing basic tools	work related	0.87	0.90
3	20.2	Laundry Allowance - Blouses and Shirts	clothing and shoe repair	2.73	2.80
4	20.2	Laundry Allowance - Other Garments	clothing and shoe repair	7.10	7.27
5	20.2	Laundry Allowance - Other than weekly employees	clothing and shoe repair	2.19	2.24
6	20.2	Laundry Allowance - Other Employees Maximum per week	clothing and shoe repair	9.88	10.12
7	20.3	Front of House - Shoes other than black	clothing and shoe repair	1.03	2.06
8	20.3	Front of House - Shoes other than black maximum per week	clothing and shoe repair	5.13	5.26
9	20.4.1 (a)	Costume more unusual than reasonably necessary engaged by the week	clothing and shoe repair	7.70	7.88
10	20.4.1 (b)	Costume more unusual than reasonably necessary - other than engaged by the week	clothing and shoe repair	1.53	1.57
11	20.5.1	Allowance per recording	work related	99.38	103.36
12	23.5	Meal Allowance	meal cpi	7.54	7.87
13	23.6	Meal Allowance	meal cpi	11.45	11.97
14	34.8.2	Travel period less than one week	accommodation	132.14	133.46
15	34.8.3	Travel period greater than one week - per week	accommodation	461.59	466.20
16	34.8.3	Travel period greater than one week - per night	accommodation	92.34	93.26
17	38.8.6 (a)	Cash Allowance per week	accommodation	461.59	466.20
18	38.8.6(b)	Cash Allowance per night	accommodation	92.34	93.26
19	34.9	Meals - per day	meal cpi	42.04	43.92
20	34.9	Meals - maximum per week	meal cpi	210.18	219.60
21	34.10	Incidentals - per day	expense meal	12.88	13.46
22	34.10	Incidentals - maximum per week	expense meal	64.39	67.28

**Table 3 - Reimbursement of Expenses**

(Clause 34.8.4(b))

Destination	Previous Rate \$	Amount from first full pay period after 19/08/08 \$	Amount from first full pay period after 13/09/08 \$	Amount from first full pay period after 19/09/09 \$
		2005-3% 2006 -4%	2007-4%	2008 - 4%
Sydney and Melbourne	811.80	869.60	904.38	940.56

Adelaide, Hobart, Perth and Brisbane	614.00	657.72	684.03	711.39
Canberra	715.95	766.93	797.61	829.51
Other Places	559.65	599.50	623.48	648.42

---

Printed by the authority of the Industrial Registrar.

**HAIR AND BEAUTY (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar*.

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C2768	23/07/2004	First pay period on or after 13/04/2004	345	452
10, Part B	C3011	19/11/2004	First full pay period on or after 25/07/2004	347	411
3, 9	C3408	06/05/2005	From 28/10/2004	350	1040
10, Part B	C3934	21/10/2005	First full pay period on or after 25/7/2005	354	655
10, Part B	C5018	15/12/2006	First full pay period on or after 25/7/2006	361	1214
Arrangement, 24A, 25, 26	C5438	25/05/2007	On and from 19/12/2007	362	789
10, Part B	C6137	09/11/2007	First full pay period on or after 19/9/2006	364	397
40	C6093	08/02/2008	On and from 15/9/2007	364	965
Title, Arrangement 1, 2, 7, 9, 10, 11, 11A, 18, 21, 22, 23, 24, 27, 32, 35, 35A, 36, 37, Part B	C6748	31/10/2008	First full pay period on or after 19/9/2008	366	936
Correction to C6748	C6794	28/11/2008		366	1300
10, Part B	C7207	30/10/2009	First full pay period on or after 19/9/2009	369	544
10, Part B	C7580	02/09/2011	First full pay period on or after 16/12/2010	371	627

**Arrangement**

## PART A

Clause No.      Subject Matter

1.      Definitions
2.      Apprenticeships and School-based Apprenticeships
3.      Prohibition of Work
4.      Hours
5.      Alternative Method of Implementing 38-hour Week
6.      Overtime
7.      Meals

8. Rest Pause
9. Wages and Classifications
10. State Wage Case Adjustments
11. Part-time Employees
- 11A. Casual Employees
12. Post-work Training
13. Tools and Equipment
14. Special Allowance - Health Department of New South Wales
15. Uniforms and Footwear
16. First-Aid Allowance
17. First-Aid Kit
18. Transport Allowance
19. Transfer of Employees
20. Living Away From Home Allowance
21. Holidays
22. Annual Leave
23. Annual Leave Loading
24. Sick Leave
- 24A. Parental Leave
25. Personal/Carer's Leave
26. Bereavement Leave
27. Payment of Wages
28. Training
29. Utilisation of Skills
30. Consultative Mechanism
31. Enterprise Arrangements
32. Dispute Procedure
33. Long Service Leave
34. Right of Entry
35. Termination of Employment
- 35A. Confidentiality
36. Superannuation
37. Redundancy
38. Anti-Discrimination
39. Deduction of Union Membership Fees
40. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

Table 3 - Part-time and Casual Rates of Pay

## PART A

### 1. Definitions

- (i) Full-time employees shall mean all employees engaged to work 36 ordinary hours or more per week.
- (ii) Part-time employee means an employee engaged to work for less than 36 ordinary hours of each week.
  - (a) Casual employee means a person engaged to work on an irregular basis for no less than 4 hours per shift."



- (iii) Beautician shall mean a person employed to perform the following services:
- (a) manicure; pedicure; nail enhancement and nail artistry techniques; and / or
  - (b) waxing; and/or
  - (c) eyebrow arching, lash brow tinting; and make-up (all as defined in the National Beauty Training Package).
- (iv) Beauty therapist shall mean a person who:
- (a) holds at least a Certificate IV in Beauty Therapy; and
  - (b) performs any work of a Beautician; or any or the following services (or a combination of both): analysis of skin; development of treatment plans; facial treatments including massage and other specialised treatments such as lymphatic drainage, high frequency; body treatments, including full body massage and other specialised treatments using machinery and other cosmetic applications and techniques; body hair removal, including (but not limited to) waxing and chemical methods, electrolysis and laser hair removal; aromatherapy and the application of aromatic plant oils for beauty treatments; using various types of electrical equipment for both body and facial treatments,
- and excludes those persons who are covered under clause 9(iv)(d) of this Award for the time period specified therein.
- (v) Salon Assistant shall mean a person engaged as a general hand that shall be prohibited from doing trade work other than shampooing and basin work as defined in clause 3, Prohibition of Work.
- (vi) Electrologist shall mean a person engaged in the work of electrolysis.
- (vii) A wigmaker is an employee doing work on or in connection with the making of wigs, toupees or other hairpieces and/ or boardwork generally.
- (viii) A hairdresser shall mean a qualified person (within the definition of the *Hairdressers Act 2003*) doing men's or women's hairdressing, and excludes those persons who are covered under clause 9(iv)(b) of this Award for the time period specified therein.
- (ix) Salon means any premises where hair and/or beauty services are performed.
- (x) Union means The Australian Workers' Union, New South Wales.

## **2. Apprenticeships and School Based Apprenticeships**

- (i) Apprentices may be indentured to one of the following apprenticeship trades:
- (a) Hairdressing;
  - (b) Beauty Therapy
- (ii) School based apprentice is an employee who is undertaking an apprenticeship, declared or recognised by the State Training Authority, under a training contract while also enrolled in the Higher School Certificate. The School based apprenticeship may commence upon the completion of Year 10 School Certificate exams. Such school based apprenticeship are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant *Vocational Training Order pursuant to the Apprenticeship and Traineeship Act 2001*.

## (iii) Progression through Wage Structure

- (a) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice, provided that such apprentice satisfies the requirements of the Vocational Training Order issued by the NSW Department of Education and Training (DET) relevant to the trade being undertaken by the school based apprentice.
- (b) The rates of pay are based on a standard apprenticeship of four years (unless the apprenticeship is of three years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

## (iv) Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

## (v) Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro-rata entitlements and all other conditions of employment contained in this Award.

- (a) The school based apprentice shall be allowed over the duration of the apprenticeship, the same amount of time to attend off the job training as an equivalent full time apprentice.
- (b) For the purpose of this sub-clause, off the job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- (c) The duration of the apprenticeship shall be as specified in the training agreement or contract for each apprentice. The period so specified to which the apprentice wage rates apply shall not exceed 6 years.

## (vi) Disputes and Disciplinary Matters

The settlement of Dispute provisions of the Award, subject to the provisions of the *Apprenticeship and Traineeship Act 2001*, shall apply for the resolution of disputes and disciplinary matters. This means that in the event that a dispute cannot be resolved at the enterprise level in accordance with the Settlement of Dispute provisions of the Award, it will be first referred to the Vocational Training Tribunal in accordance with the *Apprenticeship and Traineeship Act 2001*. Then if necessary it will be referred to the Industrial Relations Commission of New South Wales, for conciliation and if necessary arbitration.

## (vii) Rate of Pay for school based apprentice

- (a) The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent off the job Training.
- (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off the job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on the job each week. The wages paid for training time may be averaged over the school term or year.
- (c) Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

## (viii) Leave Reserved

Leave is reserved to the parties to apply to amend sub-clause 9(v) if a Vocational Training Order relevant to the trade of a School based apprentice is amended, after consultation with the award parties.

### 3. Prohibition of Work

No person shall perform the work of a hairdresser unless that person is qualified to work as a hairdresser under the provisions of the *Hairdressers Act 2003*. Provided however that a Salon Assistant as defined in the Award is permitted to perform the following tasks: Shampoo, Basin Work, Remove Hair Colours, Neutralise Permanent Waves, Remove Bleaches and Lighteners, Rinse Treatments and Application of Temporary Colour.

### 4. Hours

## (i) Ordinary hours shall not exceed 38 over five and one-half days.

Employees required to work ordinary hours on Sundays and public holidays will be required to work no more than five days in that week. The span of hours for ordinary hours will be as follows:

Monday to Friday - 8.00 a.m. to 9.00 p.m.

Saturday, Sunday and public holidays - 8.00 a.m. to 6.00 p.m.

## (ii) An employee shall not be required to work beyond 6.00 p.m. on more than two nights in any week. Ordinary hours may, however, be extended to 7.00 p.m. without penalty rates or a meal allowance if there is written agreement between the employer and employee. This agreement must clearly state both parties consent and the penalties and allowances forfeited by the employee. Apprentices and junior employees will not be permitted to extend ordinary hours as provided in this clause.

## (iii) Payment for ordinary hours at the following times will be as follows:

Monday to Friday - Ordinary hours worked past 6.00 p.m. = Hourly rate + 25 per cent.

Saturday - Ordinary hours worked all day = Hourly rate + 25 per cent.

Sunday - Ordinary hours worked all day = Hourly rate + 50 per cent.

Public Holiday - Ordinary hours worked all day = Hourly rate + 100 per cent.

## (iv) All employees shall be entitled to at least 12 hours rest break between the cessation of one day's work and the commencement of the next day's work.

## (v) The maximum number of hours of work on any day, without the payment of overtime, shall not exceed eight in any one day. Provided that, by agreement between employer and employee, ordinary hours may be worked for up to ten hours per day.

## (vi) The maximum number of hours that may be worked in any week, without the payment of overtime, will be 38.

## (vii) No broken shifts will be allowed.

### 5. Alternative Method of Implementing 38-Hour Week

## (i) Where agreement is reached between the employer and employees, the 38-hour week shall operate in the following manner:

## (a) Employees shall work an additional two hours each week, which shall accumulate and entitle those employees to an accumulated day off on a Monday in each four-week cycle.

- (b) Where a public holiday referred to in clause 21, Holidays, falls on a Monday, the accumulated day off shall be taken on any normal working day during that week.

### **6. Overtime**

- (i) All time worked after 38 ordinary hours in any one week or outside the span of hours as prescribed in subclauses (i) and (ii) of clause 4, Hours, or in excess of the maximum daily hours as prescribed in subclause (v) of the said clause 4 shall be overtime and shall be paid at time and one-half for the first two hours and double time thereafter.
- (ii) All overtime worked on Saturdays shall be paid at time and one-half and all overtime worked on Sundays shall be paid at double time. All overtime on public holidays shall be paid at double time and one-half. By agreement between an employer and an employee, time off may be granted to an employee in lieu of payment for overtime with the overtime rate being paid as at the rate for time off.
- (iii) Reasonable Overtime
- (a) Subject to paragraph (b) below, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours, which are reasonable.
- (c) For the purposes of paragraph (b) what is unreasonable or otherwise will be determined having regard to:
- (1) any risk to employee health and safety;
  - (2) the employee's personal circumstances including any family and carer responsibilities;
  - (3) the needs of the workplace or enterprise;
  - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (5) any other relevant matter.

### **7. Meals**

- (i) An employee shall be allowed no less than thirty (30) minutes for a meal between 11:45am and 2:45pm, Monday to Sunday inclusive, or at other times as agreed between the employer and the employee.

In any salon that does not provide a clean room and hot water facilities to employees, the period allowed for a meal shall be extended by 15 minutes which shall be counted as time worked.

- (ii) There shall be no meal break on any day where an employee works less than five hours.
- (iii) Subject to any arrangements in accordance with subclause (ii) of clause 4, Hours, and despite clause 7(ii), any employee required to work after 6:00pm, Monday to Friday, shall be paid a meal allowance as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, and shall be allowed a meal break of 20 minutes which shall be counted as time worked.

### **8. Rest Pause**

When it conveniently can be arranged by the employer, each employee shall be allowed a rest pause of ten minutes either in the morning or in the afternoon, Monday to Sunday, inclusive, at a time to be indicated by the employer. This time shall be counted as ordinary time worked.

### 9. Wages and Classifications

The minimum weekly wage payable to full-time employees shall be as set out in Table 1 - Wages, of Part B, Monetary Rates.

- (i) Provided that a Receptionist/Salon Assistant under 21 years of age shall be paid the following percentages of the wage prescribed for Level 2 in Table 1:

Age	Percentage per Week
Under 16 years of age	40%
At 16 years of age	50%
At 17 years of age	60%
At 18 years of age	70%
At 19 years of age	80%
At 20 years of age	90%

- (ii) In addition to the appropriate minimum wage prescribed by this clause, an employee in charge of a salon for more than four hours in a shift, not being an employee temporarily in charge during the absence of a person ordinarily in charge, but including an employee employed as a relieving employee in charge, shall be paid an additional amount as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

Any dispute in the application of this sub-clause shall be referred to the Industrial Relations Commission of New South Wales, for conciliation and if necessary arbitration.

- (iii) Apprentices

- (a) For all apprenticeships contracts entered into on or after the date that the new relevant Vocational Training Orders are gazetted by the NSW Government, the minimum wages payable to apprentices and probationers doing hairdressing shall be the following percentages of the wage prescribed for a hairdresser as appears in Level 1 of Table 1:

	Percentage Per Week
1st Year	45%
2nd Year	60%
3rd Year	80%

- (b) For all apprenticeships contracts entered into on or after the date that the new relevant Vocational Training Orders are gazetted by the NSW Government, the minimum wages payable to apprentices or probationers doing beauty therapy shall be the following percentages of the wage prescribed for a beauty therapist as appears in Level 1 of the said Table 1:

	Percentage Per Week
1st Year	45%
2nd Year	60%
3rd Year	80%

- (iv) Students and Graduates

- (a) The minimum wages payable to a person who is completing (but has not yet completed):

- (i) a Commercial Certificate III in Hairdressing (within the definition of the Australian Hairdressing Training Package 2006); or
- (ii) a Certificate IV in Beauty Therapy (within the definition of the National Beauty Training Package), not being a person who is also completing an apprenticeship, for hours worked that do not form part of the minimum 'on-the-job' component of the course as offered by the relevant Registered Training Organisation, shall be one thirty-eighth of the appropriate

weekly rate for a 2nd year apprentice, as the case may be, plus a casual loading of twenty (20) percent.

Provided that:

- A. such a person will not be entitled to the benefit of the following clauses of this Award: 21(i)-(iii), 23, 24 25, 26 (1)-(6), 35, 37; and
- B. the twenty (20) per cent loading paid to such persons shall be deemed a benefit that is more favourable to the worker than sections 3, 4 or 4A of the *Annual Holidays Act 1944*, and therefore, those sections of that Act will not apply to such persons under this Award.
- (b) The minimum wages payable to a person that has completed a Certificate III in Hairdressing (within the definition of the Australian Hairdressing Training Package 2006), other than a person who is completing or has completed their apprenticeship as a hairdresser, shall be the following percentages of the wage prescribed for a hairdresser as appears in Level 1 of Table 1:

	Percentage Per Week
No more than 12 months experience after completion	80%
Thereafter	100%

- (c) The minimum wages payable to a person that has completed a Certificate III in Beauty Services (or as amended from time to time), other than a person who is completing or has completed their apprenticeship as a beauty therapist, shall be the following percentages of the wage prescribed for a beautician as appears in Level 3 of Table 1:

	Percentage Per Week
No more than 12 months experience after completion	80%
Thereafter	100%

Provided that the minimum wages payable to such a person shall be 100% of the wage prescribed for a beautician as appears in Level 3 of Table 1 once that person attains the age of 21.

- (d) The minimum wages payable to a person that has completed a Certificate IV in Beauty Therapy (other than a person who is completing or has completed their apprenticeship as a beauty therapist) shall be the following percentages of the wage prescribed for a beauty therapist as appears in Level 1 of Table 1:

	Percentage Per Week
No more than 12 months experience after completion	80%
Thereafter	100%

Provided that the minimum wages payable to such a person shall be 100% of the wage prescribed for a beauty therapist as appears in Level 1 of Table 1 once that person attains the age of 21.

- (v) Transitional arrangement - Apprenticeships

For all apprenticeships contracts entered into prior to the date that the new relevant Vocational Training Orders are gazetted by the NSW Government, the minimum wages payable to apprentices or probationers doing hairdressing or beauty therapy shall be the following percentages of the relevant senior wage, as the case may be, as appears in Level 1 of the said Table 1:

	Percentage Per Week
1st Year	40%
2nd Year	55%
3rd Year	70%
4th Year	85%

### 10. State Wage Case Adjustments

The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

- (a) any equivalent overaward payments; and/or
- (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

### 11. Part-time Employees

- (i) Employees engaged as part-time employees shall be paid one thirty-eighth of the appropriate weekly rate for the work they perform, plus ten per cent, with a minimum engagement of four hours work. Where the rates outside the normal hourly rates apply, these shall be paid to part-time employees.
- (ii) Any change to a part-time employee's hours of work or days of work are to be communicated to the employee no less than five days prior, unless otherwise agreed by the employer and the employee.
- (iii) Upon appointment, a part-time employee shall be provided a written letter stating:
  - (a) the employee's name;
  - (b) the name of the employer;
  - (c) that the employee is employed on a part-time basis;
  - (d) the address of the salon where the work is to be carried out;
  - (e) the hourly rate of pay for ordinary time worked;
  - (f) any other form of remuneration;
  - (g) whether it is proposed that any tools are to be supplied by the employee; and
  - (h) the proposed hours of work per week.

### 11A. Casual Employees

- (i) Employees engaged as casual employees shall be paid one thirty-eighth of the appropriate weekly rate for the work they perform, plus twenty per cent, with a minimum engagement of four hours work. Where the rates outside the normal hourly rates apply, these shall be paid to casual employees.
- (ii) Upon appointment, a casual employee shall be provided a written letter stating:
  - (a) the employee's name;
  - (b) the name of the employer;
  - (c) that the employee is employed on a casual basis;
  - (d) the address of the salon where the work is to be carried out;
  - (e) the hourly rate of pay for ordinary time worked;
  - (f) any other form of remuneration;
  - (g) whether it is proposed that any tools are to be supplied by the employee.

## **12. Post-Work Training**

An employee may accept or decline the offer of his/her employer to remain to attend after-hours training. Where an employee is required to attend a training course, he/she will be paid the appropriate overtime rates or be paid at ordinary rates if the training is part of ordinary hours.

## **13. Tools and Equipment**

- (i) The employer shall provide all electrical equipment used by an employee.
- (ii) The employer shall provide all other necessary tools. If, by agreement between the employer and the employee, the employer does not provide all such tools, he/she shall pay a tool allowance as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- (iii) Employees shall be responsible for the proper care and protection of provided tools whilst in their possession. An employee shall replace or pay for any tools if lost or damaged through his or her negligence.

## **14. Special Allowance - Health Department of New South Wales**

Employees of the Health Department of New South Wales whilst working in mental institutions shall be paid an amount per hour as set out in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to all other rates payable under this award. Such additional payment shall not be taken into account in the calculation of overtime or other penalty rates; provided that payment under this clause shall not be made in respect of work done in such areas as may be agreed upon between The Australian Workers Union, New South Wales, and the New South Wales Public Employment Office.

## **15. Uniforms and Footwear**

Where an employer specifies a definite style of uniform to be worn, the uniform shall be supplied and paid for by the employer and shall remain the property of the employer.

Uniforms shall be laundered by the employer, provided that where the employee is required to launder the uniform, such employee shall be paid an allowance as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the ordinary wage.

There shall be no compulsion on employees to perform their duties wearing shoes with heels exceeding three centimetres in height.

## **16. First-Aid Allowance**

An employee qualified to St John Ambulance standard or the equivalent and appointed by the employer to act as the first-aid attendant shall be paid an allowance as set out in Item 6 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

## **17. First-Aid Kit**

The employer shall provide and continuously maintain, at a place reasonably accessible to all employees, a first-aid kit as prescribed in the Occupational Health and Safety Regulation 2001.

## **18. Transport Allowance**

Where an employer occasionally requires an employee to use his/her own motor vehicle in the performance of his/her duties, such employee shall be paid an allowance of not less than the amount set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

Where an employer has more than one salon under its control, an employee will be designated a base salon from which they are employed at. If the employee is required to work at another salon then the employee is to be paid the transport allowance (to and from the other work location) of not less than the amount set out in Item



7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, between the base salon and the other salon, or actual costs incurred, whichever is greater.

### **19. Transfer of Employees**

Where an employer requires an employee to transfer permanently from one township to another, the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges for the employee and his/her family.

### **20. Living Away from Home Allowance**

An employee, required by the employer to work temporarily for the employer away from his/her usual place of employment, and who is required thereby to sleep away from his/her usual place of residence shall be entitled to the following:

- (a) fares to and from the place at which the employer requires the employee to work;
- (b) all reasonable expenses incurred for board and lodging;
- (c) payment at ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location, such paid time not to exceed eight hours in 24 hours.

### **21. Holidays**

- (i) The following days or the days observed as such shall be holidays without reduction of wages:
  - (a) New Year's Day;
  - (b) Australia Day;
  - (c) Good Friday;
  - (d) Easter Saturday;
  - (e) Easter Monday;
  - (f) ANZAC Day;
  - (g) Queen's Birthday;
  - (h) Labour Day;
  - (i) Christmas Day;
  - (j) Boxing Day;
  - (k) the first Tuesday of November each year; and
  - (l) any other day, or part-day, declared by or under a law of NSW to be observed generally within NSW, or a region of NSW, as a public holiday.
- (ii) Any employee absent without leave on the day before or the day after a holiday identified in this clause shall be liable to forfeit wages for the day of absence as well as for that holiday, except where the employee's absence was caused through illness, in which case wages shall not be forfeited for the holiday.
- (iii) A part-time employee shall not be entitled to the benefits of this clause unless such employee has regularly worked on the day on which the award holiday falls, and has been in the employment of the same employer for at least three weeks prior to such award holiday.

- (iv) A casual employee shall not be entitled to the benefits of this clause, except for the provisions as set out in clause 4(iii) of this Award.

## 22. Annual Leave

See *Annual Holidays Act 1944*. As a casual employee is to be paid a twenty (20) per cent casual loading, that casual loading shall be deemed to be a benefit that is more favourable to the worker than sections 3, 4 or 4A of the *Annual Holidays Act 1944*, and therefore, those sections of that Act will not apply to casual employees under this Award by virtue of section 5 of that Act.

## 23. Annual Leave Loading

- (i) In this clause the *Annual Holidays Act 1944* is referred to as "the Act"-. This clause shall not apply to casual employees.
- (ii) Before an employee is given and takes his or her annual holiday or where, by agreement between the employer and employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.

(Note: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (vi).)

- (iii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act.
- (iv) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled under the Act (but excluding days added to compensate for public or special holidays worked or public or special holidays falling on an employee's rostered day off not worked).
- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by clause 9, Wages and Classifications, and the appropriate rate of pay prescribed by clause 11, Part-time Employees, for the classification in which the employee was employed immediately before commencing his or her annual holiday.
- (vi) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when he or she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (v) of this clause, applying the award rates of wages payable on that day.
- (vii) Where, in accordance with the Act, the employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned:
  - (a) An employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause (v) of this clause.
  - (b) An employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him or her under the Act, such proportion of the loading that would have been payable to him or her under this clause if he or she had become entitled to an annual holiday prior to the close-down as his or her qualifying period of employment in completed weeks bears to 52.
- (viii)
  - (a) When the employment of an employee is terminated by his or her employer for a cause other than misconduct and at the time of the termination the employee has not been given and has not

taken the whole of an annual holiday to which he or she became entitled, he or she shall be paid a loading calculated in accordance with subclause (v) for the period not taken.

- (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.

#### **24. Sick Leave**

- (i) A full-time employee who after three months' service with the employer is absent from work on account of illness or injury shall notify the employer of his/her absence within one hour of his/her normal commencing time where practicable.
- (ii) Proof of such illness or injury shall be given to the employer by medical certificate or other satisfactory evidence. In any event, the employee must produce a doctor's certificate for absences in excess of two days.
- (iii) The employee shall, on account of such illness or injury, be entitled, without deduction of pay, to absent himself/herself from work for an aggregate of 60.8 hours of ordinary working time during the first year of employment on the following bases:

After 3 months completed service	-	22.8 hours
After 4 months completed service	-	30.4 hours
After 5 months completed service	-	38 hours
After 6 months completed service	-	60.8 hours

In the second and subsequent years of service, the employee will be entitled to 60.8 hours sick leave per year.

The rights under this clause shall accumulate as long as the employee is employed continuously by the same employer.

- (iv) The employer shall not terminate the employment of any employee during any period when the employee is absent from work and entitled to leave of absence in accordance with this clause and any purported termination shall not take effect so long as the employee is entitled to leave of absence in accordance with this clause.
- (v) This clause shall not apply to part-time employees or casual employees.

#### **24A. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;

- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
  - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;
- to assist the employee in reconciling work and parental responsibilities.
- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing
 

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time
 

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.
- (4) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
    - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
  - (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
  - (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 25. Personal/Carer's Leave

- (1) Use of Sick Leave
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 25(1)(c)(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 24, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
  - (b) The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
      1. "relative" means a person related by blood, marriage or affinity;
      2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
      3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 32, Dispute Procedure, should be followed.

(2) Unpaid Leave for Family Purpose

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 25(1)(c)(ii) above who is ill or who requires care due to an unexpected emergency.

- (3) Annual Leave
- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
  - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
  - (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
  - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (4) Time Off in Lieu of Payment for Overtime
- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of clause 6, Overtime, the following provisions shall apply.
  - (b) 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 within 12 months of the said election.
  - (c) 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.
  - (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
  - (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate, which would have been applicable to the hours taken off.
- (6) Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

- (7) Personal Carers Entitlement for casual employees -
- (a) Subject to the evidentiary and notice requirements in 25(1)(b) and 25(1)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 25(1)(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **26. Bereavement Leave**

- (1) An employee, other than a casual employee, shall be entitled to up to two days' bereavement leave without deduction of pay on each occasion of the death of a person as prescribed in subclause (3) of this clause.
- (2) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (3) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 25, Personal/Carer's Leave Case, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (4) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (5) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said clause 25. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (6) Part-time employees are only entitled to the said bereavement leave if the bereavement leave falls due on the day or days when they would normally work and to be paid for the hours normally worked on the day or days on which the leave is taken.
- (7) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 26(2) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 25(1)(c)(ii) of clause 25, Personal/Carer's Leave.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 27. Payment of Wages

- (i) All wages shall be paid weekly in addition to any commission, bonus or premium to which the employee is entitled. Such payment shall be made on the same day of each week, which shall not be a Saturday or Sunday except as herein provided for, and shall be made up to and including at least the second day preceding the day of payment. Provided that, in a week where an award holiday falls on the day on which wages are usually paid, payment thereof shall be made not later than the working day immediately preceding the award holiday; provided further that, if payment is made on a Friday, it shall be made no later than 3.30 p.m. and payment may be made on a Saturday, Sunday or public holiday to a part-time employee who only works on a Saturday, Sunday or public holiday.
- (ii) Subject to subclauses (iii) and (iv) of this clause, overtime shall be paid no later than a week from the pay day succeeding the day on which it was earned.
- (iii) Where employment is terminated, an employee shall be paid within one working day all wages due and shall be paid all overtime and other moneys due within 14 days of the date of the termination of employment.
- (iv) In the event of an employer not paying the said overtime and other moneys due at the time on which they have undertaken to pay, or is obliged by this clause to pay them, then the employer shall reimburse the employee all reasonable expenses they have incurred in attending to collect the amounts due to him or her.
- (v) Wages may be paid to employees at the employer's discretion in the form of cash, cheque or by electronic funds transfer into an account nominated by the employee.

## 28. Training

- (i) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of the industry, a greater commitment to training and skill developments is required. Accordingly, the parties commit themselves to:
  - (a) developing a more highly skilled and flexible workforce;
  - (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (c) removing barriers to the utilisation of skills acquired.
- (ii) Following proper consultation, an employer shall develop a training program consistent with:
  - (a) the current and future skill needs of the industry;
  - (b) the size, structure and nature of operation in the industry;
  - (c) the need to develop vocational skills relevant to the industry through courses conducted by accredited educational institutions and providers through on-site courses.
- (iii)
  - (a) Where, as a result of consultation with the employees concerned, it is agreed that additional training for such employees (excluding trade courses) in accordance with the program developed pursuant to subclause (ii) of this clause should be undertaken by such employees, that training may be undertaken during ordinary working hours and the employees concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.
  - (b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of additional training shall be evidence of such expenditure.



Provided that reimbursement shall also be on an annual basis, subject to the presentation of reports of satisfactory progress.

- (c) Travel costs incurred by an employee undertaking additional training in accordance with this clause which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.

### **29. Utilisation of Skills**

- (i) Employees shall be employed to carry out such duties as may be directed by an employer from time to time, subject to their skill, competence and training.
- (ii) Any employee may at any time carry out such duties and use such tools and equipment as may be directed by the employer, provided that the employee has been properly trained in the use of such tools and equipment.
- (iii) Disputes arising in relation to the operation of this clause shall be dealt with in accordance with clause 32, Dispute Procedure, following prior consideration of the issue.

### **30. Consultative Mechanism**

Enterprises covered by this award shall establish, between the employer and employee(s) and/or the union, consultative mechanisms and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

### **31. Enterprise Arrangements**

An enterprise arrangement shall be processed in accordance with the Enterprise Arrangement Principle of the current State Wage Case Decision.

### **32. Dispute Procedure**

- (i) Procedure relating to a grievance of an individual employee:
  - (a) The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussion and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.
  - (f) The employee may be represented by an industrial organisation of employees.
  - (g) Either party involved in the grievance can refer the matter to the Industrial Relations Commission of New South Wales, for conciliation and if deemed necessary by either party, arbitration.
- (ii) Procedure for a dispute between an employer and the employees:
  - (a) A question, dispute or difficulty must initially be dealt with as close as to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

- (b) Reasonable time limits must be allowed for discussion at each level of authority.
- (c) While a procedure is being followed, normal work must continue.
- (d) The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purpose of each procedure.
- (e) Either party involved in the dispute can refer the matter to the Industrial Relations Commission of New South Wales, for conciliation and if deemed necessary by either party, arbitration.

### **33. Long Service Leave**

See *Long Service Leave Act* 1955.

### **34. Right of Entry**

See *Industrial Relations Act* 1996.

### **35. Termination of Employment**

- (i) The provisions of this clause shall only apply to full-time employees, with the exception of subclause (vi) which shall apply to part-time employees.
  - (a) This clause shall not apply to casual employees.
- (ii) Employment shall be on a weekly basis and shall continue from week to week until terminated in accordance with this clause.
- (iii) The employment of each employee is probationary for the first three months of employment, and commences on the first day of employment. During the probationary period, the employment may be terminated either by the employer or the employee with one day's notice for any reason, or by the payment or forfeiture, as the case may be, of one day's wages in lieu of such notice.
  - (a) Other than during the probationary period, employment shall be terminated by one week's notice at any time during the week by either the employer or the employee or by the payment or forfeiture, as the case may be, of one week's wages in lieu of such notice.
- (iv) Where an employee's period of service is less than one year (calculated from the commencement of the employment) and the employment is terminated, the employee is entitled to a pro rata annual leave payment calculated in the following way:

Total number of weeks employed, multiplied by the current gross wage and divided by 12.
- (v) This clause shall not affect the right of the employer to dismiss any employee without notice for malingering, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only.
- (vi) Employment of part-time employees shall be terminated by one week's notice given at any time during the week by either the employer or the employee or by the payment or forfeiture, as the case may be, of one week's wages in lieu of such notice.
- (vii) Employment of apprentices and trainees on probation may be terminated without notice by either the employer or employee without any payment in lieu of notice.

### **35A. Confidentiality**

- (i) In this clause, "Confidential information" includes all information of a confidential nature regarding the past, current or future business interests, methodology or affairs of any person or entity with which an employee may deal or be concerned with, including but not limited, to matters of a technical nature,

trade secrets, marketing procedures, financial information, wages / salary information, customer / client lists, and any other information which the employee comes across during the period of the employment.

- (ii) At all times during and after the termination of employment for any reason, all confidential information shall remain the property of the employer.
- (iii) Except in the proper course of his or her employment, an employee shall not, either during the term of employment or after its termination:
  - (a) disclose or allow to be disclosed, any confidential information, to any other person, unless required by law; or
  - (b) use any confidential information, whether such use is for the benefit of that employee or otherwise."

### 36. Superannuation

#### (1) Definitions

For the purpose of this award:

- (a) The "fund" shall mean -
  - (i) "ASSET" means the Australian Superannuation Savings Employment Trust, as may be amended from time to time, and includes any successor thereto; or
  - (ii) "Future Plus Super" means Future Plus Superannuation Fund, as may be amended from time to time, and includes any successor thereto; or
  - (iii) an alternative superannuation scheme existing within a company conforming to the Commonwealth Government's operational standards for occupational superannuation.
- (b) The "employer" shall mean any employer engaged in the industry to which clause 40, Area, Incidence and Duration, applies.
- (c) "Eligible employee" shall mean any employee who earns \$450.00 or more per month.
- (d) "Employed in the industry" means engagement by the employer where such engagement is within the scope of the industries and callings of the Hairdressing and Beauty Treatment (State) Conciliation Committee.
- (e) "Ordinary-time earnings" means:
  - (i) in the case of a full-time employee, the classification's full-time rate of pay for ordinary hours of labour; or
  - (ii) in the case of a part-time employee, the earnings for his/her classification during ordinary working hours (including the appropriate part-time loading).
  - (iii) A classification's rate shall include the rate per week and allowances related to work and/or conditions.
  - (iv) Ordinary-time earnings shall also include any over-award payment.
- (f) "Over-award payment" means the amount (whether it be termed over-award payment", "attendance bonus", "service increment", or any term whatsoever) which an employee would receive in excess of an award and/or an industrial agreement's rate of pay for the classification in which such an employee is engaged. Provided that such payment shall exclude payments related to overtime prescribed by an award and/or industrial agreement.

## (2) Contributions

## (a) Superannuation Legislation

The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993* and section 124 of the *Industrial Relations Act 1996* (NSW). This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

- (b) Each employer bound by this award shall sign and execute the Deed of Adherence for the appropriate fund. Upon acceptance of the deed by the Trustees of the fund the employer shall, without delay, notify the employee(s) who shall sign and execute an application for membership for the appropriate fund. The employer shall pay to the Trustees of the fund a weekly contribution, payable monthly, on behalf of each eligible employee who has signed and executed an application for membership for the appropriate fund.
- (c) The employer shall pay the Trustees of the fund on behalf of each employee a contribution of an amount not less than the percentage currently prescribed by the *Superannuation Guarantee Charge Act 1992* of the ordinary-time earnings of the employee.
- (d) Contributions shall be payable from the date on which the employee signs and executes the application for membership referred to in paragraph (a) of this subclause, provided that the employer shall not be required to make payment to the Trustees of the fund until a period of two weeks has elapsed from the commencement of employment.
- (e) The employer shall provide to each eligible employee a statement setting out the amount of contributions made on the employee's behalf into the fund. Such statement shall be provided yearly, at the anniversary of their membership of the fund or employment. Notwithstanding the foregoing, at an establishment which employs less than five full-time employees, such a statement shall only be provided to an eligible employee upon his/her request.

### 37. Redundancy

## (i) Application

- (a) This clause shall only apply in respect of full-time and part-time employees.
- (b) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
- (c) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
- (d) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

## (ii) Introduction of Change

- (a) Employer's duty to notify

- (1) 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 the union to which they belong.
- (2) '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, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(b) Employer's duty to discuss change

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (a) above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in paragraph (a) of this subclause.
- (3) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iii) Redundancy

(a) Discussions before terminations

- (1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii) above, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (1) of this subclause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (3) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) Termination of Employment

(a) Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "production", "programme", "organisation" or "structure" in accordance with subclause (ii) (a)(1) above.

- (1) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (2) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years' continuous service, shall be entitled to an additional week's notice.

- (3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(b) Notice for Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with subclause (ii)(a)(1) above:

- (1) In order to terminate the employment of an employee the employer shall give to the employee three months' notice of termination.
- (2) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

(c) Time off during the notice period

- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
- (2) 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.

(d) Employee leaving during the notice period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.

## (e) Statement of employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

## (f) Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify the Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## (g) Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by the Centrelink.

## (h) Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii) above, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.

## (v) Severance Pay

## (a) Where an employee is to be terminated pursuant to subclause (iv) above, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

## (1) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Under 45 Years of Age	Years of Service Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

## (2) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

(3) 'Weeks pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

(b) Incapacity to pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (i) above will have on the employer.

(c) Alternative employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above if the employer obtains acceptable alternative employment for an employee.

(vi) Savings Clause

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### 38. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibility as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, 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.
- (iv) Nothing in this clause is to be taken to affect :
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.



## NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

**39. Deduction of Union Membership Fees**

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - (c) deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly or quarterly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.
- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance

with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.

(viii) The above variations shall take effect:

- (a) In the case of employers which currently deduct union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first full pay period to commence on or after 20 June 2003.
- (b) In the case of employers who do not fall within paragraph (a) above, but who currently make deductions, other than union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first full pay period to commence on or after 20 September 2003.
- (c) For all other employers, from the beginning of the first full pay period to commence on or after 20 December 2003.

#### **40. Area Incidence and Duration**

This award rescinds and replaces the Hairdressers', &c. (State) Award published 19 April 1996 (294 I.G. 1442), the Hairdressers, &c., Redundancy (State) Award (290 IG 1096) and the Hairdressers', &c., Superannuation (State) Award (257 IG 801) and all variations thereof. It shall take effect from the beginning of the first full pay period to commence on or after 31 August 2000 and shall remain in force for a period of three years.

This award shall apply to all employees of the classes specified in clause 9, Wages and Classifications, in the State, excluding the County of Yancowinna within the jurisdiction of the Hairdressing and Beauty Treatment (State) Industrial Committee.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 15 September 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

### **HAIRDRESSING AND BEAUTY TREATMENT (STATE) INDUSTRIAL COMMITTEE**

#### **Industries and Callings**

Hairdressers, barbers, wigmakers, hair workers and their assistants, and receptionists employed in connection therewith, beauty therapists and teachers of beauty therapy or any component thereof in beauty salons or clinics, electrologists, aroma therapists, beauticians, manicurists, and all persons engaged in or in connection with beauty treatment, and their assistants, excepting employees exclusively engaged in the sale of goods or exclusively engaged in the manufacture of beauty preparations; telephonists; cashiers and office assistants in the State, excluding the County of Yancowinna.

**PART B**  
**MONETARY RATES**

**Table 1 - Wages**

Level	Classification	SWC 2009 Amount \$	SWC 2010 (4.25%) Adjustment \$	SWC 2010 Amount \$
1	Wigmaker - Employees, male and female, doing work on or in connection with the making of wigs, toupees or other hair pieces and /or doing board work generally  Hairdresser doing men's and /or ladies hairdressing  Beauty Therapist	660.95	28.09	689.05
2	Receptionist/Salon Assistant - 21 years of age and over	627.00	26.65	653.65
3	Beautician, Electrologist, Chiropodist	622.45	26.45	648.90

**Table 2 - Other Rates and Allowances**

Item No	Clause No	Brief Description	SWC 2009 (2.8%) Amount \$	SWC 2010 (4.25%) Amount \$
1	7(v)	Meal Allowance per meal	9.15	9.15
2	9 (iv)	Employee in charge per day	7.25	7.55
3	13 (ii)	Tool allowance per week	8.80	8.80
4	14	Health Department per hour	1.06	1.11
5	15	Laundry per week	5.95	5.95
6	16	First aid per week	10.30	10.70
7	18	Transport per km	0.77	0.77

**Table 3 - Part-time and Casual Rates of Pay**

Level	Classification	Part-time rate per hour SWC 2010 (4.25 %) \$	Casual rate per hour SWC 2010 (4.25 %) \$
1	Wigmaker - Employees, male and female, doing work on or in connection with the making of wigs, toupees or other hair pieces and/or doing board work generally.  Hairdresser doing men's and/or ladies hairdressing  Beauty Therapist	19.94	21.76

2	Receptionist/Salon Assistant - 21 Years of age and over	18.92	20.64
3	Beautician, Electrologist, Chiropodist	18.79	20.50

---

Printed by the authority of the Industrial Registrar.

## HEALTH, FITNESS AND INDOOR SPORTS CENTRES (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0077	04/05/2001	On and from 02/03/2001	324	497
Erratum to C0077	C0166	22/06/2001	On and from 02/03/2001	325	792
31 (1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
27A, Appendix A	C1227	12/07/2002	On or after 22/04/2002	335	162
Erratum to C0077	C1596	01/11/2002	On and from 02/03/2001	336	1081
30, Part B Tables 1 & 2, Part C Tables 1 - 6	C1454	22/11/2002	First pay period on and from 12/08/2001	337	126
30, Part B	C1461	22/11/2002	First full pay period on and from 12/08/2002	337	130
27A(i)(iii)(iv) (v), (vi)(d)(e) (g) & Part C	C1626	07/02/2003	First pay period on or after 06/09/2002	338	240
27A (vi) (d), (vi) (g) (ii) & Part C	C2255	05/12/2003	First full pay period on or after 06/09/2003	342	255
8(c), 30(ii) and Part B	C2145	19/12/2003	First full pay period on or after 12/08/2003	342	483
1, 21, 23, 27A, 28, 29, 30, 31, 32, 33, 34	C2816	12/11/2004	On 08/06/2004	347	300
31, Part B	C3121	25/02/2005	First full pay period on or after 12/08/2004	348	888
28, Part C	C3430	04/03/2005	First full pay period on or after 08/10/2004	348	1157
31, Part B	C3953	21/10/2005	First full pay period on or after 12/8/2005	354	639
28, Part C	C3992	18/11/2005	First full pay period on or after 08/10/2005	354	910
Erratum to C3953	C4164	16/12/2005		355	531
1, 5A	C4898	20/10/2006	From 07/03/2006	361	451
31, Part B	C5010	20/10/2006	First full pay period on or after 12/08/2006	361	454

1, 15, 15A, 16, 17, 19	C5540	06/07/2007	On and from 19/12/2005	362	1229
31, Part B	C5939	12/10/2007	First full pay period on or after 12/08/2007	363	1487
34	C6129	08/02/2008	On and from 23/07/2007	364	966
31, Part B	C6627	29/08/2008	First full pay period on or after 12/08/2008	366	626
28, Part C	C7020	26/06/2009	First full pay period on or after 20/02/2009	368	444
28, Part C	C7052	26/06/2009	First full pay period on or after 20/08/2009	368	447
31, Part B	C7230	30/10/2009	First full pay period on or after 18/09/2009	369	547
Correction to C2145	C7273	30/10/2009		369	546
28, Part C	C7053	26/06/2009	First full pay period on or after 20/10/2010	368	450
28, Part C	C7406	26/02/2010	First full pay period on or after 23/12/2009	369	1411
28, Part C	C7634	02/09/2011	First full pay period on or after 16/12/2010	371	629

## PART A

### 1. Arrangement

#### PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Rates of Pay
3.	Classifications
4.	Terms of Engagement
5.	Casual Employment
5A.	Secure Employment
6.	Part-time Employment
7.	Hours of Work
8.	Overtime
9.	Saturday and Sunday Work
10.	Public Holidays
11.	Payment of Wages
12.	Higher Duties
13.	Meal Breaks
14.	Sick Leave
15.	Personal/Carer's Leave
15A.	Parental Leave
16.	Unpaid Leave for Family Purpose
17.	Annual Leave
18.	Annual Leave Loading
19.	Compassionate Leave
20.	Jury Service
21.	First-aid
22.	General Conditions
23.	Allowances
24.	Travelling Time
25.	Miscellaneous Statutory Provisions
26.	Grievance and Dispute Settlement Procedure
27.	Training
28.	Traineeships
29.	Superannuation
30.	Annualised Salaries
31.	State Wage Case Adjustment
32.	Anti-Discrimination
33.	Redundancy

34. Area, Incidence and Duration  
35. Leave Reserved

## PART B

## MONETARY RATES

- Table 1 - Rates of Pay  
Table 2 - Other Rates and Allowances  
Table 3 - Base Rate  
Table 4 - Supplementary Payments

## PART C

## TRAINEE MONETARY RATES

- Table 1 - Industry/Skill Level A  
Table 2 - Industry/Skill Level B  
Table 3 - Industry/Skill Level C  
Table 4 - School Based Traineeships

## APPENDIX A - Skills Levels for Qualifications

**2. Rates of Pay**

- (a) Weekly Rates - The rates paid to an employee in the classification set out in clause 3, Classifications shall be as set out in (i) of Table 1- Rates of Pay, of Part B, Monetary.

NOTE: These rates are fixed in relation to the tradesperson (C10) classification in the Federal Metal Industry Award. The relativities fixed in relation to that classification are:

(i)	Level 1	78%
(ii)	Level 2	82%
(iii)	Level 3A	87.4%
(iv)	Level 3B	91.5%
(v)	Level 4	92%
(vi)	Level 5	100%
(vii)	Level 6	115%

The wages payable to employees under this award are inclusive of any payment by way of commissions or other similar payments to the extent that commissions or other similar payments match the total Supplementary Payments in Table 4 - Supplementary Payments, of Part B.

- (b) Junior Rates - A junior employee engaged at level 1, 2 or 3 shall be paid the following for that level:

Percentage of Appropriate Adult Rate	%
At sixteen years and under	55%
At seventeen years	65%
At eighteen years	75%
At nineteen years	85%
At twenty years	100%

Provided that employees who hold recognised industry-wide qualifications and are required to act upon them at 18 years or older with at least 12 months experience shall be paid the full adult rate of pay.

- (c) Supervisory Loadings - an employee appointed by an employer to supervise other employees shall be paid, in addition to the rates of pay prescribed in subclause (a) of this clause, the following amount per week specified in Table 2 - Other Rates and Allowances, of Part B as follows:

In charge of up to 5 employees - Item 1;

In charge of 6 and up to 10 employees - Item 2;

In charge of 11 or more employees - Item 3;

or pro rata amount per engagement for part-time and casual employees.

(d) For the calculation of the casual hourly rate refer to clause 5, Casual Employment.

### 3. Classifications

Level 1 - A level 1 employee is an employee who is undertaking training which may include information on the employer's business, conditions of employment, introduction of supervisors and fellow workers, training and career path opportunities, occupational health and safety, equal employment opportunities and quality assurance.

An employee at this level performs routine duties essentially of a manual nature and to the level of his/her training:

exercises minimal judgement;

works under direct supervision;

is undertaking structured training/learning in the following areas:

- clerical assistant duties including switchboard operation, reception, information services, taking bookings;
- providing general assistance to employees of a higher grade, not including cooking or direct service to customers;
- cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;
- assembly and preparation of ingredients for cooking;
- handling pantry items and linen;
- setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
- general cleaning, gardening and labouring tasks
- door duties, attending a cloakroom or car park not involving the handling of cash

Level 2 - A Level 2 employee is an employee who has completed at least 3 months or in the case of a casual or part time employee, 456 hours training at Level 1 so as to enable him/her to perform work within the scope of this level. An employee at this level:

performs work above and beyond the skills of an employee at Level 1 and to the level of is/her training.

works from instructions or procedures and works under direct supervision either individually or in a team environment.

is primarily engaged in one or more of the following duties:

- overseeing pool activities;
- assisting with classes and directing leisure activities in a recreational complex;



- attending to equipment and displays, eg pool attendant;
- providing customer advice, sales and services;
- operating switchboard and/or telephone paging system;
- clerical duties, involving intermediate keyboard skills with instructions;
- programme/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices - laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
- maintaining general presentation of grounds;
- door duties, attending a cloak room or car park;
- serving from a snack bar, buffet or meal counter;
- supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- non-cook duties in a kitchen.

Level 3A - A Level 3A employee has completed structured training (which may include formal Life Saving, Rescue and Resuscitation Training) recognised by the industry as relevant and appropriate to perform within the scope of this level.

is responsible for the quality of their own work subject to routine supervision either individually or in a team environment;

exercises discretion within their level of skills and training;

assists in the provision of on-the-job training of employees at Levels 2 and 1 where applicable.

Indicative of some of the duties which an employee at this level may perform include:

- pool attendant (Lifeguard) involved in overseeing pool activities under supervision by a more qualified employee;
- Instructor who works directly with more qualified staff to provide supervision of a group or individual fitness activity or program, only after commencing a recognised course or undertaking accredited training;
- Aerobics instructor undertaking accredited training with less than 12 months experience in the industry;
- recreational/leisure activities, involving the planning, and/or co-ordinating and/or conduct of individual leisure, games, promotional and/or entertainment activities;
- masseur with less than 12 months experience in the industry;
- supervision of front desk, including customer liaison and rostering of front office staff;
- building service employee who undertakes maintenance and/or restoration of hard floor surfaces, including buffing and sealing and/or operating ride on powered sweeping machines;
- gardener / grounds maintenance employee not possessing trade qualifications (and not employed as green keeper);

- maintenance of machinery, plant and technical equipment (non trade qualifications), including a trade assistant undertaking formal training who takes direction from a more qualified employee;
- preparing and cooking a limited range of basic food items such as breakfasts, grills and snacks;
- security work requiring the holding of an appropriate license
- reconciling cash transactions;
- ordering stock;
- undertakes routine chemical testing under technical supervision

Level 3B - Weight loss counsellor who develops nutritional plans and weight loss programs and who weighs and measures and records clients progress.

Level 4 - An employee at this level shall be capable of performing the indicative skills of a Level 3A employee and shall also be able to work from complex instructions in the following areas:

Aerobics instructor who has undertaken accredited training plus who has a minimum of 12 months of regular employment in the industry;

Masseur with more than 12 months experience in the industry;

Caretaker who is responsible for maintaining general site appearance, and supervising or co-ordinating the work of building services / grounds employees at lower levels.

Progression to Level 5 will be dependent upon successful application and availability of position

Level 5 - An employee who is qualified in a trade recognised by the industry as relevant and appropriate to the work performed, and who is competent to perform work within the scope of this level.

An employee at this level is responsible for supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service. An employee at this level is one who performs the following range of tasks or duties:

- Instructor (including Aerobics instructor) who conducts more than one level or type of class or activity and who may assist in the design and delivery of programs and is capable of assessing participants;
- Lifeguard holding relevant industry qualifications at trade or equivalent level;
- Weight loss counsellor responsible for co-ordinating or supervising the work of employees at lower levels;
- Trade qualified in a single trade stream and who is responsible for giving trade directions for Levels 1 to 4;
- Employee performing horticultural duties at a Certificate or equivalent level.
- Building Maintenance supervisor involved in supervising the general maintenance of buildings and work of employees at Levels 1 to 4;

Level 6 - An employee who is engaged in supervising, training and co-ordinating staff and who is responsible for the maintenance of service and operational standards, and who exercises substantial responsibility and independent initiative and judgement with a requisite knowledge of their specific field and of the employers business.

An employee at this level would have:

worked or studied in a relevant field and/or have specialist knowledge, qualifications and experience; or

hold formal trade or technical qualifications relevant to the employer in more than one trade or technical field; which are required by the employer to perform the job; or

hold specialist post trade qualifications which are required by the employer to perform the job, and will have achieved a level or organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

Indicative of duties at this level are:

- General supervision of catering or retail functions;
- Centre administration involving supervision of staff and systems and co-ordinating events;
- development of in-house training programs for instructors and co-ordinators

NOTE: Where supervision is a feature or responsibility of the Level, the supervisory loading referred to in subclause (c), of Clause 2, Rates of Pay, shall not be payable.

FURTHER NOTE: The definitions contained in the classification structure above shall have no application to a person employed in a managerial capacity (including a manager employed in a Weight Loss Centre) that is a person who is employed primarily to control the conduct of the employer's business either in whole or in part and who in the performance of his/her duties regularly makes decisions and accepts responsibility on matters relating to the administration and conduct of business.

#### **4. Terms of Engagement**

- (a) An employee shall be employed as one of the following:
  - (i) a full-time employee;
  - (ii) a part-time employee;
  - (iii) a casual employee
- (b) The employment of employees (excluding casual employees) may be terminated by one week's notice on either side which may be given at any time or by the payment by the employer or forfeiture by the employee of a week's pay in lieu of notice. This shall not affect the right of the employer to dismiss an employee without notice in the case of an employee guilty of malingering, inefficiency, neglect of duty or misconduct.
- (c) Trial Period - Notwithstanding anything elsewhere contained in this clause, the first three months of employment will be on a trial basis and may be terminated by two days' notice by either side, or by the payment in lieu by the employer or forfeiture by the employee, of two days' wages.
- (d) Notwithstanding anything contained in this award, an employer may deduct payment of wages for any day, or part thereof, on which an employee cannot be usefully employed because of:
  - (i) any strike;
  - (ii) any breakdown of machinery; or
  - (iii) any stoppage of work unavoidable by the employer.

## 5. Casual Employment

- (a) Casual employees are persons engaged and paid as such.
- (b) A casual employee shall be engaged either on an ordinary or "all-up" basis as detailed below:
  - (i) Ordinary Casual - An ordinary casual shall be paid 1/38 of the appropriate weekly rate plus:
    - (1) a 15 per cent loading (except when Saturday, Sunday, public holiday or night work penalties are paid); and
    - (2) the equivalent of one-twelfth of the ordinary hourly rate of pay for a full-time employee for each hour worked.

The payments specified in this subclause include statutory obligations under the *Annual Holidays Act, 1944*.

An ordinary casual employee shall be paid for a minimum engagement of three hours.

- (ii) All-up Casual - An all-up casual shall be paid 1/38 of the appropriate weekly rate plus a loading of 30 per cent for each hour worked.

This 30 per cent loading includes statutory obligations under the *Annual Holidays Act, 1944*, and the loadings applicable under this award for work on Saturdays, Sundays, public holidays and at night.

An all-up casual employee shall be paid for a minimum engagement of three hours. Provided that where an employer has been engaging casual(s) for periods of less than 3 hours prior to the commencement of this award, they may continue to do so, subject to a minimum engagement of one hour and a half. Also provided that an all-up casual employee involved in the presentation or conducting of sports games/training (e.g. instructors) shall be paid for a minimum engagement of one hour.

## 5A. Secure Employment

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving

such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
  - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

### 6. Part-time Employment

- (a) A part-time employee is a permanent employee engaged to work less than an average of thirty-eight hours per week over any 28 day period, but not less than 15 hours per fortnight and who is not engaged and paid as a casual.
- (b) A part-time employee shall be engaged in writing, detailing their minimum weekly hours and method of engagement.
- (c) A part-time employee shall be paid an hourly rate equivalent to the appropriate weekly rate divided by thirty-eight with a minimum shift of three consecutive hours.
- (d) Part-time employees shall receive the same benefits as apply to full-time employees under this award but on a pro rata basis.
- (e) A part-time employee can be required to work more than one shift on any day. Provided that the total shifts on any day shall not be less than three hours in duration and there shall be not more than two such shifts per day within a span of 12 hours from the start of the first such shift to the end of the second such shift, exclusive of any breaks.

### 7. Hours of Work

- (a) Subject to subclause (g) of this clause, the ordinary hours of work shall be not more than an average of thirty eight per week to be worked on one of the following bases:
  - (i) 38 hours within a work cycle not exceeding seven consecutive days;

- (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
- (iii) 152 hours within a work cycle not exceeding twenty-eight consecutive days.

The hours of work are to be worked each day in either one or two shifts totalling not more than:

- (i) Ten hours for full-time employees.
- (ii) ten hours for part-time employees, subject to subclause (e) of clause 6, Part-time Employment.
- (iii) Eight hours for casual employees.

exclusive of any breaks.

- (b) All employees shall be notified by the employer of their working shifts by means of a roster placed in the staff room for each employee's perusal. At least seven days notice shall be given to the employee should any alteration of the working hours be intended, except in the case of emergency or where the employee(s) agrees to the alteration.
- (c) Each employee shall have an average of two days off in each week of employment in a 28 day period. Such two days shall be consecutive if it is reasonably possible to arrange rosters accordingly.
- (d) An employee shall be paid a loading of 30 per cent for ordinary hours worked between midnight and 6.00 a.m. on all occasions.
- (e) An employee who is principally engaged as a cleaner shall be paid a loading of 15 per cent for ordinary hours worked between 6.00pm and midnight. This loading is not payable on weekends or public holidays.
- (f) Full-time and part-time employees will be given 10 clear hours off between finishing work on one ordinary shift and starting work on the next ordinary shift on consecutive days or be paid overtime for all time worked until the employee has had ten clear hours off.
- (g) Employees in Weight Loss Centres - the ordinary hours of work for employees in weight loss centres covered by this award shall be 38 per week between the hours of 6.00 am to 8.00 pm, Monday to Friday, and 8.00 am to 6.00 pm on a Saturday.
- (h) Make-up Time -
  - (i) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (ii) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

## 8. Overtime

- (a) All work performed in excess of the hours prescribed in subclause (a) of clause 7, Hours of Work, shall be overtime.
- (b) Overtime shall be paid at the rate of time and a half for the first two hours and double time thereafter on a daily basis, calculated on:
  - (i) The ordinary rate of pay for weekly employees;
  - (ii) The loaded casual rate (i.e. 15 per cent or 30 per cent loading) for casual employees

- (c) Reasonable Overtime
- (i) Subject to paragraph (ii) below, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
  - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours, which are unreasonable.
  - (iii) For the purposes of paragraph (ii) what is unreasonable or otherwise will be determined having regard to:
    - (1) any risk to employee health and safety;
    - (2) the employee's personal circumstances including any family and carer responsibilities;
    - (3) the needs of the workplace or enterprise;
    - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
    - (5) any other relevant matter.
  - (d) When overtime work is necessary it shall, wherever reasonably practicable, be arranged that employees have at least ten consecutive hours off duty between the work of successive days. An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day, and that employee has not had at least ten consecutive hours off duty between those times, shall be released after completion of such overtime until ten consecutive hours off duty has been allowed without loss of pay for ordinary working time occurring during such absence.

When such a break is not granted by the employer, the employee shall be paid double time for all time worked until the appropriate break is granted.

- (e) Time Off in Lieu of Payment for Overtime
- (i) Prior to working overtime, 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 within 12 months of the said election.
  - (ii) 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.
  - (iii) If, having elected to take time as leave in accordance with paragraph (i) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
  - (iv) Where no election is made in accordance with the said paragraph (i), the employee shall be paid overtime rates in accordance with the award.

### **9. Saturday and Sunday Work**

- (a) All ordinary work on a Saturday shall be paid at the employee's ordinary-time classification rate of pay plus a penalty equal to 25 per cent of the employee's ordinary-time classification rate of pay.
- (b) All ordinary work on a Sunday shall be paid at the employee's ordinary-time classification rate of pay plus a penalty equal to 50 per cent of the employee's ordinary-time classification rate of pay.



### 10. Public Holidays

- (a) Employees, other than casual employees, shall be entitled to the following public holidays without deduction of pay: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Birthday of the Sovereign, Christmas Day, Boxing Day, and any other day or days gazetted as public holidays shall be public holidays for the purposes of this clause.

Provided that the abovementioned holidays may be substituted for another day off, by agreement between the employer and the employee(s), to be taken within one month of the said holiday or adjacent to a period of annual leave.

- (b) In addition to the holidays specified in subclause (a) of this clause, an employee shall be entitled to one additional day as a public holiday in each calendar year. Such additional holiday shall be observed on the day when the majority of employees in an establishment observed a day as an additional holiday or on another day mutually agreed between the employer and the employee. The additional holiday is not cumulative and must be taken within each calendar year.
- (c) Where an employee is absent from employment on the working day (or part thereof) before, or the working day (or part thereof) after a public holiday (or group of public holidays) without reasonable cause, onus of proof of which will lie with the employee, the employee shall not be entitled to payment for the holiday(s) succeeding or preceding the absence.
- (d) For all work performed on a public holiday an employee shall be paid at double time and a half.

### 11. Payment of Wages

- (a) All employees are to be paid either weekly, fortnightly or monthly, provided that if demanded by the employee, he/she shall be paid at least once each fortnight.
- (b) Wages shall be paid at the election of the employer by:
- (i) cash; or
  - (ii) cheque; or
  - (iii) electronic funds transfer (EFT).

An employer shall be required to give reasonable notice to employee's of any decision to change the method of payments of wages.

- (c) Written details of all payments and deductions from wages shall be supplied to employees.

### 12. Higher Duties

An employee transferred to work in a classification that provides for a rate of pay higher than the employee's own ordinary rate shall be paid at such higher rate during the period of transfer, such payment to continue for a minimum period of one hour.

### 13. Meal Breaks

- (a) Meal breaks shall be not less than thirty minutes and not more than one hour.
- (b) Such meal breaks are to be commenced not more than five hours after commencing work.
- (c) If the employees are required to work during the time when a meal break should be allowed pursuant to this clause they shall be paid for such time at the appropriate overtime rate and the meal break shall be postponed to another mutually convenient time.
- (d) No part of the time taken as a meal interval shall be counted as part of the ordinary hours of work.

- (e) Where practicable a paid tea break may be allowed each day for full-time employees. Provided that the taking of such break(s) shall be subject to the workload of the business.
- (f) Subject to (c), no employee shall be required to work more than 5 consecutive hours without a break.

#### 14. Sick Leave

An employee, other than a casual employee with not less than three months' continuous service with the employer who, by reason of personal ill-health, is unable to attend for duty shall be entitled to ordinary rates of pay for the actual time of such non-attendance, subject to the following conditions and limitations.

- (a) The employees shall not be entitled to paid leave of absence for a period in respect of which the employee is entitled to compensation under the *Workplace Injury Management and Workers' Compensation Act 1998*.
- (b) The employee wherever possible shall, prior to the commencement of such absence, inform the employer of the employee's inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of absence.
- (c) The employee shall provide, to the satisfaction of the employer, by the production of a medical certificate or such other evidence as may be acceptable to the employer, that he/she was unable, on account of illness or injury, to attend for duty on the day or days for which sick leave is claimed.
- (d) An employee shall be entitled to be paid sick leave according to the following scale:
  - (i) During the first year of service - 38 hours.
  - (ii) During the second year of service - 60.8 hours.
  - (iii) During the third and subsequent years of service - 76 hours.

Provided that the sick leave entitlement under this clause may be accumulated, subject to continuous employment, for a maximum of 228 hours in addition to the current year's entitlement.

- (e) For absences adjacent to public holidays, refer to subclause (c) of clause 10, Public Holidays.

#### 15. Personal/Carer's Leave

- (a) Use of Sick Leave -
  - (i) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 15(iii)(2) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 14, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
  - (ii) The employee shall, if required,
    - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
    - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (iii) The entitlement to use sick leave in accordance with this subclause is subject to:
- (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a defacto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (E) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

- (iv) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 26, Grievance and Dispute Settlement Procedure, should be followed.

(b) Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 15(a)(ii) and 15(a)(iv) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 15(iii)(2) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

**15A. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
    - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

#### **16. Unpaid Leave for Family Purpose**

- (i) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 15(iii)(2) above who is ill or who requires care due to an unexpected emergency.

#### **17. Annual Leave**

- (a) See *Annual Holidays Act, 1944*. Reference should also be made to subclause (b) of clause 5, Casual Employment.
- (b) Annual Leave -
  - (i) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
  - (ii) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
  - (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (c) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

#### **18. Annual Leave Loading**

- (a) Each employee, other than a casual employee, before going on any period of annual leave shall for each week of such leave be paid an annual leave loading at the rate of 17½ per cent of the ordinary weekly rate of pay prescribed herein for such employee.
- (b) No loading is payable to an employee who takes leave wholly or partly in advance. Provided that if the employment of such an employee continues until the day when they would have become entitled to annual leave, the loading then becomes payable in respect of the period of such leave and is to be calculated by applying the award rates of wages applicable on that day.
- (c) No loading is payable on the termination of an employee's employment.

#### **19. Compassionate Leave**

- (i) An employee, other than a casual employee, shall be entitled to up to two days compassionate leave, without deduction of pay, on each occasion of the death of a person within Australia as prescribed in subclause (iii) of this clause. Where the death of a person as prescribed by the said subclause (iii) occurs outside Australia, the employee shall be entitled to three days compassionate leave where the person travels overseas to attend the funeral.
- (ii) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will provide to the satisfaction of the employer proof of death.

- (iii) Compassionate leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (iii) of subclause (a) of Clause 15, Personal/Carer's Leave, provided that for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Compassionate leave may be taken in conjunction with other leave available under paragraph (iv) subclause (a) of the said clause 15, and clause 16, Unpaid Leave for Family Purpose. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 19(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 15(iii)(2) of clause 15, Personal/Carer's Leave.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 20. Jury Service

- (a) An employee, other than a casual employee, required to attend for jury service during his/her 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 amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- (b) An employee shall notify the employer as soon as possible of the date upon which he/she is required to attend for jury service. Also, the employee shall give the employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

## 21. First-aid

- (a) An employee appointed by the employer to perform first-aid duties and who holds a first-aid certificate shall be paid an additional amount per week as set out in Item 4 of Table 2 of Part B or per shift as set out in Item 4 of Table 2 of Part B.

This allowance shall not be regarded for calculating other payments arising from this award.

- (b) First-aid Kits - See *Occupational Health and Safety Act 2000* (First-aid Regulation).

## 22. General Conditions

- (a) A sufficient supply of boiling or purified water shall be provided at meal hours for all employees.
- (b) A lunch room, which may be an area separated by a partition (mobile or otherwise) from the public and is separated from any dressing room, shall be provided by the employer.
- (c) A lockable cabinet, cupboard, drawer or locker where employee's valuable may be stored shall be provided by the employer.

- (d) Access to suitable lavatory facilities, in close proximity to the work station, shall be provided by the employer.
- (e) Where required, an employee working outdoors shall be supplied with wet weather gear, footwear and adequate reflective clothing.

### 23. Allowances

- (a) Stocking Allowance - Employees shall be paid a stocking allowance as set out in Item 5 of Table 2 of Part B, if they are required by the employer to wear stockings in the course of their employment. This allowance shall only apply to employees employed in Weight Loss Centres.
- (b) Toilet Cleaning Allowance - A cleaner required to clean lavatories shall be paid an allowance as set out in Item 5 of Table 2 of Part B. Lavatories of both sexes can be cleaned by either male or female cleaners as long as appropriate steps are taken to ensure that the lavatories are not in use at the time of cleaning. This allowance shall not be payable to employees required to clean toilets as an ancillary function to their normal duties.
- (c) Laundry Allowance - Where a Weight Loss Centre requires an employee to wear a uniform or clothing, the Weight Loss Centre shall supply and maintain such uniforms, free of charge to the employee by the Weight Loss Centre laundering or dry cleaning such uniform or clothing. Provided that a laundry allowance as set out in Item 5 of Table 2 may be paid in lieu.
- (d) Broken Shift Allowance - part-time or full-time employees working broken shifts as provided for in subclause (e) of Clause 6, Part-time Employment and clause 7, Hours of Work, shall be paid the additional allowances as set out in Item 5 of Table 2.

### 24. Travelling Time

If an employee is temporarily transferred from the usual place of employment, the employee shall be reimbursed any extra cost of travelling and shall be paid for any excess time occupied in travelling.

### 25. Miscellaneous Statutory Provisions

- (a) Long Service Leave - *Long Service Leave Act*, 1955.
- (b) Parental Leave - See *Industrial Relations Act*, 1996 (Chapter 2, Part 4, Division 1).
- (c) Particulars of wages to be supplied to employees - See *Industrial Relations Act*, 1996 (Section 123).
- (d) Time and pay sheets to be kept - See *Industrial Relations Act*, 1996 (Section 129).

### 26. Grievance and Dispute Settlement Procedure

Subject to the *Industrial Relations Act* 1996 grievances or disputes shall be dealt with in the following manner:

- (a) The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and state the remedy sought. This meeting shall take place within two working days of the issue arising (weekends and holidays excepted).
- (b) If agreement is not reached, the matter shall then be referred by the employer to a higher authority (where this exists) not later than three working days after (a) above (weekends and holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing any proposed remedy.
- (c) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission for settlement by either party.

- (d) While a procedure is being followed, normal work must continue.
- (e) The employer may be represented by an industrial organisation of employers and the employees(s) may be represented by the Union for the purposes of each step of the procedure.
- (f) The foregoing disputes settlement procedure is not mandatory for an employee of a small business employer. For the purposes of this subclause a small business employer is defined as:
  - (i) an employer of fewer than 20 employees; or
  - (ii) an employer with a management structure under which all persons employed by the employer are subject to the direct supervision and control of the employer or the chief executive of the employer.

### **27. Training**

The parties acknowledge that varying degrees of training are provided to employees, both via internal, on the job and through external training providers.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees and the parties agree to co-operate in encouraging both employers and employee to avail themselves of the benefits to both from such training.

### **28. Traineeships**

- (i) Application -
  - (a) Subject to paragraph (c) of this subclause, and clause 34, Area, Incidence and Duration this clause shall apply to persons who are undertaking a traineeship (as defined) and is to be read in conjunction with this award.
  - (b) Notwithstanding (a), this clause shall apply provisionally for an interim period:
    - (i) Starting upon the commencement date as recorded on a valid "Application to Establish a Traineeship" signed by both the employer and the Trainee, which has been lodged with the Commissioner for Vocational Training; and
    - (ii) Ending at the time the employer is notified that the establishment of the traineeship has been approved, or at the end of the probationary period, whichever is the later.
  - (c) This award or any former industrial agreement of the Industrial Relations Commission of New South Wales shall apply, except where inconsistent with this clause.
  - (d) Notwithstanding the foregoing, this clause shall not apply to employees who were employed by an employer under this award referred to in paragraph (a) of this subclause prior to the date of approval of a traineeship relevant to the employer, except where agreed upon between the employer and the relevant union(s).
  - (e) This clause does not apply to the apprenticeship system or any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April 1998, or in an award that binds the employer. This clause only applies to AQF IV traineeships when the AQF III traineeship in the training package is listed in Appendix A to this award. Further, this award also does not apply to any certificate IV training qualification that is an extension of the competencies acquired under a certificate III qualification which is excluded from this clause due to the operation of this subclause.



NOTATION: - The abbreviation 'AQF' means Australian Qualification Framework.

- (f) At the conclusion of the traineeship, this clause shall cease to apply to the employment of the trainee and the rest of this award shall apply to the former trainee.
- (ii) Objective - The objective of this clause is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people, and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. Nothing in this clause shall be taken to replace the prescription of training requirements in the award.

(iii) Definitions

Structured Training means that training which is specified in the Training Plan which is part of the Training contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority and leads to a qualification set out in paragraph (f) of subclause (iv) of this clause.

Relevant Union means a union party to the making of this award and which is entitled to enrol the Trainee as a member.

Trainee is an individual who is a signatory to a Training contract registered with the relevant NSW Training Authority and is involved in paid work and structured training which may be on or off the job. A trainee can be full-time, part-time or school-based.

Traineeship means a system of training which has been approved by the relevant NSW Training Authority, and includes full time traineeships and part time traineeships including school-based traineeships.

Training contract means an instrument which establishes a Traineeship under the *Apprenticeship and Traineeship Act 2001*(NSW).

Training Plan means a programme of training which forms part of a Training contract registered with the Relevant NSW Training Authority.

School-Based Trainee is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority and the NSW Board of Studies as such.

Relevant NSW Training Authority means the Department of Education and Training, or successor organisation.

Year 10 - For the purposes of this clause, any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

(iv) Training Conditions

- (a) The Trainee shall attend an approved training course or training program prescribed in the Traineeship contract or as notified to the trainee by the relevant NSW Training Authority in an accredited and relevant traineeship.
- (b) A Traineeship shall not commence until the relevant Training contract, has been signed by the employer and the trainee and lodged for registration with the relevant NSW Training Authority.

- (c) The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship contract and shall ensure that the Trainee receives the appropriate on-the-job training.
  - (d) The employer shall provide a level of supervision in accordance with the Training contract during the traineeship period.
  - (e) The employer agrees that the overall training program will be monitored by officers of the relevant NSW Training Authority and that training records or work books may be utilised as part of this monitoring process.
  - (f) Training shall be directed at:
    - (i) the achievement of key competencies required for successful participation in the workplace (eg. literacy, numeracy, problem solving, team work, using technology) and an Australian Qualification Framework Certificate Level I.

This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise; and/or
    - (ii) the achievement of key competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies) as are proposed to be included in an Australian Qualification Framework Certificate Level II or above.
- (v) Employment Conditions
- (a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration or a part-time trainee for a period no greater than the equivalent of one year full-time employment.

For example, a part-time trainee working 2½ days per week (including the time spent in approved training) works (and trains) half the hours of a full-time trainee and therefore their traineeship could extend for a maximum of two years.

In any event, unless the relevant NSW Training Authority directs, the maximum duration for a traineeship shall be thirty-six months.

By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship.
  - (b) A trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
  - (c) Where the trainee completes the qualification in the Training contract, earlier than the time specified in the Training contract then the traineeship may be concluded by mutual agreement.
  - (d) A traineeship shall not be terminated before its conclusion, except in accordance with the *Apprenticeship and Traineeship Act 2001* (NSW), or by mutual agreement.

An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.
  - (e) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the approved training in accordance with the Training contract.

- (f) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any award or any other legislative entitlements.
- (g)
  - (i) The Training contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.
  - (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of this award.
  - (iii) No Trainee shall work shiftwork unless the relevant parties to this award agree that such shiftwork makes satisfactory provision for Structured Training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
  - (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award.
- (h) All other terms and conditions of this award shall apply.
- (i) A Trainee who fails to either complete the Traineeship or who cannot for any reason, be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payment.

The following employment conditions apply specifically to part-time and school-based trainees

- (j) A part-time trainee shall receive, on a pro rata basis, all employment conditions applicable to a full-time trainee. All the provisions of this award shall apply to part time trainees except as specified in this clause.
- (k) A part time trainee may, by agreement, transfer from a part time to a full time traineeship position should one become available.
- (l) The minimum daily engagement periods applying to part-time employees specified in this award shall also be applicable to part time trainees.

Where there is no provision for a minimum daily engagement period in this award or other industrial instrument(s), applying to part-time employees, then the minimum start per occasion shall be 3 continuous hours, except in cases where it is agreed that there shall be a start of 2 continuous hours, on 2 or more days per week, provided that:

- (i) a 2 hour start is sought by the employee to accommodate the employee's personal circumstances, or
- (ii) the place of work is within a distance of 5km from the employee's place of residence.
- (m) School-based trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final year Higher School Certificate Examination period and ending upon the completion of the individual's last HSC examination paper.
- (n) For the purposes of this clause, a school-based trainee shall become an ordinary trainee as at January 1 of the year following the year in which they ceased to be a school student.

(vi) Wages -

Wages - Full-Trainees -

- (a) The weekly wages payable to full time trainees shall be as prescribed in Part C of the award, as follows:

Industry/Skill Level A	Table 1A
Industry/Skill Level B	Table 1B
Industry Skill Level C	Table 1C
School-Based Trainees	Table 1D

- (b) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this clause.
- (c) The wage rates prescribed in this clause do not apply to complete trade level training which is covered by the Apprenticeship system.
- (d) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
- (i) any equivalent over-award payments; and/or
  - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustment.
- (e) Appendix A sets out the rate of pay or skill level of a Traineeship. Where the actual traineeship is listed in Appendix A, the rate of pay or skill level in respect of the traineeship is determinative of the actual rate of pay or skill levels (i.e. skill levels A, B or C) that are contained in the Traineeship. Where the traineeship is not listed in Appendix A, the skill levels in Appendix A are illustrative of the appropriate levels, but are not determinative of the actual skill levels. The determination of the appropriate rate of pay or skill level for the purpose of determining the appropriate wage rate shall be based on the following criteria:
- (i) Any agreement of the parties, or submission by the parties;
  - (ii) The nature of the industry;
  - (iii) The total training plan;
  - (iv) Recognition that training can be undertaken in stages;
  - (v) The exit skill level in the Parent Award contemplated by the traineeship.

In the event that the parties disagree with such determination it shall be open to any party to the award to seek to have the matters in dispute determined by the Industrial Relations Commission of New South Wales.

- (f) For the purposes of this provision, "out of school" shall refer only to periods out of school beyond Year 10, and shall be deemed to
- (i) include any period of schooling beyond Year 10 which was not part of nor contributed to a completed year of schooling;
  - (ii) include any period during which a Trainee repeats in whole or part a year of schooling beyond Year 10;
  - (iii) not include any period during a calendar year in which a year of schooling is completed; and
  - (iv) have effect on an anniversary date being January 1 in each year.

(g)

## (i) Definition of Adult Trainee

An adult trainee for the purpose of this subclause is a trainee who would qualify for the highest wage rate in Industry/Skill Level A, B, or C if covered by that Industry/Skill Level.

## (ii) Wage Rates for Certificate IV Traineeships

(a) Trainees undertaking an AQF IV traineeship shall receive the relevant weekly wage rate for AQF III trainees at Industry/Skill Levels A,B, or C as applicable with the addition of 3.8 per cent of that wage rate.

(b) An adult trainee who is undertaking a traineeship for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

Industry/Skill Level	First Year of Traineeship SWC 2010 (4.25%) \$	Second Year of Traineeship SWC 2010 (4.25%) \$
Industry/Skill Level A	561.00	582.00
Industry/Skill Level B	540.00	561.00
Industry/Skill Level C	489.00	507.00

## Wages for Part-time and School-Based Trainees -

(a) This clause shall apply to trainees who undertake a traineeship on a part time basis by working less than full time ordinary hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.

(b) Table 1 - Hourly Rates for Trainees Who Have Left School and Table 4 - Hourly Rates for School-based Traineeships of Part C, Monetary Rates are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in approved training. These rates are derived from a 38-hour week.

(c) The hours for which payment shall be made are determined as follows:

(i) Where the approved training for a traineeship (including a school based traineeship) is provided off-the-job by a registered training organisation, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part-time trainee on-the-job.

(ii) Where the approved training is undertaken on-the-job or in a combination of on-the-job and off-the-job, and the average proportion of time to be spent in approved training is 20% (i.e., the same as for the equivalent full-time traineeship):

(1) If the training is solely on-the-job, then the total hours on-the-job shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

(2) If the training is partly on-the-job and partly off-the-job, then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

Note: 20 per cent is the average proportion of time spent in approved training which has been taken into account in setting the wage rates for most full time traineeships.

- (iii) Where the normal full time weekly hours are not 38 the appropriate hourly rate may be obtained by multiplying the rate in the table by 38 and then dividing by the normal full time hours.
- (d) For traineeships not covered by clause 8(b) above, the following formula for the calculation of wage rates shall apply:

The wage rate shall be pro-rata the full time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship which may also be varied on the basis of the following formula:

$$\text{Wage} = \text{Full-time wage rate} \times \frac{\text{Trainee hours} - \text{average weekly training time}}{30.4^*}$$

\* NOTE: 30.4 in the above formula represents 38 ordinary full time hours less the average training time for full time trainees (i.e., 20%) a pro rata adjustment will need to be made in the case where the Parent Award specifies different ordinary full time hours: for example where the ordinary weekly hours are 40, 30.4 will be replaced by 32.

- (i) "Full time wage rate" means the appropriate rate as set out in Table 1 - Industry/Skill Level A, Table 2 - Industry/Skill Level B, Table 3 - Industry/Skill Level C and Table 4 - School-based Traineeships of Part C, Monetary Rates.
- (ii) "Trainee hours" shall be the hours worked per week including the time spent in approved training. For the purposes of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the traineeship.
- (iii) "Average weekly training time" is based upon the length of the traineeship specified in the traineeship agreement or training agreement as follows:

$$\text{Average Weekly Training Time} = \frac{7.6 \times 12}{\text{length of the traineeship in months}}$$

NOTE: 1:7.6 in the above formula represents the average weekly training time for a full time trainee whose ordinary hours are 38 per week a pro rata adjustment will need to be made in the case where the Parent Award specifies different ordinary time hours for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

NOTE 2: The parties note that the traineeship agreement will require a trainee to be employed for sufficient hours to complete all requirements of the traineeship, including the on the job work experience and demonstration of competencies the parties also note that this would result in the equivalent of a full day's on the job work per week.

**Example of the calculation for the wage rate for a part time traineeship**

A school student commences a traineeship in year 11 the ordinary hours of work in the Parent Award are 38. The training agreement specifies two years (24 months) as the length of the traineeship.

"Average weekly training time" is therefore  $7.6 \times 12/24 = 3.8$  hours.

"Trainee hours" totals 15 hours; these are made up of 11 hours work which is worked over two days of the week plus 1-1/2 hours on-the-job training plus 2-1/2 hours off the job approved training at school and at TAFE.

So the wage rate in year 11 is:

$$\$181 \times \frac{15 - 3.8}{30.4} = \$66.68 \text{ plus any applicable penalty rates under the Parent Award.}$$

The wage rate varies when the student completes year 11 and passes the anniversary date of 1 January the following year to begin year 12 and/or if "trainee hours" changes.

(vii) Grievance Procedures for Trainees -

(a) Procedures relating to grievances of individual trainees -

- (i) A trainee shall notify the employer as to the substance of any grievance and request a meeting with the employer for bilateral discussions in order to settle the grievance.
- (ii) If no remedy to the trainee's grievance is found, then the trainee shall seek further discussions and attempt to resolve the grievance at a higher level of authority, where appropriate.
- (iii) Reasonable time limits must be allowed for discussions at each level of authority.
- (iv) At the conclusion of the discussions, the employer must provide a response to the trainee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy. At this stage an employer or a trainee may involve an industrial organisation of employers or employees of which he/she is a member.
- (v) If no resolution of the trainee's grievance can be found, then the matter may be referred to the Industrial Relations Commission of New South Wales by either the trainee or the employer or the industrial organisation representing either party.
- (vi) While this grievance procedure is being followed, normal work shall continue.

(b) Procedures relating to disputes, etc., between employers and their trainees:

- (i) A question, dispute or difficulty must initially be dealt with at the workplace level where the problem has arisen. If the problem cannot be resolved at this level, the matter shall be referred to a higher level of authority.
- (ii) If no resolution can be found to the question, dispute or difficulty the matter may be referred to the Industrial Relations Commission of New South Wales by any party to the dispute or the industrial organisation representing any of the parties to the dispute.
- (iii) Reasonable time limits must be allowed for discussion at each level of authority.
- (iv) While a procedure is being followed, normal work must continue.

- (v) The employer may be represented by an industrial organisation of employers and the trainees may be represented by an industrial organisation of employees for the purpose of each procedure.

### 29. Superannuation

Superannuation Legislation -

- (a) The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act, 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of Complaints) Act 1993* and s.124 of the *Industrial Relations Act 1996*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- (b) Subject to the requirements of this legislation, superannuation contributions may be made to:
  - (i) Nationwide Superannuation Fund (NSF); or
  - (ii) ASSET (Australian Superannuation Savings Employment Trust); or
  - (iii) Any industry or multi-employer superannuation fund which has application to the employees in the main business of the employer where employees covered by this award are a minority of award covered employees, provided that such fund complies with the Occupational Superannuation Guidelines and has joint employer/union management such as ARF (Australian Retirement Fund), LIST (Law Industry Superannuation Trust), MTAAISF (Motor Traders' Association of Australia Industry Superannuation Fund), PISF (Printing Industry Superannuation Fund), REST (Retail Employees Superannuation Trust), STA (Superannuation Trust of Australia) and TISS (Timber Industry Superannuation Scheme); or
  - (iv) Any superannuation fund which has application to the employees in the main business of the employer, pursuant to a superannuation arrangement approved by an industrial tribunal prior to 18 July 1989, and where employees covered by this award are a minority of award covered employees. Where freedom of choice is provided for in such arrangement the principle of that provision shall apply; or
  - (v) Any superannuation fund which improves or provides superannuation to employees covered by this clause provided that the employer commenced contributions to such fund prior to 14 February, 1992.
  - (vi) Such other funds that comply with the requirements of this legislation.
  - (vii) Any other approved occupational superannuation fund to which an employer or employee who is a member of the religious fellowship known as The Brethren elects to contribute.

### 30. Annualised Salaries

Except as to the provisions of subclause (a), of clause 10, Public Holidays, clause 14, Sick Leave, clause 15, Personal/Carer's Leave, clause 16, Unpaid Leave For Family Purpose, clause 17, Annual Leave, clause 19, Compassionate Leave, clause 20, Jury Service, clause 25, Miscellaneous Statutory Provisions and clause 28, Superannuation, this award shall not apply to full-time and part-time employees who are in receipt of a weekly wage in excess of 15 per cent above the rate for a Level 6 employee.

This provision shall not be taken to effect any right to make other salary arrangements.

### 31. State Wage Case Adjustment

The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:



- (a) any equivalent overaward payments, and/or
- (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

### 32. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect :
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides :

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### 33. Redundancy

- (i) Application -
  - (a) This clause shall apply in respect of full-time and part-time employees.
  - (b) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
  - (c) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.

- (d) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

(ii) Introduction of Change -

(a) Employer's duty to notify

- (1) 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 the union to which they belong.
- (2) '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, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(b) Employer's duty to discuss change

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (a) above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in paragraph (a) of this subclause.
- (3) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iii) Redundancy -

(a) Discussions before terminations

- (1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii) above, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (1) of this subclause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or

minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

- (3) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) Termination of Employment -

- (a) Notice for Changes in Production, Programme, Organisation or Structure - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "production", "programme", "organisation" or "structure" in accordance with subclause (ii) (a)(1) above.

- (1) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (2) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.

- (3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (b) Notice for Technological Change - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with subclause (ii)(a)(1) above:

- (1) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.

- (2) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act, 1955*, the *Annual Holidays Act, 1944*, or any Act amending or replacing either of these Acts.

(c) Time off during the notice period -

- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.

- (2) 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.

- (d) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.
- (e) Statement of employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (f) Notice to Centrelink - Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (g) Centrelink Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.
- (h) Transfer to lower paid duties - Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii) above, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.
- (v) Severance Pay -
  - (a) Where an employee is to be terminated pursuant to subclause (iv) above, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

- (1) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Under 45 Years of Age	Years of Service Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (2) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and over entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (3) 'Weeks pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.
- (b) Incapacity to pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above.
- The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (i) above will have on the employer.
- (c) Alternative Employment - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above if the employer obtains acceptable alternative employment for an employee.
- (vi) Savings Clause - Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### 34. Area, Incidence and Duration

- (a)
- (i) This award shall apply to all employees engaged in the classifications detailed in Clause 2, Rates of Pay and clause 3, Classifications by any organisation, whether run for profit or not, whose operation is substantially one or more of the following:
- Weight Loss Centres;  
Gymnasiums;  
Squash Courts;  
Indoor Cricket and/or Sports Centres;  
Ten Pin Bowling Allies;  
Aquatic Centres;  
Golf Driving Ranges;  
Dance Schools Including Jazzercise;  
Martial Arts School;  
Tennis Centres; and/or  
other like Health and Fitness Centres; or
- (ii) Or individuals who predominantly carry out one or more of the following activities:
- Aerobics Instructor, Gym Instructor, Dance Instructor, Health Counsellor, Pool Attendant, Sports Instructor and/or any other like Health Attendant work; where such work is performed in an organisation where no other award or registered enterprise agreement covers such persons; and
- (iii) shall be binding upon the Australian Workers' Union, New South Wales, its officers and members, the Australian Liquor, Hospitality and Miscellaneous Workers Union, NSW Branch, its officers and members and employees, whether they are members of the union or not.
- (b) This award shall not apply to employees of:
- (i) contract companies who may provide cleaning, security, catering and child care to any organisation that this award would normally apply.
- (ii) Registered Clubs, Hotels, Motels, Resorts, which are already covered by awards.
- (iii) Outdoor sports stadiums (other than those persons in clause 33 (a) (ii) above,)

- (iv) Entertainment Venues.
- (c) This Award is made following a review under section 19 of the *Industrial Relations Act*, 1996 and rescinds and replaces the Health, Fitness and Indoor Sports Centres (State) Award published 4 June 1999 (309 I.G. 561) and the Health, Physical Culture and Weight Loss Centres, &c. (State) Superannuation Award published 13 March 1992 (268 I.G. 666).
- (d) This award shall take effect on and from 2 March 2001 and shall remain in force for a period of 12 months.
- (e) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

### 35. Leave Reserved

Leave is reserved to the parties to amend this award to provide for the following:

- (a) a specific exclusion for Child Care, pending the decision of the Chief Industrial Magistrate in Court file no. CIM 550 of 1997 and CIM 551 of 1997.
- (b) provision of a laundry allowance and uniforms.

## PART B

### MONETARY RATES

**Table 1 - Rates of Pay**

Grade	Full Time SWC 2010 (4.25%) \$	Hourly Rate SWC 2010 (4.25%) \$
Level 1	584.50	15.38
Level 2	603.10	15.87
Level 3A	628.10	16.53
Level 3B	646.50	17.01
Level 4	649.60	17.10
Level 5	689.00	18.13
Level 6	759.50	19.98

Junior Rates for Levels 1, 2 and 3	Percentage of Appropriate Adult Rate %
At 16 years and under	55
At 17 years	65
At 18 years	75
At 19 years	85
At 20 years	100

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount Per Week SWC 2010 (4.25%) \$
1	2(c)	Supervisory loadings - Up to 5 employees	24.50 per week
2	2(c)	Supervisory loadings - 6 to 10 employees	33.30 per week
3	2(c)	Supervisory loadings - 11 or more employees	44.85 per week
4	21(a)	First-aid allowance	11.45 per week 2.29 per shift
5	23(a)	Stocking allowance	3.10 per week 0.62 per day
	23(b)	Toilet cleaning allowance	9.40
	23(c)	Laundry Allowance	8.05 per week 1.61 per day
	23(d)	Broken Shift Allowance: For each broken shift so worked	12.25 per day
		Excess fares allowance	8.30 per week or 1.66 per day

**Table 3 - Base Rate**

	Relativity %	Amount Per Week \$
Level 1	78	284.90
Level 2	82	299.50
Level 3A	87.4	319.20
Level 3B	91.5	334.10
Level 4	92	336.00
Level 5	100	365.20
Level 6	115	420.00

**Table 4 - Supplementary Payments**

	Relativity %	Supplementary Payments \$
Level 1	78	88.50
Level 2	82	90.60
Level 3A	87.4	93.40
Level 3B	91.5	94.90
Level 4	92	95.80
Level 5	100	100
Level 6	115	110.40

**PART C****TRAINEE MONETARY RATES****Table 1 - Weekly Rates - Industry/Skill Level A**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level A.

	Highest year of schooling completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	349.00
Plus 1 year out of school	291.00	349.00	407.00
Plus 2 years	349.00	407.00	472.00
Plus 3 years	407.00	472.00	540.00
Plus 4 years	472.00	540.00	540.00
Plus 5 years or more	540.00	540.00	540.00

The average proportion of time spent in Structured Training which has been taken into account in setting the above rates is 20 per cent.

**Table 2 - Weekly Rates - Industry/Skill Level B**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level B.

	Highest year of schooling completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	338.00
Plus 1 year out of school	291.00	338.00	389.00
Plus 2 years	338.00	389.00	457.00
Plus 3 years	389.00	457.00	521.00
Plus 4 years	457.00	521.00	521.00
Plus 5 years or more	521.00	521.00	521.00

The average proportion of time spent in structured training which has been taken into account in setting the above rates is 20 per cent.

**Table 3 - Weekly Rates - Industry/Skill Level C**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level C.

	Highest year of schooling completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	335.00
Plus 1 year out of school	291.00	335.00	377.00
Plus 2 years	335.00	377.00	420.00
Plus 3 years	377.00	420.00	470.00
Plus 4 years	420.00	470.00	470.00
Plus 5 years or more	470.00	470.00	470.00



The average proportion of time spent in structured training which has been taken into account in setting the above rates is 20 per cent.

**Table 4 - School-Based Traineeships**

	Year of Schooling	
	Year 11 SWC 2010 (4.25%) \$	Year12 SWC 2010 (4.25%) \$
School based Traineeships Skill Levels A, B and C	264.00	291.00

The average proportion of time spent in structured training which has been taken into account in setting the above rates is 20 per cent.

## APPENDIX A

### Industry/Skill Levels

Industry/Skill Level A

Industry/Skill Level B

Sport & Recreation (Sport & Recreation - Certificate) II

Sport & Recreation (Sport & Recreation - Certificate) III

Sport & Recreation (Career Oriented Participation) Certificate II

Sport & Recreation (Career Oriented Participation) Certificate III

Sport & Recreation (Coaching) Certificate III

Sport & Recreation (Officiating) Certificate II

Sport & Recreation (Officiating) Certificate III

Sport & Recreation Sport (Trainer) Certificate III

Sport & Recreation Community Recreation (Instruct) Certificate II

Sport & Recreation Community Recreation Certificate II

Sport & Recreation Community Recreation Certificate III

Sport & Recreation Fitness Certificate III

Sport & Recreation Sport (Massage Therapy) Certificate III

Industry/Skill Level C

**MARINE CHARTER VESSELS (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Award	C1031	12/04/2002	On 27/07/2001	331	875
6 (v) & Part B	C1042	12/04/2002	First pay period on or after 03/12/2001	332	1002
6(v) & Part B	C1704	28/02/2003	First pay period on or after 03/12/2002	338	610
6 & Part B	C2477	19/03/2004	First pay period on or after 03/12/2003	343	97
6, Part B	C3697	22/07/2005	First pay period on or after 21/04/2005	352	780
Arrangement, 3A	C4771	06/10/2006	From 21/03/2006	361	251
6, Part B	C4940	15/12/2006	First pay period on or after 27/07/2006	361	1245
Arrangement, 13, 13A, 19	C5556	27/07/2007	On and from 19/12/2005	363	177

**Arrangement**

## PART A

Clause No.	Subject Matter
1.	Anti-Discrimination
2.	Definitions
3.	Engagement
3A.	Secure Employment
4.	Hours
5.	Meal Intervals
6.	Wages
7.	Overtime
8.	Rest Day and Holiday Rates
9.	Rest Break
10.	Physical Exhaustion
11.	Annual Leave
12.	Sick Leave
13.	Bereavement Leave
13A.	Parental Leave
14.	Uniforms
15.	Mixed Functions
16.	Travel Arrangements
17.	Compensation for Personal Effects

18. Dispute Settlement Procedure
19. Personal/Carer's Leave
20. Undertaking
21. Structural Efficiency - Flexibility
22. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Wages

Table 2 - Others Rates and Allowances

## PART A

### 1. Anti-Discrimination

- 1.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 1.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 1.3 Under the *Anti-Discrimination Act 1977*, 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.
- 1.4 Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 1.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### 2. Definitions

- (i) "Charter vessel" means a vessel engaged wholly or principally within the limits of bays, harbours and rivers as a tourist, sightseeing or cruise vessel and/or as a place of or for entertainment, functions or restaurant purposes, but does not include a vessel on which overnight accommodation for crew or passengers is available and used.
- (ii) "Master" means an appropriately qualified person having command of a charter vessel.
- (iii) "Engineer" means an appropriately qualified marine engineer employed on a charter vessel.
- (iv) "General purpose hand" means an appropriately qualified person, other than a master or engineer, employed on a charter vessel to perform duties associated with its operation or maintenance.

### **3. Engagement**

Masters, engineers and general purpose hands may be engaged indefinitely or for casual work only, provided that no casual employee shall be engaged or paid for less than four hours' work on any one day. In the case of indefinite engagements, in the absence of any contrary agreement, employment shall be terminated by one week's notice on either side given at any time during the week or by payment or forfeiture of one week's wage, as the case may be, provided that an employer may dismiss any employee, without notice, for misconduct.

Notwithstanding anything contained in this clause, where the employer terminates the employment of an employee on an indefinite hire (other than for misconduct or neglect of duty) within one month from the date of the employee's engagement, the employee shall be entitled to an additional payment equal to the difference between the casual and the weekly rates of pay set out in clause 6, Wages, for the period worked by him or her, less any amounts paid in respect of holidays not worked and days on sick leave.

### **3A. Secure Employment**

#### **3A.1. Objective of this Clause**

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

#### **3A.2. Casual Conversion**

3A.2.1. A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

3A.2.2. Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

3A.2.3. Any casual employee who has a right to elect under paragraph 3A.2.1, upon receiving notice under paragraph 3A.2.2 or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- 3A.2.4. Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- 3A.2.5. Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- 3A.2.6. If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph 3A.2.3, the employer and employee shall, in accordance with this paragraph, and subject to paragraph 3A.2.3, discuss and agree upon:
- 3A.2.6.1. whether the employee will convert to full-time or part-time employment; and
- 3A.2.6.2. if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- 3A.2.7. Following an agreement being reached pursuant to paragraph 3A.2.6, the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- 3A.2.8. An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- 3A.3. Occupational Health and Safety
- 3A.3.1. For the purposes of this subclause, the following definitions shall apply:
- 3A.3.1.1. A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- 3A.3.1.2. A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- 3A.3.2. Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- 3A.3.2.1. consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - 3A.3.2.2. provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - 3A.3.2.3. provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - 3A.3.2.4. ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- 3A.3.3. Nothing in this subclause 3A.3 is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

#### 3A.4. Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- 3A.5. This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

### 4. Hours

The ordinary hours of work for employees other than casuals shall:

- (i) not exceed 40 hours per week;
- (ii) be worked between the hours of 7.00 a.m. on one day and 2.00 a.m. on the next day;
- (iii) be worked on Monday to Saturday in any week or during any other six-day period in any week mutually agreed upon between an employer and employee or of which period the employer has given at least 14 days' written notice to the employee; and
- (iv) be a minimum of four hours and a maximum of 12 hours on any one day within the spread of hours prescribed in subclause (ii) of this clause.

### 5. Meal Intervals

- (a) Employees shall be provided with luncheon and/or dinner of the standard enjoyed by passengers. A suitable meal break shall be mutually agreed upon by the employer and the employee so as not to disrupt the service of the vessel, nor duly extend the period between meals for the employee.
- (b) When an employee is required to work overtime in excess of one and a half hours before or after the usual commencing time, the employee shall be provided free of cost with suitable meal and shall be provided with a further suitable meal every four hours thereafter while overtime continues or be paid in lieu thereof as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

## 6. Wages

- (i) The minimum rates of pay for any classification shall, subject to the other provisions of this award, be the weekly rates as set out in Table 1 - Wages, of Part B, Monetary Rates.
- (ii) Junior general purpose hands: The minimum rates of pay of junior general purpose hands shall be the following percentages of the rates of pay prescribed for general purpose hands in subclause (i) of this clause. Such percentages shall be calculated to the nearest five cents, any broken part of five cents in the result not exceeding half of five cents being disregarded:

	Percentages
At 16 years of age and under 17 years of age	50
At 17 years of age and under 18 years of age	60
At 18 years of age and under 19 years of age	75
At 19 years of age and under 20 years of age	89

- (iii) Special Allowances -
- (a) An employee who is a holder of a Certificate of Competency as a Marine Motor Engineer shall be paid an allowance as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for each day or part of a day during which he/she is required to use such a certificate. The allowance prescribed by this subclause shall, when paid, be deemed to be part of the ordinary rate of wages for the purpose of calculating overtime, annual leave, sick leave and long service leave.
- (b) Casual employees shall be paid at the rate of ordinary time plus 20 per cent for all work performed within the ordinary hours of work prescribed by clause 4, Hours. When a casual employee is required to work overtime, they shall be provided free of cost with a suitable meal and be provided with a further suitable meal every four hours thereafter while overtime continues.
- (iv) An employee under 21 years of age who holds a Master's Certificate and is employed to perform the duties of a master shall be paid the appropriate rate of pay for a master prescribed by subclause (i) of this clause.
- (v) The rates of pay in this award include the adjustments payable under the State Wage Case 2005. These adjustments may be offset against:
- (a) Any equivalent overaward payments, and/or
- (b) Award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

## 7. Overtime

All work performed in excess of either ten hours per day or 40 hours per week shall be paid for at the rate of time and one-half for the first two hours and double time thereafter.

## 8. Rest Day and Holiday Rates

- (i) At the commencement of employment or as soon as practicable thereafter, an employer will inform each employee, other than a casual, which day of the week will be the employee's rest day. An employee's rest day may be altered by agreement with the employee or by the employer giving at least 14 days' written notice to the employee.
- (ii) For all time worked by an employee on a rest day, time and one-half shall be paid for a minimum of four hours.
- (iii) Employees required to work on Christmas Day shall be paid treble time for a minimum of four hours.

- (iv) Indefinite employees required to work on public holidays, other than Christmas Day (in respect of which the provisions of subclause (iii) of this clause apply), shall be paid ordinary time and have an extra day added to their annual leave entitlement or, alternatively, be paid double time for such work.
- (v) For the purpose of this clause, the following days shall be public holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Eight-hour Day, Christmas Day, Boxing Day and all other days proclaimed as public holidays throughout the State of New South Wales.
- (vi) Where an employee is to be in employment for more than seven days, an employer shall give as much notice as is reasonably practicable to an employee of the times during which he/she is to work on days other than his/her rest days.

### **9. Rest Break**

An employee must be given at least nine consecutive hours off duty between ceasing work on one day and commencing work on the following day.

### **10. Physical Exhaustion**

Notwithstanding clause 9, Rest Break, should an employee work at the request of the employer after he/she has been on duty continuously for more than 18 hours, he/she shall be entitled to at least ten consecutive hours off duty between his/her ceasing work on one day and his/her commencing work on the following day and shall be entitled to be paid at the rate of double time for the period of such duties in addition to any other payment due to him/her until such time as the ten hours respite from duty commences.

### **11. Annual Leave**

- (a) Every employee shall be entitled, after 12 months' continuous service, to an annual holiday, paid at the ordinary weekly rates of four weeks per annum with a holiday loading of 17.5 per cent of the amount due. If the term of employment is less than 12 months, the pay due to the employee shall be 1/12 of the pay earned by him/her at ordinary rates during the period of employment but shall not include any loading.
- (b) Where an employee has been employed for a period longer than 12 months and has had his or her employment terminated by the employer for a cause other than misconduct and at the time of the termination has not been given and has not taken the whole of an annual holiday to which the employee is entitled, he or she shall be paid a loading calculated in accordance with subclause (a) of this clause for the period not taken.

### **12. Sick Leave**

An employee who has served continuously with the employer for not less than 13 weeks and who is unable to attend for duty during ordinary working hours for reasons of personal illness or personal incapacity not due to his/her own serious and wilful misconduct, shall be entitled to be paid at ordinary-time rates of pay for the time of such non-attendance, subject to the following:

- (a) He/she shall not be entitled to be paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
- (b) He/she shall not be entitled in respect of any year of continuous employment to sick pay for more than ten days; provided that any employee with 12 months or more service shall be entitled to an additional ten days sick leave per annum. Any period of paid sick leave allowed by the employer to an employee in any such year shall be deducted from the period of sick leave which may be allowed or may be carried forward under this award in respect of such year.
- (c) The rights under this clause shall accumulate from year to year as long as the employee's employment continues with the employer, so that any part of ten days which has not been allowed in any year may be claimed by the employee and allowed by the employer, subject to the conditions prescribed by this



clause, in a subsequent year of such continued employment and shall be fully accumulative for each year of service.

### 13. Bereavement Leave

- (i) An employee, other than a casual employee, shall be entitled to a maximum of three days bereavement leave, without deduction of pay, on each occasion of the death of a person in Australia as prescribed in subclause (iii) of this clause. Where the death of a person as prescribed by the said subclause (iii) occurs outside Australia, the employee shall be entitled to three days bereavement leave where the employee travels outside Australia in connection with the death.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of Clause 19, State Personal/Carer's Leave Case - August 1996, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4) and (5) of the said Clause 19. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 13(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 19(c)(ii) of clause 19, Personal / Carer's Leave.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### 13A. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

#### 14. Uniforms

- (i) Where employees are required to wear uniforms, these shall be provided by the employer at no cost to the employee or, in lieu thereof, the employer will pay to the employee the sum as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- (ii) Casual employees: When a casual employee is engaged, the standard of dress of such employee shall be by mutual agreement between the employer and the employee, subject to the right of the employer to require a reasonable standard of dress.
- (iii) Each employee required to man a vessel not fitted with efficient devices for the protection of such employee from glare shall be provided with suitable sunglasses, free of cost, by the employer.

Sunglasses so provided shall be replaced by the employer upon satisfactory evidence that the loss, damage or destruction of the glasses was not caused by the negligence of the employee.

#### **15. Mixed Functions**

When an employee is called upon to do any work for a period exceeding one hour of a class for which a higher rate of wage is herein prescribed, such employee shall, during the time he/she is so employed, be paid at the higher rate for the time he/she was so employed on any one day, with a minimum payment of four hours on any one day at the higher rate.

#### **16. Travel Arrangements**

Where an employee is required to start or finish work outside the spread of hours provided in clause 4, Hours, and the employee does not have his or her own means of transport or public transport is not readily available, the employer shall provide transport or, if such transport is not provided, the employee shall be allowed travelling time at ordinary rates to the extent of one hour each way.

#### **17. Compensation for Personal Effects**

If, by fire, explosion, foundering, shipwreck, collision, stranding or any other cause whatsoever not attributable to the employee's neglect, an employee should sustain damage or loss of his/her personal effects or equipment, such equipment being necessary for the performance of his/her duties, the employer shall compensate the employee for such damage or loss by cash payment equivalent to the value thereof to a maximum of an amount as set out in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, provided that this amount or any part thereof shall not be payable where loss is recovered through workers' compensation insurance.

#### **18. Dispute Settlement Procedure**

The procedure for the resolution of grievances and industrial disputation concerning matters arising under this award shall be in accordance with the following procedural steps:

- (i) Procedure relating to a grievance of an individual employee:
  - (a) The employee shall notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue. No party shall be prejudiced as to the final settlement by the continuation of work in accordance with this subclause.
  - (f) The employer may be represented by an industrial organisation of employers and the employee may be represented by an industrial organisation of employees for the purpose of each procedure.

- (ii) Procedure for a dispute between an employer and the employees -
  - (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) While a procedure is being followed, normal work must continue. No party shall be prejudiced as to the final settlement by the continuation of work in accordance with this subclause.
  - (d) The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purpose of each procedure.

### **19. Personal/Carer's Leave**

- (1) Use of Sick Leave
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 19(c)(i) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 12, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
  - (b) The employee shall, if required,
    - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
    - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.
  - (c) The entitlement to use sick leave in accordance with this subclause is subject to:
    - (i) the employee being responsible for the care of a person concerned; and
    - (ii) the person concerned being:
      - (a) a spouse of the employee; or
      - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
      - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
      - (d) a same sex partner who lives with the employee as a de facto partner of that employee on a bona fide domestic basis; or
      - (e) a relative of the employee who is member of the same household, where for the purposes of this subparagraph:

1. "relative" means a person related by blood, marriage or affinity;
  2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence or the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 18, Dispute Settlement Procedure, should be followed.

(2) Unpaid Leave for Family Purpose

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 19(c)(ii) above who is ill or who requires care due to an unexpected emergency.

(3) Annual Leave

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(4) Time Off in Lieu of Payment for Overtime

- (a) 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 within 12 months of the said election.
- (b) 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.
- (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
- (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.

(5) Make-up Time

- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- (6) Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 19(1)(b) and 19(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 19(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **20. Undertaking**

Captain Cook Cruises Pty Limited undertakes that full-time employees covered by this award, working on regular scheduled cruises, if required to work on Sundays (either on scheduled or non-scheduled cruises) will be paid double time and that the company will give full-time employees the opportunity to work on Sundays consistent with current arrangements.

## **21. Structural Efficiency - Flexibility**

- (i) It is a term of this award that the restructuring principles allow the employers to be able to allocate duties for variation of endeavours and learning, productivity and economy. It is agreed that these benefits must take precedence over areas of demarcation.
- (ii) It is agreed that no employee complying with the provisions of this clause shall be deemed by any entity to be in breach of the union's rules.
- (iii) It is agreed, for the purpose of harmony on board and variation in tasks, that "stated duties" be given to persons covered by this award, in addition to the traditional and lawful responsibilities.
  - (a) Master's direction -
    - (1) The union agrees that the master may direct a general purpose hand, or any other person, to perform any task related to the safe navigation of the vessel or the work he/she is engaged in.
    - (2) Where the safety of the vessel is a factor, the master may direct anyone to do any duty as is lawful and prudent.
    - (3) Where any person covered by this award is called upon by the employer to perform any task outside of his/her stated duties, it will be with the consent and knowledge of the master, who may object only on the grounds of safe navigation or safe and lawful conduct of the vessel.
  - (b) Management -

- (1) Where "stated duties" of crew have been given and any objections have been settled, persons covered by this award will perform the duties as directed by the employer.
- (2) Persons representing the employer as management are recognised as having responsibilities to the employer, principally in the navigation areas of the ship's operations.
- (c) Underway -
- (1) Where management requires persons covered by this award to perform some duty not covered by their "stated duties", it shall be done with the consent and knowledge of the master, while the vessel is underway or in his/her charge.
- (2) Should an employer direct and the agreement of the master be gained, the employer may direct any person covered by this award to perform any task in addition to those stated above.
- (d) Remuneration -When a person covered by this award is called upon to do any work outside subparagraphs (1) and (2) of paragraph (a) for a period exceeding one hour, where a higher rate of pay is prescribed, such employees shall, during the time he/she is so employed, be paid at the higher rate for the time so employed, with a minimum payment of four hours on any one day at the higher rate.

## 22. Area, Incidence and Duration

- 22.1 This award shall apply to masters, engineers and general purpose hands, as defined in clause 2, Definitions, employed on charter vessels as defined in the said clause 2.
- 22.2 This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Marine Charter Vessels (State) Award published on 29 September 1995 (288 IG 222), and all variations thereof.
- 22.3 The award published 29 September 1995 took effect from the beginning of the first pay period to commence on or after 29 June 1995
- 22.4 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 18 December 1998 (308 I.G. 307) take effect on 27 July 2001.
- 22.5 The award remains in force until varied or rescinded, the period for which it was made having already expired.

## PART B

### MONETARY RATES

Table 1 - Wages

Classification	Former Rate Per Week \$	SWC - June 2005 Per Week \$	Total Wage Per Week \$
Master (vessels 35m and over)	663.80	17.00	680.80

Engineer (vessels 35m and over)	663.80	17.00	680.80
Master (vessels 20m and over)	594.10	17.00	611.10
Engineer (vessels 20m and over)	594.10	17.00	611.10
Master (vessels under 20m but 18.25 and over)	581.90	17.00	598.90
Engineer (vessels under 20m but 18.25 and over)	581.90	17.00	598.90
Master (vessels under 18.25m)	578.60	17.00	595.60
General - purpose Hand	522.70	17.00	539.70

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount \$
1	5(b)	Meal Allowance	9.90
2	6(iii)(a)	Certificate of Competency (per day or part thereof)	4.00
3	14(i)	Uniforms	12.64
4	17	Compensation for Personal Effects	995.64

---

Printed by the authority of the Industrial Registrar.



## MISCELLANEOUS WORKERS' - KINDERGARTENS AND CHILD CARE CENTRES, &c. (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C4544	16/06/2006	On and from 07/03/2006	359	843
19	C4657	06/10/2006	On and from 22/03/2006	361	257
9, Part B	C5923	31/08/2007	First full pay period on or after 30/07/2007	363	698
Correction to C5923	C6476	14/03/2008		365	305
9, Part B	C6692	31/10/2008	First full pay period on or after 01/09/2008	366	949
Correction to C6692	C6793	28/11/2008		366	1316
39, Part B	C6928	27/03/2009	On and from 11/12/2008	367	855
Correction to C6928	C7025	24/04/2009		367	1274
9, Part B	C7199	30/10/2009	First full pay period on or after 08/09/2009	369	566
Correction to C7199	C7295				
9, Part B	C7601	02/09/2011	First full pay period on or after 16/12/2010	371	647

#### 1. Arrangement

##### PART A

Clause No.	Subject Matter
10.	Additional Rates and Allowances
20.	Annual Leave
21.	Annual Leave Loading
34.	Anti Discrimination
39.	Area Incidence and Duration
1.	Arrangement
25.	Bereavement Leave
8.	Classification Structure
4.	Contract of Employment
3.	Definitions
35.	Dispute Settling Procedure

- 31. Examination and Study Leave
- 36. Exemptions
- 5. Hours
- 6. Implementation of 38 Hour Week
- 28. In Service: Preschools and OOSHC Centres
- 16. Job Sharing
- 26. Jury Service
- 38. Leave Reserved
- 22. Long Service Leave
- 13. Make up Time
- 29. Meetings and Activities
- 15. Miscellaneous Conditions
- 2. Name of Award
- 12. Overtime
- 23. Parental Leave
- 14. Payment of Wages
- 24. Personal Carers Leave
- 30. Professional Development, Training & Planning
- 19. Public Holidays
- 27. Redundancy
- 17. Relieving in Other Positions
- 7. Rostered Days Off Duty
- 37. Salary Packaging
- 11. Saturday and Sunday Work
- 4A. Secure Employment Provisions
- 18. Sick Leave
- 33. Superannuation
- 32. Supported Wage
- 9. Wages

#### PART B

#### MONETARY RATES

Table 1A - Former Wages

Table 1B - Wages - Support Worker Classifications

Table 1C - New Wages - Child Care Classifications Long Day Care

Table 1D - New Wages - Child Care Classifications Pre-Schools

Table 2 - Additional Rates and Allowances

Appendix A - Casual Service Card

Appendix B - Parental Leave

#### 2. Name of Award

This Award shall be known as the Miscellaneous Workers Kindergarten and Child Care Centres (State) Award 2006.

#### 3. Definitions

- (i) Full-Time Employee - means an employee employed and paid by the week subject to clause 4, Contract of Employment and clause 5 (i) of the award.
- (ii) Part-time Employee - means an employee who works a constant number of ordinary hours less than the ordinary number of hours prescribed for full-time employees in subclause (i) of this clause and clause 5 (i) of the award.

- (iii) Casual Employee - means an employee engaged and paid as such.

Notation: Certain casual employees may have rights to make an election to convert their employment under the provisions of Clause 4A of this award.

- (iv) Temporary Employee

(a) means an employee engaged to work full-time or part-time for a specified period which is not more than two years but not less than 20 days.

(b) Such employees shall be engaged solely for the following specified purposes:

- (1) to replace existing employees proceeding on annual leave, maternity leave, long service leave, workers compensation or leave without pay;
- (2) to occupy specially funded positions;
- (3) to occupy positions approved by the Department of Community Services which vary a centre's licence;
- (4) to occupy positions resulting from seasonal employment fluctuations in a locality;
- (5) to occupy positions resulting from increases in enrolments.

Notation: Employees engaged pursuant to (4) and (5), above, shall not be engaged in such a way that would displace existing employees or future permanent employees.

- (v) Day - means the period from midnight to midnight.

- (vi) Union - means The Liquor, Hospitality and Miscellaneous Union, New South Wales Branch.

- (vii) Night Shift - means any shift finishing subsequent to midnight and at or before 8.00am or any shift commencing at or after midnight and before 5.00am.

- (viii) Afternoon Shift - means any shift finishing after 6.30pm and at or before midnight.

- (ix) Early Morning Shift - means any shift commencing at or after 5.00am and before 6.30am.

- (x) Night Shift, Non-rotating - means any shift system in which night shifts are worked which do not rotate or alternate with another shift so as to give the employee at least one third of the employee's working time off night shift in each roster cycle.

#### **4. Contract of Employment**

- (i)

(a) All employees will be engaged on a probationary period of three months.

(b) Except for the first three months of employment, the employment of a full-time or part time employee may be terminated by a week's notice given by either party or by the payment or forfeiture, as the case may be, of one week's wages in lieu of such notice. This shall not affect the right of an employer to dismiss any employee without notice for misconduct and in such cases wages shall be paid up to the time of dismissal only.

(c) During the first three months of employment, the employment may be terminated by a day's notice given by either party or by the payment or forfeiture, as the case may be, of one day's wages in lieu of such notice.

- (ii) Payment During Vacations: Notwithstanding the foregoing provisions, where an establishment is closed during a vacation period and no work is available, an employee shall be paid the ordinary rate of pay during such a period provided that during the Christmas vacation only an employee with insufficient credit of annual leave to maintain the ordinary rate of pay during the said vacation period may be stood down without pay for a maximum of four weeks.

Provided further that where the employment of an employee is terminated by the employer in accordance with the provisions of this clause through no fault of the employee during the vacation, and such employee whose services are so terminated is re-employed by the same employer before the expiration of two weeks after the commencement of the next term, the contract of employment shall not be deemed to have been broken for the purposes of the *Long Service Leave Act 1955*. Any period of non-employment of any such employee who is so re-employed shall not count as qualifying service for the purposes of such Act.

- (iii) The employment of a casual employee may be terminated by one hour's notice.
- (iv) Upon request by an employee, the employer shall give an employee a signed statement of service upon termination. Such statement shall certify the period of commencing and ceasing employment and the class of work upon which the employee was employed. Note: with respect to casual employees, see paragraph (e) of subclause (i) of clause 8, Classification Structure of this award.
- (v) Employees terminating employment shall be paid all wages and other monies due forthwith, including any payments which may be due in lieu of annual leave and/or long service leave.
- (vi) Flexibility of Work
- (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award, provided that such duties are not designed to promote de-skilling.
- (b) Persons employed as Child Care Workers may be required to assist with duties incidental to their primary contact care role.
- (c) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### **4A. Secure Employment Provisions**

- (i) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (ii) Casual Conversion

- (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

- (c) Any casual employee who has a right to elect under paragraph (ii)(a), upon receiving notice under paragraph (ii)(a) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (ii)(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (ii)(c), discuss and agree upon:
- (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);
- Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.
- (g) Following an agreement being reached pursuant to paragraph (e), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (iii) Occupational Health and Safety
- (a) For the purposes of this subclause, the following definitions shall apply:
- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or

services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- (b) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (c) Nothing in this subclause (iii) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(iv) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (v) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

(vi) Exemption

The above mentioned casual conversion clause will not apply to persons who perform work pursuant to the *Technical and Further Education Commission Act 1990*.

## 5. Hours

- (i) Ordinary Working Hours - The ordinary working hours, inclusive of crib breaks, shall not, without payment of overtime, exceed an average of thirty eight per week. Such hours shall be worked as follows:
- (a) Day Workers - Between the hours of 6.30 a.m. and 6.30 p.m., Monday to Friday inclusive. The above hours shall be worked on each day in either one or two shifts provided that the total hours worked on any day shall not exceed the applicable hours provided for in clause 6 Implementation of 38 Hour Week without payment for overtime.
  - (b) Shift Workers - Fixed shifts of a duration provided for in Clause 6, Implementation of 38 hour week to be worked on five days of the week, Monday to Sunday inclusive.
- (ii) Notification of Hours - The employer shall, by legible notice displayed at some place accessible to the employees, notify the ordinary hours of commencing and ceasing work and the ordinary times of meal or crib breaks. Such hours, once notified, shall not be changed without the payment of overtime except by seven days' clear notice to the employee, or by mutual agreement between the employer and employee to waive or shorten the notice period, or due to an emergency outside the employer's control.

Any dispute as to the existence of an emergency will be dealt with in accordance with the dispute settling procedure of this award.

Notation: An 'emergency' must be given its ordinary meaning. It is not to be understood to comprehend routine events, such as an employee having to remain at the end of their rostered hours, when a parent fails to arrive on time to collect a child. Such work, if required will involve overtime to which the award overtime provisions will apply.

Notation: For part time employees see subclause (iii) of Clause 12, Overtime.

- (iii) Rest Pauses - All employees shall be allowed a rest break of ten minutes per shift between the second and third hour from starting time and, if the work exceeds seven hours from starting time the employee shall be allowed a further rest break of ten minutes, to be taken at a time mutually convenient to the employer and the employees in the establishment concerned, subject to the provisions relating to the supervision of children under the *Children and Young Persons (Care and Protection) Act 1998*.
- (iv) Crib Breaks - Not more than thirty minutes nor less than twenty shall be allowed to employees each day for a midday crib break between the fourth and fifth hour if such employee's shift exceeds five hours from commencement of work. Such crib breaks shall be counted as time worked.

Provided however that employee may, by agreement with the employer, leave the premises during the crib break. Where such reasonable request has been made by an employee, the employer shall give favourable consideration to any such request having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. Such time away from the premises shall not count as time worked nor shall any payment be made for such time. A record of unpaid lunch periods shall be kept in the Time and Wages records.

- (v) Unpaid Meal breaks for those employed on or after 28 August 2000. An employer may direct an employee engaged on or after 28 August 2000 to take an unpaid meal break of up to thirty minutes between the fourth and fifth hour of the employee's shift provided that the shift exceeds five hours and having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. During this unpaid time, the employee may leave the premises.
- (vi) Unpaid Meal breaks for those employed prior to 28 August 2000. With the prior written agreement of the employee, an employer may direct an employee engaged prior to 28 August 2000 to take an unpaid meal break of up to thirty minutes between the fourth and fifth hour of the employee's shift provided that the shift exceeds five hours and having regard to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* relating to supervision of children. The prior agreement of the employee shall be recorded in the time and wages record. During this unpaid time, the employee may leave the premises.
- (vii) Employee performing duties during meal break. If an employee is required to perform duties during and unpaid meal break, the employee shall be paid at time and one half for the time worked with a minimum payment as for fifteen minutes work. Where the employee works more than fifteen minutes, the payment shall be as for thirty minutes.

## **6. Implementation of 38 Hour Week**

### **6A. Ordinary Hours of Work**

- (i) The ordinary hours of work shall not exceed an average of 38 per week, as provided in clause 5, Hours, of this award.
- (ii) In respect of employees engaged prior to 28 August 2000, the 38 hour week is to be implemented by the working of a 19 day month in accordance with sub-clause 6.B. Provided that, with the consent of the employee, the ordinary hours of work may be implemented in accordance with (b), (c), (d), or (e) of sub-clause (iii) of this clause. The consent of the employee must be in writing and a notation of the consent shall be kept in the time and wages record.

- (iii) In respect of employees engaged on or after 28 August 2000, ordinary hours of work in accordance with clause 5, Hours of this award, may be implemented in one of the following ways:-
- (a) by working a 19 day month; or
  - (b) by working 3 x 10 hour shifts and 1 x 8 hour shift per week; or
  - (c) by working 4 x 9.5 hour shifts per week; or
  - (d) by working 5 x 7.6 hour shifts per week; or
  - (e) by working 4 x 8 hour shifts and 1 x 6 hour shift per week.

6B. 19 Day Month

- (iv) An employee shall accrue two hours per week or 0.4 of an hour (i.e., 24 minutes) for each eight hour shift or day worked, to give an entitlement to take an accrued rostered day off in each four week cycle as though worked.
- (v)
- (a) Each day of paid leave taken (including annual leave but not including long service leave or any period of paid or unpaid stand-down as provided in clause 4 (ii) of this award) and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes. Provided however that accrued days off shall not be regarded as part of annual leave for any purpose.
  - (b) Notwithstanding the provisions of paragraph (a) of this subclause, an employee shall be entitled to no more than 12 paid accrued days off in any twelve months of consecutive employment.
  - (c) An employee who has not worked a complete four week cycle in order to accrue a rostered day off, shall be paid a pro rata amount for credits accrued for each day worked in such cycle payable for the rostered day off or, in the case of termination of employment, on termination, (i.e. an amount of 24 minutes for each 8 hour day worked).
- (vii) Subject to subclause (v) of this clause, an employee shall accrue an entitlement to rostered days off in any twelve months of consecutive employment to the extent provided in the following table:

Number Of Weeks Establishment Open Per Year	Accrued Days Off Per Year
41 weeks	10.25
42 weeks	10.50
43 weeks	10.75
44 weeks	11.00
45 weeks	11.25
46 weeks	11.50
47 weeks	11.75
48 weeks - 52 weeks	12.00

6C. Implementation of 19 Day Month

- (viii) By mutual agreement between the employer and employee concerned, the employer may fix one work day in every fourth week as an accrued rostered day off to the extent of such rostered days off accrued in accordance with subclause (vii) of this clause; or



## Accumulation

## (ix) Establishments Operating 48 - 52 Weeks

The employee may accrue sufficient accrued days off to enable such days to be taken as rostered days off to a maximum block of five (5) days at any one time in any twelve (12) months of consecutive employment, and provided that no two (2) blocks of rostered days off shall follow on consecutively.

The employee shall take such rostered days off by mutual agreement with the employer.

## (x) Establishments Operating 41 - 47 Weeks

Accumulated rostered days off shall be taken during non-term time, including but not limited to the period of paid stand-down provided in Clause 4 (ii) of this award.

## 6D. Part Time Employees

- (a) A part time employee as defined in clause 3 (ii) of this award who is regularly rostered to work ordinary hours over five days per week shall accrue an entitlement to rostered days off in the same ratio of weeks worked to accrued days as set out in subclause (vi) of this clause. A part time employee may choose to be paid the appropriate higher hourly rate (that is a rate based on a 38-hour divisor, as set out in clause 7(ii) in lieu of accruing an entitlement to rostered days off subject to mutual agreement between employer and employee. A notation of such agreement shall be kept in the Time and Wages Records.

Provided that in respect of part time employees engaged on or after 28 August 2000, the employer may require that such employee be paid the higher rate in lieu of the rostered day off.

- (b) Where rostered days off are taken the provisions of subclause 6C of this clause shall apply.
- (c) A part-time employee as defined in subclause (ii) of clause 3, Definitions, who works less than five days per week shall be paid for all hours worked (on the basis of a 38-hour divisor) subject to subclause (iv) of clause 9, Wages in lieu of an entitlement to rostered days off subject to mutual agreement between the employer and the employee/s.

## 6E. Casual Employees

A casual employee as defined in subclause (iii) clause 3, Definitions, shall be paid for all hours worked subject to subclause (v) of clause 9, Wages in lieu of an entitlement to accrued days off prescribed by this clause.

**7. Rostered Days Off Duty**

## (i) Rostering

- (a) Notice - Except as provided in paragraph (b), an employee shall be advised by the employer at least four weeks in advance of the day or days he or she is to be rostered off duty.
- (b) Substitution - An individual employee with the agreement of the employer may substitute the day he or she is rostered off duty for another day.
- (c) Payment of Wages - Subject to Clause 14, Payment of Wages, of this award, where an employee is paid by cash or cheque and such employee is rostered off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.
- (d) Accumulation - Rostered days off may accumulate in accordance with subclause (iv) of clause 6, Implementation of 38 Hour Week of this award.

- (ii) Payment of Rostered Days Off - For every ordinary hour paid for, payment to the employee of one twentieth (5%) of the hourly rate will be withheld by the employer and then paid in the pay week in which the employee's rostered day off is taken. Notation: The withholding of payment for rostered days off for part time employees may also be implemented by applying a divisor of 40 in lieu of a 38 divisor to the appropriate full time rate of pay used to determine the part time rate applicable.
- (iii) Rostered Day Off Falling on a Public Holiday - Where an employee's rostered day off falls on a public holiday the employee and the employer shall agree to the substitution of an alternative day off. Provided however that where such agreement is not reached the substituted day may be determined by the employer.
- (iv) Sick Leave and Rostered Days Off - An employee is not eligible for sick leave in respect of absences on rostered days off as such absences are outside the ordinary hours of duty.
- (v) Bereavement & Rostered Days Off - An employee shall not be entitled to payment for Bereavement leave in respect of absences on rostered days off as such absences are outside the ordinary hours of duty.
- (vi) Work on Rostered Day Off - Except as provided in paragraph (b) of subclause (i) of this clause, any employee required to work on a rostered day off shall be paid in accordance with the provisions of clause 12, Overtime, of this award and an alternative day shall be granted as a rostered day off.

### **8. Classification Structure**

- (i) Implementation of Classification Structure
  - (a) The employer shall determine the appropriate classification for each position in the service having regard to the needs of the service. The employer may choose not to appoint anyone to a particular classification in the Award, subject to the provisions of the *Children and Young Persons (Care and Protection) Act 1998* and/or the *Children's Services Regulations 2004*.
  - (b) An employee will be appointed to the position and the corresponding classification in this award having regard to the duties required by the employer to be undertaken by the employee, the qualifications of the employee and the employee's length of service.
  - (c) An employee shall commence on the step in the appropriate classification commensurate with the number of years of employment in early childhood and child care services for children aged 0 - 12 years whether conducted by the employer or not and shall progress thereafter in accordance with the award.

Progression through the steps of each classification in this clause for part-time and casual employees shall be based on full-time equivalent service.
  - (d) Calculation of Employment: When calculating employment for the purposes of this clause, one year of employment may be deducted for every period of five year's absence from early childhood and child care services.
  - (e) Employment History on Engagement:
    - (1) Full time or Part time employees - upon engagement, an employee shall establish the employee's employment history in early childhood and child care services for the purposes of determining, where necessary, the appropriate step applicable under the classification structure set out in subclause (ii) of this clause.
    - (2) Casual employees - a casual employee shall maintain and keep up to date a record of employment as set out in Appendix A of this award. Such record shall be signed by the employer at the conclusion of each period of casual employment.

- (f) An employee may apply for a higher classification when a position becomes available in the service subject to the employee possessing the requisite qualifications and appropriate selection procedures for the particular service being followed.
- (g) Any dispute in relation to the implementation of the classification structure shall be dealt with in accordance with Clause 35 - Dispute Settling Procedure of this award.
- (h) Translation

- (1) Existing employees whose duties fall within the classification structure set out in this award should confer with their employer and seek to reach agreement on any translation that may apply to the employee's classification as a result of the introduction of new classifications in this award.
- (2) Employees will translate to new classifications, if applicable, on the basis of the following principles:

where an existing employee retains their existing classification, they will retain their current incremental position in that classification based on their years of experience in the industry;

where an existing employee is subsequently reclassified to a higher classification, they will be paid at the rate for the classification to which they are appointed to in accordance with 8(i)(c).

Co-ordinators will be classified according to their qualifications, the service type, and the number of licensed child care places.

New employees will be classified and paid according to the appropriate table in Part B Monetary Rates of this award.

(ii) Classification Structure

An employer shall classify the position to which an employee is appointed in accordance with the following structure:

Child Care Support Worker (as defined)

Child Care Support Worker (Qualified Cook) (as defined)

Child Care Worker (as defined)

Step	
1	on engagement without early childhood or child care service
2	after 1 year's employment in this classification, or the satisfactory completion of an AQF Certificate III in Children's Services (with less than 12 months employment in an early childhood or child care service)
3	after 2 year's employment in this classification
4	after 3 year's employment in this classification
5	after 1 year's employment in this classification, in addition to the satisfactory completion of an AQF Certificate III in Children's Services.

Advanced Child Care Worker (as defined)

Step	
1	on engagement with early childhood or child care service
2	after 1 year's employment in this classification
3	after 2 year's employment in this classification

## Advanced Child Care Worker (Qualified) (as defined)

Step	
1	on engagement with early childhood or child care service
2	after 1 year's employment in this classification
3	after 2 year's employment in this classification
4	required to supervise other Associate Diploma or Diploma qualified employees within the group they have responsibility for

## Assistant Co-ordinator (as defined)

## Assistant Co-ordinator Qualified (as defined)

## Co-ordinator (as defined)

Level		
1	OOSH	on engagement with an Out Of School Hours centre
2	LDC/Pre-School	on engagement with long day care or Pre-School service up to 29 licensed places
3	LDC/Pre-School	on engagement with long day care or Pre-School service up to 69 licensed places.
4	LDC/Pre-School	on engagement with long day care or Pre-School service with 70 licensed places or more.

## Co-ordinator Qualified (as defined)

Level		
1	OOSH	on engagement with an Out Of School Hours Centre
2	LDC/Pre-School	on engagement with long day care or Pre-School service up to 29. licensed places
3	LDC/Pre-School	on engagement with long day care or Pre-School service up to 69 licensed places.
4	LDC/Pre-School	on engagement with long day care or Pre-School service with 70 licensed places or more.

- (iii) Child Care Support Worker means an employee appointed by the employer to perform some or all of the following duties:

assisting a qualified cook;

laundry work;

cleaning;

gardening;

cooking (where the employee is unqualified);

driving (as part of other duties);

handy work; and

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a higher classification; provided that this does not promote de skilling.

- (iv) Child Care Support Worker (Qualified Cook) - means an employee who holds basic qualifications in cooking, and who is appointed by the employer to cook meals in the service. An employee in this classification may be required by the employer to perform other duties as required by the employer as

are within the knowledge, skills and capabilities of the employee including duties at a higher or lower classification; provided that this does not promote de skilling.

(v) Child Care Worker - means a carer appointed by the employer to contribute to the development of and assist in the implementation of the child care program under the general direction of and responsible to a supervisor who is regularly present with the group of children. Qualifications are not required for Steps 1 to 4.

(a) An employee who has completed an AQF Certificate III in Children's Services shall be paid no less than Child Care Worker Step 2.

(b) An employee who has completed both an AQF Certificate III in Children's services and 12 months equivalent full-time service in a child care service, or has successfully completed an approved Certificate III traineeship of no less than 12 months duration, shall be classified at Step 5.

(c) An employee at this level is responsible for their own work and may be required by the employer to perform some or all of the following duties:

positively interact with children, give each child individual attention and comfort as required;  
assist to implement daily routines;

assist with ensuring a safe, healthy and clean indoor and outdoor environment for children;

supervise the activities of a group of children for short periods of time during the day;

work with other staff members to ensure the smooth running of the service subject to the service policies and procedures;

understand and work according to the service policies and procedures;

assist in the development and/or evaluation of the program;

assist in the observation and evaluation of the children's development;

assist with the recording of children's development and assist in planning for the ongoing development of the child;

communicate with parents as instructed;

attend to incidental cleaning and housekeeping or associated with individual and group activities, experiences and routines;

perform incidental administrative duties including but not limited to: completing receipts, signing deliveries, ruling up the roll, checking the roll and the like;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

(d) An employee at this level may be required by the employer to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998*.

(e) Employees appointed to the position of child care worker, but required to perform the duties of an advanced child care worker, will be paid the higher rate applicable to that classification.

(vi) Advanced Child Care Worker - means an unqualified carer appointed by the employer with the responsibility to develop, plan and implement the child care program. An employee at this level is responsible to the overall employer of a service and may be responsible for the direction of other staff

within the group for which they have responsibility. An employee at this level may be required by the employer to perform some or all of the following duties:

has direct responsibility for the management of a group or groups of children in conjunction with the employer of the service;

ensure the maintenance of a healthy and safe work environment;

ensure a safe, healthy and clean indoor and outdoor environment for children;

liaise with parents as to needs of the children and the service;

maintain appropriate and up-to-date records;

ensure that programs are planned, implemented and evaluated for each child in their care;

ensure that all regulations, licensing guidelines, service policies and procedures are observed;

carry out administrative duties which relate to effective room management and child care responsibilities;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended and administer first aid as required.

An employee at this level will be required to continue to demonstrate the skills and knowledge required for the position.

- (vii) **Advanced Child Care Worker: Qualified** - means a qualified carer who holds a Diploma in Children's Services, an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, appointed by the employer with the responsibility to develop, plan and implement the child care program. An employee at this level is responsible to the overall employer of a service and may be responsible for the direction of other staff within the group for which they have responsibility. An employee at this level may be required by the employer to perform some or all of the following duties:

has direct responsibility for the management of a group or groups of children in conjunction with the employer of the service;

ensure the maintenance of a healthy and safe work environment;

ensure a safe, healthy and clean indoor and outdoor environment for children;

liaise with parents as to needs of the children and the service;

maintain appropriate and up-to-date records;

ensure that programs are planned, implemented and evaluated for each child in their care;

ensure that all regulations, licensing guidelines, service policies and procedures are observed;

carry out administrative duties which relate to effective room management and child care responsibilities;

other duties as required by the employer as are within the knowledge, skills and capabilities of the carer including duties at a lower classification; provided this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

An employee at this level will be required to continue to demonstrate the skills and knowledge required for the position.

Advanced Child Care Worker Qualified Step 4 means a qualified carer who holds the Associate Diploma in Social Science (Child Studies), Diploma in Children's Services or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and who is appointed by the employer to a position where the employee is required to supervise other Associate Diploma or Diploma qualified employees within the group they have responsibility for.

- (viii) Assistant Co-ordinator - means carer appointed by the employer to perform administrative and management functions which assist in the co-ordination administration and management of a service, under direction from and responsible to a supervisor who is regularly present at the service. In addition to those of an Advanced Child Care Worker, an employee at this level may be required by the employer to perform some or all of the following duties:

Supervise, direct and co-ordinate the activities of groups of children across the service.

Co-ordinate and manage day-to-day staffing matters across the service.

Perform administrative duties which assist in the effective management of the service.

Ensure that groups within the service meet programming, planning administrative and regulatory requirements.

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee will not be regarded as working at this level for undertaking responsibilities such as evaluating and improving the activities of a service.

An employee will not be regarded as working at this level for relieving in a supervisory position to fill a temporary absence where the provisions of Clause 17 'Relieving Other Positions' of this Award apply.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (ix) Assistant Co-ordinator Qualified means a carer who holds a Diploma in Children's Services, or an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, appointed by the employer to perform administrative and management functions which assist in the co-ordination administration and management of a service, under direction from and responsible to a supervisor who is regularly present at the service. In addition to those of an Advanced Child Care Worker Qualified, an employee at this level may be required by the employer to perform some or all of the following duties:

Supervise, direct and co-ordinate the activities of groups of children across the service.

Co-ordinate and manage day-to-day staffing matters across the service.

Perform administrative duties which assist in the effective management of the service.

Ensure that groups within the service meet programming, planning administrative and regulatory requirements.

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee will not be regarded as working at this level for undertaking responsibilities such as evaluating and improving the activities of a service.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (x) Co-ordinator - means a carer appointed by the employer to co-ordinate, administer and manage a service. An employee at this level is required to perform all of the following duties:

be accountable to the employer for the administration of the service;

co-ordinate and manage the day-to-day operations of the service;

manage staff through liaison and consultation with the employer;

oversee and ensure the implementation and maintenance of a healthy, safe and clean environment for staff and children;

ensure day-to-day administrative tasks are completed appropriately, including requirements for funding and licensing;

ensure the Service adheres to all relevant regulations and licensing guidelines;

ensure all appropriate records are maintained;

liaise with and consult with parents regarding the needs of the children and the community;

liaise with management to ensure that all matters and procedures relating to government funding are complied with in accordance with appropriate guidelines and, where applicable, submissions for funding to relevant authorities are made and funds applied in accordance with the relevant guidelines and approvals;

assist with the preparation of budgets in consultation with the employer, making appropriate recommendations and manage service financial responsibilities within approved levels;

attend meetings as required by the employer consistent with position responsibilities.

In addition an employee may be required to perform some or all of the following duties:

develop, implement and evaluate service policies and procedures and ensure these and licensing conditions are met in consultation with the employer;

prepare and present reports regarding Service issues;

develop goals and directions for the service in consultation with staff and management in line with early childhood policy and practice;

ensure that Government guidelines on priority access to services are adhered to;

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.



An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (xi) Co-ordinator: Qualified means a qualified carer who holds the Diploma in Children's Services, an Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and who is appointed by the employer to co-ordinate, administer and manage a service. An employee at this level is required to perform the following duties:

be accountable to the employer for the administration of the Service;

co-ordinate and manage the day-to-day operations of the service;

manage staff through liaison and consultation with the employer;

oversee and ensure the maintenance and implementation of a healthy, safe and clean environment for staff and children;

ensure day-to-day administrative tasks are completed appropriately, including requirements for funding and licensing;

ensure the Service adheres to all relevant regulations and licensing guidelines;

ensure all appropriate records are maintained;

liaise with and consult with parents regarding the needs of the children and the community;

liaise with management to ensure that all matters and procedures relating to government funding are complied with in accordance with appropriate guidelines and, where applicable, submissions for funding to relevant authorities are made and funds applied in accordance with the relevant guidelines and approvals;

assist with the preparation of budgets in consultation with the employer, making appropriate recommendations and manage service financial responsibilities within approved levels;

attend meetings as required by the employer consistent with position responsibilities.

In addition an employee may be required to perform some or all of the following duties:

acts as Authorised Supervisor in accordance with the *Children and Young Persons (Care and Protection) Act 1998* as amended, where required by the employer;

develop, implement and evaluate Service policies and procedures and ensure these and licensing conditions are met in consultation with the employer;

prepare and present reports regarding service issues;

develop goals and directions for the service in consultation with staff and management in line with early childhood policy and practice;

ensure that government guidelines on priority access to services are adhered to;

other duties as required by the employer which are within the knowledge, skills and capabilities of the carer, including duties at a lower classification; provided that this does not promote de skilling.

An employee at this level is required to possess and maintain a current first aid certificate recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended, and administer first aid as required.

- (xii) Co-ordinator Level 1 (Out Of Schools Hours) - means a Co-ordinator (as defined) appointed to an OOSH service who does not hold a Diploma Children's Services, an Associate Diploma in Social Science (Child Studies), or equivalent qualifications which are recognised under the *Children and Young Persons (Care and Protection) Act 1998* as amended.
- (xiii) Co-ordinator Level 2 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of up to 29 licensed places.
- (xiv) Co-ordinator Level 3 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of between 30 and 69 licensed places.
- (xv) Co-ordinator Level 4 - LDC / Pre School means a Co-ordinator (as defined) appointed to a Long Day Care or Pre School service of 70 licensed places or more.
- (xvi) Co-ordinator Qualified Level 1 (Out Of School Hours) means a Co-ordinator Qualified (as defined) appointed to an OOSH service.
- (xvii) Co-ordinator Qualified Level 2 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of up to 29 licensed places.
- (xviii) Co-ordinator Qualified Level 3 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of between 30 and 69 licensed places.
- (xix) Co-ordinator Qualified Level 4 - LDC / Pre School means a Co-ordinator Qualified (as defined) appointed to a Long Day Care or Pre School service of 70 licensed places or more.

## 9. Wages

- (i) Full-Time Employees
  - (a) Rates:- The minimum rate of pay for the classifications as set out in clause 8, Classification Structure, of employees engaged in Long day Care Centres or services operating more than 41 weeks per year shall be the rates as set out, in Table 1B and 1C - Wages, of Part B, Monetary Rates.
  - (b) Rates:- The minimum rate of pay for the classifications as set out in clause 8, Classification Structure, of employees engaged in Pre-Schools or services operating 41 weeks per year shall be the rates as set out, in Table 1B and 1D - Wages, of Part B, Monetary Rates.
  - (c) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
    - (i) any equivalent overaward payments, and/or
    - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
- (ii) Savings Clause - Leading Hand and First Aid Allowance: With the exception of employees classified as Co-ordinators under the new structure, an employee who is employed as at July 8, 1997 and who is currently appointed as a leading hand and/or appointed first aid attendant and is in receipt of an allowance for such appointment(s) shall continue to receive the amount of such allowance(s), as an over award payment, whilst they continue in employment in that position with that employer.
- (iii) Part time Employees:
  - (a) Rates - For each hour worked during ordinary time, part-time employees shall be paid the hourly equivalent of the minimum weekly wage prescribed by this award for the class of work performed by them.

## (b) Minimum Starts

1. Child Care Support Worker. A part-time employee engaged as a Child Care Support Worker or Child Care Support Worker (Qualified Cook) working a single shift on any day shall be paid a minimum of two hours for each start.
2. Out of School Hours Care. A part-time employee working a single shift shall be paid a minimum of two hours for each start.
3. Broken Shift Workers. A part-time employee working a broken shift pursuant to paragraph (a) Day Workers of subclause (i) of Clause 5, Hours, of this award, shall be paid a minimum of two hours for each of the two shifts so worked.
4. All other part-time employees shall be paid a minimum of three hours for each start.

## (iv) Casual Employees

- (a) Rates. Casual employees, for each hour worked during ordinary time shall be paid the hourly equivalent of the minimum weekly wage prescribed by this award for the class of work performed by them, plus an additional amount of 15 per centum of the appropriate weekly rate. Casuals are entitled to annual leave payments under the *Annual Holidays Act, 1944*. The employer must make the payment by adding an additional one twelfth of the ordinary time casual hourly rate to the aggregate ordinary pay after each engagement.

## (b) Minimum Starts

1. Child Care Support Worker A casual employee engaged as a Child Care Support Worker or Child Care Support Worker (Qualified Cook) working a single shift on any day shall be paid a minimum of two hours for each start.
2. Out of School Hours Care A casual employee working a single shift shall be paid a minimum of two hours for each start.
3. Broken Shift Workers A casual employee working a broken shift pursuant to paragraph (a) Day Workers of subclause (i) of Clause 5, Hours, of this award, shall be paid a minimum of two hours for each of the two shifts so worked.
4. All other casual employees shall be paid a minimum of three hours for each start.

- (v) The hourly rates for part-time and casual employees shall be calculated to the nearest whole cent, any amount less than half a cent in the result to be disregarded.

- (vi) Juniors: Junior Child Care Workers employed shall be paid the following percentages of the appropriate adult rate of pay specified for the classification under which the junior is engaged:

Age	Percentage (per week)
Under 17 years of age	70
At 17 years of age	80
At 18 years of age	90
At 19 years of age	100

The above mentioned percentages shall be calculated to the nearest ten cents, provided however that any broken part of ten cents in the result less than five cents shall be disregarded.

- (vii) Junior Employees (Special Conditions): Junior employees employed otherwise than in accordance with subclause (vii), of this clause, shall be paid the appropriate adult rate of pay. The employment of junior employees is further subject to the following conditions:-

- (a) The ratio of juniors to adults employed in any capacity in any establishment shall not exceed the following ratios -

Where up to 20 children are catered for - one junior to one adult.

Where over 20 children are catered for - one junior to two adults.

- (b) Junior employees engaged as trainee Advanced Child Care Worker shall be required, as a condition of employment, to train as such. employees shall attend the Associate Diploma of Social Science (Child Studies) Course or such other technical college course as is necessary.
- (c) The employer shall, in respect of each trainee Advanced Child Care Worker, pay all fees and charges necessary to attend and complete the said course and shall, if necessary, allow the employee time off duty without deduction of pay to attend the said course.

(viii) Phasing in and Savings provision

- (a) Savings

No employee shall suffer a reduction in wages and/or allowances as a result of the insertion of the new classification structure into this award on 7 March 2006.

- (b) Commencement

The rates of pay set out in this award will apply on and from the first pay period after 7 March 2006.

- (c) Phasing in of Increases. Where the employee's current rate of pay is below the total new end rate of pay specified in this Award for the classification appropriate to the employee, the difference will be phased in according to the following provisions:

Date	Increase	
7 March 2006	4%	
1 September 2006	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 March 2007	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 September 2007	4%	Or, the balance of the remaining increase, if less than 4 per cent
1 March 2008		The balance of the remaining increase.

- (d) The employer and employee may agree to earlier implementation dates for wage increases than those set out in subclause (c) above.
- (e) In the event that the employer and the employee cannot reach agreement as envisaged by clause 8(i)(h)(1), or in the event that a dispute arises as the transitional arrangements referred to in clause 8, the procedures specified in clause 35 - Dispute Settling Procedure must be followed.

### 10. Additional Rates and Allowances

- (i) Straight Shifts: The following additional allowances for shift work shall be paid to employees in respect of work performed during ordinary hours for shifts as defined in subclauses (vii), (viii), (ix) and (x) of Clause 3, Definitions, of this award:

	Percentage
Early morning shift	10%
Afternoon shift	15%
Night shift, rotating with day or afternoon shift	17.5%
Night shift, non-rotating	30%

- (ii) Broken Shifts - Employees working broken shifts as provided in paragraph (a) of subclause (i), of clause 5, Hours, shall be paid the following additional allowances:
  - (a) For each broken shift so worked - a shift allowance in accordance with Item 1 of Table 2 Additional Rates and Allowances, of Part B, Monetary Rates.
  - (b) Excess fares allowance - at the rate in accordance with Item 2 of the said 2.
- (iii) Uniform Laundry Allowance - In the event of an employee being required to wear a uniform such uniform shall be provided by and laundered at the employer's expense, or, by mutual agreement, such employees shall be paid a uniform laundry allowance, in accordance with Item 3 of the said Table 2.
- (iv) Cooks Uniform Laundry Allowance - Where an employer requires a cook to wear an ordinary white overall or wrap, coat, cap, apron and trousers, usually worn by cooks, such garments shall be laundered either at the employer's expense or at the option of the employer, the employee shall be paid a cooks uniform laundry allowance, in accordance with Item 4 of the said Table 2.
- (v) First Aid Certificate:
  - (a) If an employer requires an employee who is not required to have a first aid certificate under the award definition of the classification, to obtain and/or maintain such a qualification, the employee shall be allowed time off without loss of pay for the purpose of completing the course required. The cost of the course shall be met by the employer.
  - (b) Employers who require employees to attend to medical procedures such as administering epi pens, suppositories and drip feeding shall ensure staff are adequately trained in such procedures, before being required to undertake them. The cost of any such training will be met by the employer.
- (vi) Qualification Allowances
  - (a) An employee who has completed successfully the Commercial Cookery Basic Training Course at TAFE or a course deemed by the employer to be an equivalent qualification, shall be paid an additional allowance in accordance with Item 5 of the said Table 2, such amount shall be part of the ordinary rate of pay for all award purposes.
  - (b) An employee who has completed successfully the Hotel and Restaurant Cookery Course at the Sydney Technical college or a course deemed by the employer to be an equivalent qualification, shall be paid an allowance in accordance with Item 6 of the said Table 2, such amount shall be part of the ordinary rate of pay for all award purposes.
  - (c) An employee shall advise the employer of the date of completion of such course as specified in paragraph (a) and/or (b) of this subclause.
- (vii) The rate of pay for a Support Worker (Qualified Cook) provided for in subclause (i) of clause 9, Wages of this award shall include any allowance for the responsibility of directing or supervising the duties of an assistant cook when such is employed.
- (viii) Board and Lodging : An employer shall not be compelled to board and/or lodge any worker but where board and/or lodging are provided the employer shall be entitled to deduct in respect of all workers the following amounts:-
  - (a) For full board of twenty-one (21) meals per week, an amount equal to 18.5 per cent of the adult basic wage.
  - (b) For full lodging for seven (7) days per week, an amount equal to 7 per cent of the adult basic wage.

- (c) Where by mutual consent, part board and/or part lodgings are provided the deductions referred to in subclauses (a) and (b), of this clause, may be made on a pro-rata basis. Non-residential employees shall not suffer any deductions for meals provided unless by mutual consent.
- (ix) **Authorised Supervisor Allowance:** An employee (other than a Co-ordinator: Qualified or a Co-ordinator) who is required by the employer to act as an Authorised Supervisor in accordance with the *Children and Young Persons (Care and Protection) Act 1998*, as amended, shall be paid an amount as set out in Item 8, of the said Table 2. The daily rate for such allowance shall be calculated by dividing the weekly allowance by 5.

### 11. Saturday and Sunday Work

- (i) **Ordinary Hours - Shift Workers -** Shift workers required to work their ordinary hours on a Saturday and/or Sunday shall as prescribed by subclause (i)(b) of clause 5, Hours of this award, be paid for all time so worked at the following rates:
- |               |                   |
|---------------|-------------------|
| Saturday Work | Time and one-half |
| Sunday Work   | Double time       |
- (ii) The rates prescribed in this clause shall be in substitution for and not cumulative upon the shift work allowances prescribed in subclause (i) of clause 10, Additional Rates and Allowances, of this award.
- (iii) **Overtime - Day Workers**
- (a) Overtime performed on Saturday shall be paid for at the rate of time and one half for the first three hours and double time thereafter with a minimum payment of not less than four hours at such rate.
- (b) Overtime performed on Sundays shall be paid for at the rate of double time.
- (iv) **Overtime - Shift Workers**
- (a) Overtime performed on Saturday shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (b) Overtime performed on Sundays shall be paid for at the rate of double time.

### 12. Overtime

- (i) Subject to subclause (iii) of this clause and subclauses (iii) and (iv) of clause 11, Saturday and Sunday Work of this award, for all work done outside ordinary hours the rates of pay shall be time and one half for the first two hours and double time thereafter. In computing overtime each day's work shall stand alone.
- (ii) Where overtime or extra shifts are required to be worked, the employer shall give preference for such work to employees as classified and covered by the terms of this award where it is reasonably practicable to do so.
- (iii) **Part-time employees -**
- If a part-time employee agrees to work additional hours, the additional hours must be paid at the same rate as full time employees are paid under the award. The work must be paid for at the ordinary hourly rate for all hours unless they fall outside the ordinary hours fixed by this Award for full-time employees. Any hours worked in addition to ordinary full-time hours must be paid at the overtime rate applicable to full-time employees under this Award.
- (iv) **Meal Money:** An employee required to work overtime in excess of one and one half hours shall either be paid an allowance in accordance with Item 7 of Table 2 of Part B, Monetary Rates or be supplied with a meal of equivalent value.

- (v) Time Off in Lieu of Overtime : Where an employee performs duty on overtime the employee may at the employee's request and with the agreement of the employer subsequently be released from duty in ordinary hours subject to the following conditions:
- (a) The agreement shall be in writing and be kept with the time and wages records;
  - (b) Where an employee takes subsequent time off the relevant and equivalent period of overtime shall be paid for at ordinary rates of pay; all other overtime worked and in respect of which time off is not taken shall be paid for at the appropriate overtime rate otherwise provided in this award;
  - (c) Where an employee elects to take any period/s of time off in ordinary hours in accordance with this clause such time off shall be with pay and shall equate to the relevant period/s of overtime worked;
  - (d) Time off may be taken only in respect of overtime worked between Monday to Friday inclusive;
  - (e) Payment for any period/s of overtime worked and in relation to which the employee elects to take time off may be paid by the employer to the employee in the pay period in which the time off is taken;
  - (f) An employee may not accumulate more than 20 hours of equivalent time off which shall be taken within four weeks of its accrual. Where such time off is not taken the period/s of overtime referable thereto shall be paid for in the next relevant pay period at the appropriate overtime rate otherwise applicable.
- (vi) Reasonable Overtime: Subject to clause (vii) an employer may require an employee to work reasonable overtime at overtime rates.
- (vii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (viii) For the purposes of clause (vii) what is unreasonable or otherwise will be determined having regard to:
- (1) any risk to employee's health and safety;
  - (2) the employee's personal circumstances including any family responsibilities;
  - (3) the needs of the workplace or enterprise;
  - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (5) any other relevant matter.

### **13. Make Up Time**

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 award, at the ordinary rate of pay.

### **14. Payment of Wages**

- (i) Wages shall be paid weekly or fortnightly in ordinary working time. An employee kept waiting after the normal ceasing time for the payment of wages shall be paid at overtime rates from the normal ceasing time until payment is made. Casual employees shall be paid within one hour of the termination of the employment or on the normal pay day for the establishment.

- (ii) Where an employer and employee agree, the employee may be paid the employee's wages by cheque or direct transfer into the employee's bank (or other recognised financial institution) account. Notwithstanding this provision, if the employer and the majority of employees agree, all employees may be paid their wages by cheque or direct transfer into an employee's bank (or other recognised financial institution) account.
- (iii) Where payment is made by cheque the employer shall ensure that clearance of such cheque is made available by the appropriate bank or, alternatively, an employer may make a direct deposit by cheque to the appropriate bank for transfer to nominated employee accounts to ensure access by the employee to wages on the nominated pay day.

#### **15. Miscellaneous Conditions**

- (i) **Boiling Water:** Hot water shall be provided by the employer where practicable.
- (ii) **Accommodation for Meals:** Employers shall allow employees to partake of their meals, crib breaks or tea breaks in a suitable place protected from the weather and every such employee shall leave such place in a thoroughly clean condition.
- (iii) **Rubber Boots:** Where employees are required to work outside or in toilets in wet conditions they shall be supplied with rubber boots, which should remain the property of the employer.
- (iv) **Rubber Gloves:** Where employees are required to clean toilets or to use acids or other injurious substances or detergents they shall be supplied with rubber gloves, which shall remain the property of the employer and shall be replaced by the employer when unserviceable.
- (v) **Dressing Accommodation:** Where it is necessary or customary for employees to change their dress or uniform suitable dressing rooms or dressing accommodation and individual lockable lockers shall be provided.
- (vi) Clean overalls shall be supplied by the employer for all outdoor staff where such employee requires same.
- (vii) A first aid kit shall be supplied and be readily available to all employees.
- (viii) All materials, equipment, etc. required for the work and for cleaning purposes shall be supplied by the employer.
- (ix) Protective clothing, overalls or uniforms supplied pursuant to this award shall remain the property of the employer and shall be returned upon termination of employment.

#### **16. Job Sharing**

- (i) **Definitions** 'Job Sharing' may be defined as the occupation of a full-time or part-time position by two employees (job sharers) sharing all of the duties and responsibilities of the position.
- (ii) **General Employment Conditions**
  - (a) A job share position shall only be created by mutual agreement between the employer and the employee occupying the position to be job shared.
  - (b) Subject to the provisions of subclause (iii) of this clause relating to overtime, job sharers will be employed on pro-rata hours, wages and conditions for the relevant classification or grade of the position filled.
  - (c) Before any job sharing arrangements are approved, the employer shall provide each prospective job sharer with a copy of this clause and obtain her or his acceptance of the job share position to be worked.



- (d) Job sharers will discuss with the employer arrangements to determine how the job is to be split and agree the hours to be worked by each job sharer including the arrangements to be adopted when one job sharer is absent.
  - (e) Where a job share position is of a specific duration and instead of being filled by two existing employees an additional employee must be engaged to share the position, such additional employee shall be advised that the position is only available for the duration sought and approved.
- (iii) Hours of Duty
- (a) The hours of work of job sharers shall be worked in accordance with clause 5, Hours of this award.
  - (b) The hours of job sharers once established will not be changed except by mutual consent of both the job sharers and the employer or subject to the operational requirement of the centre. Where an employer is required to change a job sharers hours because of the operational requirement of the centre, the employer shall give the job share employees notice in accordance with subclause (ii) of Clause 5, Hours of this award.
  - (c) The total weekly hours of job sharers of a full-time position shall not exceed an average of 38 hours per week to be worked in accordance with Clause 6, Implementation of the 38 Hour Week. Hours worked in excess of the arrangements set out in the said Clause 6 by a job sharer shall be paid in accordance with Clause 12, Overtime of this award.
  - (d) Job Sharers shall not be entitled to accrue credits towards rostered days off provided for under clause 6, Implementation of 38 Hour Week and clause 7, Rostered Days Off Duty of this award.
- (iv) Leave
- (a) Job sharers shall be entitled to all leave provisions available under this award on a pro rata basis.
  - (b) Job sharers may take annual leave or other leave at the same time or separately.
  - (c) Job sharers may be asked and may agree to cover for the absences of the other job share employees. Such coverage may be either for part of the absence or for the full period.
  - (d) All leave arrangements wherever possible will be made by mutual agreement between both job sharers and the employer.
  - (e) Where a job share employee agrees to cover for the other job share employee whilst he or she is on leave, they shall be paid at ordinary rates for the extra days or extra hours worked subject to the provisions of paragraph (f) of this subclause.
  - (f) Where the absence of one job sharer on leave is covered by the other job sharer the aggregate number of hours worked shall not exceed those of a full-time employee without the payment of overtime.
- (v) Redundancy Subject to the provisions of clause 27, Redundancy of this award where a job share position is made redundant then the job sharers shall be entitled to the provisions of the said clause 27.
- (vi) Termination of Employment
- (a) The position of a job sharer may be terminated in accordance with the relevant provisions of clause 4, Contract of Employment of this award.
  - (b) Where one job sharer has terminated the position of the remaining job sharer shall not be prejudiced.

- (c) Where one job-sharer has terminated, the position may be filled internally or externally provided that any replacement employee is advised of the job share nature of the position and particularly when the position is of a specific duration, or the remaining job-sharer may be offered the option of occupying the full position on a permanent basis.
- (d) Any replacement employee shall also be advised of the provisions of this clause applying to the job share position.

#### **17. Relieving in Other Positions**

- (i) Employees employed at work for which a higher rate is fixed shall be paid such higher rate whilst so employed. If employed for four hours or more on the higher class of work employees shall be paid the higher rate for the whole of that day.
- (ii) Where an employee is called upon to perform duties for which a lower rate is fixed the employee shall suffer no reduction in pay.

#### **18. Sick Leave**

For exemptions to certain provisions of this clause for certain categories of employees, see clause 36, Exemptions of this award.

- (i) A full time employee is entitled to 15 days sick leave in the first year of employment, and 12 days in each subsequent year. Any leave accrued and not utilised accumulates to a maximum of 120 days.
- (ii) A part time employee is entitled to pro rata sick leave commensurate with the proportion which their ordinary hours bears to 38 hours per week.
- (iii) The employee shall provide to the employer a doctors certificate in respect of absences of two days or more or where the sick leave occurs before or after a public holiday, rostered day off or weekend.
- (iv) A Statutory Declaration shall be accepted in respect of any single day absences.
- (v) The employee shall, as soon as reasonably practicable and in any case within 24 hours of the commencement of such absence, inform the employer of an inability to attend for duty and, and as far as practicable, the estimated duration of the absence.

#### **Payment During the Initial Three Months of Service**

- (vi) Paid sick leave which may be granted to a staff member in the first three months of service shall be limited to five days' paid sick leave unless the centre approves otherwise. Paid sick leave in excess of five days granted in the first three months of service shall be supported by a satisfactory medical certificate.
- (vii) Following the completion of three months of service with an employer the employee shall be entitled to the balance of leave not taken up to a maximum of 15 days in the first year of service.

#### **Infectious Diseases at the Centre or Service**

- (viii) Consideration shall be given to extending the sick leave amount in the circumstances where an infectious disease or illness has been identified at the centre, and an employee is subsequently infected.

#### **Workers Compensation**

- (ix) An employee shall not be entitled to sick leave for any period in respect of which the employee is entitled to workers compensation.
- (x) Notwithstanding anything contained in subclause (i), of this clause, a weekly employee suffering injury through an accident arising out of and in the course of employment (not being an injury in respect of

which there is an entitlement to workers' compensation) necessitating his or her attendance during working hours on a doctor, chemist or trained nurse, or at a hospital, shall not suffer any deduction from his or her pay for the time (not exceeding four hours) so occupied on the day of the accident and shall be reimbursed by the employer for all expenses reasonably incurred in connection with such attendance and expenses shall include fares.

#### Definition of Week

(xi) For the purpose of this clause "week" means:-

- (a) In the case of part-time employees - the number of ordinary weekly hours regularly worked by such employees;
- (b) in the case of all other weekly employees - thirty eight hours.

#### Savings for sick leave accruals

- (xii) Employees engaged at 7 March 2006 who have accrued in excess of 120 days of sick leave under previous accruals will not have their entitlement reduced as a consequence of this award. Such accruals in excess of 120 days will, as of 7 March 2006 be capped at that higher level, and that level will form the maximum accrual for the employee whilst employed by the same employer.
- (xiii) Current employees will receive the sick leave allowances in sub clause (i) of this clause on their next anniversary with their current employer.

### 19. Public Holidays

- (i) The days on which the following holidays are observed shall be holidays, namely, New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day and Boxing Day and any day which may hereafter be proclaimed as a public holiday throughout the State of New South Wales, and the first Monday in August or such other day as is mutually agreed between the employer and an employee or the employer and the majority of employees. Provided that for pre-schools operating 41 weeks per year only, the first Monday in August may be subsumed into a period of paid stand-down provided in clause 4(ii) of this award.
- (ii) The above holidays falling on an ordinary working day shall be paid for if not worked, irrespective of such holidays falling in a vacation period.
- (iii) Employees required to work on any of the above holidays shall be paid at the rate of double time and one-half with a minimum payment of four hours at such rate.
- (iv)
  - (a) Where a holiday occurs on the rostered day off of a seven day shift worker as provided for in subclause (i)(b) of clause 5, Hours and:
    - (1) the employee is not required to work on that day, the employer shall pay such employee eight hours' ordinary pay in respect of such day;
    - (2) the employee is required to work on that day, the employer shall pay such employee eight hours' ordinary pay in respect of such time and in addition at the rate of time and one-half for the first eight hours (with a minimum payment of four hours) and double time and one-half thereafter.
  - (b) The employer may, in lieu of the payment of eight hours' ordinary pay prescribed in paragraph (a) of this subclause, add a day to the annual leave period.

- (c) Any day or days added in accordance with this subclause shall be the working day or working days immediately following the annual leave period to which the employee is entitled to under clause 20, Annual Leave, of this award.
- (d) Where the employment of an employee has been terminated and the employee thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday with respect to a period of employment, the employee shall be entitled also to an additional payment for each day accrued to the employee under this clause at the appropriate ordinary rate of pay, if payment has not already been made in accordance with paragraph (a) of this subclause.
- (v) For the purpose of this clause any employee whose ordinary hours of work commence before and continue past midnight shall be regarded as working on a holiday only if the greater number of the employee's working hours fall on the holiday, in which case all time worked shall be regarded as holiday work; provided that if the number of ordinary hours worked before and past midnight is equal, all ordinary time worked shall be regarded as time worked on the day on which the shift commenced.

## 20. Annual Leave

- (i) All employees except seven day shift workers - see *Annual Holidays Act 1944*.
- (ii) Seven Day Shift Workers - in addition to the leave provided by section 3 of the *Annual Holidays Act 1944*, a seven day shift worker at the end of each year of employment shall be entitled to the additional leave as prescribed below:-
  - (a) If during the year of employment the employee has served continuously as a seven day shift worker, the additional leave with respect to that year shall be one week.
  - (b) If during the year of employment the employee has served only a portion of it as a shift worker, the additional leave shall be 3.5 hours for each completed month of employment as a shift worker, or provided that where the additional leave is or comprises a fraction of a day, such fraction shall not form part of the leave period and any such fraction shall be discharged by payment only.

Where the employment of a seven day shift worker is terminated and the shift worker thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday with respect to a period of employment, he or the shift worker shall be entitled to an additional payment of 3.5 hours at such ordinary rate of pay for each completed month of service as a seven day shift worker.
- (iii) For the purposes of this clause, a seven day shift worker means an employee whose ordinary working hours includes Sundays and/or holidays on which the shift worker may be regularly rostered for work.

## 21. Annual Leave Loading

- (i) In this clause the *Annual Holidays Act 1944*, is referred to as "the Act".
- (ii) Before an employee is given and takes his or her annual holiday, or where, by agreement between the employer and the employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods, the employer shall pay the employee a loading determined in accordance with this clause (Note: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (vi)).
- (iii) The loading is payable in addition to the pay for the period of holidays given and taken and due to the employee under the Act and this award.
- (iv) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled under the Act and this award (but excluding days added to compensate for public or special holidays worked or public or special holidays falling on an employee's rostered day

off not worked), or where such a holiday is given and taken in separate periods, then in relation to each such separate period. (Note: See subclause (vi) as to holidays taken wholly or partly in advance).

- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) of this clause at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his or her annual holiday together with, where applicable, the following allowances prescribed by clause 10, Additional Rates and Allowances, in subclause (vii) Leading Hands and subclause (vi) Qualification Allowances of this award, but shall not include any other allowances, penalty rates, shift allowances, overtime rates or any other payment prescribed by this award.
- (vi) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; Provided that, if the employment of such an employee continues until the day when he or she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday, and is to be calculated in accordance with subclause (v), of this clause, applying the award rates of wages payable on that day. This subclause applies where an annual holiday has been taken wholly or partly in advance and the entitlement to the holiday arises after that date.
- (vii) Where, in accordance with the Act the employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employee concerned -
  - (a) an employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause (v), of this clause;
  - (b) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him or her under the Act such proportion of the loading that would have been payable to him or her under this clause if he or she had become entitled to an annual holiday prior to the close down as his or her qualifying period of employment in completed weeks bears to 52.
- (viii)
  - (a) When the employment of an employee terminates for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he or she became entitled he or she shall be paid a loading calculated in accordance with subclause (v), of this clause, for the period not taken.
  - (b) Except as provided in paragraph (a), of this subclause, no loading is payable on the termination of an employee's employment.
- (ix) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if he or she had not been on holiday; Provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.
- (x) By agreement between the employer and employee, the loading may be calculated in relation to such period of an employee's annual holiday as is equal to the period of annual holiday to which the employee is entitled for the time being under the *Annual Holidays Act 1944* at the end of either each calendar year or at the end of each year of the employee's employment. The employer will identify the payment on the employee's payslip when the payment is made.

Any agreement made pursuant to sub-clause (x) will be recorded in writing in the time and wages record.

## 22. Long Service Leave

See *Long Service Leave Act 1955*.

## 23. Parental Leave

- (i) See Appendix B to this award.
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (iii) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (2) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (3) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under Clause 23(iii)(a)(2) and 23(iii)(a)(3) must be recorded in writing.
  - (d) Request to return to work part-time

Where an employee wishes to make a request under Clause 22(3)(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.
- (iv) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return or other contact details which might affect the employer's capacity to comply with Clause 23(iv)(a).

#### **24. Personal/Carers Leave**

For exemptions to the provisions of this clause for certain categories of employees see clause 36, Exemptions of this award.

- (i) Use of sick leave
  - (a) An employee with responsibilities in relation to a class of person set out in 24(i)(c)(2) who needs their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement which accrues after September 12th, 1996 for absences to provide care and support for such persons when they are ill or who require care due to an unexpected emergency.
  - (b) The employee shall, if required,
    - (1) establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
    - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.
  - (c) The entitlement to use sick leave in accordance with this subclause is subject to:
    - (1) the employee being responsible for the care and support of the person concerned; and
    - (2) the person concerned being:
      - (a) a spouse of the employee; or
      - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
      - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
      - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
      - (e) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
        - 1. "relative" means a person related by blood, marriage or affinity;

2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
3. "household" means a family group living in the same domestic dwelling.

- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes settling procedure at Clause 35 should be followed.

(ii) Unpaid leave for family purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 24(i)(c)(2) above, who is ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

(iii) Annual leave

- (a) To give effect to this clause an employee may elect, with the consent of the employer, to take annual leave not exceeding ten days in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph 24(iii)(a) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(iv) Time Off in Lieu of Payment for Overtime

- (a) An employee may elect, with the consent of their employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer.
- (b) Arrangements for taking overtime as time off shall be governed by Clause 12 - Overtime of the Award.

(v) Make-up time

An employee may elect, with the consent of their employer, to work "make-up time" in accordance with Clause 13 - Make Up Time of the Award.

(vi) Grievance process

In the event of any dispute arising in connection with any part of this clause, such dispute shall be processed in accordance with the dispute settling provisions of this award.



- (vii) Personal Carers Entitlement for casual employees
- (a) Subject to the evidentiary and notice requirements in Clause 24(i)(b) and 24(i)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Clause 24(i)(c)(2) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

### **25. Bereavement Leave**

- (i) An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay, up to and including the day of the funeral, on each occasion of the death of a person prescribed in (iii) below. Provided that where the death of a relative as defined occurs outside Australia and a memorial service is held, one day's leave without loss of any ordinary pay shall be allowed.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed by (i)(c)(2) of Clause 24 Carer's Leave, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (i), (ii), (iii) (iv) and (v) of Clause 24 Personal/Carers Leave of this Award. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in Clause 25(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 24(i)(c)(2).
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **26. Jury Service**

- (i) An employee shall be allowed leave of absence during any period when required to attend for jury service.

- (ii) During such leave of absence, an employee shall be paid the difference between the jury service fees received and the employee's normal rate of pay as if working.
- (iii) An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such requirement as soon as practicable after receiving notification to attend for jury service.

## **27. Redundancy**

- (i) Application
  - (a) This clause shall apply in respect of full time and part time employees as set out in clause 9, Wages.
  - (b) In respect to employers who employ more than 15 employees immediately prior to the termination of employment of employees, in the terms of subclause (v) of this clause.
  - (c) Notwithstanding anything contained elsewhere in this award, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
  - (d) Notwithstanding anything contained elsewhere in this award, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (ii) Introduction Of Change
  - (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 the union to which they belong.
  - (b) 'Significant effects' include termination of employment, major changes in the composition, operation or size of the employers workforce or in the skills required, the elimination or diminution of job opportunities, promotion 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.

- (iii) Employers Duty To Discuss Change
  - (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (ii) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
  - (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (ii) of this clause.
  - (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters

likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to paragraph (a) of subclause (ii), of this clause and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of paragraph (a) of this subclause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination of the employees concerned.
- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(v) Notice For Changes In Production, Program, Organisation Or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'production', 'program', 'organisation' or 'structure' in accordance with paragraph (a) of subclause (ii) of this clause.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(vi) Notice For Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'technology' in accordance with paragraph (a) of subclause (ii) of this clause:

- (a) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.

(vii) Time Off During The Notice Period

- (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes 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.

(viii) Employee Leaving During The Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.

(ix) Statement Of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(x) Notice To Centrelink

Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(xi) Centrelink Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an 'Employment Separation Certificate' in the form required by Centrelink.

(xii) Transfer To Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii), of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.

(xiii) Severance Pay

Where the employment of an employee is to be terminated pursuant to subclause (v) of this clause, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age & Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) 'Weeks Pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and all purpose allowances paid in accordance with this award.

(xiv) Incapacity To Pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (xiii) of this clause.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (xiii) of this clause will have on the employer.

(xv) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (xiii) of this clause if the employer obtains acceptable alternative employment for an employee.

(xvi) Procedures Relating To Grievances

Grievances relating to individual employees will be dealt with in accordance with clause 33, Dispute Settling Procedure of this award.

### **28. In-Service - Pre-Schools and Out of School Hours Care Centres**

- (i) This clause shall apply only to pre-schools operating 41 weeks per year and out of school hours care centres operating 41 weeks per year.
- (ii) Employees may be required to attend in-service courses totalling up to an accrued value time of 38 hours duration in any calendar year. In computing attendance at in-service courses, each year shall stand alone.
- (iii) Attendance at such in-service courses may be during stand-down (non-term) time.

- (iv) An employee attending in-service courses outside his or her ordinary hours of work shall accrue such hours as 'accrued value time' at the rate of one and a half hours accrued for each of the first two hours of such in-service attended and two hours accrued for each additional hour of in-service attendance thereafter. In computing 'accrued value time' each day's in-service shall stand alone.

Such 'accrued value time' shall count towards hours of attendance at in-service courses in accordance with subclause (ii) of this clause.

### **29. Meetings and Activities**

An employee may be required to attend up to a maximum of two hours per month and co-ordinators up to four hours per month where such time involves parental meetings, staff meetings and other duties not including the supervision of children without any payment being due. Part-time employees may be required to attend such meetings outside of ordinary hours on a pro rata basis.

Any hours required to be worked in excess of those specified above will be paid in accordance with Clause 12 Overtime of this award.

### **30. Professional Development, Training and Planning**

- (a) Employees are responsible for ensuring that they are aware of new developments in early childhood education. However, the parties recognise that continuing professional development of employees is a joint responsibility of both the employer and the employee.
- (b) The employer may request an employee to attend any courses in non-term time or after hours relating to professional development, training and planning. The employee cannot unreasonably refuse to attend such courses, provided that a full-time employee who receives no more than four weeks' annual leave in a calendar year shall receive time in lieu for time spent at any courses outlined in this clause.
- (c) Any dispute in relation to attendance shall be dealt with in accordance with clause 35, Dispute Settling Procedure of this award.

### **31. Examination and Study Leave**

An employee who for the purpose of obtaining the Certificate III in Children's Services or the Diploma in Children's Services enrolls at a College of Technical and Further Education shall be granted leave with pay on the day of any examination required in the course. Provided that such leave of absence shall only be approved where a month's prior notice is given to enable alternate staffing arrangements to be effected.

### **32. Supported Wage**

Definition:

- (i) This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:
- (a) "Supported wage system" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "(Supported Wage System: Guidelines and Assessment Process)".
- (b) "Accredited assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (c) "Disability support pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

- (d) "Assessment instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

#### Eligibility criteria

- (ii) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of Disability Support Pension.

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment).

(The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of, or eligible for, a disability support pension, except with respect to an organisation which has received recognition under section 10 or section 12A of the Act, or if a part only has received recognition, that part).

#### Supported wage rates

- (iii) Employees to whom this clause applies shall be paid the applicable percentage of the rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

Assessed Capacity Rate (Subclause (d))	% of Prescribed Award
*10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

Provided that the amount payable shall not be less than \$45.00 per week.

\* Where a person's assessed capacity is ten percent, they shall receive a high degree of assistance and support.

#### Assessment of capacity

- (iv) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:
- (a) the employer and the union party to the award, in consultation with the employee or, if desired by any of these.
  - (b) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

#### Lodgement of assessment instrument

(v)

- (a) All assessment instruments under the condition of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union which is party to the award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

#### Review of assessment

- (vi) The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

#### Other terms and conditions of employment

- (vii) Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro rata basis.

#### Workplace adjustment

- (viii) An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

#### Trial Period

(ix)

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45.00 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialled.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (iv) of this clause.

### 33. Superannuation

#### A. Definitions

- (i) "ASSET" means the Australian Superannuation Savings Employment Trust constituted by deed made 14 October 1987.



- (ii) "HESTA" means the Health Employees Superannuation Trust Australia, constituted by deed made 30 July 1987.
- (iii) "Union" means The Australian Liquor, Hospitality and Miscellaneous Workers Union of Australia, New South Wales Branch.
- (iv) "Eligible employee" means:
  - (a) a full-time employee engaged under the terms and conditions of this Award.
  - (b) a part-time or casual employee engaged under the terms and conditions of the above Award who earns two hundred dollars (\$200.00) or more per calendar month.
- (v) "Ordinary time earnings" means the weekly rate of pay for the employee's classification (including leading hand allowances, broken shift allowance, excess fares allowance, toilet cleaning allowance, qualification allowances and shift work premiums) and any overaward payments for ordinary hours of work.

#### B. Fund

- (i) For the purposes of this clause, contributions made by employers shall be made as follows:
  - (a) the employer shall offer each employee a choice between H.E.S.T.A. and A.S.S.E.T.
  - (b) the employee shall nominate the fund into which contributions shall be made.
- (ii) Each employer bound by this award shall sign and execute an agreement to become a participating employer to either H.E.S.T.A. or A.S.S.E.T. dependent upon the fund chose by the employee.
- (iii) Each employer bound by this award shall become party to H.E.S.T.A. or A.S.S.E.T. upon the acceptance of the respective Trustee of a Deed of Adoption, duly signed and executed by each employer and the respective Trustee.
- (iv) An employee shall become eligible to join H.E.S.T.A. or A.S.S.E.T. in accordance with the following:
  - (a) in the case of an employee who is employed at 1 July 1988, from the beginning of the first pay period commencing on or after 1 July 1988, and
  - (b) in the case of an employee employed after 1 July 1988, from the beginning of the first pay period commencing on or after the employee's date of engagement.
- (v) An employer shall take all necessary steps to ensure an eligible employee becomes a member of the fund.

#### C. Contributions

- (i) Each employer shall pay to the respective Trustee in respect of each eligible employee an amount equal to three percentum of employee's ordinary time earnings for all ordinary hours worked from the date the employee becomes eligible in accordance with Clause 3(iv) of this award.
- (ii) A pro-rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.
- (iii) An employer shall not be required to contribute during any period of unpaid leave - such as unpaid sick leave, maternity leave or the like, or periods of workers compensation beyond the expiry of any entitlement to full pay in accordance with the *Workers Compensation Act, 1987*.

Further an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.

- (iv) Contributions shall be made at the end of each calendar month for periods of employment worked during that month.
- (v) Notwithstanding the date upon which an employee signs an Application Form, contributions in accordance with subclause (I) of this clause shall be made from the date when the employee became eligible for membership.

#### D. Records

The employer shall retain all records relating to the calculation of payments due to the fund/s in respect of each employee and such records shall be retained for a period of six years.

#### E. Exemptions

Employers of employees who are contributions or eligible to become contributors to the following Superannuation Funds or any scheme/s replacing such Funds shall be exempt from the provisions of this Award:

State Superannuation Fund

State Public Service Superannuation Scheme

Public Authorities Superannuation Scheme

### 34. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, 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.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

## Notes

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### 35. Dispute Settling Procedure

The parties agree that, subject to the provisions of the New South Wales *Industrial Relations Act 1996*, all grievances, claims or disputes shall be dealt with in the following manner so as to ensure the orderly settlement of the matters in question.

- (i) Any grievance or dispute which arises shall, where possible, be settled by discussion on the job between the employee(s) and the employee's immediate supervisor.
- (ii) If the matter is not resolved at this level, it will be further discussed between the affected employee(s), the union delegate (if any) or contact and the employer. Both the employer's industrial representative and the employee's union representative may be notified.
- (iii) If no agreement is reached the union representative or contact will discuss the matter with the employer's nominated industrial relations representative.
- (iv) Whilst the foregoing procedure is being followed work shall continue normally. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.
- (v) Should the matter still not be resolved it may be referred by the parties to the Industrial Relations Commission of New South Wales for settlement.

### 36. Exemptions

The provisions of clause 24, Personal/Carers Leave, Clause 25 Bereavement Leave and subclause (iv) of clause 18, Sick Leave shall not apply to employees of the following:

- (a) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens attached to or operated by a non-Government school; or
- (b) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens operated by a Catholic Diocese, a Catholic religious order or a Catholic parish; or
- (c) licensed child care centres, child minding centres, day nurseries and pre-school kindergartens operated by the following organisations:
  - (A) Society of St Vincent de Paul;
  - (B) AMIGOSS Co-operative Limited;
  - (C) Camperdown Child Care Centre Limited;
  - (D) Wunanbiri Pre-School; and
  - (E) St Patrick's SHOOSH Care Association Inc.

Such employees shall continue to be entitled to family leave provisions and additional sick leave in the first year of employment contained in the Miscellaneous Workers Kindergartens and Child

Care Centres Family Leave (Catholic Kindergartens, Child Care Centres and Others and Independent Schools) (State) Award published 17 November 1995 (289 IG 519) as varied.

### 37. Salary Packaging

- (i) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (ii) Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (iii) The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
  - (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
  - (b) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
  - (c) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
  - (d) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
  - (e) prior to entering into any salary packaging agreements, the employee will be given the opportunity by the employer to seek independent advice in respect of salary package arrangements including advice from the union;
  - (f) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
    - (i) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
    - (ii) the applicable rate specified in Table 1, Rates of Pay of this Award.
  - (g) notwithstanding any of the above arrangements, the employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
  - (h) Superannuation Guarantee Contributions will be calculated with reference to the ordinary time rate of pay the employee would have been entitled to receive but for the salary packaging arrangement;
  - (i) any allowance, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the ordinary time rate of pay which would have applied to the employee but for the salary packaging arrangement
  - (j) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

**38. Leave Reserved**

Leave is reserved to Employers First to apply in relation to unpaid meal break and crib break provisions in the Award.

**39. Area, Incidence and Duration**

This award rescinds and replaces the Miscellaneous Workers Kindergartens and Child Care Centres &c. (State) Award, published 22 June 2001 (325 I.G. 652), and all variations thereof.

It shall apply to all persons of the classes herein provided for within the jurisdiction of the Kindergartens, &c. (State) Industrial Committee.

This award shall take effect on and from the 7 March 2006 and shall remain in force for a period of three years.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 11 December 2008.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

**PART B****MONETARY RATES****Table 1A - Former Wages**

Classification	Weekly Rate From First Pay Period On or After 28th August 2005
Child Care Worker	
Step 1	524.80
Step 2	529.40
Step 3	533.80
Step 4	538.40
Advance Child Care Worker	
Step 1	549.30
Step 2	561.30
Step 3	572.20
Advanced Child Care Worker Qualified	
Step 1	616.50
Step 2	625.60
Step 3	634.80
Co-ordinator - Unqualified Small	
Step 1	568.50
Step 2	582.50
Step 3	593.40
Co-ordinator - Unqualified Large	
Step 1	580.10
Step 2	592.00
Step 3	603.00
Co-ordinator - Qualified Small	
Step 1	643.30
Step 2	652.40
Step 3	661.60
Co-ordinator - Qualified Large	
Step 1	662.40
Step 2	671.50
Step 3	678.70

**TABLE 1B****Wages - Support Worker Classifications**

Classification	Rate at 8/09/09 SWC 2009 (2.8%) \$	16/12/10 SWC 2010 (4.25%) \$
Support Worker	608.76	634.60
Support Worker(Qualified Cook)	623.30	649.80

**TABLE 1C****New Wages - Child Care Classifications in Long Day Care**

Level	Step	Rate at 8/09/2009 SWC 2009 (2.8%) \$	Rate at 16/12/10 SWC 2010 (4.25%) \$
CCW	1	696.30	725.89
	2	702.04	731.88
	3	707.51	737.58
	4	713.23	743.54
	5	720.02	750.62
ACCW	1	726.81	757.70
	2	741.87	773.40
	3	765.49	798.02
ACCWQ	1	778.26	811.34
	2	857.56	894.01
	3	899.06	937.27
	4	943.80	983.91
Asst Co-ord		793.29	827.00
Asst Co-ord Qual.		964.78	1005.78
Co-ord OOSH	L1	849.91	886.03
Co-ord LDC	L2	870.78	907.79
	L3	899.44	937.67
	L4	935.34	975.09
Co-Ord Qual OOSH		1038.38	1082.51
Co-Ord Qual. LDC	L2	1059.25	1104.27
	L3	1087.91	1134.15
	L4	1123.82	1171.58

**TABLE 1D****New Wages - Child Care Classifications In Pre-Schools**

Level	Step	Rate at 8/09/2009 SWC 2009 (2.8%) \$	Rate at 16/12/10 SWC 2010 (4.25%) \$
CCW	1	671.16	699.68
CCW	2	676.68	705.44
CCW	3	681.94	710.92
CCW	4	687.44	716.66
CCW	5	693.97	723.46

ACCW	1	700.50	730.27
ACCW	2	714.87	745.25
ACCW	3	737.69	769.04
ACCWQ	1	750.00	781.88
ACCWQ	2	826.24	861.36
ACCWQ	3	866.11	902.92
ACCWQ	4	909.17	947.81
Asst Co-ord		764.42	796.91
Asst Co-ord Qual.		929.31	968.81
Co-ord OOSH	L1	822.50	857.46
Co-ord Pre-Sch	L2	843.37	879.21
	L3	872.04	909.10
	L4	907.94	946.53
Co-ord Qual OOSH		1003.75	1046.41
Co-Ord Qual. Pre-Sch	L2	1024.63	1068.18
	L3	1053.29	1098.05
	L4	1089.19	1135.48

TABLE 2

**Additional Rates and Allowances  
From the First Pay Period Commencing On or After 16 December 2010**

Item No.	Clause No.	Brief Description	Amount	New Amount
			8/09/2009 SWC 2009 (2.8%)	16/12/2010 SWC 2010 (4.25%)
			\$	\$
1	10 (ii)(a)	Broken Shift	61.50 per week	64.10 per week
			12.30 per day	12.82 per day
2	10 (ii)(b)	Excess Fares	8.74 per week	8.74 per week
3	10 (iii)	Uniform: Laundry Allowance	4.70 per week	4.70 per week
4	10 (iv)	Cooks Uniforms: Laundry Allowance	7.45 per week	7.45 per week
5	10 (vi)(a)	Qualification Allowance Commercial Cookery Basic Certificate	6.10 per week	6.35 per week
6	10 (vi)(b)	Hotel & Restaurant Cookery Certificate	12.90 per week	13.45 per week
7	12 (iv)	Meal Money	7.10	7.10
8	10(ix)	Authorised Supervisor	33.25 weekly	34.66 weekly
			6.65 daily	6.93 daily

**APPENDIX A****RECORD OF CASUAL EMPLOYMENT****EMPLOYEE'S RECORD TO BE MAINTAINED BY EMPLOYEE**

1. Name: .....
2. Number of years of training: .....
3. Name of qualification: .....
4. Year of attainment of this qualification: .....

Period of engagement (from date to date)	No. of days/hours worked in total, classification; years trained & step	Name, address & telephone number of Centre	Signed by Centre Director (signature, date & name)

**APPENDIX B****PARENTAL LEAVE**

Set out below are the provisions relating to Parental Leave contained in Part 4, Chapter 2, of the *Industrial Relations Act 1996*.

## Division 1 - Parental Leave Generally

## 53. Employees to Whom Part Applies

This Part applies to all employees, including part time employees, but does not apply to casual or seasonal employees.

## 54. Entitlement to Unpaid Parental Leave

- (1) An employee is entitled to a total of 52 weeks unpaid parental leave in connection with the birth or adoption of a child, as provided by this Part.
- (2) Parental leave is not to extend beyond 1 year after the child was born or adopted.

Note: See also Part 5 relating to entitlements to part time work agreements.

## 55. What is Parental Leave?

- (1) For the purposes of this Part, parental leave is maternity leave, paternity leave or adoption leave.
- (2) Maternity leave is taken by a female employee in connection with the pregnancy or the birth of a child of the employee. Maternity leave consists of an unbroken period of leave.
- (3) Paternity leave is leave taken by a male employee in connection with the birth of a child of the employee or of the employee's spouse. Paternity leave consists of:



- (a) an unbroken period of up to one week at the time of the birth of the child or other termination of the pregnancy (short paternity leave), and
  - (b) a further unbroken period in order to be the primary care-giver of the child (extended paternity leave).
- (4) Adoption leave is leave taken by a female or male employee in connection with the adoption by the employee of a child under the age of 5 years (other than a child who has previously lived continuously with the employee for a period of at least 6 months or who is a child or step child of the employee or of the employee's spouse). Adoption leave consists of:
- (a) an unbroken period of up to 3 weeks at the time of the placement of the child with the employee (short adoption leave), and
  - (b) a further unbroken period in order to be the primary care giver of the child (extended adoption leave).
- (5) For the purposes of this Part, spouse includes a de facto spouse.

Note: Employees are also entitled to special maternity leave for recovery from a termination of pregnancy or illness related to pregnancy (section 71) and to special adoption leave up to 2 days to attend interviews or examinations for the purposes of adoption (section 72). The requirement of unbroken periods of leave is subject to section 63 (employee and employer may agree to interruption of parental leave by return to work).

56. This Part Provides Minimum Entitlements

- (1) This Part sets out the minimum entitlements of employees to parental leave.
- (2) The provisions of an industrial instrument, contract of employment or other agreement (whether made or entered into before or after the commencement of this Part) do not have effect to the extent that they provide an employee with a benefit that is less favourable to the employee than the benefit to which the employee is entitled under this Part.

57. Length of Service for Eligibility

- (1) An employee is entitled to parental leave only if the employee has had at least 12 months of continuous service with the employer.
- (2) Continuous service is service under one or more unbroken contracts of employment, including:
  - (a) any period of authorised leave or absence, and
  - (b) any period of part time work.

Note: Under Part 8 of this Chapter a period of service in the business of a former employer counts as service with a new employer to whom the business concerned has been transferred.

58. Notices and Documents Required to be Given to Employer

- (1) Maternity Leave

The notices and documents to be given to the employer for the purposes of taking maternity leave are as follows:

- (a) The employee should give a least 10 weeks' written notice of the intention to take the leave.

- (b) The employee must, at least 4 weeks before proceeding on leave, give written notice of the dates on which she proposes to start and end the period of leave.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that she is pregnant and the expected date of birth.
- (d) The employee must, before the start of leave, provide a statutory declaration by the employee stating, if applicable, the period of any paternity leave sought or taken by her spouse.

(2) Paternity Leave

The notices and documents to be given to the employer for the purposes of taking paternity leave are as follows:

- (a) In the case of extended paternity leave, the employee should give at least 10 weeks' written notice of the intention to take the leave.
- (b) The employee must, at least 4 weeks before proceeding on leave, give written notice of the dates on which he proposes to start and end the period of leave.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that his spouse is pregnant and expected date of birth.
- (d) In the case of extended paternity leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (i) if applicable, the period of any maternity leave sought or taken by his spouse, and
  - (ii) that he is seeking that period of extended paternity leave to become the primary care giver of a child.

(3) Adoption Leave

The notices and documents to be given to the employer for the purposes of taking adoption leave are as follows:

- (a) In the case of extended adoption leave, the employee should give written notice of any approval or other decision to adopt a child at least 10 weeks before the expected date of placement.
- (b) The employee must give written notice of the dates on which the employee proposes to start and end the period of leave, as soon as practicable after the employee is notified of the expected date of placement of the child but at least 14 days before proceeding on leave.
- (c) The employee must, before the start of leave, provide a statement from an adoption agency or another appropriate body of the expected date of placement of the child with the employee for adoption purposes.
- (d) In the case of extended adoption leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
  - (i) if applicable, the period of any adoption leave sought or taken by his or her spouse, and
  - (ii) that the employee is seeking that period of extended adoption leave to become the primary care giver of a child.

- (4) An employee does not fail to comply with this section if the failure was caused by:
- (a) the child being born (or the pregnancy otherwise terminating) before the expected date of birth, or
  - (b) the child being placed for adoption before the expected date of placement, or if it was not otherwise reasonably practicable to comply in the circumstances.

In the case of the birth of a living child, notice of the period of leave is to be given within 2 weeks after the birth and the certificate of the medical practitioner is to state that the child was born and the date of birth. In the case of the adoption of a child, notice of the period of leave is to be given within 2 weeks after the placement of the child.

- (5) An employee must notify the employer of any change in the information provided under this section within 2 weeks after the change.
- (6) If required by the employer, an employee who applies for parental leave is to give the employer a statutory declaration, or enter into an agreement with the employer, that for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

59. Continuity of Service

- (1) Parental leave does not break an employee's continuity of service, but is not to be taken into account in calculating an employee's period of service for any purpose.
- (2) However, parental leave counts as service for any purpose authorised by law or by any industrial instrument or contract of employment.

60. Parents Not to Take Parental Leave at the Same Time

- (1) An employee is not entitled to parental leave at the same time as his or her spouse is on parental leave under this Part.
- (2) If this section is contravened the period of parental leave to which the employee is entitled under this Part is reduced by the period of leave taken by his or her spouse.
- (3) This section does not apply to short paternity leave or short adoption leave.

61. Cancellation of Parental Leave

- (1) Before Starting Leave

Parental leave applied for but not commenced is automatically cancelled if:

- (a) the employee withdraws the application for leave by written notice to the employer, or
- (b) the pregnancy concerned terminates other than by the birth of a living child or the placement of the child concerned does not proceed.

- (2) After Starting Leave

If:

- (a) the pregnancy of an employee or an employee's spouse terminates other than by the birth of a living child while the employee or spouse is on parental leave, or
- (b) the child in respect of whom an employee is then on parental leave dies, or

- (c) the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee is entitled to resume work at a time nominated by his or her employer within 2 weeks after the date on which the employee gives his or her employer a notice in writing stating that the employee intends to resume work and the reason for the intended resumption.

(3) Special Leave Not Affected

This section does not affect an employee's entitlement to special maternity leave under section 71.

62. Parental Leave and Other Leave

- (1) An employee may take any annual leave or long service leave (or any part of it) to which the employee is entitled instead of or in conjunction with parental leave.
- (2) However, the total period of leave cannot be so extended beyond the maximum period of parental leave authorised by this Part.
- (3) Any paid sick leave or other paid absence authorised by law or by an industrial instrument or contract of employment is not available to an employee on parental leave, except if the paid absence is annual leave or long service leave or with the agreement of the employer.

63. Employee and Employer may Agree to Interruption of Parental Leave by Return to Work

- (1) An employee on parental leave may, with the agreement of the employer, break the period of leave by returning to work for the employer, whether on a full time, part time or casual basis.
- (2) The period of leave cannot be extended by such a return to work beyond the maximum period of leave authorised by this Part.
- (3) Nothing in this section affects any other work undertaken by the employee during parental leave.

Note: - Section 58(6) requires the employee when taking parental leave to provided the employer with a statutory declaration, or enter into an agreement with the employer, that the employee will not engage during leave in any conduct inconsistent with the employee's contract.

64. Extension of Period of Parental Leave

- (1) An employee may extend the period of parental leave once only by giving the employer notice in writing of the extended period at least 14 days before the start of the extended period. The period of leave cannot be extended by such a notice beyond the maximum period of leave authorised by this Part.
- (2) An employee may extend the period of parental leave at any time with the agreement of the employer. The period of leave can be extended by such an agreement beyond the maximum period of leave authorised by this Part.
- (3) This section applies to an extension of leave while the employee is on leave or before the employee commences leave.

65. Shortening of period of Parental Leave

An employee may shorten the period of parental leave with the agreement of the employer and by giving the employer notice in writing of the shortened period at least 14 days before the leave is to come to an end.

## 66. Return to Work After Parental Leave

- (1) An employee returning to work after a period of parental leave is entitled to be employed in:
  - (a) the position held by the employee immediately before proceeding on that leave, or
  - (b) if the employee worked part time because of the pregnancy before proceeding on maternity leave - the position held immediately before commencing that part time work, or
  - (c) if the employee was transferred to a safe job under section 70 before proceeding on maternity leave - the position held immediately before the transfer.
- (2) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position as nearly as possible comparable in status and pay to that of the employee's former position.
- (3) This section extends to a female employee returning to work after a period of leave under section 71 (special maternity leave and sick leave).
- (4) An employer who does not make available to an employee a position to which the employee is entitled under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

Note: - An employee returning to work after parental leave may also have an entitlement to work part time under an industrial instrument or a part time work agreement under Part 5.

## Division 2 - Miscellaneous Provisions

## 67. Employer's Obligations

- (1) Information to employees 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 entitlements to parental leave under this Part, and
  - (b) the employee's obligations to notify the employer of any matter under this Part.

An employer cannot rely on an employee's failure to give a notice or other document required by this Part unless the employer establishes that this subsection has been complied with in relation to the employee.

- (2) Records An employer must keep, for at least 6 years, a record of parental leave granted under this Part to employees and all notices and documents given under this Part by employees or the employer.

Maximum penalty: 20 penalty units.

## 68. Termination of Employment Because of Pregnancy or Parental Leave

- (1) An employer must not terminate the employment of an employee because:
  - (a) the employee or employee's spouse is pregnant or has applied to adopt a child, or
  - (b) the employee or employee's spouse has given birth to a child or has adopted a child, or
  - (c) the employee has applied for, or is absent on, parental leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Maximum penalty: 100 penalty units.

- (2) For the purposes of establishing such a termination of employment, it is sufficient if it is established that the alleged reason for termination was one of two or more reasons for termination.
- (3) This section does not affect any other rights of a dismissed employee under this or any other Act or under any industrial instrument or contract of employment, or the rights of an industrial organisation representing such an employee.

Note: - A dismissed employee may also make a claim under Part 6 (unfair dismissals).

69. Replacement Employees

- (1) A replacement employee is a person who is specifically employed as a result of an employee proceeding on parental leave (including as a replacement for an employee who has been temporarily promoted or transferred in order to replace the employee proceeding on parental leave).
- (2) Before a replacement employee is employed, the employer must inform the person of the temporary nature of the employment and of the rights of the employee on parental leave to return to work.

Maximum penalty: 50 penalty units.

- (3) A reference in this section to an employee proceeding on parental leave includes a reference to a pregnant employee exercising a right under section 70 to be transferred to a safe job.

70. Transfer to a Safe Job

- (1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the obligations of the employer under the *Occupational Health and Safety Act 1983*.
- (2) The employer is to temporarily adjust the employee's working conditions or hours of work to avoid exposure to that risk.
- (3) If such an adjustment is not feasible or cannot reasonably be required to be made, the employer is to transfer the employee to other appropriate work that:
  - (a) will not expose her to that risk and
  - (b) is as nearly as possible comparable in status and pay to that of her present work.
- (4) If such a transfer is not feasible or cannot reasonably be required to be made, the employer is to grant the employee maternity leave under this Part (or any available paid sick leave) for as long as is necessary to avoid exposure to that risk, as certified by a medical practitioner.
- (5) An employer who does not comply with any obligation imposed on the employer by this section is guilty of an offence.

Maximum penalty (subsection (5)): 50 penalty units.

71. Special Maternity Leave and Sick Leave If the pregnancy of an employee terminates before the expected date of birth (other than by the birth of a living child), or she suffers illness related to her pregnancy, and she is not then on maternity leave:

- (a) the employee is entitled to such period of unpaid leave (to be known as special maternity leave) as a medical practitioner certifies to be necessary before her return to work, or
- (b) the employee is entitled to such paid sick leave (either instead of or in addition to special maternity leave) as she is then entitled to and as a medical practitioner certifies to be necessary for her return to work.
72. Special Adoption Leave An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave if the employee requires that leave to attend compulsory interviews or examinations as part of the adoption procedure.

### **KINDERGARTENS, &c, (STATE) INDUSTRIAL COMMITTEE**

#### Industries And Callings

All persons employed in or in connection with child care, child minding centres, day nurseries and pre-school kindergartens in the State, excluding the County of Yancowinna; excepting -

Persons employed as teachers or teachers in training but not excepting unqualified teachers' aides, helpers or assistants;

Persons employed as teachers' aides in pre-school kindergartens and nurseries within the grounds of public schools;

Persons employed by the Department of Corrective Services;

Drivers of vehicles;

Employees of all city, municipal, shire and county councils;

Employees in child minding centres in public hospitals;

and excepting also employees within the jurisdiction of the following Conciliation Committees -

Private Hospital Employees (State);

Trained Nurses, &c. Other Than In Hospitals, &c, (State);

Voluntary Care Association Employees (State).

---

Printed by the authority of the Industrial Registrar.

## MISCELLANEOUS WORKERS HOME CARE INDUSTRY (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B9151	04/08/2000	First pay period on or after 15/12/1999	317	618
5 & Part B	B9585	15/12/2000	First pay period on or after 24/07/2000	321	175
5 & Part B	C0727	15/02/2002	First pay period on or after 15/08/2001	311	490
33 (i)	C1016	08/03/2002	On and from 31/05/2001	331	1077
21 (6)	C1312	23/08/2002	On and from 23/11/2001	335	1243
5 & Part B	C1370	08/11/2002	First full pay period on or after 15/08/2002	336	1162
5, 15, Part B	C2101	26/09/2003	First full pay period on or after 15/08/2003	341	593
11A	C2642	30/04/2004	First full pay period on or after 05/02/2004	344	287
1, 37, 38	C2795	03/09/2004	From 25/05/2004	346	300
5, Part B	C2895	10/09/2004	First full pay period on or after 15/08/2004	346	381
5, Part B	C4250	03/02/2006	First full pay period on or after 30/08/2005	356	1223
5, Part B	C5008	06/10/2006	First full pay period on or after 30/08/2006	361	91
21, 23, 24	C5565	06/07/2007	On and from 19/12/2005	362	1297
5, Part B	C5929	12/10/2007	First full pay period on or after 30/08/2007	363	1468
1, 3A	C6136	30/11/2007	On and from 31/08/2007	364	604
5, Part B	C6674	29/08/2008	First full pay period on or after 30/08/2008	366	636
5, Part B	C7229	30/10/2009	First full pay period on or after 18/09/2009	369	569
5, Part B	C7582	02/09/2011	First full pay period on or after 16/12/2010	371	650

## PART A - CONDITIONS

### 1. Arrangement

#### PART A - CONDITIONS

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Contract of Employment
3A.	Secure Employment
4.	Hours of Work
5.	Wage Rates



6. Composite Rates
7. Part-time Employment
8. Casual Employment
9. Shift Allowances
10. Saturday and Sunday Work
11. Payment of Wages
- 11A. Union Dues
12. Rest Periods
13. Sleep Over
14. Client Cancellation
15. Overtime
16. Meal Money
17. Meal Breaks
18. Public Holidays
19. Annual Leave and Loading
20. Sick Leave
21. Personal Carer's Leave
22. Long Service Leave
23. Bereavement Leave
24. Parental Leave
25. Right of Entry
26. Union Business
27. Work Clothes and Equipment
28. Expenses
29. Travel Allowance and Travel Time
30. Training
31. Redundancy
32. Superannuation
33. Anti-Discrimination
34. Disputes Procedure
35. Form of 'Agreement in Writing'
36. Savings
37. Salary Packaging
38. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Wage Rates

Table 2 - Other Wage Rates

Table 3 - Other Rates and Allowances

### APPENDIX 'A' - GUIDELINES FOR GRADING

#### 2. Definitions

- (i) 'Agreement in writing' means in the form provided in clause 35, Form of Agreement in Writing.
- (ii) 'Average weekly hours' means the specified minimum number of contract hours or the average number of ordinary hours actually worked, whichever is the greater.
- (iii) 'Broken shift' means when an employee works two or more engagements on the same day, each engagement separated by a non-working period.
- (iv) 'Casual employee' means an employee engaged and paid as such but shall not include employees working 38 ordinary hours per week and shall not include part-time employees and shall be engaged pursuant to clause 8, Casual Employment, of this award.

- (v) 'Client' means the person who requires the home care service.
- (vi) 'Day' means a period of 24 consecutive hours.
- (vii) 'Engagement' means time on the job with the client/s joined by the time taken to travel between clients, meal breaks, crib breaks and rest periods, including overtime worked continuously after the engagement.
- (viii) 'Full-time employee' means a weekly employee engaged to work an average of 38 hours per week.
- (ix) 'Ordinary hours' means the usual rostered hours of the employee.
- (x) 'Part-time employee' means an employee engaged by the week who is required to work a number of ordinary hours each week less than the 38 ordinary hours prescribed for full-time employees.
- (xi)
  - (a) 'Pro rata sick leave' means, for the first 9 months of service, the accumulation of sick leave using the following calculation:
 
$$\frac{\text{Average weekly hours per month} \times 8}{38}$$
  - (b) 'Pro rata sick leave' means, after 12 months service, the accumulation of sick leave using the following calculation:
 
$$\frac{\text{Average weekly hours per year} \times 76}{38}$$
- (xii) 'Residence' means place of abode.
- (xiii) 'Union' means The Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch.
- (xiv) 'Week' means not more than 38 ordinary hours worked in not more than five days in any seven consecutive day period.
- (xv) 'Weekly employee' means an employee engaged and paid by the week or fortnight.

### **3. Contract of Employment**

- (i) An employee may be engaged as a full-time, part-time or casual employee.
- (ii) Employees other than casuals shall be employed by the week and their engagement shall be terminated by a week's notice on either side to be given at any time during the week or by the payment or forfeiture, as the case may be, of a week's wages in lieu thereof.  
  
 Provided that where an employee leaves without giving notice the employer may deduct, from monies owing, that part of notice not given.
- (iii) Where a full-time or part-time employee has no prior engagement with the employer as a casual, then during the first two weeks' employment they may be terminated on one hour's notice. Casual employees who are subsequently engaged as full-time or part-time employees may be terminated on one hour's notice during the first week. The short periods of notice of termination shall apply in respect of both an employer terminating employment and an employee resigning from employment.
- (iv) Notwithstanding the provisions of this clause the employer or the employer's representative shall have the right to terminate an employee at any time for refusal of duty, malingering, inefficiency, neglect of duty or misconduct and shall be liable only for payment up to the time of dismissal.

- (v) The employment of a casual employee may be terminated by one hour's notice.
- (vi) On the termination of employment the employer shall, at the request of the employee, give to such employee a statement by the employer stating the period of employment, the class of work employed upon and when the employment terminated.

### 3A. Secure Employment

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Occupational Health and Safety

- (i) For the purposes of this subclause, the following definitions shall apply:
  - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
  - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

#### 4. Hours of Work

- (i) The ordinary hours of work, exclusive of meal times, shall not exceed 8 hours per day nor 38 hours per week, provided that ordinary hours may be a maximum of 10 hours per day by agreement in writing between employer and employee. Such hours shall be worked in no more than five days in any seven consecutive day period within the spread of hours of 7:00am to 8:00pm.
- (ii) As required by the employer, an employee shall start and cease work on the job at the commencing and finishing times within which the ordinary hours shall be worked and shall transfer from client to client as directed by the employer. An employee transferred from one client to another during a day shall be paid for the time occupied in travelling in accordance with the provisions of subclause (ii) of clause 29, Travel Allowance and Travel Time.
- (iii) An unpaid period of not less than 30 minutes nor more than one hour shall be allowed for meals to employees who continuously work 5 hours or more in each day.
- (iv) As far as possible the employer shall fix the time of duty in a flexible way to meet the needs of the client and the employee.

#### 5. Wage Rates

Employees of the classifications herein set out shall be paid not less than the minimum rates as set out in Table 1 - Wage Rates, of Part B, Monetary Rates.

The rates of pay in this award include the adjustments payable under the State Wage Case of 2010. These adjustments may be offset against:

- (a) any equivalent overaward payments; and/or
- (b) award wage increases since 29 May 1991, other than safety net, State Wage Case, and minimum rates adjustments.

Upon being employed, employees shall be graded into one of the following grades:

- (i) Field Staff Grade 1 - Field Staff Grade 1 shall mean a person without previous relevant experience in personal care delivery. This is a trainee level which applies to new employees. The employer shall provide training. At the end of a maximum period of six months or 250 hours employment, employees who have satisfactorily completed the requirements of Grade 1 shall progress to Grade 2.

Should an employee at this Grade 1 level not satisfactorily complete the requirements of Grade 1, he/she shall be notified in writing by the employer two weeks prior to the date which he/she would have proceeded to Grade 2.

An employee may seek the assistance of the union during these discussions and if there is a disagreement between the parties as to the employee's future, the matter shall be resolved as per clause 34, Disputes Procedure.

Nothing contained in this clause shall be taken to detract from the employer's right under clause 3, Contract of Employment.

A Field Staff Grade 1 shall work under general supervision.

Notwithstanding the above employees who choose only to carry out general housekeeping duties and are not prepared to multiskill shall be paid at this grade.

- (ii) Field Staff Grade 2 - Field Staff Grade 2 shall mean a person who satisfies the requirements of Grade 1 and has progressed to Grade 2.

An employee at this level shall be competent in carrying out simple personal care, housekeeping and tasks relevant to assisting clients to maintain their independence in their own homes.

Optional training shall be provided to employees at the request of the employee to equip employees to apply for positions at Grade 3.

Field Staff Grade 2 employees may be required to perform complex tasks required of a grade 3 employee from time to time, within their competence, and shall be paid at the rate for Field Staff Grade 3 whenever such duties are performed for periods in excess of 5 hours per week.

- (iii) Field Staff Grade 3 - Field Staff Grade 3 shall mean a person who performs the duties of a Field Staff Grade 2 and is required to directly attend to the client's needs, as opposed to assisting the client to do for himself/herself because of the client's behaviour or the clients' condition and/or household environment.

Grade 3 employees will be involved in on-the-job training of Field Staff where required.

- (iv) Live-In Houseworker -

- (a) The terms and conditions contained in the clause shall be in substitution for and not cumulative upon the following clauses of the Award.

Clause Number	Subject
4	Hours of Work
10	Saturday and Sunday Work
15	Overtime
18	Public Holidays

- (b) In respect of persons not permanently appointed as Live-in Houseworkers, in so far as clause 19, Annual Leave and Loading, and clause 20, Sick Leave, are concerned, hours worked under this clause shall be limited to eight hours of every 24 for calculation purposes.

- (c) Live-in Houseworker shall mean an employee who would normally live at the client's premises for a period in excess of 48 hours and shall be graded as follows:

- (1) Live-in Houseworker - Grade 1 is an employee employed to perform general housekeeping duties only. General housekeeping means preparing meals, cleaning, laundry, shopping and household duties of a like nature and handyperson work within the skill competence and training of the employee and excludes any personal care.
- (2) Live-in Houseworker/Carer - Grade 2 is an employee employed to perform general housekeeping duties as defined in Grade 1 and personal care grade 2 as described in Appendix A.
- (3) Live-in Houseworker/Carer - Grade 3 is an employee employed to perform general housekeeping duties as defined in Grade 1 and personal care grade 2 and 3 as described in Appendix A.

- (d) Wages - Weekly Rates

- (1) Live-In Houseworker - Grade 1

The total weekly remuneration for a Live-in Houseworker Grade 1 shall be calculated as follows:

Weekly Rates for a Field Staff Worker Grade 1  
+ All Incidents Loading = Total Weekly Rate

The All Incidents Loading for a Live-in Houseworker Grade 1 is calculated by obtaining 30% of the relevant weekly rate.

The All Incidents Loading of 30% takes into account all incidents of employment inherent in the work and conditions of employment of Live-in Houseworkers, including but not limited to, the requirement to reside at the client's premises. Such tasks that are required to be performed by the employee will be performed at times of the day which are mutually agreed between the employer and the employee.

(2) Live-In Houseworker/Carer - Grade 2

The total weekly remuneration for a Live-in Houseworker/Carer Grade 2 shall be calculated as follows:

Weekly Rates for a Field Staff Workers Grade 2  
+ All Incidents Loading = Total Weekly Rate

The All Incidents Loading for a Live-In Houseworker/Carer Grade 2 is calculated by obtaining 40% of the relevant weekly rate. The All Incidents Loading of 40% takes into account all incidents of employment inherent in the work and conditions of employment of Live-In Houseworkers, including but not limited to, the requirement to reside at the client's premises. The employee will normally perform duties at times of the day which are mutually agreed between the employer and employee.

(3) Live-In Houseworker/Carer - Grade 3

The total weekly remuneration for a Live-in Housekeeper/Carer Grade 3 shall be calculated as follows:

Weekly Rates for a Field Staff Worker  
+ Special Loading + All Incidents Loading = Total Weekly Rate.

The Special Loading is calculated by obtaining 3.5% of the relevant weekly rate. The special loading is in recognition of all factors, including but not limited to, the special pressures, responsibilities and climate inherent in the work of a Live-in Houseworker Grade 3.

The All Incidents Loading is calculated by obtaining 50% of the sum of the relevant weekly rate plus the Special Loading. The All Incidents Loading of 50% takes into account all incidents of employment inherent in the work and conditions of employment of Live-in Houseworkers, including but not limited to, the requirement to reside at the client's premises and to perform work, and be available for the performance of work at all such times of the day as the job and the client's needs may require.

(e) Wages - Daily Rates

- (i) Part Time Employees - The daily rate for a Live-In Houseworker/Carer (any grade) shall be calculated as follows:

$$\frac{\text{Appropriate Weekly rate for Live-In Houseworker}}{5} = \text{daily rate}$$

Provided that by mutual agreement up to three employees may be engaged as a Live-In Houseworker (any grade) per client.

For the purpose of this subclause a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this subclause shall be two days at the daily rate. Thereafter the minimum payment will be at the daily rate.

(ii) Casual Employees

The casual rate for a Live-In Houseworker (any grade) shall be calculated as follows:

$$\frac{\text{Appropriate Weekly rate for Live-In Houseworker} + 25\% = \text{daily rate}}{5}$$

For the purpose of this subclause a day shall be defined as a period of 24 consecutive hours.

The minimum payment for work done under this subclause shall be one day at the daily rate.

Work performed under this subclause shall be for relief and temporary and emergency purposes only.

(f) Time Off -

- (i) After each five consecutive days of duty, a Live-in Houseworker shall be entitled to two consecutive days off.

Provided that

- (1) Such days may accumulate to a limit of six and in any case must be taken at the conclusion of such service.
- (2) Where it is mutually agreed between the employer and the employee that under special circumstances the days of duty should continue, such days may accumulate to a limit of eight to be taken at the conclusion of such service.

Provided that the Live-in Houseworker shall continue to receive the normal weekly wage during such days off.

(g) Full Time Live-in Houseworker -

- (i) In the event of work appropriate to a Live-in Houseworker under this clause not being available, a Live-in Houseworker can be required to undertake work performed by other employees covered by this award. Provided that where such work is directed and carried out it shall be paid at the rates and conditions contained in this clause subject to subclause (ii) of this clause.
- (ii) In the event of work not being available under this clause the Secretary or other responsible officer of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, New South Wales Branch, will be contacted. During this period of time the Live-in Houseworker will not suffer any reduction in pay. Discussions will commence as soon as possible between the employer and the said Union. From the date of contact with the said Union, the Live-in Houseworker will not suffer any reduction in pay, although such time will be limited to two weeks.
- (iii) Nothing in this subclause shall preclude an employee from applying for that leave contained in this award to which there is an entitlement.

- (h) Commencement and Cessation - Designated commencement of work insofar as place, date and time are concerned shall be calculated by the employer. Designated cessation of work insofar as place, date and time are concerned shall be calculated by the employer. Provided that time spent travelling shall be regarded as time worked.



- (i) Reimbursement of Meals - In the event of whether all or some of breakfast, lunch and dinner is not provided the employer shall reimburse such reasonable amounts for same, upon proof of expenditure.
- (j) Accommodation to be provided free of charge - A live-in houseworker shall not be liable to pay or contribute towards rent, board and lodging, charges, fees, or accommodation costs etc, whilst living at the client's premises. This includes charges for gas, electricity etc.
- (k) Annual Leave - Subject to clause 19, Annual Leave and Loading, and subclause (b) of this clause, a Live-in Houseworker employed and paid as such shall accrue an additional weeks leave for every 12 months of continuous service on a pro-rata basis.

### **6. Composite Rates**

- (i) An employer shall pay all employees except live-in houseworkers a composite rate as prescribed below for all work of the employees where the employer chooses to utilise this clause. Where the employer chooses to pay a composite rate, each employee will be informed in his/her letter of appointment that composite rates apply to employment with the employer.
- (ii) The composite rate will be the rate as prescribed in Table 1 - Wage Rates, of Part B, Monetary Rates (which includes an additional 20 per cent loading). The composite rate shall be paid for all hours worked except overtime.
- (iii) This loading will be in substitution for payment of any penalty rates contained in clause 9, Shift Allowances, and clause 10, Saturday and Sunday Work.
- (iv) Overtime shall be paid on the ordinary rate as prescribed in the said Table 1, and not on the composite rate.
- (v) Where an employer wishes to vary the payment system to or from the composite rate structure, all employees will be provided with one month's notice in writing.
- (vi) Where an employer chooses to use a composite rate, employees employed at that date shall not be disadvantaged in relation to having to work outside the normal spread of hours, that is, employees shall not have their hours and times of work re-rostered in a way which disrupts their social and family life.

### **7. Part-time Employment**

- (i) A part-time employee is one who is appointed to work a minimum number of contract hours which are less than 38 per week but which may vary from week to week above that minimum.

A part-time employee shall be given a minimum number of contract hours per week by his/her employer as part of their contract of employment. A part-time employee shall not be paid less than his/her minimum contract hours per week, but may work up to 10 hours extra per week at his/her ordinary hourly rate without the payment of overtime, subject to clause 9, Shift Allowances, and clause 10, Saturday and Sunday work, and clause 15, Overtime.

Provided that, where 7 days' notice is given, an employee may be requested to work up to 38 hours per week.

- (ii)
  - (a) A part-time employee (other than a Live-In Houseworker) shall receive the appropriate hourly rate of pay as set out in Table 1 Wage Rates, of Part B Monetary Rates, for all work performed in ordinary time on any day, Monday to Friday, inclusive. This amount shall be the ordinary hourly rate of pay for part-time employees.
  - (b) A part time Live-In Houseworker shall receive a daily rate as set out in clause 5(e)(i).

- (iii) The hourly rates of pay shall be calculated by dividing the appropriate weekly rate by 38, calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.
- (iv) Part-time employees shall be entitled to annual leave, sick leave, public holidays and like conditions of this award on a pro-rata basis.
- (v) Part-time employees (other than Live-In Houseworkers) shall be engaged on the following basis:
  - (a) Employees shall have a minimum contract of hours of 10 per week or 20 per fortnight.
  - (b) The minimum payment per engagement shall be one hour.
  - (c) Notwithstanding the provisions in paragraph (a) above, where there is a genuine agreement in writing between the employer and employee the minimum contract hours may be reduced.
  - (d) Savings: The provisions in paragraph (a) of this subclause shall not apply to existing employees of an employer where:
    - (1) as at the operative date of this award the minimum contract hours worked by the employee are five and less than ten per week or are less than 20 per fortnight, and
    - (2) the employer is unable to re-roster the minimum contract hours of the employee so as to comply with paragraph (a) of this subclause; provided that if additional hours of work become available such existing employees shall be offered those additional hours to the extent necessary to comply with paragraph (a) of this subclause.
- (vi) The average weekly hours worked shall be the specified minimum number of contract hours or the average number of ordinary hours actually worked, whichever is the greater, for the purposes of accrual of annual leave, sick leave, long service leave and bereavement leave.
- (vii) Part time Live-In Houseworkers shall receive a minimum payment of two days at the daily rate as set out in clause 5(e)(i).

### **8. Casual Employment**

- (i) Casual employee means an employee engaged by the hour and paid as such and shall only be used for relief, temporary or emergency work.

'Relief work' covers all hours that would have been worked by another employee but for absence due to any type of leave or other approved absence by that employee.

'Temporary work' means an engagement of less than six weeks where the services required by the client is for less than six weeks.

'Emergency work' means work which could not be covered by a weekly employee because of extenuating circumstances.

- (ii)
  - (a) A casual employee (other than a Live-In Houseworker) shall receive the hourly rate of pay as set out in Table 1 - Wage Rates, of Part B, Monetary Rates plus a casual loading of 20 per cent of the hourly rate of pay.
  - (b) A casual Live-In Houseworker shall receive a daily rate of pay as set out in clause 5(e)(ii).
  - (c) This amount shall be the ordinary hourly rate of pay for casual employees and is inclusive of compensation for annual leave.

- (iii) The hourly rate of pay prescribed in subclause (ii)(a) above shall be calculated by dividing the appropriate weekly rate by 38, calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.
- (iv)
  - (a) Casual employees (other than Live-In Houseworkers) shall receive a minimum payment of one hour for each engagement.
  - (b) Casual Live-In Houseworkers shall receive a minimum pay of one day at the daily rate as set out in clause 5(e)(ii).
- (v) A casual employee other than a Live-In Houseworker, notified by his/her employer in accordance with subclause (i) of clause 6, Composite Rates, shall receive the casual rate of pay referred to in subclause (ii)(a) herein, plus the additional 20 per cent loading referred to in subclause (ii) of the said clause 6.

### **9. Shift Allowances**

- (i) An additional allowance of 30 per cent shall be paid for all ordinary hours that fall outside the spread of hours of 7:00 a.m. to 8:00 p.m., Monday to Friday, for the actual time worked outside the said spread of hours.
- (ii) Broken Shifts
  - (a) Employees working broken shifts shall be paid an additional amount as set out in Item 1 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates, for each break in the shift worked.
  - (b) Periods of work shall be so arranged so that all employees shall have a break of 10 hours in any 24-hour period, unless there is agreement in writing between the employee and the employer, or where the shifts are associated with a sleepover.
  - (c) Notwithstanding the provisions in this clause all employees shall have a break of 8 hours in any 24-hour period.

### **10. Saturday and Sunday Work**

- (i) Employees required to work their ordinary hours on a Saturday or Sunday shall be paid at the appropriate rate prescribed in Table 1 - Wages of Part B, Monetary Rates, and in addition shall be paid for all time so worked at the following rates:
  - Saturday work - 50 per cent
  - Sunday work - 100 per cent
- (ii) The allowances prescribed in this clause shall be in substitution for and not cumulative upon the shift work allowances prescribed in clause 9, Shift Allowances.
- (iii) For the purpose of this clause, the rates prescribed shall apply in respect of ordinary hours of work only and shall apply to all employees including casual employees.

### **11. Payment of Wages**

- (i) All wages shall be paid at least fortnightly by cash, cheque or by direct deposit into the bank account of an employee's choice.
- (ii) The minimum unit of payment of wages shall be by the half hour, eg. where an employee is directed to work 1 hour and 20 minutes the employee shall be entitled to payment of 1½ hours wages.
- (iii) Wages shall be paid during working hours on a weekday being not more than five days following the end of the pay period. The pay day selected, once agreed, shall not be changed without the agreement in

writing of a majority of the employees. In the case of electronic funds transfer payments, wages shall be transferred to the nominated account within 12 hours of the close of business on the nominated pay day.

An employee who is kept waiting for his or her pay beyond the time nominated for such pay to be paid the employee shall be paid at overtime rates for such waiting time until the wages are paid.

Provided that when the employee has not provided the employer with details of time worked at the nominated time, the employer will not be held responsible for delays of payment for work beyond the minimum contract hours.

- (iv) Upon termination, wages due to an employee and any other monetary entitlements shall be paid on the date of termination or forwarded by post on the next working day.
- (v) An employer may deduct from amounts due to an employee such amounts as are authorised in writing by the employee and deductions of income tax required to be made to the Australian Taxation Office.
- (vi) On pay days, the employer shall provide for each employee a statement in writing showing the gross salary including overtime and allowances, the amount deducted for taxation purposes, particulars of other deductions and the net amount paid, in accordance with section 123 of the Industrial Relations Act 1996, and regulation 15 thereof.

#### **11A. Union Dues**

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - (c) deduction of Union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- (iv) Where the employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.

- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.
- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.
- (viii) This clause shall take effect:
  - (a) In the case of employers which currently deduct Union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after 5 February 2004.
  - (b) In the case of employers who do not fall within subparagraph (a) above, but who currently make deductions, other than union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on or after 5 May 2004.
  - (c) For all other employers, from the beginning of the first pay period to commence on or after 5 August 2004.

## 12. Rest Periods

Each employee shall be allowed two intervals of not more than ten minutes each as rest periods, where such employees work more than four consecutive hours in a day. The intervals shall be part of the time of duty without deduction of pay.

## 13. Sleep Over

- (i) This clause shall not be used to substitute for or derogate from an employee employed as a Live-In Houseworker as defined in subclause (iv), of clause 5, Wage Rates.
- (ii) An employer shall not require an employee to sleepover at the clients' residence more than five consecutive nights and will only be required to do so for emergency, relief and temporary purposes.
- (iii) An employee who is required to sleep overnight and to be on call for emergencies shall, in addition to the provision of board and lodging for such nights, be paid an allowance as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, provided that, except for time spent on call-out, the on-call period shall not count as time worked for the purpose of annual leave, sick leave or other leave.
- (iv) A sleep over shall not exceed 10 hours per occasion.
- (v) All time spent on call-out shall be paid for as time worked with a minimum payment of one half hour at ordinary time including the shift allowance as provided in clause 9, Shift Allowances, applying to each occasion, subject to the time and purpose of the call and the time spent being appropriately documented for each occasion.
- (vi) When an employee is engaged on sleep over, such sleep over period shall immediately precede and/or follow a shift.

#### 14. Client Cancellation

- (i) Where an employee is given notice before 5:00 p.m. the day before the rostered service was to take place that a client shall not be requiring the service, then no payment shall be made to the employee in respect of that client.
- (ii) Where the employee is given notice after 5:00 p.m. the day before the rostered service or where the employee arrives at the client's home and the client is not there:
  - (a) If the employee can be given another client, then the employee is to proceed to the client within the rostered time on the same day. Where there is an agreement between the employer and employee then re-rostering of the client may take place on another day.
  - (b) If the employee cannot be given another client within the rostered time on the same day and the cancelled client stood alone as a single engagement, the employee is to receive a one hour payment regardless of the fact that the engagement has been cancelled.
  - (c) If the employee cannot be given another client within the rostered time on the same day and the cancelled client is part of an engagement, the employee is to be paid for the time that would have been worked to a maximum of one hour.
- (iii) Notwithstanding the provisions of subclauses (i) and (ii) of this clause, if the total hours worked at the end of the fortnight are less than an employee's contract hours, then the contract hours shall be paid.
- (iv) Notwithstanding subclauses (i), (ii) and (iii) of this clause where the employer is unable to meet the minimum contract hours of a full-time or part-time employee for reasons associated with death, hospitalisation or other like extenuating circumstances, the following procedures shall be followed in the sequence provided:
  - (a) work shall be re-allocated from casual employees to the part-time or full-time employee; or
  - (b) where possible, the additional hours beyond the contract hours shall be re-allocated from another employee to the employee; or
  - (c) where the employee agrees, the employee may have access to annual leave or long service leave; or
  - (d) the employee and employer may agree to a period of unpaid leave; or
  - (e) failing agreement in paragraph (d) of this subclause, refer to clause 34, Disputes Procedure.
  - (f) Notwithstanding the provisions in paragraphs (a) to (e) of this subclause, inclusive, if after six weeks the client still does not require the service, the employee shall be entitled to the provisions as set out in clause 31, Redundancy.

#### 15. Overtime

- (i) Rates of Pay - For all work directed to be done in excess of eight hours per day or ten hours per day where agreed in accordance with subclause (i) of clause 4, Hours of Work, or 38 hours per week, the rates of pay shall be time and a half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime work.

Except as provided in subclause (iii) of this clause, in computing overtime each day's work shall stand alone.

- (ii) Where an employee is paid a composite rate, overtime shall be paid on the ordinary rate as prescribed in Table 1 - Wage Rates, of Part B, Monetary Rates, and not on the composite rate.

- (iii) Return to Duty After Overtime - When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

An employee (other than a casual employee) who works so much overtime between the termination of such employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that he or she has not had at least ten consecutive hours off duty between those times shall be released after completion of such overtime until he or she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instructions of the employer, such an employee resumes or continues work without having had such ten consecutive hours off duty he or she shall be paid at double rates until released from duty for such period and shall then be entitled to be absent until he or she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (iv) Crib Time - An employee working overtime shall be allowed a crib break of 20 minutes without deduction of pay after each consecutive four hours of overtime worked if the employee continues work after such crib time. Where the period of overtime is more than one and a half hours, an employee before starting overtime after working ordinary hours shall be allowed a meal break of 30 minutes which shall be paid for at the appropriate ordinary rate. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand, provided that the employer shall not be required to make any payments for any time allowed in excess of 30 minutes.

(v)

- (a) Subject to subclause (b), an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (c) For purposes of subclause (b) what is unreasonable or otherwise will be determined having regard to:
- (1) any risk to employee health and safety;
  - (2) the employee's personal circumstances including any family and carer responsibilities;
  - (3) the needs of the workplace or enterprise;
  - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (5) any other relevant matter.

## 16. Meal Money

An employee required to work overtime after 5:00 p.m. for more than two hours without being notified on the previous day or earlier that he or she will be so required to work shall be paid an allowance as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for the purchase of a meal, except where the employer provides a suitable meal.

## 17. Meal Breaks

- (i) No employee shall be required to work more than five hours continuously without a meal break after commencing his or her daily work. Such unpaid period shall consist of not less than 30 minutes nor more than one hour. However, employees may be rostered to have a 20 minute paid crib break in place of the meal break where they are expected to remain with the client during such break.

- (ii) An employee called upon to work during a meal period as prescribed in clause 4, Hours of Work, shall be paid overtime rates for all time so worked and such overtime shall continue to be paid until a meal break is allowed.

### 18. Public Holidays

- (i) Employees, other than casual employees, shall be entitled to the following public holidays, without loss of pay, namely:

New Year's Day, Australia Day, Good Friday, and the following Saturday and Monday, Anzac Day, Queen's Birthday, August Bank Holiday, Labour Day, Christmas Day and Boxing Day.

Provided that absence from duty owing to illness or other causes for periods immediately preceding or succeeding such holidays, where application is made for leave and such is approved, will cause the employee no loss of pay for the public holiday or holidays occurring within such period of absence.

- (ii) Payment shall be the amount the employee would have received had the day not been a holiday and he or she had worked thereon for the usual time on such day. Provided that where duties that would have been performed on the day on which the holiday falls are performed on another day in that week in addition to the normal duties which will extend the hours worked, then no payment will be made for the holiday.

Employees working 38 hours a week but not on a Saturday, shall not receive pay if the holiday falls on a Saturday.

- (iii) All time worked on a public holiday shall be paid for at the rate of double time and a half the ordinary prescribed rate.
- (iv) When the client cancels work on a public holiday, the employee shall have the time off with normal pay.
- (v) These rates are in substitution for and not cumulative upon the rates prescribed in clause 9, Shift Allowances and clause 10, Saturday and Sunday Work.
- (vi) Where a full-time employee has a rostered day off or short day off as part of a 38 hour week roster, which falls on a public holiday, the employee and employer shall agree to an appropriate alternative day off. In the absence of agreement, the substituted day shall be determined by the employer, and in any event shall be taken by the employee within 30 days of the public holiday.
- (vii) An employee who is paid a composite rate as set out in Table 1 - Wage Rates, of Part B, Monetary Rates, and is required to work on a public holiday shall be granted equivalent time off at a time to be mutually agreed between the employer and the employee, without loss of pay. Such time off must be taken within 30 days of the holiday or if not taken within 30 days the employee is entitled to the payment prescribed in subclause (iii) of this clause on the ordinary rate as set out in the said Table 1.

### 19. Annual Leave and Loading

- (i) The provisions of the *Annual Holidays Act 1944*, and/or any Act amending or replacing that Act shall apply.
- (ii) Employees engaged to regularly work their ordinary hours on a rotating roster cycle over any seven days of the week, and who work in excess of 30 weekends in a calendar year, shall be entitled to an additional week's annual leave.
- (iii) Part-time employees whose weekly hours vary during the year shall be entitled to four weeks annual leave paid at their average weekly hours of ordinary time worked during the preceding 12 months.



- (iv) Annual Leave Loading -
- (a) When annual leave is due and taken, in addition to payment of wages an employee before going on annual leave shall receive a loading of 17.5 per cent of the appropriate ordinary rate of wages prescribed in Table 1 - Wages Rates, of Part B, Monetary Rates.
  - (b) When the employment of an employee is terminated by the employer for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, the employee shall be paid a loading calculated in accordance with subclause (a) of this subclause for the period not taken.
  - (c) Except as provided in paragraph (b) of this subclause, no loading is payable on the termination of an employee's employment.
  - (d) The loading is not payable on annual leave taken in advance, but will become payable at the time the leave would normally become due.
  - (e) Employees paid a composite rate will receive their composite rate whilst on annual leave in lieu of the annual leave loading referred to above.

## 20. Sick Leave

In the event of an employee becoming sick and unfit for duty and certified as such by a duly qualified medical practitioner, he or she shall be entitled to 76 hours sick leave for each year of service, provided that:

- (i) The entitlement to be paid for absences due to sickness in the first year of employment shall accrue on the basis of eight hours after each month of employment so that the full 76 hours entitlement will have been accrued after nine months' employment. In the second and subsequent year 76 hours will accrue at each anniversary date of employment, with untaken sick leave cumulative to a maximum of five years, namely 380 hours.
- (ii) Employees shall not be entitled to be paid for sick leave for any period in respect of which workers' compensation is paid or payable.
- (iii) Applications for sick leave shall be in writing which may be completed upon resumption of duty.
- (iv) Should an employee be absent from work on account of sickness or accident it shall be necessary for such employee to notify the employer or agent authorised on the employer's behalf, that such absence is due to sickness or accident at least three hours prior to the commencement of normal work, wherever practicable but in any case not later than one hour before the first client. Should an employer require a written statement setting out the nature of the illness, such statement shall be furnished within 48 hours of the commencement of each absence.
- (v) The employer may dispense with the requirement of a medical certificate where the absence does not exceed two days in any year, or where, in the employer's opinion, such requirement is unnecessary. Medical certificates furnished by employees in accordance with this subclause to cover any periods of absence, shall indicate to the employer the nature of the illness suffered by the employee.
- (vi) A part-time employee is entitled to pro rata sick leave on the proportionate basis that the employee's weekly hours bears to 38 as outlined by the formulae provided in subclause (xi) of clause 2, Definitions. The entitlement to pro rata sick leave shall be cumulative to a maximum of five years.

## 21. Personal Carer's Leave

### 1. Use of Sick Leave -

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 21.1(c)(ii) who needs the employee's care and support, shall be entitled to use, in

accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 20, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (b) The employee shall, if required,
- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
  - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a defacto spouse, who in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or defacto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the defacto partner of that employee on a bona fide domestic basis; or
    - (e) a relative of the employee who is a member of the same household, where for purposes of this subparagraph:
      - (1) "relative" means a person related by blood, marriage or affinity;
      - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
      - (3) "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 34, Dispute Procedure, should be followed.

2. Unpaid Leave for Family Purposes -

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 21.1(c)(ii) above who is ill or who requires care due to an unexpected emergency.

3. Annual Leave -

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be inclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(d) Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 21.1(b) and 21.1(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 21.1(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

4. Time Off in Lieu of Payment for Overtime -

- (a) 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 within the 12 months of the said election.
- (b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
- (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.

5. Make-up Time -

- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.

- (b) An employee may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- 6. The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.
- 7. An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

## 22. Long Service Leave

See *Long Service Leave Act 1955* and/or any Act amending or replacing that Act.

## 23. Bereavement Leave

- (i) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay, on each occasion of the death of a person as prescribed by the said subclause (iii) of this clause.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 21, Personal Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4) and (5) of the said clause 21. In determining such a request the employer will give consideration to the consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 23(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 21.1(c)(ii) of clause 21, Personal / Carer's Leave.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 24. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **25. Right of Entry**

An officer of an industrial organisation of employees, authorised for the purpose by the Industrial Registrar, may enter the premises where members are engaged, in accordance with the provision of Part 7 of the Industrial Relations Act 1996.

### **26. Union Business**

- (i) An employer of employees whose conditions of employment at any premises are covered by this award must cause a copy of the award to be exhibited at those premises in a conspicuous place readily available to the employees in accordance with section 261 of the Industrial Relations Act 1996.
- (ii) It is sufficient compliance with subclause (i) of this clause if the latest reprint of the award is exhibited.

### **27. Work Clothes and Equipment**

- (i) On request, the employer shall supply, free of charge, two sets of tabards (ie. full body aprons).
- (ii) Tabards shall be replaced by the employer on the basis of fair wear and tear.
- (iii) Tabards shall remain the property of the employer at all times and any employee applying for a new issue of any tabards supplied by the employer who fails to return such tabards last issued to him or her shall not be entitled to a new issue without payment therefor.
- (iv) All new employees at time of engagement and all existing employees at the time of the next issue of uniforms may be required to sign an authorisation permitting the employer to deduct the value of uniforms and/or employer property from termination monies if the uniforms and/or employer property is not returned. Employer property is property personally given to an employee and where such property can reasonably be expected to remain in the employee's personal control.
- (v) Where equipment, materials and tools are supplied by the client, the employer shall ensure that they are of reasonable quantity, quality and safety standards.
- (vi) Where an employee is required to work outdoors the employer shall provide a suitable broad-brimmed hat.

### **28. Expenses**

- (i) Employees who are authorised to make business telephone calls on their telephone or a public telephone shall be reimbursed the cost of such calls. Provided that a record of calls and their purpose may be required to be given to the employer with an application for reimbursement, on a monthly basis.
- (ii) No payment shall be made under this clause unless the employer is satisfied that the employee has incurred such expenditure.

### **29. Travel Allowance and Travel Time**

- (i)
  - (a) Where an employee is required to use his or her motor vehicle on official business he or she shall be paid at the rate as set out in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, excluding travel from the employee's home to the first place of work and return to home at the end of his or her duties.
  - (b) Where an employee is required to use public transport for travel on official business such employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties.

- (c) No payment shall be made under paragraphs (a) and (b) of this subclause unless the employer is satisfied that the employee has incurred expenditure for such travel.
- (ii) Where employees are rostered to work with consecutive clients they shall be paid for the time taken to travel between locations at the rate of three per cent of the ordinary hourly rate per kilometre travelled, excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties; provided that this payment shall not be made if the employee is being otherwise paid under this award.

### 30. Training

An employee may, with the prior approval of the employer, attend conferences, training courses and seminars which are specifically relevant to the employer's business during normal business hours without loss of pay. Employers will not unreasonably withhold approval to attend such courses.

### 31. Redundancy

- (i) Application -
  - (a) This clause shall apply in respect of full time and part time persons employed in the classifications specified by this award.
  - (b) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees, in the terms of subclause (iv) of this clause.
  - (c) Notwithstanding anything contained elsewhere in this award, this award shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
  - (d) Notwithstanding anything contained elsewhere in this award, this award shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (ii) Introduction of Change -
  - (a) Employers duty to notify -
    - (1) 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 the union to which they belong.
    - (2) 'Significant effects' include termination of employment, major changes in the composition, operation or size of the employers workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award specified in paragraph (a) of subclause (i) of this clause makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

## (b) Employer's duty to discuss change -

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (a) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (a) of this clause.
- (3) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## (iii) Redundancy -

## (a) Discussions before terminations -

- (1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii), Introduction of Change, of this clause, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (1) of this paragraph and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination of the employees concerned.
- (3) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employee.

## (iv) Termination of Employment -

## (a) Notice for Changes in Production, Programme, Organisation or Structure -

This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'production', 'programme', 'organisation' or 'structure' in accordance with subparagraph (1) of paragraph (a) of subclause (ii) of this clause.

- (1) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks



- (2) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
  - (3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (b) Notice for Technological Change -
- This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'technology' in accordance with subparagraph (1) of paragraph (a) of subclause (ii) of this clause:
- (1) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.
  - (2) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
  - (3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.
- (c) Time Off During the Notice Period -
- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
  - (2) 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.
- (d) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.
- (e) Statement of employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (f) Notice to Centrelink - Where a decision has been made to terminate employees, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (g) Centrelink Employment Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an 'Employment Separation Certificate' in the form required by the Department of Social Security.
- (h) Transfer to Lower Paid Duties - Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii) of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the

employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.

(v) Severance Pay -

- (a) Where an employee is to be terminated pursuant to subclause (iv) of this clause, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

- (1) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (2) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (3) 'Weeks pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and all purpose allowances paid in accordance with this award.

- (b) Incapacity to Pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (a) of this clause.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (a) of this clause will have on the employer.

- (c) Alternative Employment - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (a) of this clause if the employer obtains acceptable alternative employment for an employee. Without in any way limiting the generality of the words 'acceptable alternative employment, regard shall be had to:

- (a) the employee's age, education, skills and work experience;
- (b) the employee's place of residence;
- (c) the needs of the employer and the nature of the employer's operations; and

- (d) any other relevant circumstances.
- (vi) Savings Clause - Nothing in this clause shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### 32. Superannuation

- (i) The subject of superannuation is dealt with by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, and the *Superannuation (Resolution of Complaints) Act 1993*, and section 180 of the *Industrial Relations Act 1991 (NSW)*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

The required superannuation contributions will be paid in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

- (ii) Pursuant to section 124 of the *Industrial Relations Act 1996*, the employer shall genuinely consider a request by an employee nominating the Health Employees Superannuation Trust of Australia (HESTA).

### 33. Anti Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects.
- (iii) Under the *Anti-Discrimination Act 1977*, 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.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practise of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### 34. Disputes Procedure

Subject to the *Industrial Relations Act 1996*, grievances or disputes shall be dealt with in the following manner:

- (i) The employee/s is/are required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and state the remedy sought. This meeting shall take place within a reasonable time period.
- (ii) If agreement is not reached, the matter shall then be referred by the employer to a higher authority (where this exists). At the conclusion of the discussion, the employer must provide a response to the

employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing any proposed remedy.

- (iii) While the foregoing procedure is being followed, normal work shall continue.
- (iv) If the matter is not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission for settlement by either party.
- (v) The employer may be represented by an industrial organisation of employers and employee/s is/are entitled to be represented by an industrial organisation of employees for the purposes of each step of the procedure.

### **35. Form of 'Agreement in Writing'**

For the purpose of this award the following form will satisfy the provision that the agreement between the employer and employee shall be in writing.

#### **AGREEMENT**

Print Employee's name \_\_\_\_\_ and \_\_\_\_\_  
 Print Employer's name and address \_\_\_\_\_  
 Voluntarily agree that:  
 Date \_\_\_\_\_  
 Signature of Employee \_\_\_\_\_ Signature of Employer \_\_\_\_\_

### **36. Savings**

No employee shall suffer a reduction in the rate of wages enjoyed by that employee as a result of the implementation of this award.

### **37. Salary Packaging**

- (i) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (ii) Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (iii) The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
  - (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
  - (b) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
  - (c) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;

- (d) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
- (e) prior to entering into any salary packaging agreements, the employee will be given the opportunity by the employer to seek independent advice in respect of salary package arrangements including advice from the union;
- (f) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
  - (i) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
  - (ii) the applicable rate specified in Table 1 - Rates of Pay of Part B, Monetary Rates, of this award.
- (g) notwithstanding any of the above arrangements, the employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (h) Superannuation Guarantee Contributions will be calculated with reference to the ordinary time rate of pay the employee would have been entitled to receive but for the salary packaging arrangement;
- (i) any allowance, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the ordinary time rate of pay which would have applied to the employee but for the salary packaging arrangement.
- (j) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

### **38. Area, Incidence and Duration**

- (i) This award shall apply to all persons within the jurisdiction of the Domestic Workers &c (State) Conciliation Committee engaged by an organisation in or in connection with the provision of home care services, to perform domestic work in private residences and furthermore, this award shall apply to persons engaged in or in connection with the provision of home care services who perform domestic work in private residences where the occupant of the residence is funded by one or more government and/or non-government:
  - (1) agencies;
  - (2) insurance funds;
  - (3) trusts;
  - (4) companies;
  - (5) statutory corporations;
  - (6) superannuation;
  - (7) or like fund;

where the purpose of such funding is to fund or subsidise the service or services performed and such funding may be in the form of reimbursement or payment of subsidies, allowances, fees, wages, damages, awards (from the date such damages or awards are adjudged) or other like assistance given to or on behalf of the client or service provider. Without in any way limiting the generality of the words

'domestic work' it shall include cleaning, child minding, gardening, handy work, cooking, laundry, shopping, housekeeping, personal attendant and general upkeeping services.

- (ii) Except: This award shall not apply to:
- (a) persons (other than persons employed by a home care service) employed in ambulance work, hospitals, mental hospitals, nursing homes, hostels, retirement villages, aged care hostels and other like institutions;
  - (b) persons (other than persons employed by a home care service) employed in or by hostels, accommodation support services or community residential units where their function is to assist in the provision of care and training in daily living skills, personal development, socialisation and recreation for disabled persons;
  - (c) persons employed in providing home care services to clients in private residences, where such employees are employed by, and such services are run as an adjunct to a retirement village, nursing home, hostel, accommodation support service or community residential unit, where the traditional primary role of such institutions or services was not to provide home care services;
  - (d) persons employed in or by a nursing home, hostel, retirement village, accommodation support service or community residential unit where such employees may be required to cross service clients within the scope of the employer's business (e.g., St. John's Nursing Home providing personal care services to clients who live at St. John's Retirement Village);
  - (e) persons employed by a service whose primary function is to provide respite care services;
  - (f) persons employed under the Community Services (Home Care Service of NSW) Field Staff Award 1992;
  - (g) persons employed by the occupant of the residence, where such employment is inconsistent with subclause (i) of this clause.
- (iii) Further excepting that the provisions of paragraph (d) of subclause (iv) Live-In Houseworker of clause 5, Wage Rates, shall not apply to Live-In Houseworkers employed by Paraquad of 33-35 Burlington Road, Homebush, New South Wales, until 30 August, 1995.

This award rescinds and replaces the Miscellaneous Workers Home Care Industry (State) Award published 6 October 1995 (288 IG 519), as varied, and the Miscellaneous Workers - Home Care Industry (State) Wages Adjustment and Allowances Award published 1 November 1996 (295 I.G. 675), as varied.

This award shall take effect from the beginning of the first full pay period to commence on or after 15 December 1999 and shall remain in force thereafter for a period of 12 months.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 31 August 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

**PART B**  
**MONETARY RATES**

**Table 1 - Wage Rates**

Classification	Former Rate per week \$	SWC 2010 %	Total Rate per week \$
Field Staff Grade 1	629.71	4.25	656.50
Field Staff Grade 2	654.30	4.25	682.10
Field Staff Grade 3	692.79	4.25	722.20
Live-in Houseworker Grade 1*	818.62	-	853.50
Live-in Houseworker Grade 2*	916.02	-	954.90
Live-in Houseworker Grade 3*	1075.56	-	1121.20

\*For part-time and casual rates refer clause 7 (iii) and 8 (ii) of the award. Wage totals for Live-in Houseworker rates include the All Incidents Loading per clause 5 (iv) (d) of the award which is reflected in the total rate. The Live-In Houseworker Grade 3 rate also includes a 3.5% special loading which is also reflected in the wage total.

**Table 2 - Other Wage Rates**

Rate	Field Staff Grade 1 SWC 2010 (4.25%) \$	Field Staff Grade 2 SWC 2010 (4.25%) \$	Field Staff Grade 3 SWC 2010 (4.25%) \$
Part-time minimum daily payment - hourly rate	17.27	17.95	19.00
Casual per hour includes 20% loading	20.72	21.54	22.81
Composite per hour includes 20%	20.72	21.54	22.81
Composite casual per hour includes 20% plus 20%	24.87	25.85	27.37

**Table 3 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount SWC 2010 (4.25%) \$
1	9(ii)	Shift Allowance	7.91 for each break in the shift
2	13(iii)	Sleep Over Allowance	39.88 per night
3	16	Meal Money (overtime)	10.01
4	29(i)(a)	Vehicle Allowance	0.72 per kilometre

**APPENDIX "A" - GUIDELINES FOR GRADING****Grading Work**

When determining the grade of tasks which an employee will perform in a household, the employer/employee will need to establish:

the tasks which are to be performed - personal care, housework, handyperson work, etc.

the likely impact on the worker, or the work to be performed, from any household factors - including behaviour, exhibited by the client or another household member

If Personal Care tasks are to be performed, refer to the graded lists to identify whether the work is Grade 3 or Grade 2.

Grade 3 Personal Care work requires a Grade 3 worker. Grade 2 Personal Care work requires a Grade 2 worker.

Personal Care

All personal care tasks have been graded either as Grade 3 or Grade 2.

The criteria used for grading personal care tasks, is detailed below.

Level of assistance needed (Grade 2 tasks involve some assistance to the clients, Grade 3 tasks involve a high degree or total assistance)

Who is responsible (is the client/carer responsible or is the worker responsible)

Bodily intrusion

**Grade 3 Personal Care Grade 2 Personal Care**

	Grade 3 Personal Care	Grade 2 Personal Care
Showering / Bathing	<p>Showering/Bathing adults and children with severely limited/uncontrollable body movements.</p> <p>Total bed bath/sponge where there is severely limited/uncontrollable movements or serious comfort/health consideration</p>	<p>Assisting client to shower/bath self or totally showering/bathing client. Replacement employees except where client has severely limited/uncontrollable body movements.</p> <p>Assisting with mobility or transferring to and from shower/bath except with clients who have severely limited/uncontrollable body movements.</p> <p>Assisting or transferring client to commode chair except where client has severely limited/uncontrollable body movements.</p> <p>Supervising children's bath</p> <p>Bathing a baby</p> <p>Total bed bath/sponge - exceptions Grade 3</p>



Toileting	<p>Assisting in placement, removal, emptying, care and cleaning of sheaths and leg baths</p> <p>Assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site</p> <p>Changing or assisting with urinary diversion - colostomy and drainage bags</p> <p>All bowel management except changing babies nappies and toileting children</p> <p>Continual caring of someone with bowel incontinence including washing person changing bowel incontinence pads</p> <p>Responsibility for sterilising glass catheters for people using intermittent catheters</p>	<p>Helping people to the toilet</p> <p>Assisting people to use the toilet by loosening clothing</p> <p>Assisting client to change own incontinence and sanitary pads</p> <p>Changing clients urinary incontinence pads</p> <p>Assisting clients with bottles</p> <p>Assisting self-catheterisation by holding mirror or positioning legs except where there is severely limited/uncontrollable body movements</p> <p>Changing babies, nappies, toileting children</p>
Menstrual Care	Changing tampons and sanitary pads	Assisting with menstrual care
Skin Care	<p>Changing dressings on pressure areas, ulcers, burns, wounds, cuts and grazes.</p> <p>Application of treatment creams to genital area</p>	All skin care eg. application of cream, rubbing pressure areas with lotions
Nasal Care	Cleaning noses	
Grooming	All dressing/undressing where there are severely limited/uncontrollable body movements	<p>All hair care</p> <p>Limited care of nails</p> <p>Shaving:</p> <p>Where there are uncontrollable body movements use electric razors only</p> <p>All other shaving - electric razors recommended</p> <p>All dressing/undressing or assistance with dressing/undressing except where there is severely limited/uncontrollable body movements</p>

Oral Hygiene		Assisting client with their own care of teeth or dentures  Care of teeth and dentures for the client by using tooth brush/tooth paste/oral solutions only
Oral Medication		Assisting client with or administering liquid medicines, pills, powders, nose and eye drops
Medication	Suppositories	
Transferring/ Mobility	Assisting clients to turn/sit where clients can offer limited/no assistance with weight bearing  Using mechanical aids to lift and transfer clients  Assisting client with transfers/mobility where:  Client can offer limited/no assistance with weight bearing  Particularly careful handling is required because of the client's health/disability  Some lifting or physically awkward movement is involved for staff in the transfer/mobility	Transferring client in and out of bed/chair. Care and assisting with mobility - exceptions see Grade 3  Assisting clients to turn or sit up - exceptions Grade 3
Fitting of Aids/Appliances		Such as splints and callipers
Therapy	Assisting with therapy in any of the following circumstances:  high degree of assistance is involved field staff have total responsibility because client is unable to take responsibility for the therapy and carer/therapist is not on site specialised training/knowledge is required	Assisting with therapy in any of the following circumstances  low level of assistance is involved carer/therapist is on site of clients is able to take responsibility for the therapy or carer/therapist is on site simple instructions required rather than specialised training/knowledge
Assistance with Eating	Assisting with eating where a risk of choking, vomiting or other eating difficulty is involved	Assisting where there are no eating difficulties

#### Other Assistance (Not Grade 3 Personal Care Tasks)

When determining the grading for tasks other than Grade 3 Personal Care the employer/employee will need to consider the following:

What is the likely impact on the worker, or the work to be performed from any household factor - including behaviours exhibited by the client or another household member.

Examples of household factors which will have a significant impact on the work/worker:

restless, wandering behaviour;

verbal abuse, aggression;

hearing or speech impairment which seriously affects communication;

extreme stress present due to household member with acute/terminal illness loss/bereavement;

households where children have been notified to FACS as At Risk;

households where adults are at risk of abuse;

domestic violence;

where there is a severe allergy which requires additional care with the tasks.

The more pronounced the impact of household factors on work, the higher the level of interpersonal skills required of the worker.

#### Grading Personal Care Task

Examples of Grading Personal Care with respect to the following criteria:

Level of assistance needed (Grade 2 tasks involve some assistance to the clients, Grade 3 tasks involve a high degree or total assistance)

Who is responsible (is the client/carer responsible or is the field staff responsible)

Bodily intrusion

#### Example - Grade 3 Personal Care

Providing total bowel care for a severely disabled client while their carer leaves for a break. Analysis of the task according to the factors above:

Total assistance

Worker totally responsible while carer is away

Bodily intrusion

#### Example - Grade 2 Personal Care

Assisting client to wash and dry their own hair. Analysis of the task according to the factors above:

Some assistance

Client is responsible

No bodily intrusion

#### Grading Client Behaviour

Examples of Grading with respect to client behaviour:

Level of interpersonal skills required by worker

Examples - Grade 3

- A Providing housekeeping assistance to a disabled client who displays aggressive behaviour and who is often verbally abusive.

Worker will need advanced level of interpersonal skills to be able to perform the tasks, for example: assertiveness skills to deal with the aggression and abuse - knowledge of the clients condition and understanding of the effect on the clients behaviour - negotiating skills to request assistance or change arrangements, if necessary.

- B. Assisting disabled adult female to shower, wash her hair and dress. Severe arthritis impairs the clients ability to assist. The worker cooks tea for the client in the evening, the client can feed herself. However, the client often experiences severe depression which results in her becoming withdrawn and passive.

The impact of the client's condition on the work or worker is likely to be moderate to pronounced as the work may take longer to perform and be more difficult for the worker because of the client's passivity and depression.

Worker will need advanced level of interpersonal skills to be able to direct the client or to carry out tasks on own initiative at times when the client is depressed - to be sensitive to the clients behaviour and have advanced listening skills and empathy with the client.

Examples - Grade 2

- A. Providing activities for a blind adolescent girl. The worker will be following a plan which has previously been discussed and outlined.

- B. Providing housekeeping assistance to an elderly woman who has severe asthma and heart problems.

The impact of the work or worker is slight to moderate, depending on the clients health stability. The worker would need basic interpersonal skills, eg. ability to respond in a crisis.

NOTE: Where there exists a dispute in relation to the grading of work refer to clause 34, Disputes Procedure.

---

Printed by the authority of the Industrial Registrar.

## MISCELLANEOUS WORKERS' KINDERGARTENS AND CHILD CARE CENTRES (STATE) TRAINING WAGE AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0803	08/02/2002	On and from 12/06/2001	331	86
8(d), Part B	C0843	25/01/2002	First full pay period on and from 28/08/2001, then 10/11/2001	330	1254
8(d) & Part B	C1880	04/07/2003	First full pay period on or after 30/01/2003	340	321
8(d) & Part B	C2493	16/04/2004	First full pay period on or after 30/01/2004	344	83
4, 5, 6, 9	C3202	29/04/2005	On 30/08/2004	350	794
8, Part B	C3666	22/07/2005	First full pay period on or after 01/04/2005	352	778
8, Part B	C5392	09/03/2007	First full pay period on or after 04/02/2007	362	247
2, 4, 10	C6363	15/02/2008	On and from 30/11/2007	364	1383
8, Part B	C7380	26/02/2010	First full pay period on or after 23/12/2009, then 23/04/2010, then 23/8/2010, then 23/12/2010	369	1482
8, Part B	C7635	02/09/2011	First full pay period on or after 16/12/2010	371	652

#### Arrangement

##### PART A

Clause No.	Subject Matter
1.	Title
2.	Application
3.	Objective
4.	Definitions
5.	Training Conditions
6.	Employment Conditions
7.	Co-operation
8.	Wages
9.	Grievance Procedures
10.	Area, Incidence and Duration

**PART B****MONETARY RATES**

Table 1 - Weekly Wage Rates - Industry/Skill Level B

**APPENDIX A - INDUSTRY SKILL LEVELS****PART A****1. Title**

This award shall be known as the Miscellaneous Workers' Kindergartens and Child Care Centres (State) Training Wage Award.

**2. Application**

- (a) Subject to subclause (c) of this clause this award shall apply to persons who are undertaking a traineeship (as defined) and is to be read in conjunction with the Miscellaneous Workers Kindergartens and Childcare Centres (State) Award 2006, as varied.
- (b) Notwithstanding (a), this award shall apply provisionally for an interim period:
  - (i) Starting upon the commencement date as recorded on a valid "Application to Establish a Traineeship" signed by both the employer and the Trainee, which has been lodged with the Relevant NSW Training Authority; and
  - (ii) Ending upon the expiry of one calendar month period immediately following the employer's receipt of the Indenture Papers from the Relevant NSW Training Authority.

In any case, the duration for which this award may provisionally apply shall be no longer than two calendar months, or such longer period as may be required to accommodate a delay in processing the "Application to Establish a Traineeship" which is beyond the control of the employer.

- (c) The terms and conditions of the parent award shall apply, except where inconsistent with this award.
- (d) Notwithstanding the foregoing, this award shall not apply to employees who were employed by an employer under an award referred to in subclause (a) of this clause prior to the date of approval of a traineeship relevant to the employer, except where agreed upon between the employer and the union.
- (e) This award does not apply to the apprenticeship system or any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April, 1998 or in an award that binds the employer.
- (f) At the conclusion of the traineeship, this Award shall cease to apply to the employment of the trainee and the Parent Award shall apply to the former trainee.

**3. Objective**

The objective of this award is to assist in the establishment of a system of traineeships which provides structured training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people, and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. Nothing in this award shall be taken to replace the prescription of training requirements in the Parent Award.

A further objective of this award is to ensure training and the maintenance of job security in the industry generally.

#### 4. Definitions

Structured Training means that training which is specified in the Training Plan which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a traineeship scheme and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority and leads to a qualification set out in clause 5(f).

"Parent Award" means the Miscellaneous Workers Kindergartens and Child Care Centres (State) Award 2006.

Trainee is an individual who is a signatory to a training contract registered with the relevant NSW Training Authority and is involved in paid work and structured training which may be on or off the job.

Traineeship means a system of training which has been approved by the relevant NSW Training Authority.

"Training Contract" means a contract entered into for the purpose of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001*.

Training Plan means a programme of training which forms part of a Training contract registered with the Relevant NSW Training Authority.

Relevant NSW Training Authority means the Department of Education and Training, or successor organisation.

Year 10 for the purposes of this award any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

#### 5. Training Conditions

- (a) The Trainee shall attend an structured training course or training program prescribed in the Training contract or as notified to the trainee by the Relevant NSW Training Authority in an accredited and relevant traineeship.
- (b) A Traineeship shall not commence until the relevant Training contract, has been signed by the employer and the trainee and lodged for registration with the Relevant NSW Training Authority.
- (c) The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Training contract and shall ensure that the Trainee receives the appropriate on-the-job training.
- (d) The employer shall provide supervision of the Trainee by a designated qualified member of staff (the workplace supervisor), who is required to have an early childhood qualification of Diploma of Social Science (Child Studies) or equivalent or higher. The workplace supervisor shall be provided with appropriate non-contact time during working hours each week to allow the workplace supervisor to undertake evaluation of the Trainee and to do record keeping. The role of the workplace supervisor is to supervise the conduct of the Trainee in the workplace, to coach the Trainee so that they maximise their learning opportunities and assist in assessing the Trainee's skills.
- (e) The employer agrees that the overall training program will be monitored by officers of the Relevant NSW Training Authority and that training records or work books may be utilised as part of this monitoring process.
- (f) Training shall be directed at:
  - (i) the achievement of key competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies) as are proposed to be included in an Australian Qualification Framework Certificate Level 3 or above.

## 6. Employment Conditions

- (a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration.

By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of structured training provided that any agreement to vary is in accordance with the relevant Traineeship.

- (b) A trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
- (c) Where the trainee completes the qualification in the Training contract, earlier than the time specified in the Training contract then the traineeship may be concluded by mutual agreement.
- (d) A Traineeship shall not be terminated before its conclusion, except in accordance with the *Apprenticeship and Traineeship Act 2001*. (Note: s 22 of the *Apprenticeship and Traineeship Act 2001* provides that a traineeship may be cancelled by consent of the employer and of the trainee.)

An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship shall notify, in writing, the relevant NSW Training authority of their decision.

- (e) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the structured training in accordance with the Training Contract.
- (f) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any Parent Award or any other legislative entitlements.
- (g)
- (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.
- (ii) No Trainee shall work overtime or shift work on their own unless consistent with the provisions of the Parent Award.
- (iii) No Trainee shall work shift work unless the relevant parties to this Award agree that such shift work makes satisfactory provision for structured training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shift work Trainees.
- (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Parent Award.
- (h) All other terms and conditions of the Parent Award(s) that are applicable to the Trainee or would be applicable to the Trainee but for this Award shall apply unless specifically varied by this Award.
- (i) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payment.
- (j) The maximum number of approved Trainees in any centre will be based on the registered number of child care places as shown below:

centres up to 25 places - 1 trainee  
centres up to 26-44 places - up to 2 trainees  
centres up to 45-60 places - up to 3 trainees  
centres up to 60 places - up to 4 trainees



- (k) NOTATION: The right of entry provisions contained in the parent award or the Industrial Relations Act 1996 shall apply to the parties bound by this award.

### **7. Co-operation**

- (a) The parties recognise the role of the Union in working with the children's services industry to develop the Traineeship Award.
- (b) The opportunity must be provided for open communication between the trainee, training provider and employer.

### **8. Wages**

- (a) The weekly wages payable to full time trainees are as provided in Table 1 - Industry/Skill Level B, of Part B, Monetary Rates
- (b) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes structured training as defined in this Award.
- (c) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.
- (d) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
- (i) Any equivalent over-award payments, and/or
  - (ii) Award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.
- (e) Appendix A sets out the skill level of a traineeship. The industry/skill levels contained in Appendix A are, illustrative of the appropriate levels but are not determinative of the actual skill levels (i.e., skill levels A, B or C) that may be contained in a traineeship scheme. The determination of the appropriate skill level for the purpose of determining the appropriate wage shall be based on the following criteria:
- (i) Any agreement of the parties or submission by the parties
  - (ii) The nature of the industry
  - (iii) The total training plan
  - (iv) Recognition that training can be undertaken in stages
  - (v) The exit skill level in the Parent Award contemplated by the traineeship.

In the event that the parties disagree with such determination, it shall be open to any party to the award to seek to have the matters in dispute determined by the Industrial Relations Commission of New South Wales.

### **9. Grievance Procedures**

- (a) Procedures relating to grievances of individual trainees
- (i) A trainee shall notify the employer as to the substance of any grievance and request a meeting with the employer for bilateral discussions in order to settle the grievance.
  - (ii) If no remedy to the trainee's grievance is found, then the trainee shall seek further discussions with the employer, the employer's industrial representative and the Union delegate (if any) or contact and attempt to resolve the grievance at a higher level of authority, where appropriate.

- (iii) Reasonable time limits must be allowed for discussions at each level of authority.
  - (iv) At the conclusion of the discussions, the employer must provide a response to the trainee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy. At this stage an employer or a trainee may involve an industrial organisation of employers or employees of which the trainee is a member.
  - (v) If no resolution of the trainee's grievance can be found, then:
    - (i) if the dispute relates to issues of training then the matter may be referred to the NSW Commissioner for Vocational Training in accordance with the *Apprenticeship and Traineeship Act 2001*; or
    - (ii) if the dispute relates to industrial issues then the matter may be referred to the Industrial Relations Commission of New South Wales by either the employer, an industrial organisation of employers or a union representing the trainee.
  - (vi) While this grievance procedure is being followed, normal work shall continue.
- (b) Procedures relating to disputes, etc. between employers and their trainees:
- (i) A question, dispute or difficulty must initially be dealt with at the workplace level where the problem has arisen. If the problem cannot be resolved at this level, the matter shall be referred to a higher level of authority for discussion between the affected trainee(s), the Union delegate (if any) or contact and the employer. Both the employer's industrial representative and the employee's Union representative may be notified.
  - (ii) If no resolution can be found to the question, dispute or difficulty, the matter may be referred to the Industrial Relations Commission by any party to the dispute or the industrial organisation representing any of the parties to the dispute.
  - (iii) Reasonable time limits must be allowed for discussion at each level of authority.
  - (iv) While a procedure is being followed, normal work must continue.

### **10. Area, Incidence and Duration**

This award replaces the Miscellaneous Workers NSW Child Care Traineeship (Interim) Award published 11 June 1999 (309 I.G. 744), and all variations thereof. The award published 11 June 1999 rescinded and replaced the award published on 23 August 1996 (294 IG 557).

It shall apply to all persons of the classes herein provided for within the jurisdiction of the Kindergartens &c., (State) Industrial Committee.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 30 November 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## **PART B**

### **MONETARY RATES**

#### **Table 1 - Weekly Wage Rates - Industry/Skill Level B**

Where the accredited training course and work performed is for the purpose of generating skills which have been defined for work at Skill Level B.

Effective from the beginning of the first full pay period on or after 16 December 2010.

	SWC Adjustment 2009 (2.8%)			SWC Adjustment 2010 (4.25%)		
	Highest Year of Schooling Completed 2009			Highest Year of Schooling Completed 2010		
	Year 10	Year 11	Year 12	Year 10	Year 11	Year 12
School Leaver	253.00	279.00	324.00	264.00	291.00	338.00
Plus 1 year out of school	279.00	324.00	373.00	291.00	338.00	389.00
Plus 2 years	324.00	373.00	438.00	338.00	389.00	457.00
Plus 3 years	373.00	438.00	500.00	389.00	457.00	521.00
Plus 4 years	438.00	500.00		457.00	521.00	
Plus 5 years or more	500.00			521.00		

The average proportion of time spent in structured training taken into account in setting the above rates is 20%

### APPENDIX A - INDUSTRY SKILL LEVELS

Industry/Skill Level A:

Child Care Worker  
Child Care (NSW)  
Child Care (Local Government)

Industry/Skill Level B:

Child Care

---

Printed by the authority of the Industrial Registrar.

**MOTELS, ACCOMMODATION AND RESORTS &c. (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0395	31/08/2001	First pay period on or after 14/05/2001	327	244
35.1	C0460	07/09/2001	From 26/05/2000	327	741
12 (12.2) & (12.4); 16; 18 (18.8)	C0619	07/12/2001	First pay period on or after 30/10/2001	330	226
34 (1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
24 (24.6)	C1313	23/08/2002	On and from 23/11/2001	335	1244
12.2, 12.4, 16, 18.8	C1683	14/02/2003	First pay period on or after 30/10/2002	338	379
12.2, 12.4, 16, 18.8	C2208	31/10/2003	First pay period on or after 30/10/2003	341	889
4, 8, 15, 16, 22, 24, 27, 30, 34, 35,	C3045	15/04/2005	On 28/07/2004	350	265
1, 35, 36	C3517	13/05/2005	First full pay period on or after 16/12/2004	350	1222
12, 16, 18	C3579	20/05/2005	First full pay period on or after 30/10/2004	351	301
Erratum	C3738	03/06/2005		351	684
1, 8, 13, 15, 16, 17, 19, 20, 24, 27, 37 36,	C4119	03/02/2006	First full pay period on or after 30/09/2005	356	1229
12, 16, 18	C4203	03/02/2006	First full pay period on or after 30/10/2005	356	1225
Erratum to C4119	C4404	31/03/2006		358	818
12, 16, 18	C4976	17/11/2006	First full pay period on or after 30/10/2006	361	857
2, 8, 12	C5323	23/02/2007	From 01/01/2007	362	134
23, 24, 25	C5442	27/07/2007	On and from 19/12/2005	363	189
12, 16, 18	C6133	09/11/2007	First full pay period on or after 30/10/2007	364	388
1, 2, 37	C6320	08/02/2008	On and from 20/11/2007	364	991
12, 16, 18	C6655	29/08/2008	First full pay period on or after 30/10/2008	366	638
12, 16, 18	C7200	30/10/2009	First full pay period on or after 30/10/2009	369	571
12, 16, 18	C7636	02/09/2011	First full pay period on or after 16/12/2010	371	654
Correction to C4119	C7712	27/01/2012		372	1

## 1. Arrangement

### PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Transmission of Business
4.	Index of Facilitative Provisions
5.	Enterprise Flexibility Provisions
6.	Procedure to Avoid Industrial Disputation
7.	Employer Duties
8.	Types of Employment
8.1	General
8.2	Casual Employment
8.3	Regular Part-time Employees
8.4	Apprentices
8.5	Juniors
9.	Standing Down Employees
10.	Redundancy
11.	Termination of Employment
12.	Classifications and Wage Rates
13.	Supported Wage System for Employees with Disabilities
14.	Mixed Functions
15.	Payment of Wages, Time and Wages Records
16.	Allowances
17.	Superannuation
18.	Hours of Work
19.	Meal Breaks
20.	Overtime
21.	Saturday Work
22.	Sunday Work
23.	Annual Leave
24.	Personal Leave
25.	Parental Leave
26.	Jury Service
27.	Public Holidays
28.	National Training Wage
29.	Work Experience
30.	Accident Pay
31.	Posting of Award
32.	Leave for Consultation Meetings
33.	Basis of Award
34.	Anti-Discrimination
35.	Union Dues
36.	Leave Reserved
37.	Area, Incidence and Duration

## 2. Definitions

In this award:

- 2.1 Accommodation means establishments included in clause 37 of this Award.
- 2.2 Day means the period of time elapsing from the time an employee commences duty to the time the employee ceases duty within any period of 24 hours.

- 2.3 Ordinary earnings means the ordinary wages for each classification for ordinary hours Monday to Friday.
- 2.4 Rostered day off (RDO) means any continuous 24 hour period between the completion of the last ordinary shift and the commencement of the next ordinary shift on which an employee is rostered on for duty.
- 2.5 Union means the Liquor, Hospitality and Miscellaneous Union and branches thereof.
- 2.6 Hospitality Services -
- 2.6.1 Hospitality Services grade 1 means an employee who is primarily engaged in one or more of the following:
- (a) cleaning, tidying and general assistant of kitchen, food preparation, customer service areas, including the cleaning of equipment, crockery and general utensils;
  - (b) assembly and preparation of ingredients for cooking;
  - (c) handling, storing and distributing goods, including pantry items and linen;
  - (d) setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
  - (e) assisting employees who are cooking;
  - (f) general cleaning duties;
  - (g) providing general assistance to employees of a higher grade not including cooking or direct service to customers;
  - (h) laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;
  - (i) the collection and/or delivery of guests personal dry-cleaning and laundry, linen and associated materials to and from accommodation areas;
  - (j) parking guests cars;
- 2.6.2 Hospitality services grade 2 means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:
- (a) receiving, storing and distributing goods;
  - (b) servicing accommodation areas and cleaning thereof;
  - (c) tray service to guests' rooms;
  - (d) transferring guests' baggage and/or property;
  - (e) driving a passenger vehicle or courtesy bus;
  - (f) providing butler service, basic food and beverage services with personalised guest services;
  - (g) assisting in dry-cleaning process;
  - (h) cleaning duties using specialised equipment and chemicals;

- (i) handyperson, which means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
- (j) security officer;
- (k) preparing and/or cooking a limited range of basic food items such as breakfasts, grills and snacks and a cook employed alone;
- (l) undertaking general waiting duties in a restaurant of food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
- (m) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- (n) taking reservations, greeting and seating guests, taking telephone orders;
- (o) assisting in the cellar;
- (p) receipt of monies;
- (q) attending a snack bar, buffet or meal counter;
- (r) attending in a coffee shop or espresso bar;
- (s) attending in a shop.

2.6.3 Hospitality services grade 3 means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) undertaking general cooking duties, including a la carte cooking, baking, pastry cooking;
- (b) undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
- (c) supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- (d) receipt of monies;
- (e) receiving, storing and distributing goods;
- (f) assisting in the training, co-ordination and supervision of employees of lower grades;
- (g) major repair of linen and/or clothing including basic tailoring and major alterations and refitting;
- (h) dry-cleaning;
- (i) handyperson, which means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
- (j) providing butler services, basic food and beverage services with personalised guest services;
- (k) cellar work, including stock control, ordering and the receipt, delivering and reordering of goods within such area;

- (l) designing and mixing a range of sophisticated cocktails and other drinks. May include stocktaking and ordering of stock;
- (m) supervising, training and co-ordination of employees of lower grades;
- (n) taking reservations, greeting and seating guests and taking telephone orders.

2.6.4 Hospitality services grade 4 means an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:

- (a) undertaking general cooking duties including a la carte, baking, pastry cooking, butcher, waiting, butler.

2.6.5 Hospitality services grade 5 means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) solely responsible for other cooks and other kitchen employees in a single kitchen establishment where no other trade qualified cooks are employed;
- (b) supervising, training and co-ordinating food and beverage staff including maintenance of service and operational standards, preparation of operational reports and staff rostering;
- (c) general or specialised cooking duties including the training and supervision of other cooks and kitchen staff and relieving Hospitality Services Grade 6 employees on their rostered days off or when on annual or other leave;
- (d) supervising, training and co-ordinating the work of employees engaged in the housekeeping area.

2.6.6 Hospitality services grade 6 means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchery, baking or pastry cooking and has completed additional appropriate training and who performs any of the following:

- (a) general and specialised duties including supervision or training of other trade qualified cooks, ordering and stock control;
- (b) solely responsible for other cooks and other kitchen employees in a single kitchen establishment where other trade qualified cooks are employed.

## 2.7 Administration Front Office

2.7.1 Hospitality administration and front office grade 1 means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) front office duties such as receptionist, telephonist, cashier or reservations;
- (b) performs basic clerical and routine office duties such as collating, filing, photocopying and delivering messages;
- (c) general clerical duties such as typing, basic data entry and calculation functions;
- (d) accounts;
- (e) night auditing in addition to any of the above duties such employee may also be required to perform any of the duties of Hospitality services grade 2 or below;
- (f) guest relations officer.



2.7.2 Hospitality administration and front office grade 2 means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) front office duties such as receptionist, telephonist, cashier or reservations;
- (b) clerical and other office duties;
- (c) general clerical duties such as typing, basic data entry and calculation functions;
- (d) accounts;
- (e) night auditing in addition to any of the above duties such employee may also be required to perform any of the duties of Hospitality services grade 2 or below;
- (f) assistant in sales, and/or marketing;
- (g) guest relations officer.

2.7.3 Hospitality administration and front office grade 3 means an employee appointed as such who has the appropriate level of training and

- (a) who carries out general secretarial or stenographic duties, clerical duties of an advanced nature, and
- (b) who has recognised experience in complex duties and may be
- (c) responsible for guidance of other office personnel including juniors and may check and allocate their work, or
- (d) who is responsible for sales and marketing
- (e) and/or is in the front office engaged in duties including assisting in training and supervision of front office employees of a lower grade(s).

2.7.4 Hospitality administration and front office supervisor means an employee appointed as such and who has the appropriate level of training including a supervisor's course and trains and co-ordinates the work of front office and/or other clerical staff.

## 2.8 Leisure Activities

2.8.1 Leisure attendant grade 1 means a person who is primarily engaged in one or more of the following:

- (a) acts as an assistant instructor;
- (b) does basic testing;
- (c) is responsible for setting up, distribution and care of equipment;
- (d) takes bookings and works at the front desk of a leisure facility;
- (e) provides information to guests on leisure activities and facilities;
- (f) is a pool attendant;
- (g) tests pools and spa waters for optimal levels;
- (h) is a powerboat observer;

- (i) child minding attendant.
- 2.8.2 Leisure attendant grade 2 means a person who has the appropriate level of training and who is engaged in any of the following:
- (a) takes classes;
  - (b) directs leisure activities such as in sporting areas, health clubs and swimming pools;
  - (c) leads tours, and/or group activities;
  - (d) developing or implementing activities for individuals or group of guests;
  - (e) child minding attendant.
- 2.8.3 Leisure attendant grade 3 means a person who has the appropriate level of training, who plans and co-ordinates leisure activities and/or organises activity programs and may supervise other leisure attendants.
- 2.9 Appropriate Level of Training means:
- 2.9.1 Completion of a training course deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification. Such course to be accredited by the Australian Hospitality Review Panel;
- 2.9.2 That the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in clause 2.9.1, such assessment to be undertaken by a qualified skills assessor.
- 2.10 Introductory level means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to three months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level to level 1. At the end of three months from entry, an employee shall move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to three months is required for the employee to achieve competence for movement to level 1.
- 2.11 Continuous Service
- 2.11.1 In calculating the twelve months' continuous service, the only absences counted as time worked are the following:
- up to 152 ordinary working hours in a 12-month period because of sickness or accident;
  - long service leave that an employee takes under the relevant State long service leave legislation;
  - and
  - annual leave.
- 2.11.2 Where a period of work is less than twelve months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.
- 2.11.3 The following events do not break an employee's continuous service:
- sick leave;
  - leave as the result of an accident;
  - leave lawfully granted by the employer; or

absence for a reasonable cause. (The employee must prove that the absence was reasonable.)

- 2.11.4 Where employees are temporarily stood down through no fault of their own, service is not to be considered to be broken.
- 2.11.5 Any other absence from work does not break continuity of service unless the employer notifies the employee within fourteen days of the employee returning to work after the absence. The employer must tell the employee in writing.
- 2.11.6 If an individual employee is absent, the employer must tell that employee by:
- giving the notice to him or her personally; or
- posting the notice to his or her last known address.
- 2.11.7 If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the same day.
- 2.11.8 It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.
- 2.11.9 School based apprentice is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

### 3. Transmission of Business

- 3.1 Where an establishment covered by this award is sold and the new employer continues to employ any employees the continuity of service of such employee shall be deemed not to have been broken by reason of the sale or transmission of the business for the purpose of the provision of clauses 10, Redundancy and 11, Termination of employment and in such circumstances the provisions of clauses 10, Redundancy and 11, Termination of employment shall not apply in respect to the transmittor.
- 3.2 The period of service which the employee has had with the transmittor or any previous transmittor shall be deemed to be service of the employee with the transferee for the purposes of the provisions of clauses 10, Redundancy and 11, Termination of employment.

### 4. Index of Facilitative Provisions

- 4.1 A facilitative provision provides that the standard approach in an Award provision may be departed from by agreement between an individual employer and an employee, or the majority of employees, in the enterprise or part of the enterprise concerned.
- 4.2 Facilitative provisions in this award are contained in the following clauses:

Clause Title	Clause Number
Alternative method of payment	15.2
Make-up time	18.11
Ordinary Hours - method of working	18.2
Overtime - time off in lieu	20.3
Part-time employment	8.3
Payment of wages - method and timing	15.1
Public holidays - payment	27.3

Superannuation - exemption, choice of fund	17.7
Unpaid carers' leave	24.3

### 5. Enterprise Flexibility Provisions

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 5.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 5.2 For the purpose of the consultative process the employees may nominate the Union or another to represent them.
- 5.3 Where agreement is reached an application shall be made to the Commission.

### 6. Procedure to Avoid Industrial Disputation

- 6.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:
  - 6.1.1 The employee and their supervisor meeting and conferring on the matter; and
  - 6.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 6.2 If the matter is still not resolved a discussion shall be held between representatives of the employer and the Union or other employee representative.
- 6.3 If the matter cannot be resolved it may be referred to the Commission.
- 6.4 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

### 7. Employer Duties

- 7.1 An employer shall not charge a sum against nor deduct any sum from the wages of an employee in respect of breakages of crockery or other utensils except in the case of wilful misconduct.

### 8. Types of Employment

- 8.1 General
  - 8.1.1 Employees under this award will be employed in one of the following categories:
    - (a) full-time employees; or
    - (b) regular part-time employees; or
    - (c) casual employees.
  - 8.1.2 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, regular part-time or casual.
- 8.2 Casual Employment
  - 8.2.1 A casual employee is an employee engaged as such.

8.2.2 A casual employee shall be paid per hour at the rate of 1/38 of the weekly rate prescribed for the class of work performed, plus the appropriate undermentioned addition to that rate:

- (a) On any ordinary day Monday to Friday inclusive for all time worked, an additional 25 per cent of the wages prescribed in clause 12 - of this Award for the classification in which the employee is casually employed.
- (b) On Saturday and Sunday for all time worked an additional 50 per cent for Saturday and 75 per cent for Sunday of the wages prescribed in clause 12, for the classification in which the employee is casually employed.
- (c) On a holiday as prescribed in clause 27, Public Holidays.
  - (i) a casual employed in any capacity in or in connection with flats and residential chambers and establishments of a like nature will receive an additional 150 per cent of wages prescribed in clause 12 of this Award for the classification in which the employee is casually employed;
  - (ii) all other casuals will receive an additional 175 per cent of wages prescribed in clause 12 of this Award for the classification in which the employee is casually employed.
- (d) The loadings prescribed in paragraphs (a), (b) and (c) comprehend the 1/12th payment payable under the *Annual Holidays Act*, 1944.
- (e) A casual employee shall be employed with a minimum payment of two hours pay for each engagement at the appropriate rate that would have been payable had the employee worked.
- (f) For the purposes of this award engagement means the period or periods for which the employer notifies the employee that he or she is so required to attend on any one day. Each period of engagement stands alone and is treated as an engagement of not less than two hours, and is paid for as such.
- (g) In this clause, ordinary earnings means 1/38 of the wages prescribed in clause 12 of this Award plus an additional 25 per cent.
- (h) By mutual consent casual work may be paid for weekly or at the termination of each engagement.
- (i) Casual employees who are paid their wages at any time other than during their working time shall, if kept waiting for more than fifteen minutes, be paid overtime rates for all such waiting time.

8.2.3 The following Award clauses apply to casual employees:

- (j) 2, 6, 7, 8.1, 8.2, 8.5, 9, 12, 16.3, 16.4, 16.5, 16.6, 16.7.1, 16.7.2, 17, 19, 27, 32, 35.
- (k) Any dispute about a refusal of an election to convert a contract of employment or about the matters referred to in sub-paragraph 8.2.4(b) must be dealt with in accordance with the provisions of clause 6 - Procedure to avoid industrial disputation.

8.2.4 Conversion to full-time or regular part-time employment

- (a)
  - (i) This clause only applies to a regular casual employee.

- (ii) A regular casual employee means a casual employee who is employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least twelve months.
- (b) A regular casual employee who has been engaged by a particular employer for at least twelve months, may elect (subject to the provisions of this clause) to have his or her contract of employment converted to full-time or regular part-time employment.
  - (i) An employee who has worked at the rate of an average of 38 or more hours a week in the period of twelve months casual employment may elect to have his or her employment converted to full-time employment.
  - (ii) An employee who has worked at the rate of an average less than 38 hours a week in the period of twelve months casual employment may elect to have his or her employment converted to regular part-time employment.
  - (iii) Where a regular casual employee seeks to convert to full-time or regular part-time employment, the employer may consent to or refuse the election, but only on reasonable grounds. In considering a request, the employer may have regard to any of the following factors:
    - the size and needs of the workplace or enterprise;
    - the nature of the work the employee has been doing;
    - the qualifications, skills, and training of the employee;
    - the trading patterns of the workplace or enterprise (including cyclical and seasonal trading demand factors);
    - the employee's personal circumstances, including any family responsibilities; and
    - any other relevant matter.
- (c) Where it is agreed that a regular casual employee will have his or her employment converted to full-time or regular part-time employment as provided for in this clause, the employer and employee must discuss and agree upon:
  - (i) to which form of employment the employee will convert - that is, full-time or regular part-time employment; and
  - (ii) if it is agreed that the employee will become a regular part-time employee, the matters referred to in subclause 8.3 of this Award.
- (d) Despite paragraph 8.3.5 of this Award, where a regular casual employee is at 1 January 2006 engaged for a two hour minimum shift pursuant to sub-paragraph 8.2.2(e) of this Award, the employer and employee may agree that the employee will convert to regular part-time employment as provided for in this clause for a minimum of two consecutive hours on any shift. However, nothing in this clause requires an employer to convert a casual employee working two hour shifts to regular part time employment.
- (e) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.
- (f) Once a regular casual employee has converted to full-time or regular part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

- (g) An employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this Award.
- (h) Nothing in this clause obliges a casual employee to convert to full time or regular part time employment, nor permits an employer to require a casual employee to so convert.
- (i) Nothing in this clause requires an employer to convert the employment of a regular casual employee to full time or regular part time employment if the employee has not worked for twelve months or more in a particular establishment or in a particular classification stream.
- (j) Nothing in the clause requires an employer to increase the hours of a regular casual employee seeking conversion to full time or regular part-time employment.
- (k) Any dispute about a refusal of an election to convert a contract of employment or about the matters referred to in sub-paragraph 8.2.4(b) must be dealt with in accordance with the provisions of clause 6 - Procedure to avoid industrial dispute.
- (l) Eligible employees who convert their employment under the provisions of this clause may do so from 1 January 2006. Service with the same employer prior to 1 January 2006 will be taken into account for the purposes of any such election. Any dispute arising about the application of this sub-clause between the date of this order and 1 January 2006 may be referred to the Commission for resolution.

### 8.3 Regular Part-Time Employees

8.3.1 An employer may employ regular part-time employees in any classification in this award.

8.3.2 A regular part-time employee is an employee who:

- (a) works less than full-time hours of 38 per week; and
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

8.3.3 At the time of engagement the employer and the regular part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

8.3.4 Any agreed variation to the regular pattern of work will be recorded in writing.

8.3.5 An employer is required to roster a regular part-time employee for a minimum of three consecutive hours on any shift.

8.3.6 An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 8.2.

8.3.7 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 20 - Overtime, of this award.

8.3.8 A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

### 8.4 Apprentices

#### 8.4.1

- (a) An employee apprenticed in accordance with the provisions of the *Apprenticeship and Traineeship Act 2001* must be paid the percentage of the total wage prescribed for Hospitality Services Grade 4 as follows:

Year of Apprenticeship	Percentage
First year	55%
Second year	65%
Third year	80%
Fourth year	95%

- (b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded; 5 cents and over will go to the higher 10 cents.

#### 8.4.2 Waiting Trade

- (a) An employee apprenticed in accordance with the provisions of the *Apprenticeship and Traineeship Act 2001* (NSW) must be paid the percentage of the total wages prescribed for a qualified waiter in Hospitality Services Grade 4 as follows:

Year of Apprenticeship	Percentage
First six months	65%
Second six months	80%
Third six months	80%
Fourth six months	95%
Fifth six months	95%

- (b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded; 5 cents and over will go to the higher 10 cents.
- (c) All matters prescribed in subparagraph (a) of this paragraph only apply to apprentices wages and in no other way supersede or affect any other provisions of the *Apprenticeship and Traineeship Act 2001*.

#### 8.4.3 Progression through Wage Structure

- (a) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- (b) The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

#### 8.4.4 Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

#### 8.4.5 Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.



## 8.4.6 Disputes and Disciplinary Matters

The provisions of the *Apprenticeship and Traineeship Act 2001* shall apply for the resolution of disputes and disciplinary matters.

## 8.5 Juniors

## 8.5.1 Other Than Office Juniors

The minimum rates of wages for junior employees shall be the undermentioned percentages of the total rate prescribed for the adult classification appropriate to the work performed for the area in which work is performed.

Age	Percentage
17 years of age and under	60%
18 years of age	70%
19 years of age	85%
20 years of age	100%

## 8.5.2 Junior Office Employees

- (a) The minimum rates of wages for junior office employees shall be the undermentioned percentages based on the total adult rate for the Hospitality Administration and Front Office Grade 1 classification.

Age	Percentage
At 15 years of age and under	37%
At 16 years of age	44%
At 17 years of age	58%
At 18 years of age	72%
At 19 years of age	82.5%
At 20 years of age	94%

- (b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded, 5 cents and over will go to the higher 10 cents.

8.5.3 Junior employees on reaching the age of 18 years, may be employed in the sale of liquor. However, where such a junior is employed, the adult Award rate for the work being performed shall be paid.

8.5.4 An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of a junior employee. If a birth certificate is required, the cost of it shall be borne by the employer.

## 9. Standing Down Employees

9.1 An employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed for the following reasons:

- 9.1.1 A strike or stop work meeting (except as provided in clause 32, Leave for Consultation Meetings).
- 9.1.2 A breakdown of machinery.
- 9.1.3 Rationing of power or the lack of fuel or transport.
- 9.1.4 The non-delivery of the raw material and finished product in the Liquor Trades Industry.

- 9.1.5 Any cause which the employer cannot reasonably be held responsible for, but shall not apply to slackness of trade.
- 9.2 In respect to subclauses 9.1.1 and 9.1.5 hereof:
- 9.2.1 No employee shall be deemed to be a casual employee only by reason of being given intermittent work in pursuance of this clause.
- 9.2.2 At least four hours notice of such deductions shall be exhibited where all employees concerned shall be able to see it.
- 9.2.3 Service is not to be considered broken merely because employees have been temporarily stood down through no fault of their own.
- 9.2.4 Continuity of service is to be protected for the purpose of annual leave, holidays and sick pay, as provided by this Award.
- 9.2.5 Employees allowed or required to commence work at the usual starting time on any day shall be paid for at least four hours, and where they are called upon to attend for duty twice on any one day they shall be paid not less than a full day's pay.

## **10. Redundancy**

### **10.1 Application**

- 10.1.1 This clause shall apply in respect of full-time and part-time employees employed in the classifications specified in clause 12.
- 10.1.2 This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
- 10.1.3 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service, and the general obligation on employers shall be no more than to give such 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.
- 10.1.4 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

### **10.2 Introduction of Change**

- 10.2.1 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 the union to which they belong.
- 10.2.2 "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, promotion 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 clause makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

### 10.3 Employer's Duty to Discuss Change

- 10.3.1 The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause 10.2. Introduction of Change, of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- 10.3.2 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 10.2.1 of this clause.
- 10.3.3 For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 10.4 Discussions Before Terminations

- 10.4.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to clause 10.2.1, Introduction of change, of this clause, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- 10.4.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of clause 10.4.1 of this subclause and shall cover, inter alia, any reasons for the proposed termination, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- 10.4.3 For the purposes of the discussions the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 10.5 Notice for Changes in Production, Program, Organisation or Structure - This subclause sets out the notice for provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure, in accordance with subclause 10.2.1 of this clause.

- 10.5.1 In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- 10.5.2 In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional 2 weeks' notice.
- 10.5.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- 10.6 Notice for Technological Change - This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with subclause 10.2.1 of this clause.
- 10.6.1 In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.
- 10.6.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given, provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- 10.6.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.
- 10.7 Time Off During The Notice Period
- 10.7.1 During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.
- 10.7.2 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.
- 10.8 Employee Leaving During The Notice Period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until expiry of such notice. Provided that, in such circumstances, the employee shall not be entitled to payment in lieu of notice.
- 10.9 Statement of Employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- 10.10 Notice to Centrelink - Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- 10.11 Centrelink Employment Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated provide to the employee an Employment Separation Certificate in the form required by Centrelink.
- 10.12 Transfer To Lower-Paid Duties - Where an employee is transferred to lower-paid duties for reasons set out in subclause 10.2.1, Introduction of change, of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had 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 ordinary-time rates for the number of weeks of notice still owing.
- 10.13 Severance Pay - Where an employee is to be terminated pursuant to subclause 10.5, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service:
- 10.13.1 If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- 10.13.2 Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age or over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- 10.13.3 "Week's Pay" means the all-purpose rate of pay for the employee concerned at the date of termination and shall include in addition to the ordinary rate of pay, overaward payments, shift penalties and allowances paid in accordance with this award.

- 10.14 Incapacity to Pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 10.13.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause 10.13 will have on the employer.

- 10.15 Alternative Employment - Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 10.13 of this clause if the employer obtains acceptable alternative employment for an employee.

## 11. Termination of Employment

### 11.1 Notice of Termination By Employer

- 11.1.1 In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:

Period of Continuous Service	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- 11.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

- 11.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

11.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

11.1.5 The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

11.1.6 Despite the foregoing provisions, trainees who are engaged for a specific period of time shall once the traineeship is completed and provided that the trainees' services are retained have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of his or her traineeship and is re-engaged by the same employer within six months of such termination the period of traineeship shall be counted as service in determining any future termination.

11.1.7 Continuous service is defined in subclause 2.11.

## 11.2 Notice of Termination by an Employee

11.2.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

11.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

11.3 Time Off During Notice Period - Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

## 12. Classifications and Wage Rates

12.1 An adult employee of a classification specified in the table hereunder shall be paid not less than the rate per week assigned to that classification for the area in which such employee is working.

### 12.2 Minimum Rates of Pay

Level & Classification	SWC 2009 (2.8%) commencing first pay period on or after 30 October 2009 \$	SWC 2010 (4.25%) commencing first pay period on or after 16 December 2009 \$
Introductory Level	560.70	584.50
LEVEL 1 Hospitality Services Grade 1	578.50	603.10
LEVEL 2 Hospitality Services Grade 2 Leisure Attendant Grade 1 Hospitality Administration and Front Office Grade 1	605.30 605.30 605.30	631.00 631.00 631.00
LEVEL 3 Hospitality Services Grade 3 Hospitality Administration and Front Office Grade 2 Leisure Attendant Grade 2	624.90 624.90 624.90	651.50 651.50 651.50
LEVEL 4 Hospitality Services Grade 4 Hospitality Administration and Front Office Grade 3 Leisure Attendant Grade 3	660.90 660.90 660.90	689.00 689.00 689.00

LEVEL 5		
Hospitality Services Grade 5	705.50	735.50
Hospitality Administration and Front Office Supervisor	705.50	735.50
LEVEL 6		
Hospitality Services Grade 6	725.80	756.60

- 12.3 Career Streams - Despite the recognition of three career path streams, such streaming does not prevent employees undertaking duties as are within the limits of the employee's skill, competence and training at the direction of an employer, within or across different streams provided that where work is undertaken at a higher grade and/or higher rate than clause 14 - Mixed Functions is applied.
- 12.4 The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
- (i) Any equivalent over-award payments, and/or
  - (ii) Award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.
- 12.5 Rates of Pay for school based apprentice
- (a) The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the job training.
  - (b) For the purposes of subclause (a) of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.
  - (c) Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

### 13. Supported Wage System for Employees With Disabilities

- 13.1 Workers Eligible For A Supported Wage - This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Award. In the context of this clause, the following definitions will apply:
- 13.1.1 Supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full Award wages because of a disability, as documented in Supported Wage System: Guidelines and Assessment Process.
  - 13.1.2 Accredited assessor means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
  - 13.1.3 Disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
  - 13.1.4 Assessment instrument means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
- 13.2 Eligibility Criteria -
- 13.2.1 Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under

this Award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

13.2.2 The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their current employment.

13.2.3 The Award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or s.12A of the Disability Services Act 1986, or if a part only has received recognition, that part.

### 13.3 Supported Wage Rates

13.3.1 Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Award for the class of work which the person is performing according to the following schedule:

Assessed Capacity (subclause 13.4)	% of Prescribed Award Rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

13.3.2 Provided that the minimum amount payable shall be not less than \$56 per week.

13.3.3 Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

13.4 Assessment of Capacity - For the purpose of establishing the percentage of the Award rate to be paid to an employee under this Award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

13.4.1 the employer and a union party to the Award, in consultation with the employee or, if desired by any of these;

13.4.2 the employer and an Accredited Assessor from a panel agreed by the parties to the Award and the employee.

### 13.5 Lodgement of Assessment Instrument

13.5.1 All assessment instruments under the conditions of this clause, including the appropriate percentage of the Award wage to be paid to the employee, shall be lodged by the employer with the Registry of the Industrial Relations Commission of NSW.

13.5.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the Award, is not a party to the assessment, it shall be referred by the Registry to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.



- 13.6 Review of Assessment - The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.
- 13.7 Other Terms and Conditions of Employment - Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this Award paid on a pro rata basis.
- 13.8 Workplace Adjustment - An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the areas.
- 13.9 Trial Period -
- 13.9.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 13.9.2 During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 13.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$56 per week.
- 13.9.4 Work trials should include induction or training as appropriate to the job being trialled.
- 13.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause 13.4.

#### **14. Mixed Functions**

- 14.1 An employee engaged for two or more hours on one day on duties carrying a higher rate than the ordinary classification shall be paid the higher rate for such day. If for less than two hours he or she shall be paid the higher rate for the time so worked.
- 14.2 A higher paid employee shall, when necessary, temporarily relieve a lower paid employee without loss of pay.

#### **15. Payment of Wages, Time and Wages Records**

- 15.1.1 Except upon the termination of employment, all wages of full time and regular part-time employees including overtime shall be paid on any day other than Friday, Saturday, Sunday in each week and not more than two days wages shall be kept in hand by the employer. However, by agreement between the employer and the majority of employees in the workplace, in a week where a holiday occurs payment of wages may be made on a Friday.
- 15.1.2 By agreement between the employer and the employee wages may be paid either weekly or fortnightly by one of the following means:
- (a) cash;
  - (b) cheque; or
  - (c) payment into employee's nominated financial institution account, without cost to the employee.

- 15.1.3 In the event of a disagreement, the provisions of clause 6 may be applied.
- 15.1.4 However, an employer may pay an employee weekly by cash without consultation.
- 15.1.5 Employees who are paid their wages at any time other than during their working time shall, if kept waiting for more than 15 minutes, be paid overtime rates for all such waiting time.
- 15.1.6 When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other monies due shall be made at the employee's normal place of employment during normal office hours, prior to the employee leaving such place of employment. If an employee is kept waiting for more than 15 minutes after termination of employment such employee shall be paid overtime rates for waiting time.
- 15.1.7 Provided where an employee is dismissed for misconduct, such employee shall be paid within one hour from the time of dismissal, if such takes place within ordinary office hours or otherwise as soon thereafter as is practical.
- 15.1.8 For the purposes of this clause, waiting time means all time an employee is kept waiting on the premises of the employer on the day of termination of employment in excess of the waiting time specified herein. In the event of an employee not being paid on the day of termination of employment, such employee shall be paid at the rate of time and a half until payment is effected, with a minimum payment of 2 hours and a maximum of eight hours per day. The above eight hours shall refer to the period of shift normally worked by the employee.
- 15.1.9 Despite the foregoing provisions if it is established the failure to pay an employee correctly at time of termination was due to a genuine error by the employer, payment of waiting time over and above the day of termination shall not apply. Any disputes arising in relation to this issue shall be dealt with in accordance with Clause 6 'Procedure to Avoid Industrial Disputation'.

## 15.2 Alternative Method of Payment

- 15.2.1 As an alternative to being paid by the week according to Clause 12 - Classifications and Wage Rates, by agreement between the employer and the employee an employee can be paid at a rate equivalent to an annual salary of at least 25 per cent or more above the rate prescribed in Clause 12 - Classifications and Wage Rates times 52 for the work being performed. In such cases, there is no requirement under Clauses 20 - Overtime, 21 - Saturday work, 22 - Sunday Work, subclause 18.8 - Work Outside Daily Hours and Clause 27 - Public Holidays to pay overtime or penalty rates in addition to the weekly Award wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled if all Award overtime and penalty rate payment obligations had been complied with.
- 15.2.2 Provided further in the event of termination of employment prior to completion of a year the salary paid during such a period of employment shall be sufficient to cover what the employee would have been entitled to if all Award overtime and penalty rate payment obligations had been complied with.
- 15.2.3 An employee being paid according to this clause shall be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee shall be entitled to a day off in lieu or a day added to his/her annual leave entitlement.

## 16. Allowances

### 16.1 Meal Allowance

- 16.1.1 A full time or regular part-time employee required to work overtime for more than two hours without being notified on the previous day or earlier that he or she will be so

required to work shall either be supplied with a meal by the employer or paid \$12.30 meal money.

- 16.1.2 If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, he or she shall be paid as above prescribed for the meal which he or she has provided but which is surplus.

## 16.2 Broken periods of work allowance

- 16.2.1 A full time or regular part-time employee who has a broken work day shall receive an additional allowance for a spread of hours prescribed as follows:

Spread of hours	Rate per day SWC 2010 (4.25%) \$
Under 10	Nil
10 but under 10-1/2	1.32
10-1/2 but under 11-1/2	2.61
11-1/2 or more	3.93

## 16.3 Penalty rates not cumulative

Except as provided in clause 19, Meal Breaks of this award where time worked is required to be paid for at more than the ordinary rate, such time shall not be subject to more than one penalty, but shall be subject to that penalty which is to the employee's greatest advantage.

## 16.4 Board and lodging

### 16.4.1

- (a) Where board and residence is made available to adult employees the employer shall have the right to deduct from the pay of the employees residing on the premises an amount of \$136.40 per week of seven days.
- (b) Provided that where an adult employee is required to share a room for lodging, the amount to be deducted from the pay of the employee for lodging shall be \$134.60 per week of seven days.

### 16.4.2

- (a) Where lodging only is made available to adult employees, the employer shall have the right to deduct from the pay of the employee residing on the premises the sum of \$130.10 per week of seven days.
- (b) Provided that where an adult employee is required to share a room for lodging, the amount to be deducted from the pay of such employee for lodging, shall be \$129.75 per week of seven days.

- 16.4.3 In the case of employees who do not reside on the employer's premises a deduction at the rate of \$7.35 for each meal supplied and consumed during the employee's spread of working hours may be deducted by the employer.

- 16.4.4 The rates for board and lodging for adults shall be increased or decreased by 21 cents, for each meal by one cent, for every 50 cents per week alteration in the rate of classification Hospitality services grade 1 in clause 12 - Classification and wage rates.

- 16.4.5 Junior employees receiving adult rates of pay as prescribed in this Award shall be subject to the deductions applicable to adults prescribed in this clause.

16.4.6 Junior employees receiving junior rates of pay shall be subject to a deduction at the rate of 50 cents for each meal supplied and consumed during the employee's spread of working hours.

#### 16.5 Laundry allowance

Where any employee is required to wear a special uniform such uniform shall be provided and laundered by the employer free of cost to the employee or if mutually agreed that the employee shall launder such uniform the employer shall pay the employee \$2.50 for each uniform so laundered with a maximum of \$7.80 per week.

#### 16.6 Clothing, equipment and tools

16.6.1 Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons, or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the special clothing is supplied without cost to the employee. Where protective clothing is supplied without cost to the employee, it will remain the property of the employer. In the event of a dispute, the necessity for the provision of protective clothing may be determined by the Motels, Accommodation and Resorts, &c., Employees (State) Industrial Committee.

16.6.2 Where the employer requires an employee to provide and use any tools, brushes, knives, choppers, implements, utensils and materials, the employer must reimburse the employee for the cost of purchasing such equipment. The provisions of this clause shall not apply where the employer supplied such items without cost to the employee.

16.6.3 An employer may require an employee on commencing employment to sign a receipt for item/s of uniform and property. This receipt must list the item/s of uniform and the value of them. If, when an employee ceases employment the employee does not return the item/s of uniform and property (or any of them) in accordance with receipt the employer will be entitled to deduct the value as stated on the receipt from the employees wages.

16.6.4 In the case of genuine wear and tear, damage, loss, or theft that is not the employee's fault the provision of 16.6.3 will not apply.

16.6.5 Any disagreement concerning the value of item/s of uniform and any other aspect of this clause shall be determined by the Motels, Accommodation and Resorts, &c., Employees (State) Industrial Committee.

#### 16.7 Travelling, transport and fares

16.7.1 Where an employee is detained at work until it is too late to travel by the last ordinary train, tram, vessel or other regular conveyance to his or her usual place of residence the employer shall either provide proper conveyance or provide accommodation for the night free of charge.

16.7.2 If an employee is required to start work before his ordinary commencing time and before the first ordinary means of conveyance (hereinbefore prescribed) is available to convey him or her from his or her usual place of residence to the place of employment, the employer shall provide a conveyance or pay the cost thereof.

16.7.3 Where a full time or regular part-time employee is engaged for work outside a distance of 44 kilometres from the place of engagement he or she shall be paid all fares actually and necessarily incurred in travelling from the place of engagement to the place of employment; provided that if the employee leaves his or her place of employment or is dismissed for misconduct within a period of three months of the date engagement, the employer may recover from the employee the fare paid on engagement.

## 16.8 Overnight Stay

Where the employer requests and an employee agrees to stay overnight on the employer's premises for a period outside that of the employee's normal rostered hours of duty, the following arrangements shall apply:

- 16.8.1 An employee shall be entitled to an amount of \$43.15 per overnight stay period.
- 16.8.2 This payment shall be deemed to provide compensation for the overnight stay and also includes compensation for all work necessarily undertaken by an employee up to a total of one hour's duration.
- 16.8.3 Any work necessarily performed during an overnight stay period by the employee in excess of a total of one hour's duration shall be paid for at the rate of time and one half. The payments referred to above shall not extend beyond the period of the overnight stay.
- 16.8.4 Any time worked under 16.8.2 or 16.8.3 shall not be taken into account for the purposes of Clause 8 - Types of Employment, Clause 18 - Hours of Work or Clause 20 - Overtime of this award.
- 16.8.5 An employee required to stay overnight in accordance with this clause without being notified on the previous day or earlier that he or she will be so required shall either be supplied with a meal by the employer or paid \$11.50 meal money.

## 17. Superannuation

### 17.1 Preamble

#### 17.1.1 Superannuation legislation

- (a) The subject of superannuation contributions is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- (b) Notwithstanding 17.1.1(a) above, the following provisions shall also apply.

### 17.2 Definitions

- 17.2.1 The Fund for the purpose of this clause shall mean the Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS) which complies with the Superannuation Industry (Supervision) Act 1993 as amended from time to time, and any scheme which may be made in succession thereto.
- 17.2.2 Ordinary time earnings for the purpose of this clause, means:
  - (a) Award classification rate;
  - (b) overaward payment;
  - (c) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;
  - (d) casual loading in respect to casual employees.

- 17.2.3 Ordinary time earnings does not include bonuses, Commission, payment for overtime or other extraordinary payment, remuneration or allowance.

### 17.3 Employers to Become a Party to the Fund

- 17.3.1 An employer shall make application to the Fund to become a participating employer in the Fund and shall become a participating employer upon acceptance by the Trustee of the Fund.
- 17.3.2 An employer shall provide each employee who is not a member of the Fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.
- 17.3.3 Each employee shall be required to complete the membership application and the employer shall forward the completed application to the Fund by the end of the calendar month of commencement of this clause or commencement of employment.

### 17.4 Eligibility of Employees

- 17.4.1 Each employee shall be eligible to join the Fund upon commencement of employment, subject to 17.3.1.
- 17.4.2 Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in 17.3.3 was forwarded to the Fund.

### 17.5 Employer Contribution

#### 17.5.1

- (a) An employer shall contribute to the Fund in respect of each employee such contributions as required to comply with the Superannuation Guarantee (Administration) Act 1992 and Superannuation Guarantee Charge Act 1992 as amended from time to time.
- (b) Seven per cent or ordinary time earnings on behalf of each eligible employee:

#### Ordinary Time Earnings

2000/2001	8%
2001/2002	8%
2002/2003	9%

#### 17.5.2

- (a) Provided that the employer shall make contributions for each employee for each month where the employee earns \$350.00 or more in a calendar month.
- (b) The amount of contributions to the fund shall be calculated to the nearest ten cents, any fraction below five cents shall be disregarded.

#### 17.5.3 An employer shall contribute to the Fund:

- (a) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or
- (b) equivalent monthly contributions at such other times and in such other manner as may be agreed in writing between the Trustees of a Fund and the employer.

- (c) Contributions shall continue to be paid in accordance with this sub-clause during any period in respect of which an employee is entitled to receive Accident Pay in accordance with clause 30 of this Award.

#### 17.6 Voluntary Employees Contribution

- 17.6.1 An employee may make contributions to the Fund in addition to those made by the respondent employer under subclause 17.5.
- 17.6.2 An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the Fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.
- 17.6.3 An employer who received written authorisation from the employee, must commence making payments into the Fund on behalf of the employee within fourteen days of receiving the authorisation.
- 17.6.4 An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within 14 days of receiving the authorisation.
- 17.6.5 Additional employees contributions to the Fund requested under this clause shall be expressed in whole dollars.
- 17.6.6 Employees shall have the right to adjust the level of contributions made on their own behalf on the first of July each year provided that by agreement with the respondent employer the employees may vary their additional contribution at other times.

#### 17.7 Exemptions

- 17.7.1 Persons employed in any capacity whether permanent or casual in or in connection with flats and residential chambers and establishments of a like nature, shall be exempt from the provisions of this clause except for 17.1.1(a).
- 17.7.2 Where an agreement is reached at a particular enterprise or workplace, between the employer and the majority of employees, to provide for the payments of superannuation contributions into a fund other than HOST PLUS, an application shall be made to the Commission to vary the operation of the Award in respect of the enterprise or workplace concerned.
- 17.7.3 The agreement must meet the following requirements to enable the Commission to vary the Award to give effect to it:
  - (a) That the majority of employees covered by the agreement genuinely agree to it; and
  - (b) That the fund specified is a complying fund under the Superannuation Industry (Supervision) Act 1993 (SIS).
  - (c) The union must be notified of the terms of the agreement at the time it is lodged with the Commission for approval.
  - (d) In the event that the union does not notify the Commission of an objection to the agreement within fourteen days of the agreement being lodged, the Commission will vary the Award if satisfied the agreement complies with the SIS Act.
  - (e) In the event that the union objects to the agreement within the specified time then the matter will be set down for hearing.

## 17.7.4

- (a) In respect of non union members in any contested matter, the union must bear the onus of establishing that "special circumstances" exist which warrant the continued specification of HOST PLUS as the prescribed fund. In respect of union members, the employer applicant must bear the onus of establishing its case on the usual grounds of "equity, good conscience and the substantial merits of the case".
- (b) Failure by an employer to give each relevant union an opportunity to be involved in the process leading up to the making of an agreement may result in the Commission adjourning or refusing the application to vary the Award.
- (c) A relevant union in this context means an organisation of employees that:
  - (i) is party to this Award; and
  - (ii) has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

**18. Hours of Work**

18.1 The ordinary hours of work of a full-time employee are an average of 38 hours per week.

18.1.1 The average of 38 hours per week is to be worked in one of the following ways:

- (a) a nineteen day month, of eight hours each day;
- (b) four days at eight hours and one of six hours;
- (c) four days at nine and a half hours per day;
- (d) five days of seven hours and 36 minutes per day;
- (e) 152 hours per each four week period; or
- (f) 160 hours per each four week period, with a day banked per period up to a maximum of five.
- (g) any combination of the above.

18.2 The arrangement for working the average of 38 hours per week is to be agreed between the employer and the employee from the alternatives in clause 18.1.

18.3 The agreed hours of work arrangement must meet the following conditions:

- 18.3.1 A minimum of six hours and a maximum of eleven and a half hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals.
- 18.3.2 An employee cannot be rostered to work for more than ten hours per day on more than three consecutive days without a break of at least 48 hours.
- 18.3.3 No more than eight days of more than ten hours may be worked in a four week period.
- 18.3.4 An employee shall be entitled to eight full days off per four week period; and
- 18.3.5 No employee shall work more than ten days in succession without a rostered day off.



- 18.4 Broken Shifts - Spread of Hours - Where broken shifts are worked the spread of hours can be no greater than twelve hours per day,
- 18.5 Wage Entitlements - Employees shall be entitled to a week's wages in accordance with clause 12 of this Award for each week of work.
- 18.6 Sickness on Rostered Day Off - Where an employee is sick or injured on his/her rostered day off he/she shall not be entitled to sick pay nor shall the sick pay entitlement be reduced as a result of sickness or injury on that day.
- 18.7 Pay Day - In the event that an employee by virtue of the arrangement of his/her ordinary working hours is rostered off duty on a day which coincides with payday such employee shall be paid no later than the working day immediately following such payday.
- 18.8 Work Outside Daily Hours
- 18.8.1 Full time or regular part-time employees who are required to work any of their ordinary hours outside the hours of 7.00 a.m. to 7.00 p.m. on Monday to Friday inclusive, shall be paid \$1.76 per hour, or part thereof, for any such time worked outside the said hours with a minimum payment of \$2.69 for any one day.
- 18.9 Posting of Roster
- 18.9.1 A roster for all full time and regular part-time employees showing normal starting and finishing time and the surname and initials of each employee shall be prepared by the employer and shall be posted in a conspicuous place or places accessible to the employees concerned.
- 18.9.2 The roster for full time and regular part time employees shall be alterable by mutual consent at any time or, in the case of a full time employee, by amendment on 7 days' notice.
- 18.9.3 Where practicable, 2 weeks' notice of rostered day or days off shall be given provided that the days off may be changed by mutual consent or through absence through sickness or other cause over which the employer has no control.
- 18.9.4 Any dispute concerning rostering must be dealt with in accordance with the provisions of Clause 6 - Procedure to Avoid Industrial Disputation.
- 18.10 Work on Rostered Days Off - All work performed on an employee's rostered day off shall be paid for at double time, with a minimum of 4 hours at the rate of double time.
- 18.11 Make-Up Time
- 18.11.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- 18.11.2 An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken.
- 19. Meal Breaks**
- 19.1 Meal Breaks
- 19.1.1 Each employee shall be granted a meal interval of not less than 30 minutes to be commenced after completing one hour 30 minutes and not later than 6 hours of duty.

Provided that an employee allowed a crib break of not less than 20 minutes pursuant to subclause 19.1.4 hereof shall be deemed to have been allowed the meal interval provided in this clause.

- 19.1.2 The foregoing provision does not have to apply to casual or part-time employees who are rostered for 6 hours or less in any day.
- 19.1.3 Where it is not possible to grant the meal interval on any day the said meal interval shall be treated as time worked and paid at the rate for the day plus half time additional at the ordinary weekly rate, until released for a meal. Provided that where an employee is required to exceed 5 hours work after the first meal interval he or she shall be granted a further meal interval of 20 minutes to be treated as time worked.
- 19.1.4 Where an employee's hours of work falls wholly between 11.00 p.m. and 8.00 a.m. the employee including a part-time employee shall be allowed a crib break of not less than 20 minutes which shall be counted as time worked.

## **20. Overtime**

### **20.1 Reasonable Overtime**

- 20.1.1 Subject to paragraph 20.1.2 below, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
- 20.1.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours, which are unreasonable.
- 20.1.3 For the purposes of paragraph 20.1.2 what is unreasonable or otherwise will be determined having regard to:
- (a) Any risk to employee health and safety;
  - (b) The employee's personal circumstances including any family and carer responsibilities;
  - (c) The needs of the workplace or enterprise;
  - (d) The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) Any other relevant matter.

### **20.2 All time worked by a full time employee in excess of the ordinary hours and/or outside the spread of hours or outside the rostered hours prescribed in clause 18 of this Award shall be overtime and shall be paid for at the following rates:**

- 20.2.1 Monday to Friday inclusive time and a half for the first 2 hours and double time for all work thereafter.
- 20.2.2 Between midnight Friday and midnight Saturday time and 3/4 for the first 3 hours and double time for all time worked thereafter.
- 20.2.3 Between midnight Saturday and midnight Sunday double time for all time worked.
- 20.2.4 Overtime on any day shall stand alone.
- 20.2.5 If an employee is so long on overtime duty following his or her normal finishing time that he or she has not had 8 hours interval before his or her next regular starting time such employee shall be allowed at least 8 consecutive hours interval without deduction of pay

or shall be paid at overtime rates for all time of duty until such employee has had at least 8 hours interval.

20.3 Despite the rate prescribed in clause 20.2.1, 20.2.2 and 20.2.3 at the instigation of the employee there may be an agreement in writing between the employee and employer to take time-off with pay equivalent to the amount for which payment would otherwise have been made. Such accumulated time must be taken within four weeks from the time of accrual.

20.4 A regular part-time employee is paid at overtime rates in the circumstances specified in clause 8.3.7.

### **21. Saturday Work**

All ordinary time worked by full time or regular part-time employees from midnight Friday to midnight Saturday shall be paid for at the rate of time and a quarter.

### **22. Sunday Work**

All ordinary time worked by full-time or regular part-time employees from midnight Saturday to midnight Sunday shall be paid for at the rate of time and three quarters.

### **23. Annual Leave**

23.1 See *Annual Holidays Act*, 1944.

23.2 During any period of annual leave an employee shall receive a loading of 17.5% calculated on the rates of pay prescribed by clause 12, Classifications and Wage Rates.

23.3 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

23.3.1 Access to annual leave, as prescribed in clause 23.3 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

23.3.2 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

23.3.3 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

### **24. Personal Leave**

24.1 Sick Leave -

24.1.1 Definition - Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of his or her personal illness or injury.

24.1.2 Entitlement

(a) In the first three calendar months of employment - no more than 10 hours.

(b) In the second three calendar months of employment - no more than a further 10 hours.

(c) In the first year of employment - no more than 45.6 hours.

(d) In the second year of employment and thereafter - no more than 76 hours.

(e) Sick leave may accumulate to a maximum of 304 hours for full time employees, and for part-time employees, to a maximum of 8 times the average weekly hours such employee works in any one year.

- (f) The amount of personal leave to which a regular part-time employee is entitled is determined on a pro-rata basis, reckoned each calendar month by reference to the following formula:

$$\frac{\text{Total hours worked in the month}}{152} \times \text{relevant full-time entitlement}$$

24.1.3 Employee must give notice

- (a) Before taking sick leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.

- (b) The notice must include:

the nature of the injury or illness (if known); and

how long the employee expects to be away from work.

- (c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

24.1.4 Evidence supporting claim - A claim made for sick leave shall be supported by evidence from the employee satisfactory to the employer that the employee was unable on account of illness or personal injury to attend for duty on the day for which leave is claimed.

24.1.5 The effect of workers' compensation - If an employee is receiving workers' compensation payments, he or she is not entitled to sick leave.

24.2 Carer's Leave -

24.2.1 Use of Sick Leave

An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 24.2.3(b) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at subclause 24.1 of clause 24, Personal Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

24.2.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

24.2.3 The entitlement to use sick leave in accordance with this clause is subject to:

- (a) the employee being responsible for the care and support of the person concerned; and
- (b) the person concerned being:
  1. a spouse of the employee; or

2. a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
3. a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
4. a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
5. a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
  - (a) "relative" means a person related by blood, marriage or affinity;
  - (b) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (c) "household" means a family group living in the same domestic dwelling.

24.2.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 6, Procedure to Avoid Industrial Disputation, should be followed.

24.3 Unpaid Leave - An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 24.2.3(b) above who is ill or who requires care due to an unexpected emergency.

24.4 Time Off in Lieu of Payment for Overtime

24.4.1 For the purpose only of providing care and support for a person in accordance with subclause 24.2 of this clause, and despite the provisions of clause 20, Overtime, the following provisions shall apply.

24.4.2 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 within 12 months of the said election.

24.4.3 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.

24.4.4 If, having elected to take time as leave in accordance with paragraph 24.4.1 of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.

24.4A Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 24.2.2 and 24.2.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 24.2.3(b) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

24.4.5 Where no election is made in accordance with the said paragraph 24.4.1, the employee shall be paid overtime rates in accordance with the award.

## 24.5 Bereavement Leave

### 24.5.1 Paid Leave Entitlement

- (a) An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in 24.5.3 below.
- (b) For a regular part-time employee, a "day" for the purposes of this paragraph will be reckoned by dividing the total number of hours worked by the employee in the four week period immediately prior to the employee taking bereavement leave by the number of days worked by the employee in the four week period.

24.5.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.

24.5.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 24.2.3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

24.5.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.

24.5.5 Bereavement leave may be taken in conjunction with other leave available under subclause 18.11 of clause 18, Hours of Work, subclause 23.3 of clause 23, Annual Leave, and subclauses 24.2, 24.3 and 24.4 of this clause. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

### 24.5.6 Bereavement entitlements for casual employees

- 24.5.6.1 Subject to the evidentiary and notice requirements in 24.5.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 24.2.3(b) of clause 24, Personal Leave.
- 24.5.6.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two

days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- 24.5.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

- 24.6 The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

## 25. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
- (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 26. Jury Service

- 26.1 A full-time or regular part-time 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 amount of ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service.
- 26.2 An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service.
- 26.3 Further the employee shall give their employer proof of their attendance, the duration of such attendance and the amount in respect of such jury service.

## 27. Public Holidays

- 27.1 Prescribed Public Holidays
- 27.1.1 Employees other than casuals shall be entitled to the following holidays without loss of pay: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queens Birthday, Labour Day, Union Picnic Day, Christmas Day and Boxing Day, or such other day as is generally observed in the locality as a substitute for any of the said days respectively.
- 27.1.2 In respect to Christmas Day and Boxing Day if either day falls on a Saturday or Sunday and an employee is required to work on such day or days then the day or days shall be treated as the public holiday and day substituted shall be paid at the rate that would otherwise be paid on 25 and/or 26 December.
- 27.2 Provided that when an employee is absent from his or her employment only on one working day or part of a day before or after a holiday, except on account of illness or other legitimate reason, he or she shall not suffer loss of payment for more than one day of the holidays.
- 27.3 Payment for work on a public holiday
- 27.3.1 Subject to 27.6, all time worked by a full-time employee on a holiday herein prescribed shall be paid for at the rate of double time and one-half for the hours worked, with a



minimum of four hours additional pay. Alternatively, such employees who work on a prescribed holiday, may, by agreement, perform such work at time and one-half the ordinary Monday to Friday rate, provided that the equivalent of the time worked is also added to the employee's annual leave or one day in lieu of such public holiday shall be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to employees within 28 days of such holidays falling due.

27.3.2 Casual employees working on a public holiday prescribed by this clause, shall be paid according to the provisions of clauses 8.2.2(c) and 8.2.2(e) of this Award.

27.3.3 Regular part-time employees required to work on a public holiday prescribed by this clause shall be paid (at the rate of double time and a half for all time worked) according to the provisions of clauses 8.3.4, 8.3.5 and 8.3.6 of this Award.

#### 27.4 Additional Public Holidays

Where in a State or Territory or locality within a State or Territory an additional public holiday (other than Easter Saturday) is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory government and such proclaimed or gazetted holiday is to be observed generally by persons throughout that State or Territory or a locality thereof, other than by those covered by Federal Awards, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such day shall be deemed to be a holiday for the purposes of this Award, for the employees covered by this Award who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required.

#### 27.5 Rostered Day Off Coinciding With a Holiday -

27.5.1 Where an full time employee's rostered day or days off coincide(s) with a holiday prescribed in this Award, the holiday shall not be a holiday for such employee and the holiday shall be substituted in one of the methods following:

- (a) one day with pay added to the annual leave;
- (b) payment of one day's pay shall be made to the employee on the next succeeding pay day;
- (c) such holiday may be allowed off with pay to the employee within 28 days after such holiday falls;

NOTE: one of the above methods must be mutually agreed upon by the employee and the employer. Failing such agreement the provision prescribed in 27.5.1(a) hereof shall apply.

27.5.2 A regular part-time employee (as defined in clause 8.3) is to be entitled to the public holidays listed in clause 27.1 without loss of pay if those public holidays fall on days the employee would normally work in accordance with clause 8.3.

27.5.3 An employer must not alter an employee's roster on any occasion so as to avoid any of the provisions of this clause. Where a roster is altered so as to avoid or reduce payment due or the benefit applicable under this clause, the employee must be paid for such holiday/s as if the roster had not been changed.

27.5.4 Despite 27.5.2, a regular part-time employee who was employed on or before 12 August 2005 and who works an average of five days per week must not be disadvantaged while the employee continues in employment as a regular part-time employee with the same employer by the fact that a prescribed holiday falls upon a day when the employee would not be working. The compensation for such employee will be that set out in paragraph 27.5.1 above.

**27.6 Substitution of Days**

- 27.6.1 An employer and a majority of employees in a workplace may, subject to the following conditions, agree to substitute another day for any prescribed in this clause.
- 27.6.2 If the employer intends to seek agreement on substituting a day or days and the union has members at the particular workplace then the employer must inform the union of its intention and provide the union with an opportunity to participate in negotiations relating to substitution.
- 27.6.3 After the employer and a majority of employees have agreed to a substitute day, the agreement must be recorded in writing and made available to every affected employee.
- 27.6.4 The employer must record substitution day arrangements in the time and wages records kept pursuant to Division 2 of Part 4 of the Industrial Relations (General) Regulations.
- 27.6.5 Any disputes in relation to the practical application of this provision may be dealt with in accordance with Clause 6.

**28. National Training Wage**

The parties to this award shall observe the terms of the National Training Wage Award 1994 as amended, as though bound by clause 3 of that Award.

**29. Work Experience**

The provisions of this Award shall not apply to high or secondary school students whilst undergoing work experience with the written approval of a school career co-ordinator or similar school's officers.

**30. Accident Pay**

See *Workplace Injury Management and Workers Compensation Act 1998*.

**31. Posting of Award**

A copy of this Award, as varied from time to time, shall be maintained in each establishment of an employer and shall be available for inspection at any time by an employee covered by this Award.

**32. Leave for Consultation Meetings**

Each employer must allow his/her employees to attend meetings to discuss industrial matters without loss of ordinary pay provided the following conditions are observed:

- 32.1 At least fourteen days' notice of such meeting is given to the employer.
- 32.2 The period of the meeting is no greater than three hours, with employees returning to duty by 5.00pm if so rostered.
- 32.3 The employer is only obliged to pay wages for the period of the meeting if the employer is in receipt of satisfactory evidence of the employee's attendance at the meeting.
- 32.4 Such consultation meetings are to be held on either a Monday or Tuesday, not being a week in which a public holiday occurs.
- 32.5 The employer is only obliged to pay wages for the period that the employee was rostered for duty.
- 32.6 The employer is not obliged to pay wages for more than one such meeting in any calendar year.

### 33. Basis of Award

This award is made in relation to the award of the Australian Industrial Relations Commission known as the Motels, Accommodation and Resorts Award 1998.

### 34. Anti-Discrimination

- 34.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 34.2 It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 34.3 Under the *Anti-Discrimination Act 1977*, 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.
- 34.4 Nothing in this clause is to be taken to affect:
- 34.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
  - 34.4.2 offering or providing junior rates of pay to persons under 21 years of age;
  - 34.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - 34.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 34.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### Notes

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### 35. Union Dues

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - (c) deduction of Union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and

- (d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employee's authorisation shall be in writing and shall authorise deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- (iv) Where the employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly or quarterly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.
- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of Union membership fees to cease.
- (viii) This clause shall take effect:
  - (a) In the case of employers who currently deduct Union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after 1 February 2005;
  - (b) In the case of employers who do not fall with subparagraph (i) above, but who currently make deductions, other than Union membership fee deductions or mandatory deductions (such as taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on or after 1 May 2005;
  - (c) For all other employers, from the beginning of the first pay period to commence on or after 1 August 2005.

### **36. Leave Reserved**

Leave is reserved for any party to revisit the provisions of the award to consider what amendments, if any, should be made to the award as a result of the decisions of the Commission in matter IRC No. 4330 of 2003, application for variation of awards Re: Secure Employment Clause, and matter IRC No. 7167 of 2003,

application for a State Decision pursuant to s51 of the *Industrial Relations Act 1996* to address Employment Opportunities.

### 37. Area, Incidence and Duration

37.1 This award rescinds and replaces:

- (a) the Motels, Accommodation and Resorts, &c., (State) Award published 26 May 2000 (315 I.G. 1064), and all variations thereof ;
- (b) the Flats, Residential &c., (State) Award published 5 January 1983 (228 I.G. 58), and all variations thereof;
- (c) the Flats, Residential &c., Redundancy and Technological Change (State) Award published 9 February 1996 (290 I.G. 628), and all variations thereof; and
- (d) the Flats, Residential &c., (State) Wages Adjustment Award published 28 February 1997 (296 I.G. 1025), and all variations thereof.

It shall apply to all persons employed in any capacity whether permanent or casual in or in connection with motor inns or motels, unlicensed private hotels, serviced apartments, resorts, time share facilities, health or recreation farms, guest houses, ski lodges, holiday flats/units, holiday ranches or farms, condominiums, flats (being premises (not being an hotel licensed to sell spirituous or fermented liquors) where either furnished, unfurnished or service apartments are let or sub-let to tenants (but does not include a private house) and residential chambers (being a lodging house or residential establishment (not being an hotel licensed to sell spirituous or fermented liquors) where accommodation only is provided) and establishments of a like nature together with restaurants, function areas, convention centres or like facilities, ancillary to or part of any of the above whether such establishments are licensed to serve alcoholic drinks or not and in or in connection with preparing and serving food, cleaning and attending to the premises and all other services associated therewith, excluding the County of Yancowinna and government accommodation houses, and excepting all persons employed by Lutanda Children's Home Ltd at Camp Toukley, provided further that Camp Toukley continues to provide the type of services as identified in the affidavit of John Roberts, dated 11 May 2001, filed in proceedings IRC 2328/2000.

37.2 This award shall take effect from the beginning of the first pay period to commence on or after 14 May 2001 and shall remain in force for a period of 12 months.

37.3 Unless otherwise agreed (and recorded in writing in the time and wages record), for each employee (full-time, part-time, and casual) who was at 24 March, 1999, employed under the provisions of the 1994 Private Hotels, Motels, Guest Houses &c., Employees (State) Award, as varied from time to time, it is a term of this award that they do not suffer any reduction in wages or salary as a result of the making of this award. In this clause, "an overall reduction in wages or salary" means that, when comparing like work pattern with like work pattern, the gross income of the employee is less under this award than it would have been under the provisions of the 1994 Private Hotels, Motels, Guest Houses, &c., Employees (State) Award immediately prior to 24 March 1999. This clause shall cease to operate on 23 March 2001.

37.4 Unless otherwise agreed (and recorded in the time and wages record), no employee (full-time and part-time) who was at 14 May 2001 employed under the provisions of the Flats, Residential &c., (State) Award, as varied from time to time, shall suffer a reduction in ordinary time earnings as a result of the making of this award.

37.5 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 20 November 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

---

Printed by the authority of the Industrial Registrar.

**NURSES (PRIVATE SECTOR) REDUNDANCY (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C2505	30/07/2004	First pay period on or after 12/12/2003	345	596

**1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Title
3.	Application
4.	Introduction of Change
5.	Redundancy
6.	Termination of Employment
7.	Severance Pay
8.	Grievance and Dispute Resolution Procedures
9.	Savings Clause
10.	Area, Incidence and Duration

**2. Title**

This award shall be known as the Nurses (Private Sector) Redundancy (State) Award.

**3. Application**

- (i) In respect to employers who employ 15 or more employees immediately prior to the termination of employment of the employees, in the terms of clause 6, Termination of Employment.
- (ii) Notwithstanding anything contained elsewhere in this award, this award shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
- (iii) Notwithstanding anything contained elsewhere in this award, this award shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged

for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

#### **4. Introduction of Change**

(i) Employer's Duty to Notify

- (a) Where an employer has made a definite decision to introduce major changes in production, programme, 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 the union to which they belong.
- (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, promotion 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 an award referred to in subclause (i) of clause 3, Application, makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(ii) Employer's Duty to Discuss Change

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (i) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in the said subclause (i).
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

#### **5. Redundancy**

Discussions before Termination

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to paragraph (a) of subclause (i) of clause 4, Introduction of Change, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause (a) of this clause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.



## 6. Termination of Employment

### (i) Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, programme, organisation or structure in accordance with paragraph (a) of subclause (i) of clause 4, Introduction of Change.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

### (ii) Notice for Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with paragraph (a) of subclause (i) of the said clause 4.

- (a) In order to terminate the employment of an employee, the employer shall give to the employee three months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

### (iii) Time Off during the Notice Period

- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, 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.

### (iv) Employee Leaving during the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee shall not be entitled to payment in lieu of notice.

## (v) Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

## (vi) Notice to Centrelink

Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## (vii) Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

## (viii) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (i) of the said clause 4, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary-time rate for the number of weeks notice still owing.

## (ix) Notice Required by an Award

The period of notice prescribed by this clause shall be in substitution for any notice required by an award listed in subclause (i) of clause 10, Area, Incidence and Duration.

### 7. Severance Pay

## (i) Where the employment of an employee is to be terminated pursuant to clause 6, Termination of Employment, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the following severance pay in respect of a continuous period of service.

## (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

## (b) Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of Service	Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks

4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) "Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over-award payments, shift penalties and allowances specified in paragraph (d) of this subclause paid in accordance with the award covering the wages and conditions of the employee.
- (d) For the purposes of this clause, the following allowances shall form part of an employee's "week's pay":
- (1) Private Hospital Industry Nurses' (State) Award published 24 August 2001 (327 I.G. 1).  
The allowances provided for in paragraphs (a) and (b) of subclause (i), paragraphs (a) and (c) of subclause (ii) and paragraph (a) of subclause (v) of clause 13, Special Allowances.
  - (2) Nursing Homes, &c., Nurses' (State) Award published 22 January 1999 (308 I.G. 45).  
  
The allowances provided for in paragraphs (a) and (b) of subclause (i) of clause 11, Special Allowances, and subclauses (i) and (ii) of clause 12, Climatic and Isolation Allowance.
  - (3) Catholic Health Care Services Nurses' Enterprise (State) Award 2001 published 22 March 2002 (332 I.G. 1).  
  
The allowances provided for in paragraphs (a) and (b) of subclause (i), paragraphs (a) and (c) of subclause (iii) and paragraph (a) of subclause (v) of clause 13, Special Allowances.
- (e) A "week's pay" for a particular employee shall be determined according to the average week's pay received by the employee in the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under paragraphs (a) and (b) of this subclause.

(iii) Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in the said subclause (i) will have on the employer.

(iv) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause if the employer obtains acceptable alternative employment for an employee.

## 8. Grievance and Dispute Resolution Procedures

(i) Procedures relating to Grievances of Individual Employees

- (a) The employee is required to notify the employer (in writing or otherwise) as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

- (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.
  - (f) The employee may be represented by an industrial organisation of employees.
- (ii) Procedures relating to Disputes, etc., between Employers and their Employees
- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) While a procedure is being followed, normal work must continue.
  - (d) The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure.

### **9. Savings Clause**

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

### **10. Area, Incidence and Duration**

- (i) This award shall apply to all full-time and part-time employees in classifications specified by the:
- Private Hospital Industry Nurses' (State) Award published 24 August 2001 (327 I.G. 1).
- Nursing Homes, &c., Nurses (State) Award published 22 January 1999 (308 I.G. 45).
- Occupational Health Nurses' (State) Award published 1 December 2000 published 1 December 2000 (320 I.G. 836).
- Nurses, Non-Government Schools (State) Award published 9 July 1999 (309 I.G. 1096).
- Nurses, &c., Other Than in Hospitals, &c. (State) Award published 12 January 2001 (321 I.G. 527).
- Catholic Health Care Services Nurses Enterprise (State) Award 2001 published 22 March 2002 (332 I.G. 1).
- (ii) This award shall take effect on 11 July 1996 and shall remain in force for a period of 2 years.
- (iii) The changes made to the award pursuant to the Award Review under section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 12 December 2003.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

Printed by the authority of the Industrial Registrar.

(2150)

**SERIAL C7721****NURSES (PRIVATE SECTOR) SUPERANNUATION (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar*.

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C2686	2/07/2004	On and from 08/07/1997	345	171

**1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Title
3.	Definitions
4.	Superannuation Legislation
5.	Contributions
6.	Salary Sacrifice to Superannuation
7.	Exemptions
8.	Grievance Procedure
9.	Area, Incidence and Duration

**2. Title**

This award shall be known as the Nurses' Private Sector Superannuation (State) Award.

**3. Definitions**

- (i) "Approved fund" means:
- (a) the Health Employees' Superannuation Trust Australia (H.E.S.T.A.);
  - (b) the Health Industry Plan (HIP);
  - (c) the National Healthcare Superannuation Fund (N.H.S.F.);
  - (d) the Medprac Superannuation Scheme (Medprac);
  - (e) the Australian Superannuation Savings Employment Trust (A.S.S.E.T.);
  - (f) any superannuation fund as agreed between the Association and employer(s), provided that the fund is a complying regulated fund and holds a Certificate of Compliance issued by the

Australian Prudential Regulation Authority. Provided further that the Association shall not unreasonably withhold agreement unless it establishes good and proper reasons;

- (g) any superannuation fund operating within a place of employment prior to the operative date of this award provided that the fund is a complying regulated fund, holds a Certificate of Compliance issued by the Australian Prudential Regulation Authority, and the Association agrees to the continued approval of that fund. Provided that the Association shall not unreasonably withhold agreement unless it establishes good and proper reasons;
- (h) any superannuation fund nominated by the employee and approved by the employer in accordance with section 124 of the *Industrial Relations Act* (NSW) 1996 ("the 1996 Act").
- (ii) "Complying regulated fund" means a superannuation fund that is regulated under the *Superannuation Industry (Supervision) Act* 1993 and has been issued with a Certificate of Compliance by the Australian Prudential Regulation Authority.
- (iii) "Ordinary time earnings" means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:
  - (a) Monday to Friday shift premiums for ordinary hours of work;
  - (b) Weekend shift premiums for ordinary hours of work;
  - (c) Public holiday loadings;
  - (d) any percentage addition payable to casual employees for ordinary hours of work;
  - (e) ordinary time award allowances (not including expense-related allowances);
  - (f) over-award payments for ordinary hours of work.
- (iv) "Association" mean the New South Wales Nurses' Association.
- (v) "Qualified employee" means:
  - (i) A full-time or part-time employee who has completed at least four weeks' service in the industry of nursing. Provided that once this period has elapsed, payments in accordance with clause 5 shall be made for the entire period of service with the employer;
  - (ii) A casual employee who has earned in excess of \$2000.00 ordinary-time earnings during their employment with an employer in the course of any one year (1 July to 30 June). Provided further that any casual employee who is deemed to be a qualified employee prior to the operative date of this award will continue to be qualified.

#### 4. Superannuation Legislation

The subject of superannuation is dealt with extensively by federal legislation, including the *Superannuation Guarantee (Administration) Act* 1992, the *Superannuation Guarantee Charge Act* 1992, the *Superannuation Industry (Supervision) Act* 1993, the *Superannuation (Resolution of Complaints) Act* 1993, and section 124 of the *Industrial Relations Act* 1996 (NSW). This legislation, as varied from time to time, shall govern the superannuation rights and obligations of the parties.

#### 5. Contributions

- (i) The employer shall make, in respect of qualified employees, superannuation contributions of 3% of ordinary-time earnings into an approved fund. Such contributions shall be remitted to the approved fund on a monthly basis. With respect to casual employees, contributions shall be remitted at the time that employees receive their annual group certificate.

- (ii) It is provided further that an employee may nominate one complying fund to which all award and statutory superannuation contributions in respect of him/her shall be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of agreement.
- (iii) Where no such nomination is made before any such contributions become payable, the contribution referred to in subclause (i) of this clause will be paid to the approved fund for that place of employment.

#### **6. Salary Sacrifice to Superannuation**

- (i) Salary Sacrifice to Superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre tax dollars) under the parent awards. This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (ii) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.
- (iii) Such election must be made prior to the commencement of the period of service to which the earnings relate.
- (iv) One change of a sacrificed amount will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50.00). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.
- (v) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (vi) The sacrificed portion of salary reduces the salary subject to PAYG taxation deductions.
- (vii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount.
- (viii) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (ix) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under the parent award in the absence of any salary sacrifice.
- (x) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (xi) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (xii) Nothing in this clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

#### **7. Exemptions**

This award shall not apply to employers who are subject to any of the following:

- (i) Private Hospital and Nursing Home Nurses' Superannuation (State) Award published 23 January 1998 (303 I.G. 214);



- (ii) *State Authorities Non-Contributory Superannuation Act 1987*;
- (iii) employers of occupational health nurses working in the retail industry or in the metal trades industry, provided that the parties to this award may seek the question of the constitution of this exemption be relisted for consideration by the Industrial Relations Commission on reasonable notice.

### **8. Grievance Procedure**

Grievances and disputes shall be dealt with in the following manner:

- (i) The employee is to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for discussions and state the remedy sought. This meeting shall take place within two working days of the issue arising (weekends and public holidays excepted).
- (ii) If agreement is not reached, the matter shall then be referred by either party to a higher authority (where this exists) no later than three working days after subclause (i) above (weekends and public holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing the proposed remedy.
- (iii) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission of New South Wales.
- (iv) The employer may be represented by an industrial organisation of employers and the employee/s may be represented by an organisation of employees for the purposes of each step of the procedure.

### **9. Area, Incidence and Duration**

- (i) Subject to clause 7, Exemptions, this award shall apply to all persons employed as nurses or in accordance with the profession of nursing in the State of New South Wales excluding the County of Yancawinna.
- (ii) It shall take effect on and from 8th July 1997 and remain in force for a period of 12 months.
- (iii) It shall take effect in respect of paragraph (c) of subclause (iii) of clause 3, Definitions, on 1 July 2000.
- (iv) Clause 6, Salary Sacrifice to Superannuation, shall take effect on the first pay period on or after 13 August 2001.
- (v) The changes made to the award pursuant to the Award Review under section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 12 December 2003.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

---

Printed by the authority of the Industrial Registrar.

**NURSES' (PRIVATE SECTOR) TRAINING WAGE (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B4427	02/08/1996	First pay period on or after 26/03/1996	294	77
8, Part B	B5710	06/02/1998	First pay period on or after 10/06/1997	303	543
8, Part B	B5777	12/12/1997	On and from 27/08/1997	302	686
Arrangement; 3, 5; 7; 8 9A; 11 & 12.	B6359	09/10/1998	First pay period on or after 12/12/1997	306	1039
8, Part B	B7221	12/11/1999	First pay period on or after 31/07/1998	312	129
8, Part B	B8455	24/03/2000	First pay period on or after 31/07/1999	314	496
Arrangement; 5, 6, 9A, 9B, Table 3.	B8920	11/08/2000	First pay period on or after 16/11/1999	317	990
8, Part B	C0492	28/09/2001	First pay period on or after 04/06/2001	328	259
Arrangement, 2, 3, 4, 5, 6, 7, 10, 11, Part B	C1284	16/08/2002	First pay period on or after 12/03/2002	335	1068
7, Part B	C1553	01/11/2002	First pay period on or after 12/03/2003	336	1061
4, 5, 6, 7, 8, 9	C2614	28/05/2004	First pay period on or after 24/12/2003	344	680
7, Part B	C4207	03/02/2006	First full pay period on or after 09/11/2005	356	1219
7, Part B	C6442	14/03/2008	First full pay period on or after 29/01/2008	364	328
7, Part B	C6848	24/04/2009	First full pay period on or after 29/01/2009	367	1292
7, Part B	C7381	26/02/2010	First full pay period on or after 29/01/2010	369	1484
7, Part B	C7583	02/09/2011	First full pay period on or after 16/12/2010	371	656

**Arrangement**

## PART A

Clause No.      Subject Matter

1. Title
2. Application
3. Objective
4. Definitions
5. Training Conditions
6. Employment Conditions

7. Wages
8. Part-Time Traineeships
9. School Based Traineeships
10. Grievance Procedures
11. Leave Reserved
12. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Wages - Trainees

Table 2 - Monetary Rates For School Based Traineeships

Table 3 - Wages - School Based Traineeships

## PART A

### 1. Title

This award shall be known as the Nurses' (Private Sector) Training Wage (State) Award.

### 2. Application

- (a) Subject to the subclause (c) of this clause this award shall apply to persons who are undertaking training as an assistant in nursing under a Traineeship (as defined). This award is to be read in conjunction with the awards contained in Clause 12, Area, Incidence and Duration, or any 'former industrial agreement', of the Industrial Relations Commission of New South Wales which covers the terms and conditions of employment of persons performing work covered by the listed awards in the said Clause 12.
- (b) The terms and conditions of the awards listed in the said clause 11 or any former industrial agreements of the Industrial Relations Commission shall apply, except where inconsistent with this award.
- (c) Notwithstanding the foregoing, this award shall not apply to employees who were employed under an award listed in clause 11 prior to the date of approval of a traineeship scheme relevant to the employer, except where agreed between the employer and the relevant union(s).
- (d) This award does not apply to the apprenticeship system or any training programme which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April 1998 or in an award that binds the employer.
- (e) For the removal of any doubt, this award only applies to the employment of Trainees as trainee assistants in nursing.
- (f) At the conclusion of the traineeship, this award shall cease to apply to the employment of the trainee and the Parent Award shall apply to the former trainee.

### 3. Objective

The objective of this award is to assist with the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. It is intended to apply only to the employment of Trainees as assistants in nursing. Except as provided for in clause 5, nothing in this award shall be taken to replace the prescription of training requirements in the parent award.

#### 4. Definitions

"Appropriate State Legislation" means the *Apprenticeship and Traineeship Act 2001*, or any successor legislation.

"Association" means the New South Wales Nurses' Association.

"Parent Award" means the awards listed in clause 12, Area, Incidence and Duration and includes subsequent awards rescinding, varying or replacing the awards listed in clause 12, Area, Incidence and Duration.

"Relevant NSW Training Authority" means the Department of Education and Training, or successor organisation.

"Relevant Union" means the New South Wales Nurses' Association which is entitled to enrol the Trainee as a member.

"School Based Trainee" means a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms part of a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority and the NSW Board of Studies as such.

"*Structured Training*" means that training which is specified in the Training Plan, which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off the job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a traineeship approved by the relevant NSW Training Authority and leads to a qualification as set out in subclause 5(f)."

"Trainee" means an employee, employed for training as an assistant in nursing, who is bound by a Training Contract made in accordance with this award.

"Traineeship" means a contract entered into for the purposes of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001* (NSW).

"Training Plan" means a programme of training which forms part of a Training Contract registered with the relevant NSW Training Authority.

"Year 10" means for the purposes of this award any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

#### 5. Training Conditions

- (a) The Trainee shall attend an approved training course or training programme prescribed in the Training Contract or as notified to the Trainee by the relevant NSW Training Authority in accredited and relevant Traineeship.
- (b) A Traineeship shall not commence until the relevant Training Contract, has been signed by the employer and the Trainee and lodged for registration with the relevant NSW Training Authority, provided that if the Training Contract is not in a standard format a Traineeship shall not commence until the Training Contract has been registered with the relevant NSW Training Authority.
- (c) The employer shall ensure that the Trainee is permitted to attend the training course or programme provided for in the Training Contract and shall ensure that the Trainee receives the appropriate on-the-job training.
- (d) The employer shall provide a level of supervision in accordance with the Training Contract during the traineeship period.
- (e) The employer agrees that the overall training programme will be monitored by officers of the relevant NSW Training Authority and training records or work books may be utilised as part of this monitoring process.

- (f) Training shall be directed at:
- (i) the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Qualification Framework Level I qualification.

This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise; and/or

- (ii) the achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies), as are proposed to be included in the Australian Qualification Framework Level II qualification or above.

### 6. Employment Conditions

- (a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration or a part time trainee for a maximum period of 2 years, unless the relevant NSW Training Authority directs, the maximum duration for a traineeship shall be thirty six months.
- (b) A Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
- (c) By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship .
- (d) Where the trainee completes the qualification, in the Training Contract, earlier than the time specified in the Traineeship Agreement then the traineeship may be concluded by mutual agreement.
- (e) An employer shall not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee concerned and the relevant NSW Training Authority in accordance with the Training Contract or the *Apprenticeship and Traineeship Act 2001*.

An employer who chooses not to continue to the employment of a Trainee upon the completion of the traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.

- (f)
  - (i) The Training Contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training programme is successfully completed.
  - (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of the Parent award.
  - (iii) No Trainee shall work shiftwork unless the parties to this Award agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
  - (iv) The Trainee wages shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Parent award, unless otherwise agreed by the parties to a Traineeship.
- (g) All other terms and conditions of the relevant award(s) or former industrial agreements that are applicable to the Trainee or would be applicable to the Trainee but for this Award shall apply unless specifically varied by this Award.

- (h) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments.
- (i) The trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend Structured Training in accordance with the Training Contract.
- (j) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of the Parent Award or any other legislative entitlement.

## 7. Wages

- (a)
  - (i) The weekly wages payable to trainees are as provided in Table 1 - Wages - Trainees, of Part B, Monetary Rates, and in accordance with clause 7, Employment Conditions.
  - (ii) These wage rates will only apply to trainees while they are undertaking an approved traineeship which includes approved training as defined in this award.
  - (iii) The wage rates prescribed by this clause do not apply to the complete trade level training which is covered by the apprenticeship system.
  - (iv) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
    - (a) any equivalent overaward payments, and /or
    - (b) award wage increases since 29 May 1991 other than safety net, State wage Case, and minimum rates adjustments.
- (b) The wage rates have been determined, having regard to the following criteria:
  - (i) the agreement of the parties;
  - (ii) the nature of the industry;
  - (iii) the total training plan;
  - (iv) recognition that training can be undertaken in stages;
  - (v) the exit skill level in the relevant award contemplated by the traineeship.
- (c) For the purposes of the said Table 1, "out of school" shall refer only to periods out of school beyond Year 10, and shall be deemed to:
  - (i) include any period of schooling beyond Year 10 which was not part of, nor contributed to, a completed year of schooling;
  - (ii) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10;
  - (iii) not include any period during a calendar year in which a year of schooling is completed; and
  - (iv) have effect on an anniversary date, being 1 January in each year.
- (d) No increase in wage rates, as a result in an increase in the number of years "out of school" experienced by a trainee, shall be payable before 1 January 1997.

- (e) At the conclusion of the traineeship, this award ceases to apply to the employment of the trainee and the Parent award shall apply to the former trainee.

### 8. Part-Time Traineeships

This clause shall apply to trainees who undertake a traineeship on a part-time basis by working less than full-time ordinary hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.

- (a) The wage rate shall be pro rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship, which may also be varied on the basis of the following formula:

$$\frac{\text{trainee hours} - \text{average weekly training time}}{\text{Full-time wage rate}} \times 30.4^*$$

\* NOTE:30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time trainees (i.e., 20%). A pro rata adjustment will need to be made in the case where the relevant award specifies different ordinary full-time hours; for example, where the ordinary weekly hours are 40, 30.4 will be replaced by 32.

- (b) "Full-time wage rate" means the appropriate rates as set out in Table 1 - Wages -Trainees, of Part B and School Based Traineeships in Table 2 of Part B.
- (c) "Trainee hours" shall be the hours worked per week including the time spent in approved vocational training. For the purpose of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the Traineeship.
- (d) "Average weekly training time" is based upon the length of the traineeships specified in the traineeship contract or training contract as follows:

$$\frac{7.6 \times 12}{\text{length of the traineeship in months}}$$

NOTE 1:

7.6 in the above formula represents the average weekly training time for a full-time trainee whose ordinary hours are 38 per week. A pro rata adjustment will need to be made in the case where the relevant award specifies different ordinary-time hours; for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

NOTE 2:

The parties note that the training contract will require a trainee to be employed for sufficient hours to complete all requirements of the traineeship, including the on-the-job work experience and demonstration of competencies. The parties also note that this would normally result in the equivalent of a full day's on-the-job work per week.

- (e) A part-time trainee shall receive, on a pro rata basis, all employment conditions applicable to a full-time trainee. All the provisions of this award shall apply to part-time trainees except as specified in this clause.
- (f) A part-time trainee may, by agreement, transfer from a part-time to a full-time traineeship position should one become available.
- (g) The minimum engagement periods specified in the Parent awards shall also be applicable to part-time trainees.

**EXAMPLE**

Example of the calculation for the wage rate for a part-time traineeship:

A school student (year 10) commences a traineeship in Year 11 (plus one year out of school).

The ordinary hours of work in the Parent award are 38. The Training Contract specifies two years (24 months) as the length of the traineeship.

"Average weekly training time" is, therefore,  $7.6 \times 12/24 = 3.8$  hours

"Trainee hours" totals 15 hours. These are made up of 11 hours' work, which is worked over two days of the week, plus 1 1/2 hours on-the-job training, plus 2 1/2 hours off-the-job approved training at school and at a Registered Training Organisation.

So the wage rate for a school leaver, plus one year out of school is:

\$187 x (15 = \$68.90 plus any applicable penalty rates under the Parent award.

3.8  
30.4

The wage rate varies when the student completes Year 11 and passes the anniversary date of 1 January the following year to begin Year 12 and/or if "trainee hours" changes.

**9. School Based Traineeships**

- (a) School-Based Trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final Higher School Certificate examination period and ending upon the completion of the individual's last examination period.
- (b) For the purposes of this Award, a School-Based Trainee shall become an ordinary Trainee as at January 1 of the year following in which they cease to be a school student.
- (c) An Employer shall not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee, and to the relevant NSW Training Authority in accordance with the Training Contract or the *Apprenticeship and Traineeship Act 2001*.  
  
An Employer who chooses not to continue the employment of a Trainee upon the completion of the traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.
- (d) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Training Contract
- (e) Where the employment of a Trainee by an Employer is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Parent Award or any other legislative entitlements.
- (f) The Training Contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure that the training program is successfully completed.
- (g) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of the Parent Award
- (h) No Trainee shall work shiftwork unless the parties to this Award agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.



- (i) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Parent Award, unless otherwise agreed by the parties to a Traineeship.
- (j) All other terms and conditions of the Parent Award that are applicable to the Trainee or would be applicable to the Trainee but for this Award shall apply unless specifically varied by this Award.
- (k) A Trainee who fails to complete the Traineeship or who is not offered employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments.

#### **10. Grievance Procedures**

- (a) Procedures relating to grievances of individual trainees:
  - (i) A Trainee shall notify the employer as to the substance of any grievances and request a meeting with the employer for bilateral discussions in order to settle the grievance.
  - (ii) If no remedy to the trainee's grievance is found, then the Trainee shall seek a further discussion and attempt to resolve the grievance at a higher level of authority where appropriate.
  - (iii) Reasonable time limits must be allowed for discussion at each level of authority.
  - (iv) At the conclusion of the discussion, the employer must provide a response, including reasons for not implementing any proposed remedy. At this stage an employer or a Trainee may involve an industrial organisation of employers or employees of which he/she is a member.
  - (v) If no resolution of the trainee's grievance can be found, then the matter may be referred to the Industrial Relations Commission of NSW by either the Trainee or the employer or the industrial organisation representing either party.
  - (vi) Whilst this grievance procedure is being followed, normal work shall continue.
- (b) Procedures relating to disputes, etc., between employers and their trainees:
  - (i) A question, dispute or difficulty must initially be dealt with at the workplace level where the problem has arisen. If the problem cannot be solved at this level, the matter shall be referred to a higher level of authority.
  - (ii) If no resolution can be found to the question, dispute or difficulty, the matter may be referred to the Industrial Relations Commission of New South Wales by any party to the dispute, or the industrial organisation representing any of the parties to the dispute.
  - (iii) Reasonable time limits must be allowed for discussions at each level of authority.
  - (iv) While a procedure is being followed, normal work must continue.
  - (v) The employer may be represented by an industrial organisation of employers and the Trainee may be represented by an industrial organisation of employees for the purposes of each procedure.

#### **11 Leave Reserved**

Leave is reserved to the parties to the award to vary this award by consent to reflect the terms of the Training Wage Interim (State) Award or any successor to that award.

#### **12. Area, Incidence and Duration**

- (a) This award shall apply to all classes of trainees who would ordinarily be covered by the following awards:

Private Hospital Industry Nurses (State) Award published 3 November 1995 (289 I.G. 57), as varied;

Nursing Homes, &c., Nurses' (State) Award published 3 November 1995 (289 I.G. 5), as varied;

Nurses, &c., Other Than in Hospitals, &c. (State) Award published 15 October 1993 (276 I.G. 1108), as varied;

Occupational Health Nurses' (State) Award published 15 October 1993 (276 I.G. 1080), as varied.

- (b) This award shall take effect from the beginning of the first pay period to commence on or after 26 March 1996 and shall have a nominal term of 12 months.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of NSW on 28 April 1999 (310 I.G. 359) and take effect on 24 December 2003.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## PART B

### MONETARY RATES

**Table 1 - Monetary Rates For Trainees**

	Industry Skill Level A Highest Year of Schooling Completed		
	Year 10 per week SWC 2010 (4.25%)	Year 11 per week SWC 2010 (4.25%)	Year 12 per week SWC 2010 (4.25%)
	\$	\$	\$
School Leaver	263.80	290.90	349.20
1 year out of school	290.90	349.20	406.60
2 years out of school	349.20	406.60	472.30
3 years out of school	406.60	472.30	540.00
4 years out of school	472.30	540.00	540.00
5 years out of school	540.00	540.00	540.00

The average proportion of time spent in structured training which has been taken into account in setting the above rates is 20 per cent.

**Table 2 - Monetary Rates For School Based Traineeships**

	School Based Traineeships	
	Year 11 per week SWC 2010 (4.25%)	Year 12 per week SWC 2010 (4.25%)
	\$	\$
School Based Traineeship Skill Level A	263.80	290.90

The average proportion of time spent in structured training which has been taken into account in setting the above rate is 20 per cent.

**Table 3 - Wages - School Based Traineeships**

	Year 11 \$	Year 12 \$
Skill levels A,B,C	176.00	193.00

---

Printed by the authority of the Industrial Registrar.

**NURSES, OTHER THAN IN HOSPITALS &c. (STATE) AWARD 2006****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C2524	20/08/2004	On and from 12/12/2003	346	76
4, Part B	C2825	06/08/2004	First pay period on or after 12/07/2004	345	712
4 & Part B	C3866	07/10/2005	First pay period on or after 12/07/2005	354	457
Arrangement, 25, 26	C4727	06/10/2006	From 10/03/2006	361	267
25	C4803	06/10/2006	From 10/03/2006	361	268
Title, 4, Part B	C4936	17/11/2006	First pay period on or after 17/07/2006	361	824
Arrangement, 14, 14A, 20	C5574	06/07/2007	On and from 19/12/2005	362	1309
26	C6131	14/12/2007	On and from 23/07/2007	364	773
4, Part B	C6248	08/02/2008	First pay period on or after 11/10/2007	364	994
4, Part B	C6671	26/09/2008	First pay period on or after 11/10/2008	366	788
4, Part B	C7242	30/10/2009	First pay period on or after 11/10/2009	369	575
4, Part B	C7584	02/09/2011	First pay period on or after 16/12/2010	371	658

**Arrangement****PART A**

Clause No.	Subject Matter
1.	Definitions
2.	Hours of Work
3.	Meal Hours and Meal Allowances
4.	Salaries
5.	Part-time and Casual Employees
6.	On Call
7.	Overtime
8.	Saturday, Sunday and Holiday Rates of Pay
9.	Holidays
10.	Annual Leave
11.	Annual Leave Loading
12.	Long Service Leave
13.	Sick Leave
14.	State Personal/Carer's Leave Case - August 1996

- 14A. Parental Leave
15. Termination of Employment
16. Payment of Salary
17. Uniform and Laundry Allowance
18. Vehicle Allowance
19. Right of Entry
20. Bereavement Leave
21. Grievance and Dispute Settlement Procedure
22. Anti-Discrimination
23. Labour Flexibility
24. Consultative Mechanism
25. Secure Employment
26. Area Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Salaries

Table 2 - Other Rates and Allowances

## PART A

### 1. Definitions

Unless the context otherwise indicates or requires, the several expressions hereunder defined shall have the respective meanings assigned to them:

- (i) "Board" means the Nurses' Registration Board of New South Wales, appointed under the provisions of the *Nurses' Act* 1991.
- (ii) "Association" means the New South Wales Nurses' Association.
- (iii) "Day Worker": For the purposes of this award, a day worker shall mean an employee engaged to work day work Monday to Friday inclusive.
- (iv) "Registered Nurse" means a person registered by the Board as such.
- (v) An "Enrolled Nurse" means a person enrolled by the Board as such.
- (vi) "Assistant in Nursing" means a person, other than a Registered Nurse or an Enrolled Nurse who is principally employed in nursing duties.
- (vii) "Service", for the purpose of clause 4, Salaries, means service before or after the commencement of this award in New South Wales or elsewhere as a Registered Nurse, Enrolled Nurse or Assistant in Nursing, as the case may be.
- (viii) "Shift worker" means a employee who is not a day worker as defined.

### 2. Hours of Work

- (i) Ordinary hours of work shall not exceed an average of 38 per week.
- (ii) The arrangement of the 38 hour week may be any one of the following;
  - (a) by employees working less than 8 ordinary hours each day; or
  - (b) by employees working less than 8 ordinary hours on one or more days each week; or

- (c) by fixing one weekday on which all employees will be off during a particular work cycle; or
- (d) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.
- (e) circumstances may arise where different method of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.

Notwithstanding any other provision of this award, the employer and the majority of employees concerned may agree that the ordinary hours may exceed eight hours per day, thus enabling time off to be taken more frequently than would otherwise apply.

- (iii) The arrangement of the 38 hour week may be varied by agreement between the employer and the employee(s) concerned.
- (iv) Where agreement cannot be reached, the Grievance and Disputes Settling Procedure as set out in clause 21 shall apply.
- (v) Day Workers - the ordinary hours of work for day workers shall not exceed 38 hours per week to be worked between the hours of 7.00am and 7.00pm in five days of not more than eight hours, Monday to Friday, inclusive and shall be consecutive except for breaks for meals.
- (vi) Shift Workers - the ordinary hours of shift workers shall not exceed:
  - (a) 38 hours per week; or
  - (b) 76 hours per fortnight; or
  - (c) 114 hours in 21 consecutive days; or
  - (d) 152 hours in 21 consecutive days;
  - (e) Except at regular change over of shifts an employee shall not be required to work more than one shift in each twenty-four hours without payment of overtime as prescribed in clause 7, Overtime, of this award.
  - (f) The ordinary hours of shift workers shall be worked continuously except for meal breaks.
- (vii) Shift Allowances
  - (a) Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift; provided that part time workers shall only be entitled to the additional rates where their shifts commence prior to 6.00am or finish subsequent to 6.00pm.
 

Afternoon shift commencing at 10.00am and before 1.00pm	10%
Afternoon shift commencing at 1.00pm and before 4.00pm	12.5%
Night shift commencing at 4.00pm and before 4.00am	15%
Night shift commencing at 4.00am and before 6.00am	10%
  - (b) "Ordinary rate" and "ordinary time" shall not include any percentage addition by reason of the fact that an employee is a part time or casual employee.
  - (c) For the purposes of this clause, day, afternoon and night shifts shall be defined as follows:
    - "Day shift" means a shift which commences at or after 6.00am and before 10.00am.
    - "Afternoon shift" means a shift which commences at or after 10.00am and before 4.00pm.

"Night shift" means a shift which commences at or after 4.00pm and before 6.00am on the day following.

(viii) Notice of Days Off

Except as provided in (ix) and (x) hereof, in cases where by virtue of the arrangement of his/her ordinary hours, an employee, in accordance with paragraph (c) and (d) of subclause (ii), is entitled to a day off during his/her work cycle, such employee shall be advised by the employer at least four weeks in advance of the weekday he/she is to take off; provided that a lesser period of notice may be agreed by the employer and the majority of employees in the workplace or section or sections concerned.

(ix) Substitute Days

(a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (c) and (d) of subclause (ii) for another day in the case of a breakdown in machinery or failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(b) An individual employee, with the agreement of his/her employer, may substitute the day he/she is to take off for another day.

(x) Flexibility in relation to Rostered Days Off

Notwithstanding any other provisions in this clause, where the hours of work of an establishment, plant or section are organised in accordance with paragraphs (c) and (d) of subclause (ii) an employer, the union or unions concerned and the majority of employees in the establishment, plant, section or sections concerned may agree to accrue up to a maximum of five (5) rostered days off in special circumstances such as where there are regular and substantial fluctuations in production requirements in any year.

(xi) It is a condition of this award that no employee employed on or before 24th September, 1992 shall suffer any loss of earnings as a result of the extension of ordinary hours from 8.00am - 6.00pm to 7.00am - 7.00pm.

### 3. Meal Hours and Meal Allowances

- (i) No employee shall be required to work for more than five hours without a break for a meal of not less than 30 minutes and not more than one hour.
- (ii) One interval of ten minutes (in addition to meal breaks) shall be allowed to each employee on duty for light refreshments each morning, afternoon and night shift. Such interval shall be paid for as such.
- (iii) An employee required to curtail the time prescribed herein for a meal break shall be paid at the rate of time and a half for all such curtailed periods.
- (iv) An employee required to work overtime for more than one and a half hours after his/her usual ceasing time of duty shall be supplied with a meal, free of cost, or shall be paid the amount set out in Part B.

### 4. Salaries

- (i) The minimum rates of pay to be paid to employees are set out in Part B.
- (ii) The commencing rate of salary payable to a registered nurse who has obtained an appropriate degree in Nursing or Applied Science (Nursing) or Health Studies (Nursing) (referred to for the purposes of this award as a "UG1 Qualification") shall be paid at the rate prescribed for the second year of service; and provided further that a registered nurse who has obtained the said qualification shall, on completion of the incremental scale (see Table 1) be entitled to proceed in the next year of service to the rate prescribed for such qualification in this award.

- (iii) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
  - (a) any equivalent over award payments, and/or
  - (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

## **5. Part-time and Casual Employees**

### **PART I**

#### Permanent Part-time Employees

- (i) A permanent part-time employee is one who is permanently appointed by an employer to work a specified number of hours which are less than those prescribed for a full-time employee.
- (ii) Subject to Part III of this clause, employees engaged under Part I of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 4, Salaries, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 17, Uniform and Laundry Allowances, but shall not be entitled to an additional day off or part thereof as prescribed by paragraph (c) of subclause (ii) of clause 2, Hours of Work.
- (iii) The provisions of clause 10, Annual Leave, and clause 11, Annual Leave Loading, of this Award shall apply to employees engaged under Part I of this clause, upon the same ratio as the number of hours worked in each week bears to 38.
- (iv) In Part I of this clause ordinary pay, for the purposes of sick leave and annual leave, shall be calculated on the basis of the average weekly hours worked over the 12 months qualifying period.
- (v) Employees engaged under Part I of this clause shall be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

### **PART II**

#### Casual Employees

- (i) A casual employee means an employee who is engaged and paid by the hour.
- (ii) A casual employee working ordinary hours shall be paid by the hourly rate ascertained by dividing the weekly rate by 38 plus 10 per cent except for Saturdays, Sundays and Public Holidays when the hourly rate will be ascertained by dividing the weekly rate by 38.
- (iii) A casual employee shall be entitled to the same benefits as to hours, overtime, shift penalties and Saturday, Sunday and public holiday rates of pay as a weekly employee.
- (iv) A casual employee shall be entitled to a minimum payment as for three hours at the appropriate rate in respect of each start and shall be reimbursed all fares actually and reasonably incurred by him/her in travelling to and from work provided that fares shall only be reimbursed for employees who were receiving such reimbursement before 23rd November, 1989.
- (v) No casual employee shall suffer a loss of earnings as a result of changes to this Part made in Matter No's 1327 of 1991 and 1328 of 1991 in decision of Maidment J made on 24th September, 1992.



### PART III

#### Savings Provision

- (i) Employees engaged as part-time employees as at 23 November 1989, shall be entitled to exercise the option of receiving the benefits of employment specified in Part I of this clause or in lieu thereof the following:
  - (a) A part-time employee means an employee who is employed to work not more than 38 hours per week.
  - (b) A part-time employee shall be paid at the hourly rate ascertained by dividing by 38 the weekly rate prescribed by this Award plus 5 per cent. Those employees previously covered by the Trained Nurses, Medical &c., (State) Award shall be paid the hourly rate plus 15%.
  - (c) A part-time employee shall be entitled to pro-rata sick leave in accordance with clause 13, Sick Leave, in the same proportion that his/her ordinary hours of work bear to 38.
- (ii)
  - (a) In accordance with the decision of Maidment J on 24th September, 1992, all employees employed under Part III (i) shall be employed as Permanent Part-time Employees under Part I of this clause.
  - (b) For such employees, the specified number of hours under subclause (i) of Part I of this clause shall be determined by agreement between the employee and the employer. Provided that, if no agreement is reached, the provisions of clause 21, Grievance and Dispute Settlement Procedure, shall be followed in order to determine the specified number of hours of work for the employee.
  - (c) No employee shall suffer a reduction in earnings as a consequence of becoming a permanent part-time employee through operation of this subclause.

#### 6. On Call

- (i) An employee who is required to remain on close call, that is, on call for duty and not allowed to leave his/her employer's premises during any meal break which is not paid for as time worked, shall be paid an additional sum as set in Part B for each meal during which the employee is on call.
- (ii) A person who is required by the employer to be on call (that is on call for duty but not required to remain at the employer's premises) shall be paid an on call allowance as set in Part B for each period of 24 hours or part thereof provided that only one allowance shall be payable in any period of 24 hours.

#### 7. Overtime

- (i) Day Workers - Except as prescribed in subclause (v) of this clause, all time worked by day workers in excess of 38 hours per week or before the ordinary commencing time or after the ordinary ceasing time shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (ii) Shift Workers - Except as prescribed in subclause (ii) of clause 2 Hours of Work, and except as prescribed in sub-clause (v) of this clause all time worked by shift workers -
  - (a) in excess of 38 hours per week in the case of an employee whose ordinary hours of work are balanced over one week; or
  - (b) in excess of 76 hours per fortnight in the case of an employee whose ordinary hours or work are balanced over a two week period; or
  - (c) in excess of 114 hours in 21 consecutive days in the case of an employee whose ordinary hours of work are balanced over a three week period; or

- (d) in excess of 152 hours in 28 consecutive days in the case of an employee whose ordinary hours of work are balanced over a four week period; or
- (e) before the usual starting time or after the usual finishing time;

shall be overtime and shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

- (iii) For the purpose of calculating overtime each day or shift shall stand alone.
- (iv) Subject to the following subclauses, an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for under this award:
  - (a) An employee may refuse to work overtime in circumstances where working of such overtime would result in the employee working hours which are unreasonable.
  - (b) For the purpose of this subclause, what is reasonable or otherwise will be determined having regard to:
    - (1) the risk to the employee's health and safety;
    - (2) the employee's personal circumstances including any family or carer responsibilities;
    - (3) the needs of the workplace or enterprise;
    - (4) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
    - (5) any other relevant matter.
- (v) Time Off in Lieu of Payment of Overtime
  - (a) 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 within 12 months of the said election
  - (b) 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.
  - (c) If, having elected to take time off in lieu in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
  - (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (vi) Permanent Part-time - All time worked by employees employed pursuant to Part 1 of clause 5, Part-time and Casual Employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees in the section concerned shall be paid for at the rate of time and one half for the first two hours and double time thereafter. Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees in that section shall not be regarded as overtime but as an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

### **8. Saturday, Sunday and Holiday Rates of Pay**

- (i) Day Workers -
  - (a) For all time worked on Saturdays, Sundays and public holidays, day workers shall be paid at the following rates:

Saturdays - time and one half for the first two hours and double time thereafter.

Sundays - double time.

Holidays - double time and one half.

Such double time or double time and a half to continue until relieved from duty.

- (b) Day workers who work on a Sunday or a public holiday and (except for meal breaks) continue work immediately thereafter shall, on being relieved from duty, be entitled to be absent until they have had eight consecutive hours off duty, without deduction of pay, for ordinary time of duty occurring during such absence.
- (ii) Shift Workers -
- (a) Except as provided for in paragraph (b), of this subclause, employees engaged on shift work shall be paid at the rate applicable to the majority of the employees in the establishment in which they are employed for all work performed on Saturdays, Sundays and holidays.
- (b) Employees other than those provided for in paragraph (a), of this subclause, who are required to work on Saturdays, Sundays or public holidays as part of their ordinary hours of work for the week, shall be paid for such time worked on Saturdays at the rate of time and a quarter, and on Sundays at the rate of time and a half and on public holidays at the rate of double time and a half. This payment shall be in lieu of any percentage addition by reason of the fact that an employee is a casual employee.
- (c) The rates prescribed in paragraphs (a) and (b) of this subclause shall be in substitution for and not cumulative upon the shift allowance prescribed in subclause (vii), of clause 2, Hours of Work.
- (d) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight shall not entitle the employee to the Sunday or public holiday rate.
- (iii) Employees required to work on Saturdays, Sundays or public holidays shall be paid for a minimum of three hours' work.

### 9. Holidays

- (i) Employees shall be entitled to the following public holidays without loss of pay:

New Year's Day	Australia Day
Good Friday	Easter Saturday
Easter Monday	Anzac Day
Queen's Birthday	Labour Day
Christmas Day	Boxing Day

or such other day as is generally observed in the locality as a substitute for any of the said days, respectively, together with all proclaimed public holidays throughout the State.

- (ii) To the holidays specified in this clause there shall be added one other day to be observed as a holiday which, in the absence of an agreement between the Association and an employer to the contrary, shall be observed on August Bank Holiday.
- (iii) Every employee allowed a holiday specified herein shall be deemed to have worked in the week in which the holiday falls the number of ordinary hours that the employee would have worked had the day not been a holiday.

Provided that any employee whose roster is changed with the intent of avoiding or reducing payment due or the benefit applicable under this clause and who would, but for the change of roster, have been

entitled otherwise to a payment or benefit for a public holiday or holidays shall be paid for such holiday or holidays as if the employee's roster had not been changed.

### 10. Annual Leave

- (i) Annual Leave at the rates of pay prescribed by subclause (v) of this clause and clause 11, Annual Leave Loading, shall be granted on completion of 12 months' service as follows:
- (a) 4 weeks for all employees.
- (b) in addition to the periods specified in paragraph (a) of this subclause one day shall be added to the period of leave for each public holiday prescribed by clause 9, Holidays, which occurs during the period of annual leave.
- (ii) Such annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued.
- (iii) Nothing in this clause shall prevent an employer, by agreement with the employee, from allowing annual leave to an employee before the right thereto has accrued but where leave is taken in such a case a further period of annual leave shall not commence to accrue until the expiration of the 12 months in respect of which annual leave was taken before it accrued.
- (iv) The employer shall give each employee, where practicable, at least three months' notice of the date upon which he/she shall enter upon his/her annual leave. In any event such notice shall not be less than 28 days.
- (v) Each employee, before going on leave, shall be paid for the period of leave at the ordinary rate of salary to which he/she is entitled under his/her contract of employment.
- (vi) Except as provided for in subclause (vii) of this clause, payment shall not be made nor accepted in lieu of annual leave.
- (vii) When the employment of an employee is terminated, he/she shall be entitled to receive a proportionate payment for all service for which no annual leave has been granted at the time rate of pay, as fixed under his/her contract of employment. The pro-rata annual leave payments shall be equal to one-twelfth of such ordinary pay for that period of employment.
- (viii) An employee shall be eligible for annual leave when 12 months, less the period of annual leave, has elapsed since the date on which his/her last annual leave would have begun if taken immediately it had become due or, if he/she had not previously had annual leave, since he/she commenced employment.
- (ix) In addition to the leave prescribed by subclause (i) of this clause, employees who are rostered to work their ordinary hours on Sundays and/or holidays shall be entitled to receive additional payment on the following basis:

Number of ordinary shifts worked on Sundays and/or holidays during a qualifying period of employment for annual leave purposes	Additional payment
4 - 10	one-fifth of one week's ordinary salary
11 - 17	two-fifths of one week's ordinary salary
18 - 24	three-fifths of one week's ordinary salary
25 - 31	four-fifths of one week's ordinary salary
32 or more	one week's ordinary salary

The additional payment shall be made at the time the employee proceeds on annual leave, provided that where the employment of an employee is terminated the employee shall be entitled to be paid the additional payment that may have occurred under this paragraph in addition to the proportionate payment prescribed by subclause (vii) of this clause.

### 11. Annual Leave Loading

- (i) The loading is payable in addition to the pay for the period of annual leave given and taken and due to the employee in accordance with subclause (i) of clause 10, Annual Leave, of this award.
- (ii) The loading is to be calculated at the rate of 17.5% of the appropriate ordinary weekly time rate prescribed by this award for the classification in which the employee was employed immediately before commencing his/her annual leave.
- (iii) No loading is payable to an employee who takes an annual leave wholly or partly in advance in accordance with subclause (iii) of the said clause 10 of this award, provided that, if the employment of such an employee continues until the day when he/she would have become entitled under the said clause 10 of this award to annual leave, the loading then becomes payable in respect of the period of such leave and is calculated in accordance with subclause (ii) of this clause applying to the award rates of wages payable on that day.

### 12. Long Service Leave

See *Long Service Leave Act 1955*.

### 13. Sick Leave

- (i) Subject as hereinafter provided, an employee shall be entitled to sick leave on full pay not exceeding in the aggregate (40) hours of working time in the first year of service and 64 hours of working time in the second and subsequent years of service.
- (ii) An employee shall not be entitled to sick leave until after three months' continuous service.
- (iii) An employee shall, within 24 hours of the commencement of absence, inform the employer of his/her inability to attend for duty and, as far as possible, state the nature of the illness or incapacity and the estimated duration of the absence.
- (iv) An employee shall prove to the satisfaction of the employer (or in the event of a dispute to the Industrial Relations Commission) that he/she is or was unable, on account of such illness or incapacity, to attend for duty on the day or days for which payment under this clause is claimed.
- (v) The rights under this clause shall accumulate from year to year so long as his/her employment continues with the employer so that any part of 40 hours or 64 hours which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed by this clause, in a subsequent year of such continued employment.
- (vi) For the purpose of this clause, a year means a year of employment.
- (vii) Service before the coming into force of this award shall be counted as service for the purpose of qualifying hereunder.
- (viii) **Sickness On Day Off**

Where an employee is sick or injured on the weekday she or he is to take off in accordance with paragraphs (c) or (d) of subclause (ii) of clause 2, Hours of Work, that employee shall not be entitled to sick pay, neither shall her/his sick pay entitlement be reduced as a result of her/his sickness or injury that day.

- (ix) **Part Day Absences**

In the case of employees whose hours of work are fixed in accordance with paragraphs (c) or (d) of subclause (ii) of clause 2, Hours of Work, sick pay entitlements for part-day absences shall be calculated on a proportionate basis as follows:

Duration of Sick <u>Leave Absence</u>	X	Appropriate <u>Weekly Rate</u>
Ordinary hours normally worked that day		5

In the case of employees whose hours of work are fixed in accordance with paragraphs (a) or (b) of subclause (ii) of clause 2, Hours of Work, sick pay entitlements for part-day absences shall be calculated on a proportionate basis as follows:

Duration of Sick Leave Absence	X	Appropriate <u>Weekly Rate</u>
		38

#### 14. State Personal/Carer's Leave Case - August 1996

(i) Use of Sick Leave

(a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 14(i)(c)(2) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 13, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

(b) The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

(c) The entitlement to use sick leave in accordance with this subclause is subject to:

- (1) the employee being responsible for the care of the person concerned; and
- (2) the person concerned being:
  - (i) a spouse of the employee; or
  - (ii) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
  - (iii) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
  - (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

- (v) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
  - 1. "relative" means a person related by blood, marriage or affinity;
  - 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - 3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 21, Grievance and Dispute Settling Procedure, should be followed.

(ii) Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 14(i)(c)(2) above who is ill or who requires care due to an unexpected emergency.

(iii) Annual Leave

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(iv) Time Off in Lieu of Payment for Overtime

- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of subclause (v) of clause 7, Overtime, the following provisions shall apply.
- (b) 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 within 12 months of the said election.
- (c) 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.
- (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.

- (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (v) Make-up Time
  - (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- (vi) Rostered Days Off
  - (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.
- (vii) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.
- (viii) Personal Carers Entitlement for casual employees -
  - (1) Subject to the evidentiary and notice requirements in 14(i)(b) and 14(i)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 14(i)(c)(2) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

#### **14A. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.



The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

(a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

(b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

(a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **15. Termination of Employment**

- (i) Except in cases of misconduct, the employment shall be terminated by not less than one week's notice on either side or by the payment or forfeiture of one weeks pay in lieu of such notice.
- (ii) Upon the termination of the services of an employee, the employer shall furnish him/her with a written statement, duly signed by the employer, setting out the nature and period of his/her employment.

### **16. Payment of Salary**

- (i) All salaries and other payments due to the employee shall be paid weekly or fortnightly, provided that the payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that upon the termination of the employment of an employee by the employer, or by the employee upon notice in accordance with clause 15, Termination of Employment, of this award, all salaries and other payments due to such employee shall be paid not later than one working day after such termination. Provided further that salaries may be paid monthly by agreement between the employer and employee.
- (ii) All salaries and other payments due to a casual employee shall be paid at the completion of each engagement.
- (iii) Where practicable an employee rostered off duty on pay day shall be paid the salary and other payments due to the employee on the last day on which the employee is on duty prior to pay day.
- (iv) An employer may pay an employee's salary into one account with a bank or other financial institution in New South Wales as nominated by the employee; provided that if salaries are so paid then those salaries shall be deposited by employers in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day; and provided further that this requirement shall not apply where employees nominate accounts with non-bank financial institutions but in such cases employers shall take all responsible steps to ensure that the wages of such employees are available for withdrawal no later than pay day.

### **17. Uniform and Laundry Allowance**

- (i) Where an employee is permitted and/or required to wear a uniform, such uniform shall be provided by the employer. In lieu of providing a uniform an employer may elect to pay the amounts set out in Part B for uniforms and stockings. Such payment to be paid weekly. No payment shall be made during the period of annual leave.
- (ii) Where uniforms are not laundered at the employer's expense, the amount set out in Part B shall be paid to the employee each week.
- (iii) Uniforms for the purpose of this clause, shall mean sufficient, suitable and serviceable uniforms and shall include slack suits.
- (iv) Where the employer requires any employee to wear headwear, the employer shall provide headwear free of charge to an employee.

### **18. Vehicle Allowance**

- (i) An employee who is required by his/her employer to provide a car for the performance of his/her duties shall be paid the appropriate car allowance for the horsepower of the car he/she provides as set out in Part B. A part-time employee shall be paid such allowance on a pro-rata basis of the ratio of hours worked by the employee to full-time hours per week.
- (ii) The standing charge prescribed by subclause (i) of this clause shall be paid to the employee for all periods of paid leave of 5 days or less duration.

(iii)

- (a) A casual employee who is required by his/her employer to provide a car for the performance of his/her duties shall be paid the rate as set out in Part B.
- (b) An employee who is not required to provide a car for the performance of his/her duties shall be paid the rate as set out in Part B when he/she uses their own vehicle on the employer's business.

### **19. Right of Entry**

See *Industrial Relations Act 1996*.

### **20. Bereavement Leave**

- (i) An employee, other than a casual employee, shall be entitled to a maximum of two days' bereavement leave without deduction of pay, on each occasion of the death of a person in Australia as prescribed in subclause (ii) of this clause.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect of a death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (c) of subclause (1) of clause 14, State Personal/Carer's Leave Case - August 1996, provided that, for the purpose of bereavement leave, the person need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (ii), (iii), (iv), (v) and (vi) of the said clause 14. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 20(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 14(i)(c)(2) of clause 14, State Personal/Carer's Leave Case - August 1996.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

### **21. Grievance and Dispute Settling Procedure**

Subject to the *Industrial Relations Act 1996* grievances or disputes shall be dealt with in the following manner.

- (i) The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and state the remedy sought. This meeting shall take place within two working days of the issue arising (weekends and holidays excepted).

- (ii) If agreement is not reached, the matter shall then be referred by the employer to a higher authority (where this exists) no later than three working days after (i) above (weekends and holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing any proposed remedy.
- (iii) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission of New South Wales for settlement by either party.
- (iv) While a procedure is being followed, normal work must continue.
- (v) The employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an organisation of employees for the purposes of each step of the procedure.

## 22. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, 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.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

### NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides: "Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

### **23. Labour Flexibility**

- (i) For the purposes of increasing productivity and flexibility, as well as enhancing career opportunities for employees, multi-skilling may extend by agreement between an employer and an employee to allow the employee to perform any work in an enterprise within the scope of their skills and competence.
- (ii) Discussion shall take place at the enterprise with a view to reaching agreement for employees to perform a wider range of tasks, removal of demarcation barriers and participation of employees in additional training.
- (iii) Notwithstanding the provision of subclause (ii) of this clause, employees shall perform a wider range of duties, including work which is incidental or peripheral to their main tasks or functions.
- (iv) Employees shall perform such work as is reasonable and lawfully required of them by the employer including accepting instruction from authorised personnel.
- (v) Employees shall comply with all reasonable requests to transfer or to perform any work provided for by the award.
- (vi) Employees shall take all reasonable steps to ensure the quality, accuracy and completion of any job or task assigned to the employee.
- (vii) Employees shall not impose any restrictions or limitations on the measurement and/or review of work methods or standard work times, provided that appropriate consultation between employer and employees has taken place.

### **24. Consultative Mechanism**

Enterprises shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

### **25. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing

so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW).

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (ix) Exemption

The abovementioned casual conversion clause will not apply to persons who:

- (a) perform work pursuant to the *Public Sector Employment and Management Act 2002*.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or

services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
  - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 26. Area Incidence and Duration

- (i) This award rescinds and replaces the Nurses, &c., Other Than In Hospitals, &c., (State) Award, published 15th October 1993 (276 I.G. 1108), and all variations thereof.
- (ii)
  - (a) It shall apply to registered nurses, enrolled nurses and assistants in nursing and all persons in the industry and calling of nurses employed in the State of New South Wales excluding the County of Yancowinna within the jurisdiction of the Trained Nurses, &c., Other Than In Hospitals &c., (State) Industrial Committee or any committee replacing the said committee under the *Industrial Relations Act 1996* except persons covered by the following awards or industrial agreements as varied or rescinded and replaced from time to time -
    - Occupational Health Nurses (State) Award as made by Kavanagh J in IRC 2470 of 2000 on 27 July 2000.
    - Nurses, Non-Government Schools (State) Award published 9 July 1999 (309 I.G. 1096) as varied.
  - (b) It shall also apply to registered nurses, enrolled nurses and assistants in nursing and all persons in the industry and calling of nursing employed in day procedure centres as defined by the *Private Hospitals and Day Procedure Centres Act 1988*

- (iii) The provisions of this award shall be effective on and from 12 October 2000. It shall remain in force for a period of 12 months thereafter.
- (iv) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

**TRAINED NURSES, &C., OTHER THAN IN HOSPITALS, &c., (STATE) INDUSTRIAL COMMITTEE**

**Industries and Callings**

Registered and enrolled nurses, assistants in nursing, and all persons employed as nurses in the industry and calling of nursing;

excepting employees of the Crown;

and excepting employees within the jurisdiction of the following Industrial Committees:

Iron and Steel Works Employees (Australian Iron and Steel Proprietary Limited);

Nurses Air Ambulance (State);

Public Hospital Nurses (State);

Private Hospital, Day Procedure Centre, Nursing Homes, &c., Nurses (State);

Municipal and Shire Councils (Nurses);

Australian Wire Industries Pty Ltd \_ Sydney Wiremill;

Tubemakers of Australia Limited, Newcastle;

County Councils (Electricity Undertakings) Employees;

and excepting also persons employed by -

The Council of the City of Sydney;

The Council of the City of Newcastle;

Sydney Electricity;

Electricity Commission of New South Wales, trading as Pacific Power;

State Rail Authority of New South Wales;

State Transit Authority of New South Wales;

Roads and Traffic Authority of New South Wales;

Water Board;

The Hunter District Water Board;



The Maritime Services Board of New South Wales;

The Australian Gas Light Company;

Electrolytic Refining and Smelting Company of Australia Proprietary Limited, metal Manufactures Limited, Australian Fertilizers Limited, and Austral Standard Cables Proprietary Limited, in and about the works of the said companies at Port Kembla, and employees within the jurisdiction of the Smelting and Fertilizer Manufacturing (Sulphide Corporation Pty Limited and Green leaf Fertilizers Limited) Industrial Committee.

## PART B

### MONETARY RATES

**Table 1 - Salaries**

	Former Wage Rate \$	SWC 2010 Adjustment %	Total Rate \$
Assistant in Nursing			
1st year	585.00	4.25	609.90
2nd year	596.90	4.25	622.30
3rd year	608.90	4.25	634.80
4th year	621.10	4.25	647.50
Enrolled Nurse			
1st year	629.80	4.25	656.60
2nd year	644.70	4.25	672.10
3rd year	667.60	4.25	696.00
4th year	686.50	4.25	715.70
Thereafter	699.70	4.25	729.40
Registered Nurse			
1st year	714.90	4.25	745.30
2nd year	730.60	4.25	761.70
3rd year	759.00	4.25	791.30
4th year	787.00	4.25	820.40
5th year	817.30	4.25	852.00
6th year	847.20	4.25	883.20
7th year	877.10	4.25	914.40
8th year	909.30	4.25	947.90
UG1	935.80	4.25	975.60
Supervisory Nurse	950.40	4.25	990.80

**Table 2 - Other Rates and Allowances**

Item No	Clause No	Brief Description	Amount \$	SWC 2010 Adjustment %
1	3(iv)	Meal	8.23 per meal	-
2	6(i)	On Call During Meal	6.89 per day	4.25
3	6(ii)	On Call	16.36 per shift	4.25
4	17(i)	Uniform	7.52 per week	-
5	17(i)	Stockings	3.71 per week	-
6	17(ii)	Laundry	5.74 per week	-
7	18(i)	Vehicle Allowance		
		Standing Charge		
		Up to 2 litres	165.99 per week	-
		Over 2 litres < 3.5 litres	182.72 per week	-
		Over 3.5 Litres	187.78 per week	-

		Vehicle Allowance Running Charge Up to 2 litres	31.48 cents per km	-
		Over 2 litres < 3.5 litres	35.20 cents per km	-
		Over 3.5 Litres	36.42 cents per km	-
8	18(iii)	Vehicle Allowance Casual Usage	70.30 cents per km	-

---

Printed by the authority of the Industrial Registrar.

(759)

**SERIAL C7723****NURSING HOMES, &c., NURSES' (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C6745	28/11/2008	On and from 20/08/2008	366	1320
50, Part B	C6890	27/02/2009	First pay period after 07/12/2008	367	398
50, Part B	C7301	11/12/2009	First pay period after 07/12/2009	369	953
50, Part B	C7629	09/09/2011	First pay period after 16/12/2010	371	807
Correction to C7629	C7695	30/12/2011		371	1642

**Arrangement**

Clause No.      Subject Matter

**PART A**

1. Definitions
2. Hours of Work and Free Time of Employees Other Than Directors of Nursing
3. Hours of Work and Free Time of Directors of Nursing
4. Remuneration Packaging
5. Rosters
6. Salaries
7. Transitional Arrangements - Registered Nurse Incremental Scale
8. Recognition of Service and Experience
9. Average Occupied Beds
10. Special Allowances
- 10A. Continuing Education Allowance
11. Climatic and Isolation Allowance
12. Penalty Rates for Shift Work and Weekend Work
13. Expense Allowance for Directors of Nursing
14. Telephone Allowance
15. Public Holidays
16. Uniform and Laundry Allowance
17. Higher Grade Duty
18. Overtime
19. Payment and Particulars of Salaries

20. Proportion
21. Part-time, Casual and Temporary Employees
22. Annual Leave
23. Annual Leave Loading
24. Sick Leave
25. Long Service Leave
26. Compassionate Leave
- 26A. Parental Leave
27. Personal/Carer's Leave
28. Staff Amenities
29. Labour Flexibility
30. Medical Examination of Nurses
31. Escort Duty
32. Deputy Director of Nursing and Assistant Director of Nursing
33. Nursing Unit Managers
34. Fares and Expenses
35. Registration or Enrolment Pending
36. Termination of Employment
37. Award Benefits to be Continuous
38. Special Provisions Relating to Trainee Enrolled Nurses
39. Trainee Enrolled Nurse
40. Right of Entry
41. Lifting Weights
42. Attendance at Meetings and Fire Drills
43. Training for Nurses
44. Resolution of Disputes
45. Anti-Discrimination
46. Enterprise Arrangements
47. Exemptions
48. Leave Reserved
49. Secure Employment
50. Area, Incidence and Duration

## PART B

### MONETARY RATES

Table 1 - Salaries

Table 2 - Other Rates and Allowances

Table 3 - Continuing Education Allowances

## PART A

### 1. Definitions

The following definitions apply in this award, except where otherwise clearly indicated.

- (i) "Assistant in Nursing" means - a person, other than a registered nurse, trainee or enrolled nurse who is employed in nursing duties in a facility.
- (ii) "Assistant Director of Nursing" means:
  - (a) A person appointed as such in any sized facility and includes a person appointed as the nurse in charge during the evening or night in a facility where the adjusted daily average of occupied beds is not less than 150.
  - (b) A person appointed as such to a position approved by the employer including persons appointed to be in charge of a ward or group of wards.

- (iii) "Association" means - the New South Wales Nurses' Association.
- (iv) "Board" means - the Nurses' Registration Board of NSW.
- (v) "Clinical Nurse Consultant" means - a registered nurse appointed as such to the position, who has had at least five years' post registration experience and who has in addition approved post registration nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the employer.
- (vi) "Clinical Nurse Educator" means - a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the nursing home.

The Clinical Nurse Educator shall cater for the delivery of clinical nurse education at the nursing home. The Clinical Nurse Educator may also be responsible for new employee orientation at the nursing home.

A nurse will achieve Clinical Nurse Educator status on a personal basis by being required by the nursing home to provide the educational programmes detailed above.

Nothing in this clause shall affect the role carried out by the Clinical Nurse Specialist as a specialist resource and the Clinical Nurse Consultant in the primary role of clinical consulting, researching etc.

- (vii) "Clinical Nurse Specialist":-
  - (a) In facilities of 250 ADA and above, the definition of a Clinical Nurse Specialist is:

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical area of her/his specified post registration qualification; or a registered nurse with four years post registration experience in a specific clinical area and working in the clinical area of her/his specified post registration experience.
  - (b) In facilities of less than 250 ADA the definition for Clinical Nurse Specialist is:

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical areas of her/his specified post registration qualification.
- (viii) "Day Worker" means - a worker who works her/his ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00 am and before 10.00 am, otherwise than as part of the shift system.
- (ix) "Deputy Director of Nursing" means - a person appointed to that position or deemed to hold that position pursuant to clause 32, Deputy Director of Nursing and Assistant Director of Nursing, of this award.
- (x) "Director of Nursing" means a registered nurse who is registered by her/his employer with the Health Administration Corporation as the person in charge of the facility. There shall be only one person in each facility entitled to be classified as Director of Nursing or whatever title the senior nursing administrator is known by in the individual facility and shall include "Chief Nurse" as defined by the *Nursing Homes Act 1988*.
- (xi) "Enrolled Nurse" means - a person enrolled by the Board as such.
- (xii) "Experience" in relation to an enrolled nurse or assistant in nursing means experience both before and/or after the commencement of this award whether within New South Wales or elsewhere and in the case of an enrolled nurse or assistant in nursing who was formerly a student nurse includes experience as such student nurse.

- (xiii) "Facility" means - a nursing home or hostel.
- (xiv) "Hostel" means - a Hostel as defined as at 1st September 1993 in the *Aged and Disabled Persons Care Act 1954* (Commonwealth).
- (xv) "Industry of Nursing" means - the industry of persons engaged in New South Wales in the profession of nursing in nursing homes and hostels.
- (xvi) "Nurse" includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.
- (xvii) "Nurse Educator" means - a registered nurse with a post registration certificate, who has relevant experience or other qualifications deemed appropriate by the employer, and who is appointed to a position of Nurse Educator.

A Nurse Educator shall be responsible for the development, implementation and delivery of nursing education programmes within a nursing home or group of nursing homes. Nurse education programmes shall mean courses conducted such as post registration certificates, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses.

A person appointed to a position of Nurse Educator who holds relevant tertiary qualifications in education or tertiary postgraduate specialist clinical nursing qualifications shall commence on the 3rd year rate of the salary scale.

A person appointed as the sole nurse educator for a group of nursing homes shall be paid at the 3rd year rate of the salary scale.

Incremental progression for Nurse Educators shall be on completion of 12 months satisfactory full-time equivalent service, provided that progression shall not be beyond the 3rd year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the 3rd year rate by virtue of paragraphs 3 and 4 above shall progress to the 4th year rate after completion of 12 months satisfactory full time service.

- (xviii) "Nursing Home" means - a Nursing Home as defined as at 1 September 1993 by the *Nursing Homes Act, 1988*.
- (xix) "Registered Nurse" means - a person registered by the Board as such.
- (xx) "Senior Nurse Educator" means - a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards, recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education, and who is appointed to a position of Senior Nurse Educator.

A Senior Nurse Educator shall be responsible for one or more Nurse Educators in the planning, co-ordination, delivery and evaluation of educational programmes such as post registration certificate courses, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses either in a nursing home or in a group of nursing homes.

Incremental progression shall be on completion of 12 months' satisfactory service.

- (xxi) "Service" for the purpose of clause 6, Salaries, of this award, means - service before or after the commencement of this award in New South Wales or elsewhere as a registered nurse, plus any actual periods on and from 1 January 1971, during which a registered nurse undertook a prescribed geriatric, infants', midwifery, mothercraft or psychiatric training course, or attended a post-graduate course recognised by the Board whether in New South Wales or elsewhere; provided that in the case of service elsewhere than in New South Wales where the period of the prescribed course of training is less than the period of the prescribed course of training in New South Wales, the nurses shall serve a period after

graduation equal to the difference between the period of the prescribed course elsewhere than in New South Wales and the period of the prescribed course in New South Wales before becoming entitled to be paid as a registered nurse, general nurse, geriatric nurse, infants' nurse, midwifery nurse, mothercraft nurse or psychiatric nurse as the case may be.

- (xxii) "Shift Worker" means - a worker who is not a day worker as defined.
- (xxiii) "Trainee Enrolled Nurse" means - a person who is being trained to become an enrolled nurse in a nursing home recognised by the Board for that purpose.

## **2. Hours of Work and Free Time of Employees Other Than Directors of Nursing**

- (i) The ordinary hours of work for day workers, other than Directors of Nursing, exclusive of meal times, shall be 152 hours per 28 calendar days, to be worked Monday to Friday, inclusive, and to commence on such days at or after 6.00 a.m. and before 10.00 a.m.
- (ii) The ordinary hours of work for shift workers, other than Directors of Nursing, exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.
- (iii)
- (a) The hours of work prescribed in subclauses (i) and (ii) of this clause shall, where possible, be arranged in such a manner that in each roster cycle of 28 calendar days each employee shall not work his/her ordinary hours of work on more than 19 days in the cycle.
- (b) Notwithstanding the provision of paragraph (a) of this subclause, employees may, with the agreement of the employer, work shifts of less than eight hours each over 20 days in each cycle of 28 days.
- (c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5-day fortnight may be worked instead of the 19-day month.

NOTE: This subclause is designed to ensure that rosters achieve increased leisure time for nurses, rather than reduced daily hours. This can be achieved by the working of shifts of longer than eight hours per day, with the result that less than 19 days are worked in 28, but without the accrual of an additional day off, as well as by the working of a 19-day month with an accrued additional day off.

- (iv) Each shift shall consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the Director of Nursing agrees. Provided also that an employee shall not work more than two quick shifts in any period of seven days, i.e., an evening shift followed by a morning shift, where the break between ordinary shifts is less than ten hours.
- (v) The employer is to decide when employees take their additional days off prescribed in subclause (iii) of this clause (as a consequence of the implementation of the 38-hour week). Where necessary, the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable, additional days off duty shall be consecutive with the rostered days off duty prescribed in subclause (xiv) of this clause.
- (vi) Once set, the additional day off duty may not be changed, except in accordance with the provisions of clause 5, Rosters.
- (vii) Where the employer's decision (in accordance with subclause (v) of this clause) is that an employee's additional days off be accumulated, no more than six days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time.
- (viii)

- (a) Except for breaks for meals, the hours of duty each day shall be continuous.
  - (b) "Broken shift" for the purposes of this subclause means a shift worked by a permanent part-time employee that includes a break (other than a meal break) of not more than four hours and where the span of hours is not more than 12 hours.
  - (c) Notwithstanding paragraph (a) above and subclause (iv) of this clause, an employer association representing an employer may apply to the Association for permission to implement broken shifts.
  - (d) Broken shifts may be worked without the permission of the Association, but only where:
    - (1) it is for a period of one month or less; and
    - (2) it is by reason of an emergency in the roster, e.g., absence of another employee due to sick leave, annual leave on short notice or resignation; and
    - (3) the affected employees agree to work the broken shifts.
- (ix)
- (a) Each employee shall be allowed a break of not less than 30 minutes and not more than 60 minutes for each meal occurring on duty.
  - (b) Where practicable, employees shall not be required to work more than five hours without a meal break.
- (x)
- Two separate ten-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked, employees shall be allowed one ten-minute interval in each four-hour period. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one 20-minute interval, or as one ten-minute interval with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- (xi)
- Subclauses (ix) and (x) of this clause shall not apply to an employee who, before going on night duty, is provided with a meal between 9.00 p.m. and 11.00 p.m. and who is allowed two intervals of 20 minutes each during the period of night duty, but such intervals shall count as working time and shall be paid for as such.
- (xii)
- (a) Except as provided for in paragraph (b) of this subclause, an employee shall not be employed on night duty for a longer period than eight consecutive weeks. After having served a period of night duty, an employee shall not be required to serve a further period on night duty until he or she has been off night duty for a period equivalent to the previous period on night duty.
  - (b) The provisions of paragraph (a) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a registered nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
  - (c) Moreover, except in cases of emergency, a trainee enrolled nurse shall not be employed on night duty for more than ten weeks in any one year of training nor shall a trainee enrolled nurse who is sitting for his or her final examination be required to perform night duty during a period of at least two weeks prior to the respective examination or on the two nights following such examination.
- (xiii)
- An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the 20 hours immediately preceding the commencement of the changed duty.



(xiv)

- (a) Each employee shall be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle and no duties shall be performed by the employee on any of such free days except for overtime. Where practicable, days off shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time. An evening shift shall be one which commences at or after 1.00 p.m. and before 4.00 p.m.
- (b) An employee, at his or her request, may be given free-from-duty time in one or more periods but no period shall be less than one full day.
- (c) For the purpose of this subclause, "full day" means - from midnight to midnight or midday to midday.

(xv)

- (a) Employees may be required to remain "on call". Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with clause 10, Special Allowances. Provided, however, that no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
- (b) No employee shall be required to remain on call while on a rostered day or days off nor on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.

(xvi) All rostered time off duty occupied by a trainee enrolled nurse in attendance at lectures and demonstrations given in the course of instruction in the theory and practice of nursing or during the time necessarily occupied in attending at and sitting for prescribed examinations shall be deemed to be time worked.

(xvii) The provisions of paragraphs (a) and (b) of subclause (xii) and of subclause (xiii) and of paragraph (a) of subclause (xiv) of this clause, shall not apply if the employee is required to perform duty to enable the nursing service of the employer to be carried on or where another employee is absent from duty on account of illness or in an emergency.

### **3. Hours of Work and Free Time of Directors of Nursing**

- (i) A Director of Nursing shall be free from duty for not less than nine days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- (ii) If any of the days mentioned in subclause (i) of this clause cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
- (iii) A Director of Nursing shall, where practicable, inform his/her employer by giving not less than seven days' notice of the days he/she proposes to be free from duty; provided that such days shall be subject to the approval of the employer, and such approval shall not be unreasonably withheld.

### **4. Remuneration Packaging**

- (i) Where an employer intends to offer remuneration packaging generally to employees under this award, the employer shall notify the Association at least 21 days prior to making that general offer that it intends to make a general offer of remuneration packaging to employees under this award.

- (ii) Where the employer offers remuneration packaging to an individual employee, the employer shall allow the employee a period of no less than 21 days to seek independent advice on the terms of the proposed remuneration packaging.
- (iii) Remuneration packaging shall be introduced by agreement between an employer and the employee. Neither the employee nor the employer shall be compelled to enter into a salary packaging arrangement. Employees may exercise their rights to continue to receive their applicable salary.
- (iv) The terms and conditions of a package offered to an employee shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the award and shall be subject to the following provisions:
  - (a) The employer shall ensure that the structure of any package complies with taxation and other relevant laws.
  - (b) All award conditions, other than the salary and those conditions as agreed in paragraph (c) below shall continue to apply.
  - (c) Where packaging arrangements apply with a Director of Nursing (DON) or a Deputy Director of Nursing (DDON), the employer and employee may by mutual agreement delete the application of certain award clauses, excepting clauses 22 Annual Leave, 24 Sick Leave, 25 Long Service Leave and 27 Personal/Carer's Leave.
  - (d)
    - (i) Employees will have the Superannuation Guarantee Contribution (SGC) calculated on their award salary prior to the application of any remuneration packaging arrangements.
    - (ii) Employers shall, by no later than 31 December 2002, renegotiate any remuneration package in operation prior to 13 November 2002, where such package includes a SGC calculated on less than their pre-packaged award salary. The package must provide for future SGC contributions to be based on the pre-packaged award salary.
- (v) A copy of the agreement shall be made available to the employee.
- (vi) The employee shall be entitled to inspect details of the payments made under the terms of this agreement.
- (vii) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer.
- (viii) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
- (ix) In the event that the employer ceases to attract exemption from payment of Fringe Benefit Tax, the employer may terminate all remuneration packaging arrangements and the employee's salary will revert to the applicable award classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.
- (x) One months notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to the award wage.
- (xi) In the event that the employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination shall be treated as salary and the appropriate tax deducted.

- (xii) Pay increases granted to employees in accordance with this award shall also apply to employees subject to remuneration packaging arrangements.
- (xiii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any remuneration packaging arrangements.

### 5. Rosters

- (i) The ordinary hours of work for each employee, other than the Director of Nursing, shall be displayed on a roster in a place conveniently accessible to employees.
- (ii) The roster shall, where practicable, be displayed at least two weeks, and in any event not less than one week, prior to the commencing date of the first working period in the roster.
- (iii) Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the facility to be carried on where another employee is absent from duty on account of illness or in an emergency; provided that where any such alteration involves an employee working on a day which would otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.
- (iv) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- (v) Where an employee is entitled to an additional day off duty in accordance with clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, of this award, such day is to be shown on the roster of hours for that employee.
- (vi) All rosters shall be retained for at least six years.

### 6. Salaries

- (i) The minimum salaries per week shall be as set out in Table 1 - Salaries, of Part B, Monetary Rates.
- (ii) Where an employer appoints an Assistant Director of Nursing, Deputy Director of Nursing or Director of Nursing to be responsible for a hostel, then the following calculation will apply when calculating the adjusted daily average of hostel beds to be included for salary purposes:

Responsibility for Hostel	Nursing Home Bed	Percentage %
(1)	No responsibility	0
(2)	Partial responsibility: Where the assigned responsibility is limited to oversight of the operation of a hostel and liaison with a Hostel Supervisor (who has been appointed to supervise hostel staff in the performance of their duties and to carry out administrative and other tasks relevant to the operation of the hostel and the welfare and care of residents)	25
(3)	Total responsibility: No Hostel Supervisor engaged in the hostel over which responsibility has been assigned	100

Provided that every fraction of a bed resulting from this calculation shall be deemed to equal one nursing home bed.

### 7. Transitional Arrangements - Registered Nurse Incremental Scale

- (i) For the purposes of this clause "transitional date" means the first pay period commencing on or after 1 March 1996.
- (ii) The year of service for the purpose of the incremental scale for a registered nurse employed at the transitional date shall be determined by locating the registered nurse's current year of service on the incremental scale in Column A of the Transitional Table in subclause (iv). The registered nurse's incremental year of service shall be deemed to be the year of service appearing opposite in Column B of the Transitional Table. Provided that a registered nurse with eight or more actual years of service shall be placed on the eighth year of service in Column B of the Transitional Table.
- (iii) Registered nurses who commence employment with an employer after the transitional date shall have their year of service determined as if they were employed by the employer at the transitional date. That is, the transitional arrangements shall apply to all periods of employment, under this award, which commence on or after the transitional date.
- (iv) Transitional Table:

Column A (Old incremental scale)	Column B (New incremental scale)
First year of service	First year of service
Second year of service	First year of service
Third year of service	Second year of service
Fourth year of service	Third year of service
Fifth year of service	Fourth year of service
Sixth year of service	Fifth year of service
Seventh year of service	Sixth year of service
Eighth year of service	Seventh year of service
UGI	Eighth year of service
Note: For the purposes of the old incremental scale only, a registered nurse who has obtained an appropriate degree in Nursing or Applied Science (Nursing) or Health Studies(Nursing) (referred to for the purposes of this clause as a "UGI" qualification) shall enter the incremental scale on the second year of service.	

- (v) The year of service determined by this clause shall be year of service only for the purposes of clause 6, Salaries. In particular this clause shall not affect the definition of service for the purposes of clause 22, Annual Leave, clause 24, Sick Leave or clause 25, Long Service Leave.
- (vi) A registered nurse's anniversary date for the purpose of moving to the next year of service is not affected by this clause.

### 8. Recognition of Service and Experience

- (i) The employer shall notify each nurse, in writing, of the requirements of this clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse, then the requirements of this clause shall not commence until the employer does so notify the nurse.
- (ii) From the time of commencement of employment the nurse has three months in which to provide documentary evidence to their employer detailing any other 'service' or 'experience', as defined in clause 1, Definitions, not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence may take the form of a statutory declaration.

- (iii) Until such time as the nurse furnishes any such documentation contemplated in subclause (ii) above, the employer shall pay the nurse at the level for which proof has been provided.
- (iv) If within three months of commencing employment a nurse does provide documentary evidence of other previous service or experience not disclosed at the time of commencement, the employer shall pay the nurse at the appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.
- (v) If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three months period, the nurse shall be paid a rate appropriate for the previous service or experience then proved, but only from the date of providing that evidence to the employer.
- (vi) A nurse who is working as a nurse for more than one organisation shall notify each employer under this award within one month of the end of each quarter of their hours worked with those other employers in the last quarter.
- (vii) A nurse who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide proof of that entitlement within three months of that entitlement arising. If that proof is so provided, the nurse shall be paid at the higher rate as and from the date they were entitled to progress to the next year of service or experience. If the proof is provided outside that three-month period, the nurse shall be paid at the higher rate only from the date that proof is provided.

#### **9. Average Occupied Beds**

The average shall be taken for the 12 months ended 30 June in each and every year and such average shall relate to the salary of the Director of Nursing and Deputy Director of Nursing for the succeeding year. On request, an employer shall furnish to the Association a statement in writing showing the adjusted daily average of occupied beds for the twelve months ending on the preceding 30 June.

#### **10. Special Allowances**

- (i)
  - (a) A registered nurse in charge during the day, evening or night of a facility having a daily average of occupied beds of less than 150 shall be paid, in addition to his or her appropriate salary, whilst so in charge, the relevant sum set out in Item 1 of Table 2, Other Rates and Allowances, of Part B Monetary Rates, per shift.
  - (b) A registered nurse who is designated to be in charge of a shift in a ward shall be paid, in addition to his or her appropriate salary, the sum set out in Item 2 of the said Table 2, per shift.
  - (c) This subclause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.
  - (d) An enrolled nurse shall not be required to be in charge of a facility, shift, ward or unit.
- (ii)
  - (a) An employee required by her or his employer to be on call otherwise than as provided for in paragraph (b) of this subclause shall be paid the sum set out in Item 3 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
  - (b) An employee required to be on call on rostered days off in accordance with paragraph (b) of subclause (xv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall be paid the sum set out in Item 4 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.

- (c) An employee who is directed to remain on call during a meal break shall be paid the sum set out in Item 5 of Table 2, provided that no allowance shall be paid if, during a period of 24 hours, including such period of on call, the employee is entitled to receive the allowance prescribed in paragraph (a) of subclause (ii) of this clause.
  - (d) Where an employee on remote call leaves the facility and is recalled to duty, she or he shall be reimbursed all reasonable fares and expenses actually incurred, provided that where an employee uses a motor car in those circumstances the allowance payable shall be calculated utilising the rate per kilometre in Item 6 of Table 2.
  - (e) This subclause shall not apply to a Director of Nursing, subsidiary nursing home Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.
- (iii) Where an employee is called upon and agrees to use his or her own private vehicle for official business, payment of an allowance shall be made by utilising the rate per kilometre in Item 6 of Table 2. This subclause shall apply to all employees.

#### **10a. Continuing Education Allowance**

- (i) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid an allowance subject to the conditions set out in this clause.
- (ii) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (iii) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employee's time is spent doing clinical work.
- (iv) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (v) An RN or EN holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (vi) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (vii) An RN who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 1 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (viii) An RN who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 2 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (ix) An RN who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 3 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (x) An EN who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the employer to be directly relevant to the competency and skills used by the EN in carrying out the

duties of the position shall be paid a weekly allowance as set out in Item 4 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.

- (xi) The allowances set out in sub-clauses (vii), (viii), (ix) and (x) hereof are not included in the employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (xii) A registered nurse or enrolled nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (xiii) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this award.
- (xiv) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, and such disagreement or dispute is not resolved by the process set out in sub-clauses (i) and (ii) of clause 44, Resolution of Disputes, negotiations between the employer and the Association must occur prior to referral to the Industrial Relations Commission for determination.

### 11. Climatic and Isolation Allowance

- (i) Subject to subclause (ii) of this clause, persons employed in facilities in places situated upon or to the west of a line drawn as herein specified shall be paid the sum per week as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows:

Commencing at Tocumwal and thence to the following towns in the order stated, namely, Lockhart, Narrandera, Leeton, Peak Hill, Gilgandra, Dunedoo, Coolah, Bogabri, Inverell and Bonshaw.

- (ii) Persons employed in facilities in places situated upon or to the west of a line drawn as herein specified shall be paid the sum per week as set out in Item 8 of the said Table 2 in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows:

Commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria), and thence to the following towns in the order stated, namely, Hay, Hillston, Nyngan, Walgett, Collarenebri and Mungindi.

- (iii) Except for the computation of overtime, the allowances prescribed by this clause shall be regarded as part of the salary for the purposes of this award.
- (iv) The allowances prescribed by this clause are not cumulative.
- (v) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 hours.

### 12. Penalty Rates for Shift Work and Weekend Work

- (i) Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week shall only be entitled to the additional rates where their shifts commence prior to 6.00 a.m. or finish subsequent to 6.00 p.m.

Afternoon shift commencing at 10.00 a.m. and before 1.00 pm	10 per cent.
Afternoon shift commencing at 1.00 p.m. and before 4.00 pm	12.5 per cent.
Night shift commencing at 4.00 p.m. and before 4.00 am	15 per cent.
Night shift commencing at 4.00 a.m. and before 6.00 am	10 per cent.

- (ii) "Ordinary rate" and "ordinary time" shall not include any percentages addition by reason of the fact that an employee works less than 38 hours per week, but shall include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 10, Special Allowances, and subclauses (i) and (ii) of clause 11, Climatic and Isolation Allowance.

- (iii) For the purposes of this clause, day, afternoon and night shifts shall be defined as follows:

"Day shift" means - a shift which commences at or after 6.00 a.m. and before 10.00 a.m.

"Afternoon shift" - means a shift which commences at or after 10.00 a.m. and before 4.00 p.m.

"Night shift" means - a shift which commences at or after 4.00 p.m. and before 6.00 a.m. on the day following.

- (iv) Employees whose ordinary working hours include work on a Saturday and/or Sunday, shall be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one-half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three-quarters. These extra rates shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (i) of this clause.

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but such employees shall not be entitled to be paid in addition any allowance prescribed by clause 21, Part-time, Casual and Temporary Employees, in respect of their employment between midnight on Friday and midnight on Sunday.

- (v) The additional payments prescribed by this clause shall not form part of the employee's ordinary pay for the purposes of this award, except as provided in clause 22, Annual Leave.

### **13. Expense Allowance for Directors of Nursing**

- (i) The Director of Nursing shall be paid the appropriate sum as set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, according to the adjusted daily average of the facility.

Payment equal to one quarter of the annual amount is to be made at the end of each three month period subsequent to appointment as Director of Nursing or Subsidiary Nursing Home Director of Nursing in a particular nursing home.

- (ii) Provided that this clause shall only apply to persons employed as at 12 December 1994 in nursing homes conducted by members of the Aged & Community Services Association of NSW & ACT Incorporated.

### **14. Telephone Allowance**

- (i) If an employee is required, for the purpose of his/her employment, to be on call on a regular basis or where an employee is required by his/her employer to have a telephone installed for the purpose of his/her employment, the employer shall be responsible for the following payments:

- (a) Where the employee already has a telephone installed:

- (i) three-quarters of the cost of rental of the telephone;
- (ii) the cost of all official trunk line calls.

- (b) Where the employee does not have the telephone installed:

- (i) the cost of installation of the telephone;
- (ii) three-quarters of the cost of rental of the telephone;
- (iii) the cost of all official trunk line calls.

- (ii) Provided that this clause shall not apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW. & ACT Incorporated.



### 15. Public Holidays

- (i) The following days shall be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, and any other day or part thereof proclaimed and observed as a public holiday within the area in which the facility is situated. All five-day workers shall be allowed every public holiday prescribed by this subclause without loss of pay.
- (ii) In addition to those public holidays prescribed in subclause (i) of this clause, employees are entitled to an extra public holiday each year. Such public holiday will occur on a day between Christmas Day and New Year's Day as determined by the employer following consultation with the Association. This subclause shall apply in substitution for any additional local public holiday or half public holiday proclaimed in a local government area.
- (iii)
  - (a) A full time employee who is covered by paragraph (b) of subclause (i) of clause 22, Annual Leave, and who is required to and does work on a public holiday prescribed by subclauses (i) and (ii) of this clause shall have one day or one half day, as appropriate, added to his/her period of annual leave and shall be paid at the rate of time and one-half for the time actually worked.

Such payment is in lieu of any additional rate for work or weekend work which would otherwise be payable had the day shift not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday, payment shall be made for a minimum of four hours' work, and any balance of the day or shift not worked shall be paid at ordinary rates.
  - (b) Where a public holiday falls on a rostered day off of a full-time shift worker as defined in clause 1, Definitions, who receives four weeks annual leave in accordance with paragraph (b) of subclause (i) of clause 22, Annual Leave, such shift worker shall be paid one day's pay in addition to the weekly rate or, if the employee so elects, shall have one day added to the period of annual leave prescribed by the said paragraph (b) of subclause (i) of the said clause 22.
  - (c) For the purposes of this subclause, the hourly rate of pay shall be calculated on the basis of one thirty-eighth of the appropriate ordinary weekly rate of pay prescribed in clause 6, Salaries.
- (iv) Employees engaged upon a seven-day shift roster and who are required to work on any public holiday prescribed by subclause (i) of this clause shall be paid, in addition to their ordinary pay for that day, an allowance of 50 per cent of their ordinary day's pay for work performed within ordinary hours and double time and a half for all time worked outside ordinary hours.

### 16. Uniform and Laundry Allowance

- (i) Subject to subclause (iii) of this clause, sufficient suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket, shall be supplied free of cost to each employee required to wear a uniform or part of a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price.
- (ii) An employee, on leaving the service of an employer, shall return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.
- (iii)

- (a) In lieu of supplying uniforms and shoes to an employee, an employer shall pay the said employee the sum per week set in Item 10 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates for uniforms and the sum per week set out in Item 11 of the said Table 2 for shoes.
- (b) In lieu of supplying a cardigan or jacket to an employee, an employer shall pay the said employee the sum per week set out in Item 12 of Table 2.
- (c) In lieu of supplying stockings to a female employee, an employer shall pay the said employee the sum per week set out in Item 13 of Table 2.
- (d) In lieu of supplying socks to an employee, the employer shall pay the said employee the sum per week set out in Item 14 of Table 2.
- (iv) If, in any facility, the uniforms of an employee are not laundered at the expense of the facility, the sum per week set out in Item 15 of Table 2 shall be paid to the said employee. Provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one week.
- (v) Where the employer requires any employee to wear headwear, the facility shall provide headwear free of charge to the employee.
- (vi) The allowances referred to in subclause (iii) are also payable during any period of paid leave.

#### **17. Higher Grade Duty**

- (i) Subject to subclauses (ii), (iii) and (iv) of this clause, an employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification, shall be entitled to receive for the period of relief or the period during which he/she so acts the minimum payment for such higher classification.
- (ii) The provisions of subclause (i) of this clause shall not apply where the employee of the higher classification is off duty pursuant to clause 3, Hours of Work and Free Time of Directors of Nursing, except insofar as a Director of Nursing accumulates days off for a continuous period of one week or more; nor when an employee in a higher grade is absent from duty by reason of his/her additional day off duty as a consequence of working a 38 hour week.
- (iii) Further, the provisions of subclause (i) of this clause shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than pursuant to the said clause 3.
- (iv) Subject to subclauses (ii) and (iii) above, the provisions of subclause (i) shall not apply where a day worker is being relieved and is absent from duty for a period of three consecutive working days or less

#### **18. Overtime**

- (i) Employees shall work reasonable overtime when required by the employer.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the facility;

- (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.
- (iv) This subclause is subject to subclause (x) below.
- (a) Subject to paragraph (b) of this subclause, all time worked by employees other than Directors of Nursing in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one-half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one-half.
  - (b) All time worked by employees pursuant to Part I of clause 21, Part-time, Casual and Temporary Employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one-half for the first two hours and double time thereafter, except that on Sundays such overtime shall be paid for at the rate of double time and on public holidays at the rate of double time and one-half.
- Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.
- (v) The ordinary hours of work for Directors of Nursing shall be 38 per week and shall not, without payment of overtime at the rate of time and one-half, exceed:
- (a) 43 hours in any week; or
  - (b) 86 hours in any fortnight; or
  - (c) 129 hours in any 21 consecutive days; or
  - (d) 172 hours in any 28 consecutive days.
- (vi) An employee required to work overtime following on the completion of his or her normal shift for more than two hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time shall be counted as time worked, provided that the benefits of this subclause shall not apply to an employee employed pursuant to Part I of clause 21, Part-time, Casual and Temporary Employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- (vii) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours' overtime; all such time shall be counted as time worked.
- (viii) The meals referred to in subclauses (vi) and (vii) of this clause shall be allowed to the employee free of charge. Where the facility is unable to provide such meals, the sum per meal set out Item 16 of Table 2 shall be paid to the employee concerned.
- (ix) Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, shall apply.
- (x) Employees who work so much overtime:

- (a) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times; or
- (b) on a Saturday, a Sunday or a public holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the 24 hours preceding the ordinary commencing time on the next ordinary day or shift,

shall, subject to this subclause, be released after completion of such overtime until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such eight consecutive hours off duty, they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (xi) An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee shall be released from duty; provided that this subclause does not apply to a Director of Nursing.
- (xii) By agreement between the employee and employer, an employee may be compensated by way of time off in lieu of payment of overtime on the following basis:
  - (a) Time off in lieu of overtime must be taken at ordinary rates within three months of it being accrued.
  - (b) Where it is not possible for a nurse to take the time off in lieu of overtime within the three-month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
  - (c) Nurses cannot be compelled to take time off in lieu of overtime.
  - (d) Time off in lieu of overtime should only be considered as an option in those circumstances where the employer is able to provide adequate replacement staff to ensure that the level of the quality of service that would otherwise have been provided had the overtime been worked, is in fact provided.
  - (e) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

### **19. Payment and Particulars of Salaries**

- (i) All salaries and other payments shall be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer. Provided further that, for the purpose of adjustments of wages related to variations in the basic wage, the pay period shall be deemed to be weekly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee. Salaries shall be deposited by facilities in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions; but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.

- (iii) Notwithstanding the provisions of subclause (ii) of this clause, an employee who has given or has been given the required notice of termination of employment, in accordance with clause 36, Termination of Employment, shall be paid all moneys due to him/her prior to ceasing duty on the last day of employment.

Where an employee is summarily dismissed or his/her services are terminated without due notice, any moneys due to him/her shall be paid as soon as possible after such dismissal or termination, but in any case not more than three days thereafter.

- (iv) On each pay day an employee, in respect of the payment then due, shall be furnished with a written statement containing the following particulars, namely: name, the amount of ordinary salary, the total number of hours or overtime worked, if any, the amount of any overtime payment, the amount of any other moneys paid and the purpose for which they are paid, the amount of the deductions made from the total earnings and the nature thereof.

## **20. Proportion**

Except in cases of emergency, not more than four enrolled nurses and/or assistants in nursing to each registered nurse shall be employed in a facility and for this purpose a Director of Nursing who is a registered nurse shall count; provided that the proportions specified by this clause may be altered in respect of any particular facility by agreement between the facility concerned and the New South Wales Nurses' Association.

## **21. Part-Time, Casual and Temporary Employees**

### **PART I - PERMANENT PART-TIME EMPLOYEES**

- (i) A permanent part-time employee is one who is permanently appointed by a facility to work a specified number of hours which are less than those prescribed for a full-time employee. By agreement between employer and employee, the specified number of hours may be balanced over a week and/or a fortnightly period, provided that the average weekly hours shall be deemed to be the specified number of hours for the purposes of accrual of annual leave, long service leave and sick leave. Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee working on a "week on, week off" basis in accordance with this subclause.
- (ii) Employees engaged under Part I of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 10, Special Allowances, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance, but shall not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.
- (iii) Four weeks annual leave on ordinary pay is to be granted on completion of each 12 months' service. The provisions of subclauses (iii) to (ix) of clause 22, Annual Leave, and clause 23, Annual Leave Loading, shall apply to employees engaged under this Part of this clause. The remaining provisions of the said clause 22 shall not apply.

Where an employee has any period of permanent part-time employment during any 12 month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.

- (iv) A public holiday occurring on an ordinary working day shall be allowed to employees without loss of pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to his/her period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee

may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

- (v) To the leave prescribed by subclause (iii) of this Part of this clause there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.
- (vi) For the purpose of this Part of this clause, the following are to be public holidays, namely: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated.
- (vii) In addition to those public holidays prescribed in subclause (vi) of this Part I of this clause, there shall be an extra public holiday each year. Such public holiday will occur on the August Bank Holiday or a date which is agreed upon by the Association and the Aged & Community Services Association of NSW & ACT Incorporated and the Australian Nursing Homes and Extended Care Association (New South Wales). The foregoing does not apply in areas where, in each year:
  - (a) a day in addition to the ten named public holidays specified in subclause (vi) of this Part of this clause are proclaimed and observed as a public holiday; or
  - (b) two half days in addition to the ten named public holidays specified in the said subclause (vi) are proclaimed and observed as half public holidays.
- (viii) In areas where in each year one half day in addition to the ten named public holidays specified in the said subclause (vi) is proclaimed and observed as a half public holiday, for the purposes of this award the whole day is to be regarded and observed as a public holiday, and no additional public holiday which would otherwise apply as a result of this subclause will be observed.
- (ix) Employees engaged under this Part of this clause shall be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

## **PART II - CASUAL EMPLOYEES**

- (i) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.
- (ii) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 10, Special Allowances, plus ten per cent thereof, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance.
- (iii) With respect to a casual employee, the provisions of clause 3, Hours of Work and Free Time of Directors of Nursing; clause 5, Rosters; clause 13, Expense Allowance for Directors of Nursing; clause 18, Overtime; clause 22, Annual Leave; clause 23, Annual Leave Loading; clause 24, Sick Leave; clause 25, Long Service Leave; clause 26, Compassionate Leave; clause 32, Deputy Director of Nursing and Assistant Director of Nursing; clause 34, Fares and Expenses, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.
- (iv) For the entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944*.
- (v) For the entitlement to payment in respect of long service leave, see *Long Service Leave Act 1955*.

- (vi) A casual employee who is required to and does work on a public holiday as defined in subclauses (i) and (ii) of clause 15, Public Holidays, shall be paid for the time actually worked at the rate of double time and one-half, such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual employee shall not be entitled to be paid, in addition, the allowance of ten per cent prescribed in subclause (ii) of this Part in respect of such work.

### PART III - TEMPORARY EMPLOYEES

- (i) A temporary employee is one engaged for a set period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts unless they are necessary to meet the genuine operational requirements of the employer, which may include but not be limited to parental leave, limited term funding arrangements, long term leave relief, forthcoming service reductions, and anticipated peak demand times
- (ii) A temporary employee shall be paid, in addition to all rates and allowances to which the said employee is entitled under this award, an allowance equal to ten per cent of the rates prescribed for his or her classification by clause 6, Salaries, provided that this subclause shall cease to apply upon:
- (a) the said period of engagement being extended after the said period of 13 weeks;
- (b) the employer and the employee agreeing during the said period of 13 weeks that the employee shall be employed on a permanent part-time or full-time basis.
- (iii) For entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944*.

#### 22. Annual Leave

- (i) Annual leave on full pay is to be granted on completion of each 12 months service as follows:
- (a) Employees required to work on a seven-day basis - six weeks annual leave.
- (b) All other employees - four weeks annual leave.
- (ii)
- (a) An employee to whom paragraph (a) of subclause (i) of this clause applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
- (b) To the leave prescribed by paragraph (a) of subclause (i) there shall be added one working day or one half working day for each special public holiday or half public holiday, not being one of the ten specifically named public holidays prescribed by subclause (i) of clause 15, Public Holidays (or a special day proclaimed in lieu of any of them) which may occur during the qualifying period for annual leave or during the period of annual leave.
- (c) To the leave prescribed by paragraph (b) of subclause (i) of this clause there shall be added one working day or one half working day for each public holiday or half public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a full-time shift worker the provisions of this paragraph shall apply to any public holiday falling during the period of annual leave.
- (iii)
- (a) An employee shall be eligible for annual leave when 12 months have elapsed since the date on which the first annual leave would have begun if taken immediately it had become due or, if the employee has not previously had annual leave, since the commencement of employment.

- (b) Credit of time towards an allocated day off duty shall not accrue when an employee is absent in accordance with subclause (i) of this clause. Employees entitled to allocated days off duty in accordance with clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall accrue credit towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with paragraph (b) of subclause (ii) of this clause and paragraph (a) of subclause (iii) of clause 15, Public Holidays.
- (iv) Annual leave shall be given and taken either in one consecutive period or two periods or, if the employer and employee so agree, in either three or four separate periods but not otherwise. Provided that no employee shall be compelled to take annual leave in periods of less than one week in place of any other leave provided for by this award.
- (v)
  - (a) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of such leave may be postponed by mutual agreement between the parties for a further period not exceeding six months.
  - (b) Nothing in this subclause shall prevent an employer by agreement with the employee from allowing annual leave to an employee before the right thereto has accrued, but where leave is taken in such a case a further period of annual leave will not commence to accrue until the expiration of the 12 months in respect of which annual leave was taken before it accrued.
  - (c) The employer shall give each employee, where practicable, three months notice of the date upon which he or she shall enter upon leave and, in any event, such notice shall not be less than 28 days.
- (vi)
  - (a) Each employee before going on leave shall be paid for the period of the leave at the ordinary rate of salary to which he or she is entitled under this award. Where an employee has any period of permanent part-time employment during any 12-month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.
  - (b) An employee to whom paragraph (a) of subclause (i) applies shall be paid during the first 28 consecutive days while on annual leave his or her ordinary rate of salary plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if he or she had not been on annual leave. Additional annual leave accrued under subclause (ix) attracts shift allowances and weekend penalties relating to ordinary time the employee would have worked if he or she had not been on annual leave. Provided that the provisions of the preceding paragraphs of this subclause shall not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of subclause (ii) of this clause and subclause (ii) of clause 15, Public Holidays.
- (vii) Except as provided in subclauses (viii) and (ix) of this clause, payment for annual leave shall not be made or accepted in lieu of annual leave.
- (viii) Where the employment of an employee is terminated, the employee shall be entitled to receive, in addition to all other amounts due, in respect of service of less than one year an amount equal to one-twelfth (6/46 in respect of employees rostered to work on a seven-day basis) of his or her ordinary pay for that period of employment, together with payment for any days added to annual leave in accordance with subclause (iii) of the said clause 15.
- (ix)



- (a) In addition to the leave prescribed by subclause (i) of this clause, employees who work their ordinary hours on Sundays and/or public holidays prescribed by clause 15 are entitled to receive additional annual leave as follows:

Number of ordinary shifts worked on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes -

4 to 10	1 day's additional annual leave
11 to 17	2 days additional annual leave
18 to 24	3 days additional annual leave
25 to 31	4 days additional annual leave
32 or more	5 days additional annual leave

Provided that an employee may elect to be paid when proceeding on annual leave an amount equivalent to the value of his or her additional leave entitlement in lieu of taking the additional leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) On termination of employment, employees are to be paid for any untaken annual leave due under this subclause, together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this subclause, together with payment for any untaken annual leave due in accordance with subclause (viii) of this clause.
- (c) Permanent part-time employees shall be entitled to the benefits of this subclause in the same proportion as their average weekly hours of work bear to full-time hours.

### 23. Annual Leave Loading

- (i) Before an employee is given and takes his or her annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.
- (ii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under paragraph (b) of subclause (i) and paragraph (c) of subclause (ii) of clause 22, Annual Leave, or in the case of permanent part-time employees, for the period of holiday given and taken and due to the employee in accordance with the provisions of the *Annual Holidays Act, 1944*.
- (iii) The loading is the amount payable for the period or the separate periods, as the case may be, at the rate per week of 17½ per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with any allowances prescribed by subclauses (i) and (ii) of clause 10, Special Allowances.
- (iv) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled under the said clause 22 to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (iii) of this clause, applying the award rates and wages payable on that day.
- (v)
- (a) When the employment of an employee is terminated by the employer for a cause other than misconduct, and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, he/she shall be paid a loading calculated in accordance with subclause (iii) of this clause for the period not taken.
- (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.

- (vi) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if she/he had not been on holidays; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

#### 24. Sick Leave

- (i) Subject to the following limitations and conditions, an employee shall be entitled to sick leave on full pay calculated by allowing 76 rostered ordinary hours of work for each year of continuous service, less any sick leave on full pay already taken.
- (a) An employee during his/her first year of employment with an employer shall be entitled to sick leave at the rate of 7.6 hours at the end of each of the first five months continuous service. Upon completion of six months continuous service the employee shall be entitled to a further 38 hours sick leave. For the purpose of this subclause, where service is continuous, each new entitlement will accrue at the monthly anniversary date of the commencement of employment, i.e., a person starting on 6 March would be entitled to their first 7.6 hours on 6 April.
- (b) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, that an employer shall pay to an employee who has sick leave entitlement under this clause, the difference between the amount received as workers' compensation and full pay. The employee's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 38 hours which the difference paid bears to full pay.
- (c) All periods of sickness shall be certified to by the Director of Nursing of the facility or by the employee's own legally qualified medical practitioner. The employer may dispense with the requirements of a medical certificate when the absence does not exceed two consecutive days or where, in the employer's opinion, the circumstances are such as not to warrant such requirement.
- (d) Each employee shall notify her/his employer of an absence from work due to illness or injury prior to the commencement of her/his rostered shift or as soon as practicable thereafter and shall, as far as possible, inform the employer of the estimated duration of the absence.
- (e) For the purpose of determining a full-time employee's sick leave credit as at 19 September 1986, sick leave entitlement shall be proportioned on the basis of 76:80.
- (ii) The employer shall not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the 14 days immediately following the commencement of sick leave merely by reason of the fact that she or he is on sick leave.
- (iii) For the purpose of this clause, "service" means - service in the employment of an employer.
- (iv) For the purpose of this clause, continuity of service in the employment shall not be broken by:
- (a) absences from such employment on account of illness;
- (b) absences from such employment for the purposes of pursuing a post-graduate course in nursing (i.e. a course which results in obtaining a certificate, diploma or qualifications whether in Australia or elsewhere) and where the course is pursued outside Australia an employee shall be deemed to be absent for the purpose of pursuing the course throughout the time reasonably occupied travelling to the place of study and return to Australia, the actual duration of the course, a period of three months after completion of the course before returning to Australia and a period of one month after returning to Australia, provided that subclauses (iii) and (iv) shall only apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW & ACT Incorporated.

- (v) Permanent Part-time Employees - A permanent part-time employee shall be entitled to sick leave in the same proportion of 76 hours as the average weekly hours worked over the preceding 12 months or from the time of commencement of employment, whichever is the lesser, bears to 38 ordinary hours. Such entitlements shall be subject to all the above conditions applying to full-time employees.
- (vi) With respect to an employee who is eligible for sick leave and who produces a satisfactory medical certificate to the effect that he/she has been incapacitated for a period of at least one week's duration while on annual leave, the employer may re-credit such employee with an equivalent period of annual leave, provided that no such re-crediting shall be granted to an employee on leave prior to retirement, resignation or termination of services and provided further the employer is satisfied on the circumstances and the nature of the incapacity.
- (vii) Subject to the provision of a satisfactory medical certificate and sick leave being due, extended or long service leave shall be re-credited where an illness of at least one week's duration occurs during the period of extended or long service leave; provided that the period of leave does not occur prior to retirement, resignation or termination of services.

### 25. Long Service Leave

- (i) For long service leave falling due prior to 20 February 1981, see *Long Service Leave Act 1955*.
- (ii) For long service leave falling due after 20 February 1981, the following provisions shall apply:
  - (a)

- (1) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after 15 years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one-half months' long service leave on full pay.

Such leave shall be taken at a time to be mutually arranged between the employer and the employee as soon as practicable after each period of leave falls due, having regard to the reasonable preferences of each party. Where required by the employer, the term "as soon as practicable" shall mean that leave is taken by the employee within 12 months of the date that the leave falls due. The leave is to be taken in one continuous period unless the employer and employee agree otherwise.

Notwithstanding anything contained elsewhere in this clause, an employer and an employee may mutually agree that the taking of the leave be deferred beyond the initial twelve months referred to above. In such a case the employer and employee may agree that the employee shall be paid for that leave at the rate of pay applicable at the time of the agreement to further postpone the leave, and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.

- (2) Where the service of an employee with at least five years' service is terminated, the employee shall be entitled to long service leave as follows:

For the first five years' service - one month.

For the next ten years' service - a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks' pay.

For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks' pay.

- (b) Subject to subclause (a) of this clause, where an employee has acquired a right to long service leave, then:
- (1) If, before such leave has been entered upon, the employment of such employee has been terminated, such employee shall be entitled to receive the monetary value of the leave to which such employee has become entitled, computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
  - (2) If such employee dies before entering upon such extended leave, or if, after having entered upon the same, dies before its termination, his/her widow/widower or, in the case of a widow/widower leaving children, his/her children or their guardians or other dependent relatives or their legal representatives, shall be entitled to receive the monetary value of the leave not taken or not completed, as the case may be, and computed at the rate of salary which the employee had been receiving at the time of death.
- (c) For the purpose of this clause:
- (1) Continuous service in the same facility prior to the coming into force of this award shall be taken into account.
  - (2) One month equals four and one-third weeks.
  - (3) Continuous service shall be deemed not to have been broken by:
    - (A) absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
    - (B) any period of absence on leave without pay not exceeding six months.
- (d) Where any employee has been granted a period of long service leave prior to the coming into force of this award, the amount of such leave shall be debited against the amount of leave due under this award.
- (e) Except where the total actual service is less than five years -
- (1) all service in facilities to which subclause (i) of clause 11, Climatic and Isolation Allowance, applies shall be counted as one and one-half times the actual time served;
  - (2) all service in a facility to which subclause (ii) of the said clause 11 applies shall be counted as twice the actual time served.
- (f) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in paragraphs (a) and (e) of this subclause. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38.
- (g) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave, such day shall be taken on the next working day immediately following the period of long service leave.

An employee returning to duty from long service leave shall be given the next allocated day off duty in sequence, irrespective of whether sufficient credits have been accumulated or not.

## 26. Compassionate Leave

- (i) In general, compassionate leave with pay should be granted only in extraordinary or emergent circumstances where a member of the staff of a facility is forced to absent himself/herself from duty

because of urgent pressing necessity, and such leave as is granted should be limited to the time necessary to cover the immediate emergency.

- (ii) Any absence occasioned by personal exigencies which might fairly be regarded as an obligation on the employee rather than the employer to make good, should be covered by the grant of leave without pay or, if the employee so desires, charged against his/her annual leave credit.
- (iii) The following basic principles should be kept in mind when dealing with applications:
  - (a)
    - (i) An employee, other than a casual employee, shall be entitled to a maximum of two days compassionate leave without deduction of pay, on each occasion of the death of a person as prescribed in subparagraph (iii) of this paragraph. Provided that, where the employee is involved in funeral arrangements, travelling, etc., leave may be allowed for up to three days.
    - (ii) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will, if required by the employer, provide, to the satisfaction of the employer, proof of death.
    - (iii) Compassionate leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 27, Personal/Carer's Leave, provided that, for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
    - (iv) An employee shall not be entitled to compassionate leave under this clause during any period in respect of which the employee has been granted other leave.
    - (v) Compassionate leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said clause 27. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
  - (b) Illnesses in the family - Except in very special circumstances, leave with pay should be limited to one day which, as a general rule, would prove sufficient time to meet the immediate emergency and allow the employee to make any other arrangements necessary. It would be expected that no one but the employee would be available to care for the sick member of the family.
- (iv) The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, e.g., floods and bushfires, which clearly prevent attendance for duty.
- (v) In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three days be granted to an employee in any year.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 26(iii)(a)(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 27(1)(c)(ii) of clause 27, Personal/Carer's Leave.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (vii) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

#### 26A. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.
- (4) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
  - (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

### **27. Personal/Carer's Leave**

#### **(1) Use of Sick Leave**

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 27(1)(c)(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 24, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
  - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
  - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care and support of the person concerned; and
  - (ii) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

- (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (E) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
  - (1) "relative" means - a person related by blood, marriage or affinity;
  - (2) "affinity" means - a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (3) "household" means - a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 44, Resolution of Disputes, should be followed.

(2) Unpaid Leave for Family Purpose

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 27(1)(c)(ii) above who is ill or who requires care due to an unexpected emergency.

(3) Annual Leave

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(4) Time Off in Lieu of Payment for Overtime

- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of subclause (xii) of clause 18, Overtime, the following provisions shall apply.
- (b) 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 within 12 months of the said election.
- (c) 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.



- (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
  - (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- (6) Additional Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.
- (7) Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 27(1)(b) and 27(1)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 27(1)(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (8) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

## 28. Staff Amenities

- (i)
  - (a) The employer shall provide for the use of employees:

- (1) toilet facilities; provided that this provision shall not apply to a facility the registered number of beds of which is less than nine;
  - (2) a full-length locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee.
- (b) An employer shall provide for employees morning and afternoon tea, supper and early morning tea (which shall include tea or coffee, together with milk and sugar).
  - (c) Where an employee requests, the employer shall provide an employee with meals of a reasonable standard. The employer may make a charge, provided that the charge for breakfast shall be the sum set out in Item 17 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, and the sum set out in Item 18 of the said Table 2 for other meals.
- (ii) The charges referred to in subclause (i) of this clause are to be adjusted in accordance with the movement in wage rates following State Wage Case decisions. The employers are entitled to set prices for meals at a level to cover labour and ingredient costs (not indirect costs).

### **29. Labour Flexibility**

- (i) Nurses shall not be required to perform as a matter of routine duties: washing, sweeping, polishing and/or dusting of floors, walls, windows, corridors, annexes, bathrooms or verandas, except in an emergency.
- (ii) Nothing in subclause (i) of this clause shall preclude the employment of nurses in the washing of beds, bedspreads, mattresses, bedside tables or the like, following the discharge of a patient suffering a notifiable infectious disease.
- (iii) Nothing in subclause (i) of this clause shall preclude any nurse from being required to perform all or any of the specified duties, at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.
- (iv) Subject to subclause (i) of this clause, an employer may direct a nurse to carry out such duties as are within the limits of the nurse's skill, competence and training. Such duties may include work which is incidental or peripheral to the nurse's main tasks, provided that such duties are not designed to promote deskilling.

Any employer may direct a nurse to carry out duties and use such equipment as may be required, provided that the nurse has been properly trained or has otherwise acquired the necessary skills in the use of such equipment. Any such direction issued by the employer shall be consistent with the employer's responsibility to provide a safe and healthy working environment for nurses and the employer's duty of care to residents.

- (v) Assistants in Nursing may be employed under this award to perform mixed functions, provided that:
  - (a) The primary duties performed by the Assistant in Nursing, being the delivery of direct care to residents, occupy no less than the majority of the hours for which they are employed in any 28 day cycle.
  - (b) The Assistant in Nursing shall be paid at the appropriate rate for an Assistant in Nursing for all work performed for their employer in that classification.
  - (c) An Assistant in Nursing shall not be required to perform mixed functions where the employer does not provide adequate staff to ensure that the level of the quality of the service that would have otherwise been provided if the Assistant in Nursing did not perform mixed functions, is in fact provided.

- (d) Subject to paragraph (a) of this subclause, an Assistant in Nursing may perform duties associated with a resident's well being and comfort, including functions of a laundry, kitchen or other personal support nature.

### **30. Medical Examination of Nurses**

On commencement of employment the employee shall be notified of the availability of the following provisions, which the employer shall provide at the request of the employee:

- (i) For protection against tuberculosis:
  - (a) Before a nurse commences duty, a PA chest x-ray examination of the nurse, unless a radiologist's report of a normal chest x-ray taken within the previous six months is available.
  - (b) As soon as practicable after the nurse commences duty, a Mantoux test on the nurse, then -
    - (i) where the Mantoux test is negative, immunisation with BCG vaccine;
    - (ii) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
  - (c) A Mantoux test annually to -
    - (i) previously Mantoux-negative nursing staff;
    - (ii) nursing staff whose Mantoux reaction has been converted by BCG vaccination.
  - (d) A chest x-ray annually to nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
  - (e) Where a nurse has been caring for open tuberculosis cases, a PA chest x-ray examination of the nurse one year after completion of employment.
- (ii) For protection against other communicable diseases:
  - (a) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;
  - (b) booster immunisation against tetanus at ten-year intervals;
  - (c) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
- (iii) For protection against radiation exposure, nurses required to work in close proximity to a source of ionising radiation should be provided with a film badge or personal radiation dosimeter, and a record should be maintained of the radiation exposure measured by such film badge or dosimeter.
- (iv) The costs involved in the various screening and protection procedures should be borne by the employer.

### **31. Escort Duty**

- (i) Periods during which an employee, other than a Director of Nursing, is engaged in nursing duties, viz., in attendance on a patient, shall be paid as working time under this award. Where applicable, overtime shall be payable.
- (ii) All reasonable out-of-pocket expenses shall be reimbursed.
- (iii) Rostered time shall be paid as such, even though an employee may be travelling, in hotel/motel accommodation or waiting for transport.

- (iv) In respect of non-rostered time not spent in nursing duties -
  - (a) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time.
  - (b) Periods in travelling shall count as working time.

### **32. Deputy Director of Nursing and Assistant Director of Nursing**

- (i) Subject to subclause (ii) of this clause, the following appointments shall be made in nursing homes with daily averages of occupied beds as specified hereunder:

Less than 150 beds - a Deputy Director of Nursing.

150 beds and over - a Deputy Director of Nursing and Assistant Director of Nursing.

- (ii) There is no requirement to appoint a Deputy Director of Nursing in nursing homes of 40 beds and under in the following circumstances:
  - (a) the registered nurses at the nursing home are all given the same duties and no registered nurse is delegated Deputy Director of Nursing duties; and
  - (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

Provided that no Deputy Director of Nursing employed as at 16 December 1994 shall be dismissed or demoted from that position as a result of the implementation of this subclause.

- (iii) Where a decision is made, pursuant to subclause (ii) of this clause, not to appoint a Deputy Director of Nursing, the employer shall notify the Association in writing of that decision within 14 days and must certify that the requirements of paragraphs (a) and (b) of subclause (ii) have been met.
- (iv) In the event of a dispute arising as to the operation of this clause, the procedures set out in clause 44, Resolution of Disputes, shall be followed.
- (v) Appointments under subclause (i) of this clause shall be made within two calendar months of the date this award becomes operative and thereafter within two calendar months of the occurrence of a vacancy. In default of appointment within the said period of two calendar months, the registered nurse employed as such or in a higher classification who has customarily relieved in the vacant position, or if no one has so customarily relieved, the general nurse employed in the same or the next senior classification below the vacant position with the longest service in such classification at the nursing home shall be deemed to be appointed until such time as another appointment is made by the nursing home.
- (vi) This clause shall not apply to a nursing home using members, novices or aspirants of religious orders where a member of an order carries out the duties under this clause of an Assistant Director of Nursing or Deputy Director of Nursing.
- (vii) This clause shall not apply to a nursing home which is owned by two or more registered nurses who are actively engaged as Directors of Nursing in the running of the nursing home.

### **33. Nursing Unit Managers**

No person appointed to any level of the former classification of Nursing Unit Manager as at 1 March 1999 shall be dismissed or demoted as a result of the deletion of that classification from this award. Provided that the salary rates appearing under that classification in Table 1 - Salaries, of Part B, Monetary Rates, are to be payable, on a strictly personal basis, only to those persons appointed to such positions as at 1 March 1999.

### **34. Fares and Expenses**

- (i) An employee required to travel in the performance of duty shall be reimbursed first class fares (including sleeper accommodation) and all reasonable out-of-pocket expenses.
- (ii)
  - (a) An employee who is engaged for an indefinite period and who remains in the employment for at least six months shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds 40 kilometres.
  - (b) An employee who is engaged for an indefinite period, and who is dismissed within six months for any reason other than misconduct or inefficiency, shall be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and shall also be reimbursed return fares to such place of engagement or the employee's immediate destination, whichever is the cheaper.
  - (iii) An employee who is engaged for a definite period and who completes the period of engagement or who is dismissed before completing such period for any reason other than misconduct or inefficiency, shall be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and shall also be reimbursed return fares to such place of engagement or to the employee's immediate destination, whichever is the cheaper.
  - (iv) Fares within the meaning of this clause shall include only fares incurred in respect of travel within New South Wales.
  - (v) An employee who claims reimbursement of fares pursuant to this clause shall furnish to the employer, if so required, satisfactory proof that he or she has not received from another employer reimbursement in respect of those fares.

### 35. Registration Or Enrolment Pending

- (i) A registered nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as from the date she or he is notified that she or he is eligible for registration or enrolment as a registered nurse or enrolled nurse; provided that she or he makes application for registration within seven days after being so notified.
- (ii) He or she shall notify the employer as soon as possible after he or she has applied.

### 36. Termination of Employment

- (i) Except for misconduct justifying summary dismissal, the services of an employee shall be terminated only by notice as prescribed by the *Australian Workplace Relations Act 1996* (Commonwealth) or by the payment of salary in lieu thereof in the case of an employee other than a Director of Nursing and by 28 days notice or as prescribed by the *Australian Workplace Relations Act 1996* (Commonwealth), whichever is the greater, or by the payment of salary in lieu thereof in the case of a Director of Nursing, except that where the employment of a Director of Nursing is terminated within 13 weeks of her/his engagement, there shall be given 14 days notice or the payment of 14 days salary in lieu thereof.
- (ii) No employee shall, without the consent of the employer, resign without having given seven days' notice (or, in the case of a Director of Nursing, 28 days' notice) of the intention so to do or forfeiting salary earned during the pay period current at the time of resignation; provided that in no circumstances shall the employee other than the Director of Nursing forfeit more than seven days' pay and the Director of Nursing more than 28 days' pay at the rates prescribed for his or her classification by clause 6, Salaries.
- (iii) Upon the termination of the services of an employee, the employer shall furnish the employee with a written statement, duly signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed. In addition, an employer shall provide to Assistants in Nursing a statement of in-service training and/or education which the employee has undertaken.

- (iv) Employees who have accrued additional days off duty pursuant to subclause (vii) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall be paid for such accrued time as ordinary rate of pay upon termination.

### **37. Award Benefits to be Continuous**

- (i) In the event of any change of ownership, licensee or management of any facility covered by this award, all employee rights and benefits provided by this award shall continue as if no such change in ownership, licensee or management had taken place, and no employee shall be dismissed for the reason of such change.

Where such changes do occur, no employee shall be paid out for accrued annual leave, long service leave or any other benefits, but such benefits shall be continuous.

- (ii) No employee, full-time or part-time, shall have their employment terminated or be required to take leave without pay where such termination or leave is used to avoid the requirements of any Act or to avoid payment of any rights or benefits provided by this award.

### **38. Special Provisions Relating to Trainee Enrolled Nurses**

- (i) Where a trainee enrolled nurse has transferred from one training school to another, the time allowed by the Board in the first training school shall be counted in computing salary.
- (ii) A trainee enrolled nurse, who is absent from training for not more than two weeks, exclusive of annual leave, in any period of 12 months training shall, for the purpose of annual increase in salary under clause 6, Salaries, be deemed to have completed the particular year of training 12 calendar months after the commencement thereof notwithstanding such absence, but if absent for more than the aforesaid time in any such period, the particular year of training shall not be deemed to have been completed until the employee has served the actual period of excess of such time.

### **39. Trainee Enrolled Nurse**

- (a) Objective:

The objective of this clause is to assist with the establishment of a system of traineeships for Trainee Enrolled Nurses, which provides approved training in conjunction with employment and which is to be at the same AQF level as the existing Certificate IV course.

- (b) Application:

- (i) This clause applies only to the employment of Trainee Enrolled Nurses undertaking Certificate IV in Nursing whilst performing the duties of a Trainee Enrolled Nurse.
- (ii) The system is neither designed nor intended for those who are already trained and job ready.

- (c) Definitions:

"Structured Training" means - training which is specified in the Training Plan, which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority.

"Trainee" is an individual who is signatory to a Training Contract registered with the relevant NSW Training Authority and is involved in paid work and structured training both on and off the job. A trainee can be full time, part time or school-based.

"Traineeship" means - a system of training, which has been approved by the relevant NSW Training Authority, and includes full time traineeships and part time traineeships including school-based traineeships.

"Training Contract" means - a contract entered into for the purposes of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001* (NSW).

"Training Plan" means - a programme of training which forms part of a Training Contract registered with the relevant NSW Training Authority.

"Relevant NSW Training Authority" means - the Department of Education, or successor organisation.

"School Based Trainee Enrolled Nurse" is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a Traineeship which forms part of a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority, NSW Board of Studies and NSW Nurses Registration Board as such.

(d) Training Conditions

- (i) The employer shall provide a level of registered nurse supervision during the traineeship period in accordance with the training contract.
- (ii) Trainee Enrolled Nurses will not be required to perform the duties of registered or enrolled nurses in the event of absenteeism. In the event that a registered or enrolled nurse needs to be replaced, existing staff including casuals will be offered the shift, or agency staff will be used.
- (iii) The employer agrees that the overall training programme will be monitored by officers of the relevant NSW Training Authority. Training records or work books may be utilised as part of this monitoring process.
- (iv) A Traineeship shall not commence until the relevant Training Contract has been signed by the employer and the trainee and lodged for registration with the relevant NSW Training Authority.

(e) Full Time, Part Time Traineeships

A full time Trainee Enrolled Nurse shall be engaged as a full-time employee for a maximum of one year's duration.

A part time Trainee Enrolled Nurse shall be engaged as a part time employee for a maximum of two years' duration.

A Trainee Enrolled Nurse who undertakes a Traineeship on a part-time basis works less than full-time ordinary hours, and shall undertake the approved training at the same or lesser training time than a full-time trainee.

(f) Employment Conditions

- (i) A Trainee Enrolled Nurse shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
- (ii) By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training. Any agreement to vary shall be in accordance with the relevant Traineeship.
- (iii) Where the trainee completes the qualification in the Training Contract earlier than the time specified in the Training Contract then the Traineeship may be concluded by mutual agreement.
- (iv) A traineeship shall not be terminated before its conclusion except in accordance with the *Apprenticeship and Traineeship Act 2001*(NSW) or by mutual agreement.

- (v) An employer who chooses not to continue the employment of a Trainee upon the completion of the Traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.
- (vi) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend training in accordance with the Traineeship Agreement.
- (vii) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such employment period shall be counted as service for the purposes of this Award or any other legislative entitlement.
- (viii) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training programme is successfully completed.
  - A. No Trainee Enrolled Nurses shall work overtime or shiftwork unless under the direct supervision of a registered nurse.
  - B. No Trainee Enrolled Nurse shall work shiftwork unless the parties to a Traineeship agree that such shiftwork makes satisfactory provision for structured training.
  - C. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainee Enrolled Nurses.
  - D. No Trainee Enrolled Nurse shall be rostered to work a shift any less than 8 hours prior to attending off the job training requirements, or any less than 8 hours after having completed off the job training requirements.
- (ix) The Trainee Enrolled Nurse wages shall be in accordance with Table 1 - Salaries, of Part B, Monetary Rates and shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award.
- (x) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments
- (xi) All the terms and conditions of this award or former industrial agreements that are applicable to the Trainee Enrolled Nurse shall apply unless specifically varied by this clause.

#### **40. Right of Entry**

See Part 7 of Chapter 5 of the *Industrial Relations Act 1996*.

#### **41. Lifting Weights**

Where a weight of 57 kilograms or more is to be lifted or carried, no person shall be allowed or required to lift or carry the weight on his or her own and the weight shall be lifted or carried by two or more persons or a machine.

Provided that this clause shall only apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW. & ACT Incorporated.

#### **42. Attendance at Meetings and Fire Drills**

- (i) Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g., fire drill and evacuation procedures), contained from time to time within the *Nursing Homes Act 1988* and the regulations made there under, shall be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. Such time spent in attendance shall not be viewed as overtime for the purposes of this award.



- (ii) Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this award.
- (iii) For the purposes of this clause, "ordinary rate" shall include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 10, Special Allowances, and clause 11, Climatic and Isolation Allowance, plus, where appropriate, the ten per cent loading prescribed in clause 21, Part-time, Casual and Temporary Employees, for employees engaged otherwise than as a full-time or permanent part-time employee.

#### **43. Training for Nurses**

- (i) Each employer shall provide a minimum of 12 hours of in-service training per annum to Assistants in Nursing.
- (ii) Each employer may make training available to nurses other than Assistants in Nursing.
- (iii) Each employee shall provide to their employer details of their attendance at in-service training and the employer shall keep a record of this attendance.
- (iv) Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of in-service training attended by the employee.
- (v) Where practicable, such training shall be provided to employees during the normal rostered hours of work. Where it is not practicable to provide such training during the normal rostered hours of work then:
  - (a) Employees shall attend in-service training outside their normal rostered working hours when required to do so by the employer.
  - (b) An employer shall provide employees with two weeks notice of the requirement to attend training outside of their normal rostered working hours.
  - (c) Notwithstanding clause 18, Overtime, attendance at such training shall be paid at ordinary rates.
  - (d) Notwithstanding subclause (iv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, attendance at such in-service training outside the normal rostered working time of an employee shall not affect the ordinary rate paid to the employee during normal rostered working time.

#### **44. Resolution of Disputes**

- (i) With a view to an amicable and speedy settlement of all disputes which cannot be resolved between the employees or their representatives and the supervising staff, such dispute shall be referred to the management of the facility, who will arrange for the matter to be discussed with the employee concerned and a representative or representatives of the Association.
- (ii) Failing settlement of the issue at this level, the matter shall be submitted to a committee consisting of not more than four members, two of whom shall be appointed by the facility concerned (and for the purpose of this subclause the facility may ask their employer organisation to assist) and two by the Association.
- (iii) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- (iv) The Association reserves the right to vary this procedure where it is considered a safety factor is involved.

- (v) This clause shall not interfere with the right of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

#### **45. Anti-Discrimination**

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### **NOTES -**

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:  
  
"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

#### **46. Enterprise Arrangements**

##### **PART 1 - PARTIES**

- (i) As part of the Structural Efficiency exercise and as an ongoing process for improvements in productivity and efficiency, discussion should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction, and positive assistance in the restructuring process and to encourage consultation mechanisms across the workplace to all employees in an enterprise and consideration of a single bargaining unit in all multi-union/union award workplaces. Union delegates at the place of work may be involved in such discussions.

(ii) The terms of any proposed genuine arrangement reached between an employer and employee(s) in any enterprise shall, after due processing, substitute for the provisions of this award to the extent that they are contrary, provided that:

- (a) A majority of employees affected genuinely agree.
- (b) Such arrangement is consistent with the current State Wage Case principles.

(iii)

(a) Before any arrangement requiring variation to the award is signed and processed in accordance with Part 2 of this clause, details of such arrangements shall be forwarded in writing to the union or unions with members in that enterprise affected by the changes and the employer association, if any, of which the employer is a member. A union or an employer association may, within 14 days thereof, notify the employer in writing of any objection to the proposed arrangements, including the reasons for such objection.

(b) When an objection is raised, the parties are to confer in an effort to resolve the issue.

**PART 2 - PROCEDURES TO BE FOLLOWED - SUCH ENTERPRISE ARRANGEMENTS SHALL BE PROCESSED AS FOLLOWS**

(i) All employees will be provided with the current prescriptions (e.g., award, industrial agreement, enterprise agreement or enterprise arrangement) that apply at the place of work.

(ii)

(a) Where an arrangement is agreed between the employer and the employees or their authorised representative at an enterprise, such arrangement shall be committed to writing.

Where the arrangement is agreed between the employer and an absolute majority of permanent employees under this award at an enterprise, such arrangement shall be committed to writing.

(b) The authorised representative of employees at an enterprise may include a delegate, organiser or official of the relevant union if requested to be involved by the majority of employees at the establishment.

(iii) The arrangement shall be signed by the employer, or the employer's duly authorised representative, and the employees, or their authorised representative with whom agreement was reached.

(iv) Where an arrangement is objected to in accordance with paragraph (a) of subclause (iii) of Part 1 of this clause and the objection is not resolved, an employer may make application to the Industrial Relations Commission of New South Wales to vary the award to give effect to the arrangement.

(v) The union and/or the employer association shall not unreasonably withhold consent to the arrangements agreed upon by the parties.

(vi) If no party objects to the arrangement, then a consent application shall be made to the Industrial Relations Commission to have the arrangement approved and the award varied in the manner specified in subclause (vii). Such applications are to be processed in accordance with the appropriate State Wage Case principles.

(vii) Where an arrangement is approved by the Industrial Relations Commission and the arrangement is contrary to any provisions of the award, then the name of the enterprise to which the arrangement applies, the date of operation of the arrangement, the award provisions from which the said enterprise is exempt, and the alternative provisions which are to apply in lieu of such award provisions (or reference to such alternative provisions), shall be set out in a schedule to the award.

(viii) Such arrangement when approved shall be displayed on a notice board at each enterprise affected.

- (ix) No existing employee shall suffer a reduction in entitlement to earnings, award or over award, for working ordinary hours of work as the result of any award changes made as part of the implementation of the arrangement.

#### **47. Exemptions**

This award shall not apply to members, novices or aspirants of religious orders in any facility.

#### **48. Leave Reserved**

- (i) Leave is reserved to the Association to apply with respect to:
- (a) senior nurse management restructure;
  - (b) three per cent salary increase to apply from the beginning of the first pay period to commence on or after 1 February 1999, subject to satisfactory resolution of the issue set out in subclause (i)(a) of this clause;
  - (c) paid maternity, paternity and adoption leave;
  - (d) entitlements for Association Branch officers;
  - (e) continuing education allowance for Assistants in Nursing; and
  - (f) reasonable workloads.
- (ii) Leave is reserved to the Aged & Community Services Association of NSW. & ACT Inc., the Australian Nursing Homes & Extended Care Association (NSW), Australian Business Industrial and the Catholic Commission for Employment Relations to apply with respect to:
- (a) definition of a seven day shift worker;
  - (b) definition of ordinary pay;
  - (c) span of hours; and
  - (d) leave without pay.

#### **49. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of

six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.

- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
  - (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
  - (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
    - (1) whether the employee will convert to full-time or part-time employment; and
    - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);
- Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.
- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.

- (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the Apprenticeship and Traineeship Act 2001 (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

#### **50. Area, Incidence and Duration**

- (i) This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Nursing Homes, &c., Nurses' (State) Award published 21 October 2005 (354 I.G. 759), as varied.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 20 August 2008.

This award remains in force until varied or rescinded, the period for which it was made having already expired.

- (ii) It shall apply to persons engaged in the industry of nursing as defined herein within the State of New South Wales, within the jurisdiction of the Private Hospital, Day Procedure Centre, Nursing Home, &c., Nurses' (State) Industrial Committee, which includes as part of its coverage the following:

Trained nurses, trainees and Assistants in Nursing and all persons employed as nurses in the industry and calling of nursing and employed in or in connection with:

- (a) Nursing Homes as defined as at 1 September 1993 in the *Nursing Homes Act 1988*.
- (b) Hostels as defined as at 1 September 1993 in the *Aged or Disabled Persons Care Act 1954* (Commonwealth).
- (iii) It shall also apply to persons engaged in the industry of nursing as defined herein who are employed by:
- (a) The Hall of Children, 54 Hall Parade, Hazelbrook New South Wales
- (b) The Mannix Children's Centre, 144 Memorial Avenue, Liverpool New South Wales
- (c) Whitehall Children's Home, 75B Marco Avenue, Revesby New South Wales
- (iv) The rates of pay in this award reflect the adjustments that would otherwise be payable under the State Wage Case 2009. These adjustments may be offset against any equivalent overaward payments. The rates of pay and allowances in Part B, Monetary Rates take effect from the first pay period on or after 7 December 2009.

## PART B

### MONETARY RATES

**Table 1 - Salaries**

Classification	Beginning of FPP to commence on or after 07/12/09 \$
Assistant in Nursing/ Trainee Enrolled Nurse	
Under 18:	
1st year	525.00
2nd year	548.20
Thereafter	570.00
Over 18:	
1st year	616.80
2nd year	636.00
3rd year	655.20
Thereafter	675.00
Enrolled Nurse :	
1st year	752.70
2nd year	768.20
3rd year	784.60
4th year	800.70
Thereafter	816.80
Registered Nurse General, M.R. Psych., Infants, Geriatric, Midwifery	
1st year	850.30
2nd year	895.40
3rd year	940.40
4th year	988.60
5th year	1,036.50
6th year	1,084.50
7th year	1,139.20
8th year	1,185.10

Nursing Unit Manager (personal to current occupants as at 01.03.99)	
Level I	
1st year	1,312.10
2nd year	1,348.60
Level II	1,381.10
Level III	1,417.20
Nurse undergoing pre registration assessment	735.90
Clinical Nurse Specialist	1,232.90
Clinical Nurse Consultant	1,452.30
Clinical Nurse Educator	1,232.90
Nurse Educator	
1st year	1,312.10
2nd year	1,348.60
3rd year	1,381.10
4th year	1,452.30
Senior Nurse Educator	
1st year	1,486.90
2nd year	1,516.90
3rd year	1,566.90
Assistant Director of Nursing	
<150 beds	1,348.60
150-250 beds	1,452.30
250 beds	1,486.90
Deputy Director of Nursing	
Less than 20 beds	1,375.40
20-75 beds	1,410.40
75-100 beds	1,442.60
100-150 beds	1,472.80
150-200 beds	1,516.90
200-250 beds	1,566.90
250-350 beds	1,624.70
350-450 beds	1,681.90
450-750 beds	1,743.70
750+ beds	1,810.30
Director of Nursing	
Less than 25 beds	1,535.60
25- 50 beds	1,624.70
50-75 beds	1,659.10
75-100 beds	1,693.30
100-150 beds	1,741.40
150-200 beds	1,798.90
200-250 beds	1,856.10
250-350 beds	1,925.20
350-450 beds	2,040.10
450-750 beds	2,157.20
750+ beds	2,291.30



**Table 2 - Other Rates and Allowances**

Brief Description	Clause No	Beginning FPP commence on or after 07/12/09 \$	Increase %
In charge of nursing home less than 100 beds	10 (i)(a)	21.06 per shift	2.8
In charge of nursing home 100 beds & <150 beds	10 (i)(a)	33.93 per shift	2.8
In charge of ward/unit	10 (i)(b)	21.06 per shift	2.8
On call	10 (ii)(a)	18.78 per 24 hrs or part thereof	2.8
On call on rostered days off	10 (ii)(b)	37.56 per 24 hrs or part thereof	2.8
On call during meal break	10 (ii)(c)	10.17 per period	2.8
Travelling Allowance	10 (ii)(d) & (iii)	63.37 cents per kilometre	1.5
Climatic Allowance	11(i)	3.90 per week	2.8
Isolation Allowance	11(ii)	7.52 per week	2.8
Expense allowance for DONs Less than 100 beds	13	229.00 pa	1.5
100-299		458.00 pa	1.5
300-499		687.00 pa	1.5
Over 500 beds		917.00 pa	1.5
Uniform	16(iii)(a)	6.15 per week	1.5
Shoes	16(iii)(a)	1.92 per week	1.5
Cardigan or Jacket	16(iii)(b)	1.85 per week	1.5
Stockings	16(iii)(c)	3.20 per week	1.5
Socks	16(iii)(d)	0.63 per week	1.5
Laundry	16(iv)	5.14 per week	1.5
Meal on overtime	18(viii)	9.05 per meal	1.5
Breakfast	28(i)(c)	3.39 per meal	1.5
Other Meals	28(i)(c)	6.13 per meal	1.5

**Table 3 - Continuing Education Allowances**

Item No.	Brief Description	Clause No.	Beginning FPP commencing on or after 07/12/09 \$	Increase %
1	Continuing education allowance: Registered Nurse	10A (vii)	17.68 per week	2.8
2	Continuing education allowance: Registered Nurse	10A (viii)	29.46 per week	2.8
3	Continuing education allowance:: Registered Nurse	10A(ix)	35.35 per week	2.8
4	Continuing education allowance: Enrolled Nurse	10A(x)	11.78 per week	2.8

(2101)

**SERIAL C7724**

## **PRIVATE HEALTH AND CHARITABLE SECTOR EMPLOYEES SUPERANNUATION (STATE) AWARD**

### **AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0571	07/12/2001	First pay period on or after 13/06/2001	330	89
3, 7	C2819	10/12/2004	On and from 08/06/2002	347	711
7	C6128	08/02/2008	On and from 23/07/2007	364	1014

#### **1. Index**

Clause No.	Subject Matter
1.	Index
2.	Parent Awards
3.	Definitions
4.	Superannuation Contributions
5.	Casual Employees
6.	Qualifying Period
7.	Area, Incidence and Duration

#### **2. Parent Awards**

This award shall be read in conjunction with the following parent awards Aged Care General Services (State) Award; Charitable Sector, Aged and Disability Care Services (State) Award; Charitable, Aged and Disability Care Services (State) Award; Nursing Home Professional Employees (State) Award; Charitable Institutions (Professional Paramedical Staff) (State) Award; Charitable Institutions (Professional Staff Social Workers) (State) Award; Private Hospital Employees (State) Award; and the Private Hospital Professional Employees (State) Award; or any replacements thereof.

#### **3. Definitions**

- (i) "The Approval fund". For the purposes of this Award all reference to "the approved fund" shall mean:
- (a) The Health Employees' Superannuation Trust Australia (H.E.S.T.A.) established and governed by an employer's agreement as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto.

- (b) Any other complying fund as agreed between the parties provided such fund is approved as conforming to S.I.S. legislation.
- (c) Any existing complying superannuation scheme operating within a place of employment subject to this Award as at the date of this Award, provided firstly that the Union and its members agree to the continued operation of that scheme, and secondly that such scheme conforms to S.I.S. legislation.

NOTATION:

Prior to the date of this award becoming operative in any place of employment, an employer shall ensure that the "approved fund(s)" has been nominated. Subject to practicability an employer shall ensure commonality of superannuation exists within the place of employment and nothing within this award shall obligate an employer to contribute to superannuation schemes which have not been nominated as of the date of operation of this award.

- (ii) "Ordinary time earnings" shall mean remuneration for an employees weekly number of hours of work, excluding overtime hours, calculated at the ordinary time rate of pay, and in addition thereto shall include, where applicable, the following:-
  - (a) Monday to Friday shift premiums for ordinary hours of work;
  - (b) Weekend shift premiums for ordinary hours of work;
  - (c) Any percentage addition payable for permanent part-time, part-time or casual employment for ordinary hours of work;
  - (d) Broken-shift allowances;
  - (e) Special allowances for educational qualifications as prescribed by the parent awards as defined in clause 3
  - (f) Over-a-award payments for ordinary hours of work;
  - (g) Leading hand allowances.
  - (h) Service allowance.
- (iii) "Leave without pay" shall include all periods of unpaid working time in excess of one week, but shall not include such periods where the employee is absent from work due to an injury sustained at work and/or is receiving workers' compensation benefits.
- (iv) "Employer" shall mean any facility or organisation employing persons who come under the parameters of the said parent awards.
- (v) "Union" shall mean the Health Services Union.
- (vi) "S.I.S. Legislation" shall mean the *Superannuation Industry Supervision Act 1993*.

#### 4. Superannuation Contributions

- (i) Except as provided in Clause 5, Casual Employees, the employer shall, in respect of each employee, pay a sum equal to the Superannuation Guarantee legislation, as amended, from time to time, of the employee's gross ordinary time earnings into the approved fund provided that:
  - (a) Each employee shall nominate a complying fund to which the employer contributions shall become payable. Provided that only H.E.S.T.A. or any other fund that is a complying fund for that employee's place of employment, can be nominated.

- (b) The employer shall pay said sum at least monthly to the trustees of the approved fund on behalf of each employee who is a member of such fund. Provided that any contribution shall be in conformity with the rules of the relevant trust deed or any deed of adherence or other agreement covering the payment of contributions.
- (c) Such contribution shall be calculated on the ordinary time earnings received by the employee during the preceding pay period.
- (d) Said sum shall not be in addition to any superannuation payment currently being made by the employer in respect of the employee under the Wage Fixation principle as set down, from time to time, by the Australian Industrial Relations Commission in the National Wage Case Decisions. Provided that such existing payment is as a consequence of an industrial award or agreement registered with the Australian Industrial Relations Commission or the Industrial Relations Commission of New South Wales. Provided also that if such existing payment is less than that otherwise provided by this Award then the employer shall pay an additional sum so that the payment is so equal. Provided also that the burden of proof in showing such existing payment shall be on the employer.
- (e) The employer shall not be required contribute in respect to any period where an employee is absent from his or her employment on leave without pay - such as unpaid sick leave, maternity leave or the like, or periods of workers compensation beyond the expiry of any entitlement to workers compensation make-up pay. Further, an employer shall not be required to make additional contributions in respect of annual leave and/or long service leave paid out on termination.

#### **5. Casual Employees**

An employer shall make contributions pursuant to this Award in respect of:

- (1) "Casual" employees who are employed for a minimum of 152 hours during their employment with an employer in the course of any one year (1st July to 30th June) (hereinafter called "qualified employees"); and
- (2) Qualified employees in each ensuing year of employment with that employer.

Such contribution shall be made in respect of the total gross ordinary time earnings earned during that year and shall be paid to the relevant complying fund at the time of issue to the employee of his/her annual group certificate.

Where a business is transmitted from one employer (the transmittor) to another employer (the transmittee) an employee who worked with the transmittor shall be entitled to count such service with the transmittor as service with the transmittee for the purpose of this clause.

#### **6. Qualifying Period**

Subject to Clause 5, Casual Employees, employers shall not be required to contribute superannuation in accordance with this Award for an employee who has no previous service in the industry of private hospitals, and nursing homes, charitable institutions and hostels, until the employee has completed four weeks service in these industries.

Provided that once this period has elapsed, payments in accordance with subclause (i) of Clause 5 shall be made for the entire period of service with the employer.

#### **7. Area, Incidence and Duration**

- (i) This award was made following a review under s.19 of the *Industrial Relations Act 1996*.
- (ii) This award rescinds and replaces the Private Hospital and Nursing Homes Professional Employees Superannuation (State) Award published 19 January 1990 (254 I.G 297); Private Health Industry

Employees Superannuation (State) Award published 19 January 1990 (254 I.G 291); and the Charitable Institutions (Professional Employees) Superannuation (State) Award, published 14 June 1989 (252 I.G. 847).

- (iii) This award shall apply to employed under the Aged Care General Services (State) Award; Charitable Sector, Aged and Disability Services (State) Award; Charitable, Aged and Disability Services (State) Award; Nursing Homes Professional Employees (State) Award; Charitable Institutions (Professional Paramedical Staff) (State) Award; Charitable Sector (Professional Social Workers) (State) Award; Private Hospital Employees (State) Award; and Private Hospital Professional Employees (State) Award.
- (iv) It shall take effect from the beginning of the first pay period to commence on or after 13 June 2001, and shall remain in force thereafter for a period of 36 months.
- (v) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.
- (vi) This award remains in force until varied or rescinded, the period for which it was made already having expired.

---

Printed by the authority of the Industrial Registrar.

(1299)

**SERIAL C7725**

## THE PRIVATE HOSPITALS AND AGED AND DISABILITY CARE SERVICES INDUSTRY REDUNDANCY (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0387	31/08/2001	First pay period on and from 18/05/2001	327	487
2, 4, 7, 12, 13	C2820	19/11/2004	On and from 08/06/2004	347	405
13	C6125	08/02/2008	On and from 23/07/2007	364	1041

#### 1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Relationship to Parent Awards
4.	Introduction of Change
5.	Redundancy
6.	Termination of Employment
7.	Severance Pay
8.	Incapacity to Pay
9.	Alternative Employment
10.	Grievance and Dispute Resolution Procedures
11.	Savings Clause
12.	Exemptions
13.	Area, Incidence and Duration

#### 2. Definitions

- (i) "Union" means the Health Services Union.
- (ii) "Continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955* as at 22 July 1996. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this award.

- (iii) "Parent awards" mean -
- (a) The Private Hospital Employees' (State) Award published 25 January 2001 (321 IG 1008) as varied.
  - (b) Aged Care General Services (State) Award published 11 November 2000 (320 I.G. 1), as varied.

### **3. Relationship to Parent Awards**

This award shall be read and interpreted wholly in conjunction with the parent awards as set out in subclause (iii) of clause 2, Definitions, and, in so far as the terms of this award vary from the parent awards, the terms of this award shall prevail.

### **4. Introduction of Change**

- (i) Employer's duty to notify -
- (a) Where the 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 the Union.
  - (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, promotion 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.
- (ii) Employer's duty to discuss change -
- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (i) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
  - (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (i) of this clause.
  - (c) For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.

### **5. Redundancy**

- (i) Discussions before terminations -
- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision may lead to termination of the employee's employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
  - (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and, in any case, prior to the beginning of the period of notice required by clause 6, Termination of Employment.

These discussions shall cover, inter alia, any reasons for the proposed terminations, and measures to avoid or minimise the terminations, and measures to mitigate any adverse effects of any terminations on the employees concerned.

- (c) For the purposes of the discussion the employer shall, as soon as practicable and, in any case, prior to the beginning of the period of notice required by clause 6, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer. Provided that the making of any positions redundant shall not be deemed to be confidential information for the purposes of this award.

## 6. Termination of Employment

- (i) Notice for changes in production, program, organisation or structure -

This subclause sets out the notice provisions to be applied to terminations or proposed terminations of the employment of an employee by the employer in circumstances where the employer no longer wishes the job which the employee has been doing to be done by anyone, for any reason (other than technological change), and for reasons arising from production, program, organisation or structure in accordance with paragraph (a) of subclause (i) of clause 4, Introduction of Change.

- (a) An employer shall not terminate the employment of an employee unless the employer has given to the employee at least the following minimum periods of notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the said period of notice is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (ii) Notice for technological change -

This subclause sets out the notice provisions to be applied to terminations or proposed terminations by the employer for reasons arising from technology in accordance with paragraph (a) of subclause (i) of the said clause 4.

- (a) An employer shall not terminate the employment of an employee unless the employer has given to the employee at least three months' notice of termination.
- (b) Payment in lieu of the period of the notice above shall be made if the appropriate period of notice is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu of thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any act amending or replacing either of these Acts.



(iii) Time off during the notice period -

- (a) During the period of notice of termination given by the employer, each affected employee shall be allowed up to one day's time off without loss of pay for each week of notice, up to a maximum of five days off, for the purposes of seeking other employment.
- (b) If an employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, if the employer so requests, the employee shall be required to produce proof of attendance at an interview. If the employee is so required to produce such proof of attendance and fails to do so, the employee shall not be entitled to receive payment for such time.

(iv) Employee leaving during the notice period -

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments to which the employee would have been entitled had the employee remained with the employer until the expiry of such notice.

(v) Statement of employment -

The employer shall provide to each employee whose employment has been terminated, a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(vi) Notice to Centrelink

Where a decision has been made to terminate the employment of 15 or more employees, the employer shall notify Centrelink of this, as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(vii) Centrelink Employment Separation Certificate -

The employer shall provide to an employee whose employment has been terminated an Employment Separation Certificate in the form required by Centrelink.

(viii) Transfer to Lower Paid Duties -

Where an employee is transferred to lower paid duties for reasons set out in subclause (i) of clause 4, Introduction of Change, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary-time rates for the number of weeks of notice still owing.

(ix) Notice Required by Parent Award -

The period of notice prescribed by this award shall be in substitution for any notice required by the parent award.

## 7. Severance Pay

Unless the Industrial Relations Commission of New South Wales subsequently orders otherwise pursuant to clause 8, Incapacity to Pay, where the employment of an employee is to be terminated, for reasons set out in clause 4, Introduction of Change, the employer shall pay, in addition to other payments due to that employee, the following severance pay in respect of the following continuous periods of service:

- (i) Where the employee is under 45 years of age, the employer shall pay the employee in accordance with the following scale:

Years of Service	Minimum Amount of Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	7 weeks pay
3 years and less than 4 years	10 weeks pay
4 years and less than 5 years	12 weeks pay
5 years and less than 6 years	14 weeks pay
6 years and over	16 weeks pay

- (ii) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Years of Service	Minimum Amount of Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	5 weeks pay
2 years and less than 3 years	8.75 weeks pay
3 years and less than 4 years	12.5 weeks pay
4 years and less than 5 years	15 weeks pay
5 years and less than 6 years	17.5 weeks pay
6 years and over	20 weeks pay

- (iii) "Week's pay" means the ordinary time gross all-purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay and any over-award payments:

- (a) For employees covered by the Private Hospital Employees' (State) Award:

- (1) shift allowances as prescribed in subclause (ii) of clause 11, Penalty Rates and Shift Allowances;
- (2) weekend penalties as prescribed in subclause (iii) of the said clause 11;
- (3) service allowances as prescribed in clause 24, Service Allowance;
- (4) apprentices TAFE certificate allowances as prescribed in subclause (viii) of clause 10, Apprentices;
- (5) Driving allowances as prescribed in subclause (i) of clause 12, Allowances for Special Working Conditions, excluding an allowance relating to driving a vehicle for more than ten hours in any week and excluding an allowance relating to driving a vehicle for more than four hours in any one day or shift;
- (6) post-mortem assistance allowances as prescribed in subclause (ii) of clause 12, Allowances for Special Working Conditions;
- (7) leading hand allowances as prescribed in subclause (vii) of clause 12, Allowances for Special Working Conditions;
- (8) stenographic allowance as prescribed in Table 1-Rates of Pay, of Part B, Monetary Rates;
- (9) Sterilising Certificate allowance as prescribed in the said Table 1;
- (10) boiler attendant allowances as prescribed in Table 1;
- (11) Chief Radiographer service to another hospital allowance as prescribed in Table 1;

- (b) For employees covered by the Aged Care General Services (State) Award:
- (1) shift allowances as prescribed in subclauses (i) and (ii) of clause 11, Penalty Rates and Shift Allowances;
  - (2) weekend penalties as prescribed in subclause (iii) of the said clause 11;
  - (3) service allowances as prescribed in subclause (i) of clause 21, Service Allowance;
  - (4) broken shift allowances as prescribed in subclause (xi) of clause 4, Hours;
  - (5) apprentices' TAFE examination allowances as prescribed in subclause (vi) of clause 10, Apprentices;
  - (6) driving allowances as prescribed in subclause (i) of clause 12, Allowances for Special Working Conditions, excluding the allowance relating to driving a vehicle for more than ten hours in any week and excluding the allowance relating to driving a vehicle for more than four hours in any one day or shift;
  - (7) climatic and isolation allowances as prescribed in subclauses (i) and (ii) of clause 22 , Climatic and Isolation Allowances;
  - (8) leading hand allowances as prescribed in subclause (ii) of clause 23, Leading Hands;
  - (9) stenographic allowances as prescribed in Table 1-Monetary Rates, of Part B.

#### **8. Incapacity to Pay**

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales an employer may pay a lesser amount (or no amount) of severance pay than that contained in clause 7, Severance Pay, above.

The Industrial Relations Commission of New South Wales shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission of New South Wales thinks relevant, and the probable effect paying the amount of severance pay in the said clause 7 above will have on the employer.

#### **9. Alternative Employment**

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in clause 7, Severance Pay, above if the employer obtains acceptable alternative employment for an employee.

#### **10. Grievance and Dispute Resolution Procedures**

- (i) Procedures relating to grievances of individual employees -
- (a) The employee is required to notify the employer (in writing or otherwise) as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance and, if the matter has not been resolved, include reasons for not implementing any proposed remedy.

- (e) While a procedure is being followed, normal work must continue.
- (f) The employee may be represented by an industrial organisation of employees.
- (ii) Procedures relating to disputes, etc, between employers and their employees -
  - (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) Whilst a procedure is being followed, normal work must continue.
  - (d) The employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an industrial organisation of employees for the purposes of each procedure.
- (iii) In the case of employers who employ not more than 20 employees, or where the management structure is such that all employees are subject to the direct supervision and control of the employer, graduated steps for further discussion and resolution at higher levels do not apply.
- (iv) Whilst any of the above procedures are being followed, normal work must continue.
- (v) For any of the above procedure, the employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an industrial organisation of employees.

### **11. Savings Clause**

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the Association and any employer bound by this award.

### **12. Exemptions**

This award shall not apply to:

- (i) Novices, aspirants or persons who have taken the vows of religious orders.
- (ii) Employees of the Spastic Centre of New South Wales to whom the terms of the Spastic Centre of New South Wales Enterprise (State) Award published 7 November 2003 (341 I.G. 945); and the Spastic Centre of New South Wales (Allied Professional Staff) (State) Award effective 1 November 2003 (unpublished) apply.
- (iii) Employees of the Pitt Wood Presbyterian Homes to whom the terms of the Pitt Wood Presbyterian Homes Redundancy (State) Award published 6 October 2000 (319 IG 166) apply;
- (iv) Employees of Stewart House of South Curl Curl, to whom the terms of the Registered Industrial Agreement No. 6299, and any variations thereto or replacements thereof, apply.
- (v) Employees of the Richmond Fellowship of New South Wales to whom the terms of the Richmond Fellowship of New South Wales (State) Award published 14 April 2000 (314 IG 1055) apply;
- (vi) Employees of The Northcott Society whilst ever they are applying to their employees the terms of the The Northcott Society (State) Award published 8 September 2000 (318 IG 490);

### **13. Area, Incidence and Duration**

- (i) This award was made following a review under s.19 of the *Industrial Relations Act* 1996.

- (ii) This award rescinds and replaces the Private Hospitals and Aged and Disability Care Services Industry Redundancy Award published 27 February 1998 (303 IG 665) and all variations thereof;
- (iii) The area and incidence of this award shall be the same as that prescribed by the area, incidence and duration clauses of the parent awards, that is,
  - (a) clause 37, Area, Incidence and Duration and of the Private Hospital Employees' (State) Award; and
  - (b) clause 37, Area, Incidence and Duration of the Aged Care General Services (State) Award;
- (iv) This award shall apply in respect to employers who employ 15 or more employees immediately prior to the termination of employment of the employees, in the terms of clause 6 of this award.
- (v) Notwithstanding anything contained elsewhere in this award, this award shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
- (vi) Notwithstanding anything contained elsewhere in his award, this award shall not apply where employment is terminated as a consequence of conduct that justifies instance dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (vii) This award does not apply in relation to the termination or proposed termination of employment of an employee unless at the time of termination of his/her employment he/she has been, or will have been, continuously employed by the employer for at least 12 months ending at that time.
- (viii) This award does not apply in relation to the termination of employment of a casual employee.
- (ix) This award shall take effect on and from 18 May 2001 and shall have a nominal term of two years.
- (x) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.
- (xi) This award remains in force until varied or rescinded, the period for which it was made already having expired.

---

Printed by the authority of the Industrial Registrar.

(4175)

**SERIAL C7726**

## PRIVATE HOSPITALS, AGED CARE AND DISABILITY SERVICES INDUSTRY (TRAINING) (STATE) AWARD

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B8566	02/06/2000	First pay period on or after 26/11/1999	315	1404
7(e); Tables 1,2,3,4 of Part B	B8952	02/06/2000	First full pay period on or after 26/11/1999	315	1451
Erratum to B8952	B9194	28/07/2000			
7(e), Tables 1,2,3,4 of Part B	B9697	09/02/2001	First pay period on or after 26/11/2000	322	235
7(e); Part B	C0849	21/12/2001	First pay period on or after 26/11/2001	330	707
8A (1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
Arrangement, 5(e), 9, 10, Part B, Tables 5 & 6	C1257	09/08/2002	First pay period on or after 12/3/2002	335	894
2, 6(b(v)(ix)), 6(d), 7(e), 8(f) & Part B	C1730	28/03/2003	First pay period on or after 26/11/2002	338	1046
7 and Part B	C2412	12/03/2004	First pay period on or after 26/11/2003	343	725
Arrangement, 2, 3, 5, 6, 7, 8, 9, 10, 11, Appendix A	C2919	17/09/2004	On 13/04/2004	346	495
6, 7, Part B	C3165	18/02/2005	First pay period on or after 26/11/2004	348	650
6, 7, Part B	C4249	17/02/2006	First pay period on or after 26/11/2005	357	258
6, 7, Part B	C5168	17/11/2006	First pay period on or after 26/11/2006	361	837
11	C6124	08/02/2008	On and from 23/7/2007	364	1042
6, 7, Part B	C6235	08/02/2008	First full pay period on or after 26/11/2007	364	1043
6, 7, Part B	C6940	27/02/2009	First full pay period on or after 4/12/2008	367	403
6, 7, Part B	C7348	25/12/2009	First full pay period on or after 16/12/2009	369	1138
6, 7, Part B	C7586	2/09/2011	First full pay period on or after 16/12/2010	371	679

**PART A****Arrangement**

## PART A

Clause No.	Subject Matter
1.	Title
2.	Definitions
3.	Application
4.	Objective
5.	Training Conditions
6.	Employment Conditions
7.	Wages
8.	Grievance and Dispute Procedures
9.	Anti-Discrimination
10.	Leave Reserved
11.	Area, Incidence and Duration

## PART B

## MONETARY RATES

Table 1 - Industry/Skill Level A
Table 2 - Industry/Skill Level B
Table 3 - Industry/Skill Level C
Table 4 - School-based Traineeships
Table 5 - Hourly Rates for Trainees Who Have Left School
Table 6 - Hourly Rates for School-based Traineeships

## Appendix A - Industry/Skill Levels

**1. Title**

This Award shall be known as the Private Hospitals and Aged Care and Disability Services Industry (Training) (State) Award.

**2. Definitions**

"Structured Training" means that training which is specified in the Training Plan which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off the job in a traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a traineeship approved by the relevant NSW Training Authority and leads to a qualification set out in subclause (e) of clause 5, Training Conditions.

"Commission" means the Industrial Relations Commission of New South Wales.

"Employer" means the party specified as such in the Training Contract.

"Parent Award" means the Charitable Sector Aged and Disability Care Services (State) Award-2003, the Charitable Aged and Disability Care Services (State) Award, the Private Hospitals Employees (State) Award, the Private Hospital Professional Employees (State) Award, the Aged Care General Services (State) Award, the Charitable Institution (Professional Para-medical Staff) (State) Award, or any subsequent award which varies or replaces the above Awards, and/or an Enterprise Agreement of the Commission, which apply or would have applied to the trainee but for the operation of these awards.

"Relevant Union" means the Health Services Union.

"School-based Trainee" means a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a Traineeship which forms a recognised component of the Higher School Certificate curriculum, and is endorsed by the relevant NSW Training Authority and the NSW Board of Studies as such.

"Trainee" is an individual who is a signatory to a Training Contract registered with the relevant NSW Training Authority and is involved in paid work and structured training which may be on or off the job. A Trainee can be full time, part-time or school based and whose working conditions are in accordance with the relevant parent award.

"Traineeship" means a system of training which has been approved by the relevant NSW Training Authority and can include full-time Traineeships and part-time Traineeships including School-based Traineeships.

"Training Contract" means a contract entered into for the purposes of establishing a *Traineeship under the Apprenticeship and Traineeship Act 2001* (NSW).

"Appropriate State Legislation" means the *Apprenticeship and Traineeship Act 2001* (NSW) or any successor legislation.

"Year 10" for the purposes of this award means that any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

"Training Plan" means a program of training which forms part of a Training Contract registered with the Relevant NSW Training Authority:

"Relevant NSW Training Authority" means the Department of Education and Training, or successor organisations.

### **3. Application**

- (a) Subject to subclause (c) of this clause, this award shall apply to persons who are undertaking a Traineeship (as defined) and is to be read in conjunction with the Parent Award or legally registered industrial instrument of the Commission which covers the terms and conditions of employment of persons performing work covered by the Parent Award.
- (b) The terms and conditions of the Parent Award shall apply except where inconsistent with this award.
- (c) Notwithstanding the foregoing, this award shall not apply to employees who were employed by the Employer under an award referred to in subclause (a) of this clause prior to the date of approval of a Traineeship relevant to the Employer, except where agreed between the Employer and the Relevant Union.
- (d) At the conclusion of the Traineeship, this award ceases to apply to the employment of the Trainee and the Parent Award shall apply to the former Trainee.
- (e) This award does not apply to the Apprenticeship system or any training program which applies to the same occupation and achieves essentially the same training outcome as an existing Apprenticeship in an award existing as at the date of certification of this award or in an award that binds the Employer.

### **4. Objective**

The objective of this award is to assist with the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by Trainees. Except as provided for in clause 6, Employment Conditions, nothing in this award shall be taken to replace the prescription of training requirements in the Parent Award.



### 5. Training Conditions

- (a) The Trainee shall attend an approved training course or training program prescribed in the Training Contract or as notified to the trainee by the relevant NSW Training Authority in an accredited and relevant Traineeship.
- (b) A Traineeship shall not commence until the relevant Traineeship Contract, made by the Employer and the Trainee and lodged for registration with the relevant NSW Training Authority, provided that the Traineeship Contract is not in a standard format, a Traineeship shall not commence until the Traineeship Contract has been registered with the relevant NSW Training Authority. The Employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Contract and shall ensure that the Trainee receives the appropriate on-the-job training.
- (c) The Employer shall provide a level of supervision in accordance with the Traineeship Contract during the Traineeship period.
- (d) The Employer agrees that the overall training program will be monitored by officers of the relevant Training Authority and training records or work books may be utilised as part of this monitoring process.
- (e) Training shall be directed at:
  - (i) The achievement of key competencies required for successful participation in the workplace where these have not previously been achieved (eg, literacy, numeracy, problem solving, team work, using technology) and as are proposed to be included in the Australian Quality Training Framework, Certificates at Level 1, or future qualifications at Level 1, as determined from time to time by the Australian National Training Authority and/or the New South Wales Department of Education and Training.

This could be achieved through foundation competencies, which are part of endorsed competencies for an industry or enterprise.
  - (ii) The achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies), as are proposed to be included in the Australian Quality Training Framework, Certificates at Level 2, or future qualifications at Level 2, as determined from time to time by the Australian National Training Authority and/or the New South Wales Department of Education and Training.

### 6. Employment Conditions

- (a) Full-Time Traineeships -
  - (i) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration that a Trainee shall be subject to a satisfactory probation period of up to one month, which may be reduced at the discretion of the Employer. By agreement in writing, and with the consent of the relevant Training Authority, the Employer and the Trainee may vary the duration of the Traineeship and the extent of approved training, provided that any agreement to vary is in accordance with the relevant Traineeship.
  - (ii) Where the Trainee completes the qualification in the Training Contract earlier than the time specified in the Training Contract then the Traineeship may be concluded by mutual agreement.
  - (iii) Unless the relevant NSW Training Authority otherwise directs, the maximum duration for a Traineeship shall be 36 months.
- (b) Part-Time Traineeships -
  - (i) A Trainee shall be engaged as an employee on a part time basis by working less than full time ordinary hours.

- (ii) For traineeships not covered by Clause 7(a)(ii), the formula displayed in subclause (iii) for the calculation of wage rates shall apply.
- (iii) The wage rate shall be pro rata the full time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship, which may also be varied on the basis of the following formula.

$$\frac{\text{Full time Wage Rate X Trainee hours-Average weekly training time}}{30.4}$$

Note: 30.4 in the above formula represents 38 ordinary full time hours less the average training time for full time trainees (i.e. 20%).

- (iv) "Full time wage rate" means the appropriate rate as set out in Part B, Monetary Rates.
- (v) "Trainee hours" shall be the hours worked per week including the time spent in approved vocational training. For the purpose of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the Traineeship.
- (vi) "Average weekly training time" is based upon the length of the Traineeship specified in the Training Contract or the Training Contract as follows:

$$\frac{7.6 \times 12}{\text{Length of the Traineeship in months}}$$

Note 1: 7.6 in the above formula represents the average weekly training time for a full time Trainee whose ordinary hours are 38 per week.

Note 2: The parties note that the Training Contract will require a Trainee to be employed for sufficient hours to complete all requirements of the Traineeship, including the on-the-job work experience and demonstration of competencies. The parties also note that this would normally result in the equivalent of a full day's on-the-job work per week.

- (vii) A part-time Trainee shall receive, on a pro rata basis, all employment conditions applicable to a full time Trainee. All the provisions of this Award shall apply to part-time Trainees except as specified in this clause.
- (viii) A part time Trainee may, by agreement, transfer from a part time to a full-time Traineeship position should one become available.
- (ix) The minimum engagement periods specified in the Parent Award shall also be applicable to part-time Trainees.
- (x) Minimum and maximum hours of work for part-time employees specified in the Parent Award shall apply to part-time Trainees also.

#### **Example of the calculation for the Wage Rate for a Part-Time Traineeship**

A school student commences a Traineeship in Year 11. The ordinary hours of work in the Parent Award are 38. The Training Contract specifies two years (24 months) as the length of the Traineeship.

"Average weekly training time" is therefore  $7.6 \times 12/24 = 3.8$  hours.

"Trainee hours" totals 15 hours; these are made up of 11 hours work which is worked over 2 days of the week plus 1-1/2 hours on the job training plus 2-1/2 hours off the job approved training at school and at TAFE.

So the wage rate in Year 11 is:

$$\$264 \times \frac{15 - 3.8}{30.4} = \$97.26 \text{ plus any applicable penalty rates under the Parent Award.}$$

The wage rate varies when the student completes Year 11 and passes the anniversary date of 1 January the following year to begin Year 12 and/or if "Trainee hours" changes.

- (c) School-based Traineeships -
- (i) School-based Trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final Higher School Certificate examination period and ending upon the completion of the individual's last examination period.
  - (ii) For the purposes of this award, a School-based Trainee shall become an Ordinary Trainee as January 1 of the year following in which they cease to be a school student.
- (d) An Employer shall not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee, and to the Relevant NSW Training Authority in accordance with the *Training Contract or the Apprenticeship and Traineeship Act 2001 (NSW)*.
- An Employer who chooses not to continue the employment of a Trainee upon the completion of the Traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.
- (e) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Contract.
- (f) Where the employment of a Trainee by an Employer is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Parent Award or any other legislative entitlements.
- (g)
- (i) The Training Contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure that the training program is successfully completed.
  - (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of the Parent Award.
  - (iii) No Trainee shall work shiftwork unless the parties to this Award agree that such shiftwork makes satisfactory provision for structured training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
  - (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Parent Award.
- (h) All other terms and conditions of the Parent Award that are applicable to the Trainee but for this award shall apply unless specifically varied by this Award.
- (i) A trainee who fails to complete the Traineeship or who is not offered employment with the Employer on successful completion of the Traineeship shall not be entitled to any severance payments.

## 7. Wages

- (a)
- (i) The weekly wages payable to full time trainees shall be as follows:

Industry/Skill Level A	Table 1
Industry/Skill Level B	Table 2

Industry/Skill Level C	Table 3
School Based Trainees	Table 4

- (ii) Table 5, Hourly Rates for Trainees Who Have Left School, and Table 6, Hourly Rates for School-Based Traineeships of Part B, Monetary Rates, are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in approved training. These rates are derived from a 38-hour week.
  - (iii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship, which includes approved training as defined in this Award.
  - (iv) The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.
- (b)
- (i) Appendix A (i) of Part B, Monetary Rates, sets out the existing approved Traineeships. Appendix A (ii) of Part B, Monetary Rates, sets out the industry/skills level of existing Traineeships as at the date of certification of this award. The industry/skill levels contained in Appendix A are prima facie the appropriate levels but are not determinative of the actual skill levels (ie Level A, B or C) that may be contained in a Traineeship Scheme. The determination of the appropriate skill level for the purpose of determining the appropriate wage rate shall be made on the following criteria:
    - (A) Any agreement of the parties;
    - (B) The nature of the industry;
    - (C) The total training plan;
    - (D) Recognition that training can be undertaken in stages;
    - (E) The exit skill level in the Parent Award contemplated by the Traineeship.
  - (ii) In the event that the parties disagree with such determination it shall be open to any party to the award to seek to have the matters in dispute determined by the Commission.
- (c) For the purposes of Part B, Monetary Rates, "out of school" shall refer only to periods out of school beyond Year 10, shall be deemed to:
- (i) include any period of schooling beyond Year 10 which was not part of nor contributed to a completed year of schooling;
  - (ii) include any period during which a Trainee repeats in whole or part of a year of schooling beyond Year 10;
  - (iii) not include any period during a calendar year which a year of schooling is completed; and
  - (iv) have effect on an anniversary date being January 1 in each year.
- (d) At the conclusion of the Traineeship, this award ceases to apply to the employment of the Trainee and the Parent Award shall apply to the former Trainee.
- (e) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
- (a) any equivalent over-award payments; and/or

- (b) award wage increases since 29 May 1991 other than safety net State Wage Case and minimum rates adjustments.

### **8. Grievance and Dispute Procedures**

- (a) Where any grievance, question, dispute or difficulty arises it shall be dealt with as close to its source as possible. Where a matter is not resolved, further attempts to resolve the matter must be made at progressively higher levels of authority.
- (b) Reasonable time limits will be allowed at each level for any necessary discussion, investigation and consideration of the matter. Whilst these procedures are continuing, the status quo shall remain and no stoppage of work or any other form of ban of work shall be applied.
- (c) A grievance of an individual employee should firstly be put to his/her supervisor. At the conclusion of discussions between the employee and the Employer, the Employer must provide a response to the employee's grievance, and, in the event the matter is not resolved, reasons for not implementing any proposed remedy.
- (d) An employee or employees may be represented by the Health Services Union, or other appropriate person, and the Employer, by an industrial organisation, at any stage of these procedures.
- (e) In the event that the matter remains unresolved, the matter may be referred to the Commission.
- (f) If the question, dispute or difficulty relates to training, the matter may be dealt with under the *Apprenticeship and Traineeship Act 2001* (NSW).

### **9. Anti-Discrimination**

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, 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) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

**10. Leave Reserved**

Leave is reserved to the parties to the award to vary this award by consent to reflect the terms of the Training Wage Interim (State) Award or any successor.

**11. Area, Incidence and Duration**

- (i) This award shall apply to all classes of Trainees who would ordinarily be covered by the Parent Award.
- (ii) This award rescinds and replaces the Charitable Sector Aged and Disability Care Services Jobskills (State) Award published 16 December 1994 (282 I.G. 1317) and all variations thereof; the Charitable Sector Aged and Disability Care Services (Training Wage) (State) Award published 25 September 1998 (306 I.G. 817); and the Aged Care General Services (Training Wage) (State) Award published 28 May 1999 (309 I.G. 493) and all variations thereof.
- (iii) This award shall take effect on and from the beginning of the first pay period to commence on or after 1 September 1999 and shall have a nominal term of 12 months.
- (iv) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 23 July 2007.
- (v) This award remains in force until varied or rescinded, the period for which it was made already having expired.

**PART B****MONETARY RATES****Table 1 - Industry/Skill Level A**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at industry/skill Level A.

	Highest Year of Schooling Completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	349.00
Plus 1 year out of school	291.00	349.00	407.00
Plus 2 years	349.00	407.00	472.00
Plus 3 years	407.00	472.00	540.00
Plus 4 years	472.00	540.00	540.00
Plus 5 years or more	540.00	540.00	540.00

The average proportion of time spent in structured training which has been taken into account in setting the rate is 20 per cent.

**Table 2 - Industry/Skill Level B**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at industry/skill Level B.

	Highest Year of Schooling Completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	338.00
Plus 1 year out of school	291.00	338.00	389.00
Plus 2 years	338.00	389.00	457.00
Plus 3 years	389.00	457.00	521.00
Plus 4 years	457.00	521.00	521.00
Plus 5 years or more	521.00	521.00	521.00

The average proportion of time spent in structured training which has been taken into account in setting the rate is 20 per cent.

**Table 3 - Weekly Rates - Industry/Skill Level C**

Where the accredited training course and work performed are for the purpose of generating skills which have been defined for work at Skill Level C.

	Highest Year of Schooling Completed		
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School Leaver	264.00	291.00	335.00
Plus 1 year out of school	291.00	335.00	377.00
Plus 2 years	335.00	377.00	420.00
Plus 3 years	377.00	420.00	470.00
Plus 4 years	420.00	470.00	470.00
Plus 5 years or more	470.00	470.00	470.00

The average proportion of time spent in Structured Training which has been taken into account in setting the above rates is 20 per cent.

**Table 4 - School-based Traineeships**

	Year of Schooling	
	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School based Traineeships Skill Levels A, B and C	264.00	291.00

The average proportion of time spent in structured training which has been taken into account in setting the rate is 20 per cent.

**Table 5 - Hourly Rates for Trainees Who Have Left School**

SKILL LEVEL A	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School leaver	8.69	9.57	11.48
1 year after leaving school	9.57	11.48	13.34
2 years +	11.48	13.34	15.55

3 years +	13.34	15.55	17.77
4 years +	15.55	17.77	17.77
5 years +	17.77	17.77	17.77
<b>SKILL LEVEL B</b>			
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School leaver	8.69	9.57	11.11
1 year after leaving school	9.57	11.11	12.79
2 years +	11.11	12.79	15.03
3 years +	12.79	15.03	17.12
4 years +	15.03	17.12	17.12
5 years +	17.12	17.12	17.12
<b>SKILL LEVEL C</b>			
	Year 10 SWC 2010 (4.25%) \$	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
School leaver	8.69	9.57	11.00
1 year after leaving school	9.57	11.00	12.38
2 years +	11.00	12.38	13.82
3 years +	12.38	13.82	15.47
4 years +	13.82	15.47	15.47
5 years +	15.47	15.47	15.47

**Table 6 - Hourly Rates for School-based Traineeships**

	Year of Schooling	
	Year 11 SWC 2010 (4.25%) \$	Year 12 SWC 2010 (4.25%) \$
	Skills levels A, B and C	8.69

**APPENDIX A**

Any Traineeship or Traineeships for a declared calling as defined by the *Apprenticeship and Traineeship Act 2001* (NSW).

**Industry/Skill Level A**

## Community Services

Certificate III - Community Services-Aged Care Work  
 Certificate III - Community Services-Disability Work  
 Certificate III - Community Services-Home & Community Care  
 Certificate III - Community Services Work  
 Certificate IV - Community Services-Alcohol & Other Drugs Work  
 Certificate IV - Community Services-Disability Work  
 Certificate IV - Community Services-Service Co-ordination  
 Certificate IV - Community Services Work

## Health

Certificate III - Aboriginal and Torres Strait Islander Health  
 Certificate III - Health - Aboriginal & Torres Strait Islander Health Worker  
 Certificate III - Health Service Assistance-Allied Health Assistance  
 Certificate III - Health Service Assistance-Client/Patient Services  
 Certificate III - Health Service Assistance-Hospital & Community Health



## Pharmacy Assistance

Certificate III - Health Service Assistance-Nutrition & Dietetic Support  
Certificate III - Health Service Assistance-Operating Theatre Support  
Certificate III - Health Service Assistance-Pathology Assistance  
Certificate III - Health Service Assistance-Sterilisation Services  
Certificate III - Health Services-Dental Assisting  
Certificate III - Health Support Services-Cleaning Support Services  
Certificate III - Health Support Services-Client/Patient Support Services  
Certificate III - Health Support Services-Laundry Support Services  
Certificate III - Health Support Services-General Maintenance  
Certificate III - Health Support Services-Grounds Maintenance  
Certificate IV - Health Service Assistance-Hospital & Community Health

## Pharmacy Technician

Certificate IV - Health Services-Basic Emergency Care  
Certificate IV - Health Services-Dental Assisting-Dental Radiography  
Certificate IV - Health Services-Dental Assisting-Oral Health Education  
Certificate IV - Health Services-Health Support Services-Supervision  
Certificate IV - Health Services-Pathology Specimen Collection

## General

Certificate III - Office Administration  
Certificate III - Transport and Storage (Warehousing)  
Certificate III - Laboratory Operations-Laboratory Skills  
Certificate IV - Information Technology  
Certificate IV - Information Technology - User Support  
Certificate IV - Transport and Storage (Warehousing)

**Industry/Skill Level B**

## Community Services

Certificate II - Community Services - Support Work

## Health

Certificate II - Health Services-Health Support Services-Cleaning Support Services  
Certificate II - Health Services-Health Support Services-Client/Patient Support Services  
Certificate II - Health Services-Health Support Services-Food Support Services  
Certificate II - Health Services-Health Support Services-General Maintenance  
Certificate II - Health Services-Health Support Services-General Transport Support  
Certificate II - Health Services-Health Support Services-Grounds Maintenance  
Certificate II - Health Services-Health Support Services-Laundry Support Services  
Certificate II - Health Services-Health Support Services-Stores  
Certificate II - Health Support Services

General

Certificate II - Amenity Horticultural Operations  
Certificate II - Clerical Administrative Skills  
Certificate II - Customer Support  
Certificate II - Hospitality Operations  
Certificate II - Information Technology  
Certificate II - Laboratory Operations-Laboratory Skills  
Certificate II - Transport and Storage (Warehousing)  
Certificate II - Office Administration

---

Printed by the authority of the Industrial Registrar.

(577)

**SERIAL C7736****RESTAURANTS, &c., EMPLOYEES (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B9292	19/01/2001	First pay period on or after 01/05/1997	321	759
Part B	B9405	19/01/2001	First pay period on or after 18/08/2000	321	958
32 (32.1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
Part B	C0612	14/12/2001	First full pay period on or after 18/08/2001	330	442
Part B	C1397	13/09/2002	First full pay period on or after 18/08/2002	336	251
Part B	C1992	15/08/2003	First full pay period on or after 18/08/2003	340	984
3, 5, 7, 9, 11, 12, 17, 18, 19, 21, 23, 26, 27, 28, 29, 31, 32, 33	C2910	01/10/2004	On and from 22/06/2004	346	696
Part B	C3119	17/12/2004	First full pay period on or after 18/08/2004	347	850
Part B	C3927	21/10/2005	First full pay period on or after 18/8/2005	354	608
1, 8, 22A	C4779	06/10/2006	From 14/03/2006	361	307
8	C4806	06/10/2006	From 14/03/2006	361	306
Part B	C5014	15/12/2006	First full pay period on or after 24/08/2006	361	1218
2, 9, 14	C5327	23/02/2007	From 01/01/2007	362	142
17, 18, 20, 21	C5440	06/07/2007	On and from 19/12/2005	362	1365
Part B	C5945	12/10/2007	First full pay period on or after 24/08/2007	363	1491
2, 3, 4, 5, 8, 11, 14, 25, 33	C6163	30/11/2007	On and from 03/10/2007	364	609
1, 3, 26	C6328	08/02/2008	First full pay period on or after 01/11/2007	364	1056
Part B	C6789	28/11/2008	First full pay period on or after 24/08/2008	366	1375
Part B	C7233	27/11/2009	First full pay period on or after 18/09/2009	369	852
Part B	C7587	02/09/2011	First full pay period on or after 16/12/2010	371	686

## PART A

### 1. Arrangement

Clause No.      Subject Matter

#### PART A

- 17. Annual Leave
- 32. Anti-Discrimination
- 14. Apprentices
- 33. Area, Incidence and Duration
- 1. Arrangement
- 21. Bereavement Leave
- 25. Blood Donors
- 8. Casual Employees
- 3. Classification Structure
- 2. Definitions
- 31. Employee Representative and Union Business
- 30. Exhibition of Award in Workplace
- 29. Grievance Handling and Dispute Procedure
- 5. Hours
- 13. Juniors
- 24. Jury Service
- 23. Laundry Allowance
- 6. Make-Up Time
- 7. Meal Break/Rest Pause
- 10. Mixed Functions
- 31A. Operation of the Sydney Olympic and Paralympic Games 2000 (State) Award
- 11. Overtime and Penalty Rates
- 18. Parental Leave
- 15. Payment of Wages
- 20. Personal/Carers' Leave
- 12. Public Holidays
- 26. Redundancy and Technological Change
- 22A. Secure Employment (Occupational Health and Safety)
- 19. Sick Leave
- 27. Supported Wage
- 4. Terms of Employment
- 28. Traineeships
- 9. Wages
- 22. Work Clothes and Safety Equipment
- 16. Working Together

#### PART B

#### MONETARY RATES

Table 1 - Wage Rates

Table 2 - Other Rates and Allowances

### 2. Definitions

- 2.1 "Casual Employee" means an employee who is engaged as such and paid as such.
- 2.2 "Establishment" includes more than one restaurant if they are operated by the same employer and are located in the same structure or place.

- 2.3 "Employee" means an employee whose conditions of employment are regulated by this award.
- 2.4 "Full-time employee" means a permanent employee who is engaged to work an average of 38 ordinary hours in accordance with this award.
- 2.5 "Part-time employee" means a permanent employee who is engaged to work not less than 9 or 15 hours per week (as set out in clause 5.7), nor more than 32 ordinary hours per week.
- 2.6 "Restaurant" means any building, stand, stall, tent, vehicle or boat or any other structure or place on or from which food is sold or served principally for consumption at that structure or place or adjacent to it.
- 2.7 School based apprentice is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate. The school based apprenticeship may commence upon the completion of the Year 10 School Certificate exams. Such school based apprenticeships are undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

### 3. Classification Structure

- 3.1 The following classification structure shall apply:

- 3.1.1 GRADE 1 is an employee who is:

3.1.1.1 undertaking up to three months on-the-job training so as to enable the employee to be employed as a Grade 2 employee; or

3.1.1.2 providing general assistance to employees of a higher grade, not including cooking or direct service to customers, and is primarily engaged in one or more of the following:

Cleaning, tidying and setting up of kitchen, food preparation and customer services areas, including the cleaning of equipment, crockery and general utensils;

Assembly and preparation of ingredients for cooking;

Handling pantry items and linen;

Setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses.

General cleaning, gardening and labouring tasks.

- 3.1.2 GRADE 2 is an employee who is primarily engaged in one or more of the following:

"Heating pre prepared meals and/or preparing simple food items, such as sandwiches, salads and toasted foodstuffs.

Undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, clearing tables, taking customer orders at a table.

Taking orders by telephone or whilst stationed at a fixed ordered point, serving food and/or beverages to tables.

Service from a snack bar, buffet or meal counter.

Receipt of monies, giving change, operation of cash registers, and use of electronic swipe input devices.

Greeting and seating guests under general supervision.

Supplying, dispensing or mixing of liquor, including cleaning of bar areas and equipment, preparing the bar for service, taking orders and serving drinks and assisting in the cellar.

Receiving, storing and distributing goods not involving the extensive use of documents and records.

Attending a cloakroom.

Laundry and specialised cleaning duties involving the use of specialised cleaning equipment and/or chemicals.

Allocated building, maintenance and/or gardening duties."

3.1.3 GRADE 3 is an employee who is primarily engaged in one or more of the following:

Preparing and cooking a limited range of basic food items such as breakfasts, grills and snacks.

Waiting duties of food and/or beverages, including providing assistance in choosing the meal and wines by providing detailed information when required of each item listed on menus, advising customers on the appropriate choices of wine and providing information on wine types and all items on the wine list, taking customer orders, serving food and/or beverages, supervises or undertakes the clearing of tables after and during meals, receipt of monies, taking reservations, greeting and seating guests.

Preparing and serving a range of drinks, including blended and other cocktails.

Receiving, storing and distributing goods not involving the control of the store or cellar.

Security work requiring the holding of an appropriate licence.

Assisting in the instruction on a one to one basis of employees of a lower grade.

3.1.4 GRADE 4 is an employee who is primarily engaged in one or more of the following:

Undertaking general cooking duties, including a la carte cookery, baking, pastry cooking or butchery.

Full control of a cellar and/or store, including stock control and ordering.

Designing, preparing and serving a range of sophisticated cocktails and other drinks, or duties performed by a head bar person.

Performing specialist waiting duties in a fine dining or otherwise complex restaurant environment, such as those performed by a head waiter.

Performing specialist wine waiting and ordering duties.

Providing basic supervision and instruction to employees of a lower grade.

3.1.5 GRADE 5 is an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:

Undertaking cooking, baking, pastry cooking or butchering duties.

Undertaking general and specialised waiting duties in a restaurant.

Other trade work appropriate to an employee's trade.

The employer may require the employee to provide proof of any previous service or a trade certificate at the time of commencing employment. Where it is established that the employee failed to disclose that information when required to do so such service or qualification shall not be taken into account when assessing any later claim on the employer.

- 3.1.6 GRADE 6 is an employee who is engaged in supervising, training and co-ordinating staff and who is responsible for the maintenance of service and operational standards. Duties may include preparation of operational reports, development of stock control and security procedures, menu planning, staff rostering and staff recruitment and induction, but an employee at this grade shall not have the right to engage or terminate the services of employees.
- 3.1.7 GRADE 7 is an employee who has completed an apprenticeship or has passed the appropriate trade test in cookery, butchery, baking or pastry cooking and has completed appropriate additional training and who is engaged in supervising other trade qualified cooks.
- 3.2 In the event of uncertainty or any dispute arising over classifying employee(s) within the classification structure, the parties shall refer to the training guidelines issued by Tourism Training Australia. These guidelines indicate the relevant training modules, and in more detail, the required competencies that relate to each grade.
- 3.3 If an employee has been assessed as having achieved the competency level by either:  
completing a course recognised by the Australian Hospitality Review Panel; or ACCESS skills assessment scheme  
and is performing the duties/functions referred to within the appropriate grade then the employee shall be paid at that grade.
- 3.4 The above grades cover all employees working in a restaurant, but not managerial staff whose principal functions are not described in the grade descriptions. Where an employee's duties are not mentioned within these classifications, the employee shall be classified in a grade which, by reference to the grading descriptors, most closely reflects the skills and responsibilities of the job.

#### **4. Terms of Employment**

- 4.1 Employees shall be engaged on a full-time, part-time or casual basis. The basis of the engagement will not be changed without giving the employee 28 day's notice of the change.
- 4.2 Upon engagement an employee shall be informed of:
- 4.2.1 Whether the employee is to be engaged on a full time, part time or casual basis.
- 4.2.2 The employee's classification, job description and the duties to be performed.
- 4.2.3 The working times including when meal breaks and rest breaks will be taken.
- 4.2.4 Who will supervise the employee.
- 4.2.5 The training the employee will receive.
- 4.2.6 The career path the employee can expect.
- 4.2.7 Whether the employee start work on probation (not applicable to apprentices or trainees).
- 4.3 Probationary Employment:
- 4.3.1 Employees engaged as full-time or part-time employees without any previous service with the employer may be employed on probation for the first 14 days of employment, during which period the employment may be terminated with one day's notice.

4.3.2 The work of employees on probation will be assessed by the employer, and, the employee will be told no later than 14 days after the employee has started whether the employee will continue in employment after the probation period.

#### 4.4 Leaving Employment.

4.4.1 An employer may terminate the employment of a full-time or part-time employee by giving the amount of notice set out below for the employee's period of continuous employment or by paying the employee the monies the employee would otherwise have earned during this period:

less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

4.4.2 An employer will not terminate an employee's employment unless the employee has been employed with the employer for less than one month or the employer has told the employee that the employer is unhappy with the employee's employment and the employee has not improved after being given a chance to do so.

4.4.3 Nothing in this clause shall affect the right of the employer to dismiss an employee without notice or without paying any monies instead of notice if the employee has acted dishonestly in employment, the employee has unreasonably failed to carry out a direction properly given to them by a person in charge, or the employee has otherwise behaved so badly as to justify being dismissed without notice.

4.4.4 A full-time or part-time employee when leaving employment must give the employer at least one week's notice or the employer may deduct from wages owing any part of the notice period not worked. An employer shall not terminate an employee's employment only because the employee has given notice.

4.4.5 On termination of employment for any reason the employer will give a full or part-time employee a certificate of service stating how long the employee had worked for the employer and what job the employee did.

4.5 Employees shall perform such work as the employer shall, from time to time, reasonably require (including working reasonable overtime) provided the employee is competent to do the work or, if not, the employer is prepared to train the employee to do the work.

4.6 Where an employee is detained at work after the normal finishing time and it is then too late to travel by the employee's usual transport to go home, the employer shall either arrange transport or repay the employee's taxi fare.

4.7 Employees shall not to be asked to pay any cash shortages unless the employee deliberately failed to charge the customer the full amount or deliberately failed to collect the amount payable.

### 5. Hours

5.1 Full time employees will work not more than an average of 38 ordinary hours per week in accordance with this award. These ordinary hours may not be averaged over more than a 4 week period (except if the employee is a seasonal employee).

5.2 Full-time and part-time employees will work not more than 5 days per week or, by agreement between the employer and the employee, not more than 20 days in a 4 week period.



5.3 Rosters:

5.3.1 The employer shall display a roster in a place accessible to all employees. The roster shall set out the starting, finishing and meal times for full-time and part-time employees for each week. The roster shall be posted at least seven days before its commencement.

5.3.2 Subject to other clauses of this award, employees must work at such times and on such days as the employer needs them. An employer cannot change the roster of a full-time or part-time employee without giving the employee 7 days notice except in an emergency beyond the employers control. The employer will discuss any change with the employee and try to take into account the employee's family and personal needs.

5.4 The ordinary daily working hours of full-time and part-time employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, an employee, other than an employee under 18 years old, may work up to 12 ordinary hours including the time taken for a paid meal break, without the payment of a penalty under clause 11.1.

5.5 Full-time and part-time employees will be given 10 clear hours off between finishing work on one shift and starting work on the next shift or paid double the employees ordinary rate of pay for all time worked until the employee has had ten clear hours off.

5.6 If a full-time or part-time employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.

5.7 A part time employee's ordinary hours shall be:

5.7.1 where there are less than 15 full-time and part-time employees employed at the establishment, not less than 9 hours per week and not more than 128 hours per four week period.

5.7.2 where there are 15 or more full-time and part-time employees employed at the establishment, not less than 15 hours per week and not more than 128 hours per four week period.

5.8 If a part-time employee is not given at least 7 days notice of a change of rostered hours the employee will be paid an extra 10% for the whole of the period of any affected shift(s) (and any overtime or other penalty payments will be calculated on this extra 10%) except where the change of roster has been requested by the employee.

5.9 Subject to clause 11, Overtime and Penalty Payments, if a part-time employee is asked to work extra hours beyond the employee's rostered hours, the employer will pay the employee for the employees work during that time at the rate that would be paid to a casual employee. In addition to all other payments, the rate shall include payment required by the Annual Holidays Act on termination of employment. Hours worked under the provisions of this subclause shall not otherwise be taken into account in determining a person's entitlement to annual leave payments whether on termination of employment or otherwise.

5.10 Seasonal Workers:

5.10.1 If the amount of the employer's business changes substantially during the year because of seasonal factors, the employee and the employer can agree to treat a full-time or part-time employee as a seasonal employee. If so, the employer will pay the employee by equal weekly or fortnightly payments notwithstanding the number of hours the employee works in any one day provided that averaged over any period of 52 weeks the employer will not have paid the employee less than the monies the employee would be entitled to receive throughout that period under this award.

5.10.2 If an employee is terminated by the employer, except in circumstances allowing the employer to dismiss them without notice or by the employee for pressing social or domestic or personal reasons the employer will pay the employee any higher amount which would have been earned if the employee had not become a seasonal worker under this clause, calculated from the last

anniversary of the date the employee commenced working for the employer as a full-time or part-time employee.

- 5.11 Where an employee works a broken shift the employer will pay the employee for not less than 8 hours worked on any one shift. The shift will be spread over not more than 2 periods within a span of not more than 14 hours inclusive of meal breaks. For each broken shift worked, an employee shall be paid an allowance of one half of the hourly ordinary rate of pay payable from time to time to employees at the level 2 work classification.

#### **6. Make-Up Time**

- 6.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- 6.2 An employee on a regular night shift may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

#### **7. Meal Break/Rest Pause**

- 7.1 An employee will be given a meal break of between 30 minutes and 1 hour after working not more than 5 hours. The first meal break taken on any shift shall be unpaid. The second meal break will be a paid break, and the employee will be paid a meal allowance for the second break the amount of which is set out in Item 1 of Table 2 of Part B or given a meal. If because (and only because) the work the employee is doing means that the employee cannot take a meal break by the end of 5 hours, the employer can ask the employee to work up to a further hour before the employee takes the break, and that break will become a paid break.
- 7.2 In addition to the employee's meal break(s), an employee will be given a paid rest pause of ten minutes once during each work period of 5 hours.

#### **8. Casual Employees**

- 8.1 Casual employees will not be entitled to annual leave loading or compassionate or bereavement leave or to payment for jury service or as a blood donor and clauses 5, 6, 18, 19, 20, 21, 25, 26, 27 and 29 do not apply to them.
- 8.2 The ordinary daily working hours of casual employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, hours per shift may be not more than 12 including the time taken for meal breaks (employees under 18 years old will not be required to work more than 10 hours in any one shift), without the payment of a penalty under clause 11. 1.
- 8.3 If a casual employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.
- 8.4 Casual employees will not be entitled to any public holiday penalty unless the employee works on a public holiday.
- 8.5 Secure Employment

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

## (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of twelve months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of twelve months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach-agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or

part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

(viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

(d) This clause has no application in respect of organisations which are properly registered as Group Training

Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

(e) Exemption

The abovementioned casual conversion clause will not apply to persons who:

(a) perform work pursuant to the *Technical and Further Education Commission Act 1990*.

## 9. Wages

9.1 Full-Time Employees:

9.1.1 Adult full-time employees shall be paid the appropriate minimum weekly wage rate for the employees grade as set out in Table 1 of Part B of this award.

9.1.2 Wage rates will be calculated to the nearest 10 cents.

9.2 Part-Time Employees:

9.2.1 Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-eight.

9.2.2 Terms and conditions of this award applicable to full-time employees shall apply to part-time employees on a pro-rata basis.

9.3 Casual Employees:

9.3.1 Casual employees will be paid for each hour worked 1/38th of the weekly rate for the grade which applies to the employee plus 20%. All overtime and other penalty payments will be calculated on this rate.

9.3.2 Casual employees are also entitled to be paid 1/12th of the employees ordinary pay, as defined in the *Annual Holidays Act 1944* as amended, to pay for the employees annual holiday entitlement.

9.4 Rates of Pay for school based apprentice

9.4.1 The hourly rates for full time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the job training.

9.4.2 For the purposes of subclause 9.4.1 of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.

- 9.4.3 Where this Award specifies a weekly rate for full time apprentices the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

### 10. Mixed Functions

An employee who is required by the employer to carry out work on a temporary basis that carries a higher rate of pay than the employee's ordinary classification, shall be paid the higher rate while doing that work. This clause shall not apply to work performed under supervision for training purposes.

### 11. Overtime and Penalty Rates

- 11.1 If the employer requires an employee to work:

- 11.1.1 overtime being for full time employees more than 38 hours per week or the employer may average these hours over up to a 4 week period (except if the employee is a seasonal employee),
- 11.1.2 overtime being for part time employees more than 128 hours in a 4 week period (except if the employee is a seasonal employee),
- 11.1.3 overtime being more than the ordinary daily working hours set out in subclause 5.4,
- 11.1.4 on a Saturday (except if the employee works a regular night shift referred to in clause 11.2),
- 11.1.5 on a Sunday, or
- 11.1.6 on a public holiday

the employer will pay the employee extra wages (called a penalty) being:

in the case of 11.1.1 and 11.1.2 time and one half of the ordinary rate of pay for the first 2 hours worked and after that double time,

in the case of 11.1.3 double the ordinary rate of pay for an overtime worked,

in the case of Saturday work time and a quarter of the ordinary rate of pay for all time worked,

in the case of Sunday work time and a half of the ordinary rate of pay for all time worked, and

in the case of public holidays work two and a half times the ordinary rate of pay for all time worked.

- 11.2 Where an employee works ordinary hours between midnight and 6.00am, they are to be paid an extra 30% penalty for all time worked during these hours. Notwithstanding the foregoing, if the employee works more than half of a regular shift on any day between midnight and 6.00am, the employer will pay the employee for all time worked on that shift an extra 30% penalty and clauses 11.1.3 and 11.1.4 will not apply to the employee. The above penalties are not payable for work on Sundays and public holidays, or for overtime worked under clause 11. 1.

- 11.3 Time off in lieu of payment for overtime:

The employee may, with the consent of the employer take time off within 12 months of becoming entitled to these payments instead of being paid with the time off being calculated at the rate of one hour off for every hour worked. Time off not taken within 12 months will be paid out at the overtime rates applying at the time it was earned.

## 12. Public Holidays

- 12.1. Public holidays are New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day and the days on which Australia Day, Anzac Day, Queen's Birthday and Labour Day are observed as public holidays.
- 12.1. Where a substitute day is proclaimed or gazetted to replace any of the above days, the substituted day shall be the public holiday in lieu of the original day.
- 12.2 If an employee works on a public holiday, the employee shall be paid at the rate of double time and one-half for all time worked.
- 12.3 If an employee, other than a casual employee, does not work and would normally be rostered to work on a public holiday, the employee will be paid the employees normal ordinary wages for that week.
- 12.4 If an employee, other than a casual employee, is not normally rostered to work regularly on the same days each week and the employee is not rostered to work on a public holiday, the employer will either pay the employee an additional day's wages, or add a day to the employees annual holiday's leave, or give the employee another day off on ordinary pay within 28 days after or within one week before that public holiday.
- 12.5 An employer may not change an employee's normal rosters to avoid paying the employee for a public holiday.
- 12.6 If an employee, other than a casual employee, is absent from work on the working day before or the working day after a public holiday without reasonable excuse, the employee shall not be entitled to payment for such a holiday.
- 12.7 An employee, other than a casual employee, will be given an additional day as a public holiday. The employee will become entitled to this on the anniversary of each continuous year of employment with an employer. That day can be taken on a day which is convenient to the employee and employer as a public holiday and is instead of a union picnic day.

## 13. Juniors

The minimum weekly wage rate for a junior employee shall be calculated by applying the following percentages of the appropriate adult rate for the classification in which the employee is employed:

Age	%
17 years of age and under	62
18 years of age	70
19 years of age	80
20 years of age	90

## 14. Apprentices

- 14.1 The minimum weekly wage rate for apprentices shall be calculated by applying the following percentages to the total rate of a Grade 5 employee:

% of Grade 5

Four year apprentice cooks -	
1st year (or equivalent training stage)	46
2nd year (or equivalent training stage)	54
3rd year (or equivalent training stage)	67
4th year (or equivalent training stage)	80

"Equivalent training stage" recognises that an employee could receive credit for training undertaken prior to the commencement of the employees apprenticeship or have the ability to accelerate the period of the employees apprenticeship.

#### 14.2 Tool Allowance

An apprentice in cooking who provides the employees own tools shall be paid an allowance set out in Item 2 of Table 2 of Part B.

#### 14.3 Progression through Wage Structure

14.3.1 School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.

14.3.2 The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

#### 14.4 Conversion from a school based to a full time apprenticeship

Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

#### 14.5 Conditions of Employment

Except as provided by this award, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.

#### 14.6 Disputes and Disciplinary Matters

The provisions of the *Apprenticeship and Traineeship Act 2001* shall apply for the resolution of disputes and disciplinary matters.

### **15. Payment of Wages**

15.1 All wages will be paid weekly or fortnightly by cheque or electronic funds transfer into up to two accounts nominated by the employee from time to time or by cash as the employer may choose.

15.2 Casual employees will be paid at the end of each continuous pay period that they work (but no longer than weekly) either by cash or as the employer may choose.

15.3 Wages will be paid within 2 business days of the end of each pay period.

15.4 All wages will be calculated in 10 minute intervals for time worked of less than an hour.

### **16. Working Together**

16.1 The parties to this award recognise the need for employers and employees to work closely to make the employers organisation a better place to work and to make business better. Employers shall consult with employees either individually, within working groups, or altogether.

#### 16.2 Individually:

Employers shall meet with employees from time to time and at least twice a year to discuss matters such as the employees' progress, job performance, problems, training programme and career prospects.

## 16.3 As work groups:

Employers and employees shall hold meetings from time to time and at least twice a year to discuss how the business is doing, what changes can be made to increase business and work efficiency, any concerns either party has about work or work related matters and any proposed changes that may lead to employees being made redundant.

## 16.4 An employer shall not harm an employee in employment because an employee has expressed an opinion.

**17. Annual Leave**

(see the *Annual Holidays Act*)

## 17.1 After an employee has worked for the employees employer for 12 consecutive months the employer will pay the employee a loading of 17 ½% on the employees annual holiday pay each time the employee take holidays or on termination of employment.

## 17.2 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

## 17.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

## 17.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

**18. Parental Leave**(1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

## (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

## (3) Right to request

## (a) An employee entitled to parental leave may request the employer to allow the employee:

- (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
- (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

## (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only



refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 19. Sick Leave

19.1 An employee, other than a casual employee, who has worked for the employer for more than one month shall be entitled to up to 38 hours off in the first year of employment and 60.8 hours off in each of the second and subsequent years of employment without loss of pay if the employee is unable to attend work because the employee is ill or has been injured.

19.2 An employee employed by the employer on 15 February, 1993 and who is still employed by that employer may have rights to cash in some or all of any sick leave entitlement accumulated to that date when the employee's employment terminates, in accordance with the *Industrial Relations Act 1996*.

19.3 An employee must give the employer as much notice as possible if the employee is to take sick leave, and give the employer any reasonable proof that the employer may ask.

19.4 Sick Leave accumulates from year to year for three years, that is, sick leave not taken in each year of service will be available to the employee for a period of three years from the end of each such year.

## 20. Personal/Carer's Leave

20.1 Use of Sick Leave

20.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 20.1.3.2 who needs the employee's care and support, shall be entitled to

use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 19, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

20.1.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

20.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:

20.1.3.1 the employee being responsible for the care and support of the person concerned;  
and

20.1.3.2 the person concerned being:

20.1.3.2.1 a spouse of the employee; or

20.1.3.2.2 a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person or;

20.1.3.2.3 a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

20.1.3.2.4 a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

20.1.3.2.5 a relative of the employee who is a member of the same household, where for the purposes of this paragraph:

20.1.3.2.5.1 "relative" means a person related by blood, marriage or affinity;

20.1.3.2.5.2 "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

20.1.3.2.5.3 "household" means a family group living in the same domestic dwelling.

20.1.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 29, Grievance Handling and Disputes Procedure, should be followed.

- 20.2 Unpaid Leave for Family Purpose - An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.1.3.2 above who is ill or who requires care due to an unexpected emergency.
- 20.3 Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 20.1.2 and 20.1.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 20.1.3.2 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **21. Bereavement Leave**

- 21.1 An employee, other than a casual employee, shall be entitled to up to three days bereavement leave in each year of employment without deduction of pay on the death of a person prescribed in 21.3 below.
- 21.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- 21.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 20.1.3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 21.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has already been granted other leave.
- 21.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 20.2, 20.1.3, 20.1.4 of clause 20, Personal Carer's Leave. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 21.6 Bereavement entitlements for casual employees
- 21.6.1 Subject to the evidentiary and notice requirements in 21.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 20.1.3.2 of clause 20, Personal / Carer's Leave.
  - 21.6.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- 21.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## **22. Work Clothes and Safety Equipment**

- 22.1 The employer will provide an employee with all necessary safety equipment and clothing. The employee must use/wear these items at all times when necessary and must take good care of them.
- 22.2 The employer will replace all broken or lost items but the employer can ask the employee to pay the employer back if they are lost or broken because of carelessness of the employee. The onus of proving this will be on the employer.

### **22A. Secure Employment (Occupational Health and Safety)**

#### Occupational Health and Safety

- (i) For the purposes of this subclause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 9998*.

### **23. Laundry Allowance**

- 23.1 The employer will launder an employee's special clothing or pay the employee a laundry allowance the amount of which is set out in Item 3 of Table 2 of Part B

- 23.2 Special clothes are those which the employer asks the employee to wear as a uniform and which the employee could not use for everyday wear or, if the employee is a chef or cook, the employees uniform.

#### **24. Jury Service**

- 24.1 If an employee, other than a casual employee, is required to attend for jury service the employer will pay the employee the difference between what the employee would have earned while working for the employer and the amount of jury pay received by the employee.
- 24.2 The employee shall give the employer proof that the employee was on jury service and the amount received.
- 24.3 The employee must tell the employer as soon as the employee knows that the employee is required for jury service.

#### **25. Blood Donors**

If an employee wishes to donate blood, the employee may do so during working hours without loss of pay provided that:

- 25.1 The time and day selected meet with the employer's convenience and does not unduly disrupt the employers operations.
- 25.2 The employee is able to donate blood at a place within 5 walking minutes of the restaurant.
- 25.3 The employee must provide the employer with proof that the employee donated blood.
- 25.4 This entitlement is limited to a maximum of 2 hours on no more than 3 occasions in any one year of employment.

#### **26. Redundancy and Technological Change**

##### **26.1 Application**

- 26.1.1 This Clause shall apply in respect to full time and part time persons employed in the classifications specified by Clause 3, Classification Structure.
- 26.1.2 In respect to employers who employ 15 or more employees immediately prior to the termination of employment of employees, in the terms of Clause 26.5.
- 26.1.3 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such 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.
- 26.1.4 Notwithstanding anything contained elsewhere in this Clause, this Clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks, or where employment is terminated due to the ordinary and customary turnover of labour.

##### **26.2 Introduction of Change - Employer's Duty to Notify**

- 26.2.1 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 the Union to which they belong.

- 26.2.2 "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, promotion 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, it shall be deemed not to have significant effect.

### 26.3 Employer's Duty to Discuss Change

- 26.3.1 The employer shall discuss with the employees affected and the Union to which they belong, inter alia, the introduction of the changes referred to in subclause 26.2 above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes:

- 26.3.2 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 subclause 26.2 of this Clause.

- 26.3.3 For the purpose of such discussions, the employer shall provide to the employees concerned and the Union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 26.4 Redundancy - Discussions Before Terminations

- 26.4.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subclause 26.2.1, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the Union to which they belong.

- 26.4.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause 26.4.1 and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

- 26.4.3 For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the Union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### 26.5 Termination of Employment - Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure, in accordance with subclause 26.2.1.

- 26.5.1 In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than one year	1 week
1 year and less than 3 years	2 weeks

3 years and less than 5 years	3 weeks
5 years and over	4 weeks

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

26.5.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

#### 26.6 Notice for Technological Change

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with subclause 26.2.1 of this award:

26.6.1 In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.

26.6.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment shall be terminated by part of the period of notice specified and part payment in lieu thereof.

26.6.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

#### 26.7 Time Off During the Notice Period

26.7.1 During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.

26.7.2 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.

#### 26.8 Employee Leaving During the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this Clause to which the employee would have been entitled had the 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.

#### 26.9 Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

#### 26.10 Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

## 26.11 Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by Centrelink.

## 26.12 Transfer to Lower-Paid Duties

Where an employee is transferred to lower-paid duties for reasons set out in subclause 26.2, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary-time rates for the number of weeks of notice still owing.

## 26.13 Severance Pay

26.13.1 Where an employee is to be terminated pursuant to subclause 26.5, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service.

If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

26.13.2 Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

26.13.3 "Week's pay" means - the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid pursuant to this award.

## 26.14 Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 26.13 above.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect of paying the amount of severance pay in subclause 26.13 of this Clause will have on the employer.



## 26.15 Alternative Employment

Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 26.13 above if the employer obtains acceptable alternative employment for an employee.

## 27. Supported Wage

## 27.1 Definitions

- 27.1.1 "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity with the Supported Wage System.
- 27.1.2 "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
- 27.1.3 "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time or any successor to that scheme.
- 27.1.4 "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process.
- 27.1.5 "Commonwealth Government Authority" means the Commonwealth Government Department whose responsibility includes the administration of the Supported Wage System.

## 27.2 Application

- 27.2.1 This clause applies only to employees who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on the employees productive capacity and who meet the impairment criteria for the receipt of a Disability Support Pension.
- 27.2.2 This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of Workers' Compensation legislation.
- 27.2.3 This clause does not apply to employers in respect of the employers facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 1993* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a Disability Support Pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

## 27.3 Wages

- 27.3.1 Following the trial period prescribed in clause 27.4.5, employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by the relevant parent award for the class of work which the person is performing according to the following schedule:

Assessed Capacity Rate	% of Relevant Parent Award
10%	10%
20%	20%
30%	30%

40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

Notation: Where a person's assessed capacity is 10% the person shall receive a high degree of assistance and support.

27.3.2 Notwithstanding anything otherwise contained in this award, the weekly ordinary time rate of pay for employees employed under the terms of this clause shall not be less than the amounts as are fixed from time to time by an competent Commonwealth Government Authority for the purposes of the Supported Wage System.

27.3.3 The weekly wage shall be the rate of pay for all purposes.

#### 27.4 Employment Conditions

27.4.1 For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

27.4.1.1 The employer and the union to which the employee belongs, in consultation with the employee or, if desired by an of these:

27.4.1.2 The employer, the employee and an accredited Assessor.

#### 27.4.2 Lodgement of Assessment Instrument

27.4.2.1 All assessment instruments under the conditions of this award, including the appropriate percentage of the award rate to be paid to the employee, shall be lodged by the employer with the Registry of the Industrial Relations Commission of New South Wales.

27.4.2.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union is not a party to the assessment, it shall be referred by the Registry to the union by certified mail and shall take effect unless an objection is notified to the Registry within ten working days.

#### 27.4.3 Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

#### 27.4.4 Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

#### 27.4.5 Trial Period

27.4.5.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this award for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- 27.4.5.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 27.4.5.3 Work trials should include induction or training as appropriate to the job being trialled.
- 27.4.5.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 27.4.

## 28. Traineeships

### 28.1. Applications

This clause applies only to persons employed in a traineeship which has been registered with the Relevant NSW Training Authority

### 28.2 Definitions

- 28.2.1 A "traineeship" is a program of training comprising structured training with an employer, and it will include training conducted by a Registered Training Organisation that has been approved by the Vocational Education Training Accreditation Board. For the purposes of the traineeship, structured training shall mean formal instruction and closely supervised practice directly related to that instruction that is undertaken according to the provisions of the training agreement.
- 28.2.2 A "training agreement means an agreement between an employer and a trainee for registered training and employment which is approved by the Relevant NSW Training Authority.
- 28.2.3 A "trainee" is an employee undertaking a traineeship who is bound by a training agreement.
- 28.2.4 "Relevant NSW Training Authority" means the Department of Education and Training or its successor organisation.

### 28.3 Training Conditions

A trainee undertaking a traineeship shall be engaged as a full-time employee for a traineeship of a nominal period of one year or as approved by the Relevant NSW Training Authority, provided that the trainee shall be subject to a satisfactory probation period of up to one month.

### 28.4 All Trainees

- 28.4.1 The time spent off the job at training shall be allowed without loss of continuity of employment.
- 28.4.2 Where employment of a trainee by an employer is continued after completion of the traineeship period, the traineeship period shall be counted as service for all award and statutory entitlements where consistent with relevant legislation.
- 28.4.3 For the purposes of the *Long Service Leave Act 1955*, where an employee has entered into a contract of employment with an employer within a 12 month period after the completion of the traineeship with the employer, the period of the employee's traineeship with the employer shall be taken into account for the purposes of ascertaining the period of service of the employee with that employer under that contract of employment.

- 28.4.4 Preference in continuation of employment shall be given to trainees, where possible, should vacancies occur at the conclusion of the training period.
- 28.4.5 The provisions of the Workplace Injury Management and Workers Compensation Act 1998, and the *Occupational Health and Safety Act 2000*, shall apply to trainees.
- 28.4.6 It is acknowledged by the parties to this award that the purpose of the relevant traineeships is to create education and career opportunities for persons who would otherwise be unemployed, and to that extent the traineeship systems will not be utilised by employers as a means of displacing existing regular employees, whether full-time, part-time or casual.
- 28.4.7 The employer shall ensure that the trainee is permitted to attend prescribed off the-job training and is provided with on-the-job training approved by the Relevant State Training Authority.
- 28.4.8 The union shall be afforded reasonable access to trainees and the trainees records, consistent with the *Industrial Relations Act 1996*.
- 28.5 Wages
- 28.5.1 The weekly wage payable to Trainees shall be calculated by multiplying the hourly rate applicable to the trainee by 38, less the average weekly training time to be spent in structured training.
- 28.5.2 Junior hourly rates shall be calculated in accordance with Clause 13 - Juniors. The rate for employees 21 years of age and over shall be calculated at the rate for a Grade 2 employee.
- 28.5.3 The average weekly training time to be spent in structured training shall be calculated by averaging the total number of hours that the trainee, during each year of employment, spends in structured training over the total number of weeks in that year of employment under the traineeship.

## **29. Grievance Handling and Disputes Procedure**

- 29.1 Procedures Relating to Grievances of Individual Employees:-
- 29.1.1 The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- 29.1.2 A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 29.1.3 Reasonable time limits must be allowed for discussion and resolution at higher levels of authority.
- 29.1.4 At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- 29.1.5 While a procedure is being followed normal work must continue.
- 29.2 Procedures Relating to Disputes etc. Between Employers and their Employees.
- 29.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

- 29.2.2 Reasonable time limits must be allowed for discussion at each level of authority.
- 29.2.3 While a procedure is being followed, normal work must continue.
- 29.3 The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure.

### 30. Exhibition of Award in Workplace

A copy of this award must be exhibited in a conspicuous place at the restaurant.

### 31. Employee Representative and Union Business

Where there is no union delegate on site, the employer will recognise any person appointed by a majority of employees as an employee representative. The employer will not recognise more than one employee representative for less than 50 persons who are employed by the employer at any one time. The employer will provide a notice board in a staff area for the employee representative (who may be a union delegate) to place notices, including union notices, provided that the notices do not contain defamatory or offensive material.

### 32. Anti-Discrimination

- 32.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 32.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 32.3 Under the *Anti-Discrimination Act 1977*, 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.
- 32.4 Nothing in this clause shall be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 32.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### 33. Area, Incidence and Duration

- 33.1 This award rescinds and replaces:
- 33.1.1 the Restaurant, &c., Employees' (State) Award published 1 September, 1982 and reprinted 15 November 1991 (265 IG 1604) as varied;
  - 33.1.2 the Restaurants, &c., Employees (State) Wages Adjustment Award published 17 November 1995 (289 IG 403);

- 33.1.3 the Restaurant Industry (State) Traineeship Award published 2 December 1994 (282 IG 938)
- 33.1.4 The Restaurant, &c., Employees Redundancy and Technological Change (State) Award published 16 February 1996 (290 IG 818).
- 33.2 The award applies to all employees who perform work described in the classification structure in this award in restaurants as defined throughout New South Wales and to the employers of those persons but not in the County of Yancowinna. The award does not apply to restaurants forming part of motels or licensed clubs, or conducted within a retail store, to canteens covered by the Canteen Workers (State) Award employees of the Broken Hill Proprietary Company Limited or to persons employed in hospitals or public charitable institutions.
- 33.3 This award takes effect from the beginning of the first pay period to commence on or after 1 May 1997 and shall remain in force for a period of six months.
- 33.4 The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 3 October 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## PART B

### MONETARY RATES

Table 1 - Wages

Grade	Wage Total SWC 2010 (4.25%) \$
1	592.20
2	611.10
3	639.70
4	660.50
5	698.90
6	744.00
7	767.90

The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:

- (a) any equivalent overaward payments, and/or
- (b) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.

Table 2 - Other Rates And Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	7.1	Meal Allowance	12.29
2	14.2	Apprentice's Tool Allowance	0.76 per week

3	23.1	Laundry Allowance: - special clothing requiring ironing  - special clothing not requiring ironing	3.56 per day to a maximum of 10.68 2.00 per day to a maximum of 6.19
---	------	--	---

---

Printed by the authority of the Industrial Registrar.

**SECURITY INDUSTRY (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar*.

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C3450	06/05/2005	On 06/12/2004	350	827
11, Part B	C3863	07/10/2005	First full pay period on or after 19/02/2006	354	453
12	C3603	17/02/2006	First pay period on or after 16/12/2005	357	326
4	C4452	08/09/2006	From 03/03/2006	360	1200
24	C4656	20/10/2006	First full pay period on or after 23/03/2006	361	521
2, 8A	C4901	20/10/2006	From 21/03/2006	361	522
Erratum to C4452	C5147	20/10/2006		361	642
11, Part B	C5277	26/01/2007	First full pay period on or after 19/02/2007	361	1585
Correction to C4656	C5683	25/05/2007		362	821
11, Part B	C6152	09/11/2007	First full pay period on or after 19/02/2008	364	423
5, 11, 12, 32, Appendix C & D	C6322	08/02/2008	On and from 20/11/2007	364	1130
11, Part B	C6643	29/08/2008	First full pay period on or after 19/02/2009	366	701
11, Part B	C7202	30/10/2009	First full pay period on or after 19/02/2010	369	636
11, Part B	C7595	02/09/2011	First full pay period on or after 16/12/2010	371	692

**PART A****1. Award Title**

This award is the Security Industry (State) Award.

**2. Arrangement**

This award is arranged as follows:

**PART A**

Clause No.      Subject Matter

1.      Award Title



2. Arrangement
3. Relationship with Other Awards
4. Where and to Whom the Award Applies
5. Date the Award Starts
6. Transitional Arrangements
7. Definitions
8. Types of Employment
- 8A. Secure Employment Provisions
9. Termination of Employment
10. Employer and Employee Duties
11. Wages
12. Allowances
13. Anti-Discrimination
14. Procedure to Avoid Industrial Disputation
15. Mixed Functions
16. Payment of Wages
17. Ordinary Time Hours of Work
18. Broken Ordinary Time Shifts
19. Paid Rostered Days Off Duty
20. Rosters and Transfer of Employees
21. Span Loadings - Ordinary Time Work
22. Overtime
23. Call Back
24. Public Holidays
25. Annual Leave
26. Long Service Leave
27. Personal Leave
28. Parental Leave
29. Jury Service
30. Attendance at Repatriation Centres
31. Introduction of Change
32. Redundancy
33. Enterprise Flexibility Provisions
34. Deduction of Union Dues

## PART B

### MONETARY RATES

Table 1 - Rates of Pay Per 38 Hour Week

Table 2 - Other Rates And Allowances

### APPENDIX A

Ordinary Time Hours Of Work - Specified Site Or Sites

### APPENDIX B

Overtime Agreement

### APPENDIX C

Ordinary Time Hours Of Work - Specified  
Company/Employer

### APPENDIX D

National Training Wage Provisions

### 3. Relationship with Other Awards

This Award shall supersede all previous Awards or orders relating to the employment within its scope of all employees whether or not members of the Australian Liquor, Hospitality and Miscellaneous Workers Union, but no right, obligation or liability accrued or incurred under any such previous Award or order shall be affected hereby.

### 4. Where and to Whom the Award Applies

- 4.1 This award shall apply in New South Wales only. This award shall apply to the employment of employees, being members or not of the Australian Liquor, Hospitality and Miscellaneous Workers Union, in respect of the employment by an employer of gatekeepers and all persons, employed in or in connection with the industry or industries of security or watching including persons employed in control rooms to monitor, respond to or act upon alarm systems excepting persons employed as typists, stenographers, bookkeepers, switchboard operators or engaged in any clerical capacity whatsoever, and also excepting security officers employed in or in connection with a retail shop provided those security officers are directly employed by the retail shop; and also excluding the County of Yancowinna within the jurisdiction of the Security and Cleaning, &c. (State) Conciliation Committee; "and Excepting employees covered by the Zoological Parks Board of New South Wales Wages Employees' Award, 2006"
- 4.2 For the purpose of this clause, the jurisdiction of the Security and Cleaning, &c. (State) Conciliation Committee is as follows:

#### Section 1

Caretakers and cleaners employed in or in connection with anyplace of business, in schools of arts, literary institutes, lodge rooms (including buildings used for lodge meetings), museums, schools and caretakers and cleaners (as distinguished from groundsmen) in sports grounds, also caretakers and cleaners employed solely in connection with churches, caretakers and cleaners employed in the Botanic Gardens in the Sydney Domain, caretakers of racecourses, agricultural grounds and recreation grounds, and cleaners employed in cleaning buildings other than grand and public stands, stables and animal pavilions on racecourses, agricultural grounds and recreation grounds, cleaners in shops, office cleaners and caretakers, lift attendants, security guards, gatekeepers, caretakers and cleaners employed in and about Strata Title units and Company Title units and tea attendants excepting canteen workers, persons within the present constitution rule of The Health and Research Employees' Association of New South Wales and persons within the steel industry in the State, excluding the County of Yancowinna;

#### Section 2

All persons employed in or in connection with the industry or industries of security or watching (in either case other than employees employed in a shop by the operator thereof during ordinary trading hours in areas intended for public access) and excepting also persons employed as typists, stenographers, bookkeepers, switchboard operators or engaged in any clerical capacity whatsoever, but not excluding persons employed in control rooms to monitor, respond to or act upon alarm systems.

#### Excepting

Lift attendants in hotels, clubs, boarding houses, restaurants, tea shops and oyster shops and in flats and residential chambers and establishments; Employees within the jurisdiction of the Milk Treatment, &c., and Distribution (State) Conciliation Committee, the Breweries, &c. (State) Conciliation Committee and the Cement Workers, &c. (State) Conciliation Committee; And excepting employees of - State Rail Authority of New South Wales; Urban Transit Authority of New South Wales; The Commissioner for Motor Transport; The Water Board; The Hunter District Water Board; South Maitland Railways Pty. Limited; The Electrolytic Refining and Smelting Company of Australia Proprietary Limited, Metal Manufactures Limited, Australian Fertilisers Limited and Austral Standard Cables Proprietary Limited, at Port Kembla, including employees employed by Australian Fertilisers Limited on the bone-crushing and fertiliser-mixing and bagging plant at Granville; and in connection with the manufacture of acids, chemicals and fertilisers at Villawood; Blue Circle Southern Cement Limited; The Kandos Cement

Company Limited; The Council of the City of Sydney and of shire and municipal councils; The Council of the City of Newcastle; The Sydney County Council; The Broken Hill Proprietary Company Limited at Newcastle; Australian Wire Industries Pty. Ltd. at its Sydney Wiremill; Australian Iron and Steel Proprietary Limited within the jurisdiction of the Iron and Steel Works Employees (Australian Iron & Steel Proprietary Limited) Conciliation Committee and the Quarries (Australian Iron and Steel Pty Limited) Conciliation Committee; Australian Wire Industries Pty. Ltd. at its Newcastle Wiremill; The Australian Gas Light Company; The North Shore Gas Company Limited; Prospect Electricity; Electricity Commission of New South Wales; And excepting employees in or about coal mines north of Sydney, in or about coal mines in the South Coast District; And Excepting - Employees in or about metalliferous and limestone mines or in connection with mining for minerals other than coal or shale, in or about diamond and gem-bearing mines, mining dredges, ore sluicing processes, ore smelting, refining treatment and reduction works; All persons employed in or in connection with hospitals, mental hospitals, public charitable institutions or ambulance work; Persons employed in or by The United Dental Hospital of Sydney; Cleaners employed on the national ferries; Security guards employed by the Maritime Services Board of New South Wales on tugs, dredges, launches and motor boats and lighters; Gatekeepers under the control of the Department of Agriculture employed in tick quarantine areas of the State; And excepting employees within the jurisdiction of the following Conciliation Committees:

Race Clubs, &c., Employees (State);

Special Steels and Steel Products Manufacture (Commonwealth Steel Company Limited);

Cleaning Contractors' (State);

Tubemakers of Australia Limited, Newcastle;

Showground, &c., Employees (State);

Security Officers (Waterfront);

Sugar Workers (CSR Limited, Pyrmont);

County Councils (Electricity Undertakings) Employees;

Shortland County Council;

John Lysaght (Australia) Limited Newcastle;

John Lysaght (Australia) Limited Unanderra;

Australia Wire Industries Pty Ltd - Newcastle Ropery;

Tubemakers of Australia Limited, Yennora;

Club Employees (State);

University Employees, &c. (State);

Smelting and Fertiliser Manufacturing (Sulphide Corporation Pty

Limited and Greenleaf Fertilisers Limited);

Shoalhaven Scheme.

## 5. Date the Award Starts

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 20 November 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## 6. Transitional Arrangements

- 6.1 No permanent employee employed as at 27 August 1990 shall suffer a reduction in his or her current entitlement to sick leave (i.e. a maximum of 90 hours per year) as a result of the introduction of this Award.
- 6.2 No existing permanent employee employed as at 18 September 1998 shall be required to work broken shifts without the agreement of the employee concerned.

## 7. Definitions

### 7.1 Classification Structure

7.1.1 Security Officer Grade 1 means a person employed in one or more of the following capacities:

- (a) to watch, guard or protect persons and/or premises and/or property,
- (b) to respond to basic fire/security alarms at their designated site/post,
- (c) as an employee stationed at an entrance and/or exit whose principal duties include the control of movement of persons, vehicles, goods and/or property coming out of or going into and/or moving within premises or property, including vehicles carrying goods of any description to ensure that the quantity and description of such goods is in accordance with the requirements of the relevant document and/or gate pass and who also may have other duties to perform and including an area or door attendant or commissionaire in a commercial building;
- (d) to carry out crowd control duties;
- (e) a Security Officer Grade 1 may use electronic equipment such as hand held scanners or simple closed circuit television systems and may be required to utilise basic keyboard skills in the performance of their duties and may also provide escort for a person or persons carrying cash provided it is incidental to other Grade 1 duties, and may perform incidental duties which need not be of a security nature.

7.1.2 Security Officer Grade 2 means either:

- (a) an employee who is performing the duties of securing, watching, guarding and/or protecting, or cash collection and/or delivering as a part of their duties, as directed, including responses to alarm signals and attendances at and minor non-technical servicing of automatic teller machines, and is required to patrol in a vehicle two or more separate establishments or sites;
- (b) an employee who monitors and acts upon electronic intrusion detection or access control equipment terminating in a visual display unit or computerised print -out and may be required to perform the duties of a Security Officer Grade 1; or
- (c) an employee who is required to monitor and act upon walk through electro-magnetic detectors; and/or monitor, interpret and act upon screen images using X-ray imaging equipment; or
- (d) where required by the employer, to control a dog used to assist the Security Officer to carry out the duties of watching, guarding or protecting persons and/or premises and/or property.

7.1.3 Security Officer Grade 3 means a person who in addition to performing the duties defined in Grade 2, monitors and acts upon intelligent building management systems terminating at a visual

display unit or computerised printout that has the capacity for and requires data input from the security officer.

- 7.1.4 Security Officer Grade 4 means a person employed substantially in a security and/or data input and/or a monitoring function within a central station and principally occupied in one or more of the following duties:
- (a) Monitoring, recording, inputting information or reacting to signals and instruments related to electronic surveillance of any kind; co-ordinating, checking or recording the activities of Security Officers Grade 1, 2 or 3; operating or monitoring any medium of verbal communication.
- 7.1.5 Security Officer Grade 5 - means a person who, whilst in charge of a shift of one or more Security Officers Grade 4, which may include leading hands, carries out coordinating duties in addition to the normal duties of a Security Officer Grade 4. A person in receipt of the rate applying to this classification is not entitled to a leading hand allowance as provided in this award.
- 7.2 Relieving Security Officer means a permanent employee who is engaged primarily for the purpose of relieving at short notice any other rostered security officer of the employer and for whom a display of roster is not required and for whom only 24 hours notice of change of shift must be given where practicable.
- 7.3 Seven Day Shift Worker means an employee who is regularly rostered by their employer to work ordinary hours on Saturdays and/or Sundays.
- 7.4 Five Day Shift Worker means a person engaged to work shifts of ordinary time hours between 2200 Sunday and 2400 Friday inclusive. Subject to Clause 23 - Call Back, a five day shift worker may be requested, but may not be compelled to work on public holidays prescribed by this award.
- 7.5 Permanent Employee means a full-time or part-time employee engaged on an ongoing basis and paid by the week or fortnight, as the case may be.
- 7.6 Full-Time Employee means a permanent employee engaged to work an average of 38 hours per week.
- 7.7 Part-Time Employee is defined in 8.3.
- 7.8 Broken-Shift Employee means a full-time or part-time employee who is engaged to work ordinary time shifts which may include an unpaid break period, in accordance with the provisions of Clause 18 - Broken Ordinary Time Shifts.
- 7.9 Casual Employee means an employee engaged and paid as such.
- 7.10 Time Periods
- 7.10.1 One Hour's pay means one thirty-eighth of the weekly ordinary time rate provided for the employee's classification under Table 1 of Part B.
- 7.10.2 Day means the period from midnight to midnight (0000 to 2400).
- 7.10.3 Week means the period between 0000 on a Monday and 2400 on the following Sunday.
- 7.10.4 Weekday means a 24 hour period commencing at 0000 and falling between 0000 on Monday and 2400 on Friday.
- 7.10.5 Ordinary Time Shift means the whole period between the commencement and cessation of a period of ordinary time work, including any paid crib break/s and, in the case of broken-shift employees, including the unpaid break between the first part of a broken-shift and the second part of that broken-shift.

- 7.10.6 Day Span means any part of an ordinary time shift which is worked during the period between 0600 and 1800 on any weekday between 0000 on Monday and 2400 on Friday (excluding any hours worked on a public holiday), whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.7 Night Span means any part of an ordinary time shift which is worked during the period before 0600 and/or the period after 1800, on any weekday between 0000 on Monday and 2400 on Friday (excluding any hours worked on a public holiday), whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.8 Saturday Span means any part of an ordinary time shift which is worked during the 24 hour period between 0000 and 2400 on a Saturday, whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.9 Sunday Span means any part of an ordinary time shift which is worked during the 24 hour period between 0000 and 2400 on a Sunday, whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.10 Weekend Span means any part of an ordinary time shift which is worked during the 48 hour period between 0000 on Saturday and 2400 on Sunday, whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.11 Public Holiday Span means any part of an ordinary time shift which is worked during the 24 hour period between 0000 at the start of a public holiday and 2400 at the end of that same public holiday, whether or not the ordinary time shift commences before or ends after the specified span period.
- 7.10.12 Permanent Night Work means any work performed during a night span (as defined) over the whole period of a roster cycle in which more than two thirds of the employee's total ordinary shifts include ordinary hours between 0000 and 0600, on any day of the week. However, in the case of a Relieving Security Officer (as defined in 7.2), the roster cycle for the purposes of this subclause means a complete pay period.
- 7.11 Union means the Australian Liquor, Hospitality and Miscellaneous Workers Union.
- 7.12 Mixed Enterprise means an employer's enterprise carried on for the principal purpose of the production, treatment, distribution, or provision of articles, goods, merchandise, materials and services, and which enterprise employs categories of labour provided for by this award as an incidental or ancillary function of their business or enterprise.
- 7.13 Continuous Service
- 7.13.1 In calculating the twelve months' continuous service, the only absences counted as time worked are the following:
- up to 152 ordinary working hours in a twelve month period because of sickness or accident;
  - long service leave that an employee takes under the relevant State long service leave legislation;
  - and
  - annual leave.
- 7.13.2 Where a period of work is less than twelve months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.
- 7.13.3 The following events do not break an employee's continuous service:
- sick leave;

leave as the result of an accident;

leave lawfully granted by the employer; or

absence for a reasonable cause (the employee must prove that the leave was reasonable)

7.13.4 Where employees are temporarily stood down through no fault of their own, service is not to be considered to be broken.

7.13.5 Any other absence from work does not break continuity of service unless the employer notifies the employee within fourteen days of the employee returning to work after the absence. The employer must tell the employee in writing.

7.13.6 If an individual employee is absent, the employer must tell that employee by:

giving the notice to him or her personally; or

posting the notice to his or her last known address.

7.13.7 If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the same day.

7.13.8 It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.

## **8. Types of Employment**

8.1 Employees under this award must be engaged either as permanent (full-time or part-time) employees, or as casual employees.

8.2 Probationary Period

Employees engaged as permanent employees without any previous service with the employer may be engaged for a probationary period of up to three months. The employer and employee may agree in writing to reduce or exclude altogether the probationary period.

8.3 Part-time Employees

8.3.1 "Part-time Employee" means a permanent employee who is employed to work regularly a minimum of 20 ordinary hours and less than 38 ordinary hours per week.

8.3.2 An employee engaged on a part-time basis shall be entitled to payments in respect to all leave and public holidays, on a proportionate basis subject to the relevant provisions of this Award.

8.3.3 An employee who does not meet the definition of a part-time employee and who is not a full-time employee must be paid as a casual employee in accordance with Clause 11.2.

### **8A. Secure Employment Provisions**

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

## (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.



## (c) Occupational Health and Safety

(i) For the purposes of this subclause, the following definitions shall apply:

- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

(ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

(iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

## (d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

(e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.**9. Termination of Employment**

## 9.1 Notice of Termination by Employer

9.1.1 In order to terminate the employment of a full-time or part-time employee the employer must give to the employee the period of notice specified in the table below:

Period of Continuous Service	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks

Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- 9.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.
- 9.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.
- 9.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.
- 9.1.5 The period of notice in this clause does not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.
- 9.1.6 Notwithstanding the foregoing provisions trainees who are engaged for a specific period of time must once the traineeship is completed and provided that the trainees' services are retained have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of his or her traineeship and is re-engaged by the same employer within six months of such termination the period of traineeship must be counted as service in determining any future termination.
- 9.1.7 Continuous service is defined in 7.13.
- 9.2 Notice of Termination by an Employee
- 9.2.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.
- 9.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.
- 9.3 Time Off During Notice Period
- Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off must be taken at times that are convenient to the employee after consultation with the employer.
- 9.4 Extended Notice of Termination
- 9.4.1 Despite any other provisions of this clause, where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes in the industry in which the employer is engaged, the employer terminates the employment of an employee who has been employed for the preceding twelve months, such employee must be given three months' notice of the termination of employment. If the employer fails to give such notice in full:
- (a) the employee must be paid at the rate specified in Clause 11 - Wages for the employee's ordinary classification for a period equal to the difference between three months and the period of the notice given, and
  - (b) the period of notice required by this subclause to be given must be regarded as service with the employer for the purpose of the *Long Service Leave Act 1955 (NSW)*, the *Annual Holidays Act 1944 (NSW)*, or any Act amending or replacing either of those Acts.

9.4.2 Nothing in 9.4.1 affects the common law right of an employer in relation to summary dismissal of an employee.

#### 9.5 Return of Equipment

On the termination of employment, an employee must return to the employer all uniforms, identity cards, vehicles, firearms, keys and all other items issued to employees. Where an employee fails to return any uniform, protective clothing or other items issued, the employer may deduct the monetary value of such uniform, clothing or other items from the employee's termination pay. Such deduction may only occur where prior authorisation in writing has been given by the said employee. Where the employer so requests an employee must sign such written authority upon engagement. Existing employees may be required to sign such an authority upon receipt of the next issue of uniform/clothing or other items.

### 10. Employer and Employee Duties

10.1 Employees covered by this award may be required by the employer to perform all work within their skill and competence including work which is incidental or peripheral to their main tasks or function.

10.2 If an employee wilfully or negligently damages or loses uniforms, protective clothing or equipment issued by the employer, the employer may require the employee to reimburse the employer for such damage or loss.

### 11. Wages

#### 11.1 Permanent Employees

11.1.1 The minimum rate of pay for each classification is as set out in Table 1 of Part B.

11.1.2 The rates of pay in this award include the adjustments payable under the State Wage Case of 2010. These adjustments may be offset against:

- (i) any equivalent over-award payment, and/or
- (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.

#### 11.1.3 Licencing

All employees engaged under this Award are required to hold a relevant licence in accordance with the *Security Industry Act 1997* (the "Act"). The rates of pay contained in Part B - Table 1 of this Award are inclusive of skills acquired in accordance with the provisions of the Act.

#### 11.2 Casual Employees

11.2.1 A casual employee for working ordinary time must be paid one thirty-eighth of the award wage prescribed by this award for the class of work performed plus 15 per cent (calculated to the nearest whole cent).

11.2.2 In addition to the ordinary hourly rate prescribed at 11.2.1, span penalties and overtime penalties must be paid where appropriate.

11.2.3 In addition to the ordinary hourly rate prescribed in 11.2.1 a casual employee is entitled to be paid one-twelfth of the ordinary hourly rate as entitlement to pro-rata annual leave. This amount must be paid at the same time as prescribed for the payment of wages in Clause 16 - Payment of Wages. Provided that that time is no later than on a weekly or fortnightly basis (dependent upon the employers pay period).

### 11.3 Part-Time Employees

A part-time employee for working ordinary time must be paid per hour one thirty-eighth of the weekly rate prescribed by 11.1 for the classification in which the employee is engaged (calculated to the nearest whole cent), together with such span penalties and/or overtime penalties as may be applicable to the work performed.

## 12. Allowances

### 12.1 Travelling Expenses

When an employee is sent by the employer to work away from an employer's recognised place of business the employer must pay all travelling time from such place of business to the job. If the employee is required to return the same day to the employer's place of business, the employer must pay travelling time to the place of business. An employee sent for duty to a place other than the regular place of duty or required by the employer to attend a court of inquiry in connection with employment must also be paid reasonable authorised expenses.

### 12.2 Uniforms

Where an employer requires an employee to wear a uniform, the employer must reimburse the employee for the cost of such uniform. This clause does not apply if the employer elects to provide the uniform at no cost to the employee. Employees will be required to provide their own black shoes.

### 12.3 Leading Hand Allowances

12.3.1 An employee other than a casual employee placed in charge of other employees must be paid, in addition to their ordinary wages, the rates as set out in Table 2 - Other Rates and Allowances, of Part B, plus an additional amount per week as set out in Table 2 for each employee exceeding twenty.

12.3.2 Where the employee concerned is a casual employee, the employee must be paid an amount for each shift worked equal to 1/5th of the amount as set out in Table 2.

### 12.4 Relieving Officers

Despite any other provision of this award, where a permanent employee and an employer are in agreement, the employee may be appointed a Relieving Officer by the employer and must be paid an additional amount per week as set out in Table 2 for each week of employment. This amount must not be in substitution for any span, weekend or public holiday penalties nor in substitution for any overtime payment.

### 12.5 First-Aid Allowance

#### 12.5.1

- (a) An employee who is required to hold an industrial qualification as a first-aid attendant and who is appointed by the employer to carry out the duties of a first-aid attendant shall be paid an additional amount per week as set out in Table 2.
- (b) Where the employee is a casual employee, then such employee shall be paid an additional amount for each shift worked equal to 1/5th of the amount as set out in Table 2.

### 12.6 Gun Allowance

Where an employee is required by the employer to carry a firearm, the employee must be paid an additional amount per shift as set out in Table 2 with a maximum amount per week as set out in Table 2.

## 12.7 Locomotion

12.7.1 Where an employee is required by the employer to use a motor cycle or other motor vehicle, and it is not provided and maintained by the employer, the employer must reimburse the employee for each shift worked an amount as set out in Table 2, plus the cost of fuel used on the employer's business.

12.7.2 An employee providing a bicycle for use in the employer's business must be paid for each shift worked an amount as set out in Table 2.

## 12.8 Meal Allowance

12.8.1 An employee required to work in excess of one hour after completion of the employee's ordinary shift without being notified before the completion of the previous day or shift must be paid a meal allowance as set out in Table 2.

12.8.2 The employer must pay the employee a further meal allowance as set out in Table 2 on the completion of each additional four hours' overtime worked.

## 12.9 Fares Allowance

Where an employee is required by the employer to work a broken shift (as defined), the employee must be paid an additional amount for each such broken shift worked as set out in Table 2.

## 12.10 Overnight Expenses

Where a Security Officer is required, in the course of their work, to remain away from home overnight, they must be reimbursed by the employer for:

12.10.1 all reasonable expenses actually incurred for accommodation; and

12.10.2 an amount to cover the cost of dinner and breakfast as set out in Table 2.

12.10.3 The provisions of 12.10.2 do not apply if the employer supplies breakfast or dinner (as the case may be) at no cost to the employee.

## 12.11 Aviation Security Allowance

12.11.1 An employee who performs Aviation Security Shall be paid an aviation allowance as set out in Part B, Table 2 - Other Rates and Allowances.

12.11.2 For the purpose of this clause, Aviation Security means the provision of security services including, but not limited to, passenger, goods and/or baggage security including checked baggage screening services, control room functions, guarding and controlling access to designated areas, and general security of persons, property and buildings at an airport within the scope of coverage of the *Aviation Transport Security Act 2004* (Cth) and its Regulations.

12.11.3 Aviation Security does not include traffic control (including kerbside traffic management), car parking services, or any other function for which a valid security license is not required.

## 13. Anti-Discrimination

13.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

- 13.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects.
- 13.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 13.4 Nothing in this clause is taken to affect
- 13.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation:
- 13.4.2 offering or providing junior rates of pay to persons under the age of 21 years:
- 13.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*.
- 13.4.4 a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 13.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### **14. Procedure to Avoid Industrial Disputation**

Subject to the provisions of the *Industrial Relations Act 1996* grievances or disputes shall be dealt with in the following manner.

##### 14.1 Step 1

The employee(s) is required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and stating the remedy sought. This meeting shall take place within one working day, where possible, if not within two working days of the issue arising (weekends and holidays excepted).

##### 14.2 Step 2

If agreement is not reached then the matter shall be referred by the employer to a higher authority (where this exists) no later than one working day after the period stated in subclause 14.1 (weekends and holidays excepted). At the conclusion of the discussion the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons (in writing or otherwise) for not implementing any proposed remedy.

##### 14.3 Normal Work

While the foregoing procedure is being followed normal work shall continue.

##### 14.4 Step 3

If the matter is still not settled within a reasonable period of time it may be referred/notified to the Industrial Relations Commission of New South Wales for settlement by either party.

##### 14.5 Representation

The employer may be represented by an industrial organisation of employers and the employee(s) is(are) entitled to be represented by the Australian Liquor, Hospitality and Miscellaneous Workers Union, an industrial organisation of employees, for the purposes of each step of the procedure.

### 15. Mixed Functions

- 15.1 An employee engaged for at least two hours on any day or shift on duties carrying a higher rate than the employee's ordinary classification must be paid the higher rate for such day or shift.
- 15.2 However, where an employee is engaged for less than two hours on any one day or shift the employee must be paid the higher rate for the time so worked.
- 15.3 An employee who is required to perform work temporarily for which a lower rate is paid, must not suffer any reduction in wages whilst so employed. Work of less than one week's duration is temporary work.

### 16. Payment of Wages

#### 16.1 Pay Period

The employer must pay wages and other moneys to employees either weekly or fortnightly, depending on the employer's pay period. The time of payment must not be more than seventy-two hours from the time when such wages become due and must not be later than Thursday in the week. An employer may pay in cash or by cheque or electronic funds transfer; provided that payment other than in cash does not remove the obligation to pay as prescribed by this clause.

#### 16.2 Pay Day

The employer must specify the day upon which wages will be paid, in accordance with 16.1, and any employee who is not paid on such day must be paid overtime rates for all time subsequently worked until payment is made. Where an employee is normally paid on the job or at the work site and the employee is rostered off duty on a day which coincides with pay day, then such employee must be paid no later than the working day immediately following pay day.

#### 16.3 Payment of Casual Employees

An employer may pay wages to casual employees at the time and place specified for permanent employees, that is, on a weekly or fortnightly basis depending on the employer's pay period.

#### 16.4 Errors in Payment

16.4.1 Should a pay be miscalculated or incorrectly shown on a pay slip, the right to claim waiting time will be waived provided that:

- (a) the employee has been paid the ordinary base rate of pay, and
- (b) any underpayment or error is corrected within 48 hours of notification by the employee to the pay office of the employer concerned.

16.4.2 Where such underpayment or error is not corrected within 48 hours then the employee is entitled to waiting time as provided for in 16.2.

16.4.3 In this subclause, "48 hours" means hours which fall Monday to Friday inclusive.

#### 16.5 Averaging of Hours Worked Across Roster Cycles

An employee who works normal hours according to a roster under which the number of hours worked in any particular pay period during the roster cycle are more or less than the average number of hours worked during all pay periods covered by the roster must be paid according to a weekly average of ordinary hours worked over the whole period of the roster cycle.

#### 16.6 Payment For Hours Actually Worked

In lieu of the averaging system prescribed in 16.5, an employer may, with the consent of the employee concerned, elect to pay that employee for the actual time worked in each pay period. However, once an employee has given consent to payment for hours worked, the employee cannot thereafter unilaterally withdraw that consent.

#### 16.7 Time And Wages Records

16.7.1 Each employer shall keep a record or system from which can be readily ascertained the name and occupation of each employee, the hours worked each day (including the commencing and finishing time of each shift worked), and the wages and entitlements paid each pay period.

16.7.2 The time occupied by an employee in filling in any time record or cards or in the making of records shall be treated as time of duty, but this does not apply to checking in or out when entering or leaving the employer's premises.

16.7.3 The time and wages record shall be open for inspection to a duly accredited union official in accordance with section 298 of the *Industrial Relations Act* 1996, during the usual office hours at the employer's office. Provided that an inspection shall not be demanded unless a branch official suspects that a breach of this Award has been committed. Provided also that only one demand for such inspection shall be made in one fortnight at the same establishment.

16.7.4 The official making such inspection shall be entitled to take a copy of entries in a time and wages record relating to a suspended breach of this Award.

### **17. Ordinary Time Hours of Work**

#### 17.1 Roster Cycles

17.1.1 Subject to 17.9 and subject to the exceptions hereinafter provided, the ordinary hours of work are an average of 38 per week to be worked on one of the following bases:

- (a) 76 hours within a roster cycle not exceeding fourteen consecutive days;
- (b) 114 hours within a roster cycle not exceeding twenty-one consecutive days;
- (c) 152 hours within a roster cycle not exceeding twenty-eight consecutive days;
- (d) 304 hours within a roster cycle not exceeding fifty six consecutive days.

17.1.2 The ordinary hours prescribed in this clause must be worked in shifts of no more than ten consecutive hours with not more than one shift in any period of twenty four hours. However, a new employee (other than a casual employee) on engagement may work up to three shifts as part of an initial training period. Such shifts must be paid for at the appropriate rate of pay prescribed by this award but must not form part of the normal roster cycle provided for in this clause. The normal roster cycle must commence on the fourth shift.

#### 17.2 Shift Duration

Except as provided in 17.7, ordinary time shifts must be limited in duration to:

17.2.1 for casual employees - a minimum of 4 hours and a maximum of 8 hours;

17.2.2 for full-time employees - a minimum of 8 hours and a maximum of 10 hours;

17.2.3 for part-time employees - a minimum of 3 hours and a maximum of 10 hours.



### 17.3 Break Between Sequential Shifts

Each ordinary time shift must be separated from any subsequent ordinary time shift by a minimum break of not less than 8 hours nor less than the duration of the ordinary time work performed during the shift which immediately preceded the break.

### 17.4 Long Break Between Shifts

17.4.1 An employee is entitled to have no less than 4 separate breaks of not less than 48 continuous hours off work in each 28 day roster cycle, or 3 separate breaks of not less than 72 continuous hours off work in each 28 day roster cycle, or 3 separate breaks of not less than 48 continuous hours off work in each 21 day roster cycle.

17.4.2 An employee:

- (a) must not work more than 6 ordinary time shifts, and/or
- (b) must not work more than a total of 48 hours of ordinary time between the breaks prescribed in 17.4.1.

### 17.5 Shift Start/End Times

17.5.1 Except in the case of a broken shift, shifts must be continuous and an employee's commencing and ceasing times of ordinary hours of work must operate at the actual job or work station. However:

- (a) where an employee is required to collect (prior to proceeding to the work site) or return (after completion of duty) company equipment (such as a gun, keys, car etc.) from a location other than the actual work site or sites, and
- (b) the collection and/or return of such equipment adds more than 15 minutes to the time which would otherwise be required for the employee to travel between the employee's normal work site or location and the employee's residence.

17.5.2 Then the commencing and ceasing times of ordinary work must operate from such point of collection and such point of return respectively

### 17.6 Crib Breaks

A paid crib break (or breaks) must be allowed on shifts of more than 4 hours. A crib time of not less than 20 minutes on an 8 hour shift and not less than 30 minutes on a 12 hour shift must be provided. The time must be allowed not earlier than four hours nor later than five hours after the time of commencement of each shift where it is reasonably practicable to do so.

### 17.7 Enterprise Flexibility Arrangements - Ordinary Hours of Work

17.7.1 Despite any other provision of this award, but subject to this subclause, an employer and his/her employees may arrange ordinary working hours to exceed 10 but not to exceed 12 on any day. Such arrangements may be made:

- (a) by the employees employed at a specified site or sites, with the written agreement of all affected employees, or
- (b) by the employees of a specified employer/company, with the agreement by secret ballot of a majority of the employees of that employer/company to be affected by the arrangement.

17.7.2 If the employer seeks to reach an hours agreement permitted by 17.7.1 and the union has members employed at the particular workplace or employed by the particular company (as the case may be), the employer must inform the Union of its intention (no later than five days before

the employer proposes to commence such an arrangement) and provide the union with an opportunity to take part in negotiations relating to the proposed arrangement.

17.7.3 Arrangements made pursuant to 17.7.1 are subject to:

proper health monitoring procedures being introduced;

suitable roster arrangements being made; and

proper supervision being provided.

17.7.4 Arrangements made pursuant to this subclause will continue in force unless rescinded by either party to the arrangement by the giving of seven days notice. However, the arrangements may be varied at any time by the consent of the parties.

17.7.5 Documentation of hours arrangements: Arrangements made pursuant to paragraph 17.7.1 of this subclause shall be committed to writing in the form set out:

17.7.5.1 in the case of specific site/s arrangements pursuant to subparagraph 17.7.1(a), in the form set out in Appendix A to this Award, or

17.7.5.2 in the case of specific employer/company arrangements pursuant to subparagraph 17.7.1(b), in the form set out in Appendix C to this Award.

17.8 Despite anything to the contrary in this award, the following time is ordinary working time for the purposes of this clause and must be paid for as such:

17.8.1 Time allowed as crib time under 17.6;

17.8.2 Time occupied by an employee in filling in any time record or cards or in the making of records (other than time spent checking in or out when entering or leaving the employer's premises).

17.8.3 Time spent attending a court on the employer's or employer's client's behalf in connection with any matter arising out of or in connection with the employee's duties.

17.8.4 Where an employee is required to use their own vehicle in the course of their employment and, at the request of the employer, is requested to fit the vehicle with any additional equipment or identifying markings, any time spent by the employee in the initial installation of equipment in their vehicle must be counted as time worked. Such installation takes place during ordinary business hours. Any further installation or replacement of equipment required by the employer to be done must similarly be counted as time worked. Where fitting of equipment or markings is required as a result of an employee changing vehicles, then such installation will only be counted as time worked if three years' service has elapsed since the initial installation.

17.8.5 Time spent at the direction of the employer attending initial firearms training or firearms refresher training courses.

17.9 19 Day Month Arrangements

The following provisions apply where employees work their hours in accordance with 17.1.1(c) on the basis that they agree they will accrue 0.4 hours of 19 eight hour shifts towards a paid rostered day off during each cycle of twenty-eight consecutive days:

17.9.1 Paid rostered days off may be accumulated so as to allow up to five consecutive days to be taken off in each consecutive period of up to 20 weeks or such accumulation may be extended up to a maximum of 10 consecutive day;

17.9.2 An employee is entitled to no more than 12 such paid rostered days off in any 12 months of employment;

17.9.3 The option of implementing either a 19 day month or accrual of up to five days in 20 weeks or accrual of a maximum of 10 days is at the employer's discretion.

#### 17.10 9 ½ Day Fortnight Arrangements

Where employees work their hours in accordance with 17.1.1(a) on the basis that they agree they will be rostered off for a paid period of four hours (a half day) on one day as part of a roster cycle of 76 hours of work in 14 consecutive days, an employee is entitled to no more than 24 paid half days in any 12 months of consecutive employment.

#### 17.11 21 Day Work Cycles

Where employees work their hours in accordance with 17.1.1(b) on the basis that they agree they will work a roster cycle of 114 hours in 21 consecutive days so as to allow one complete shift to be taken as a paid rostered day off during each such roster cycle, an employee is entitled to no more than 17 such paid rostered days off in any 12 months of consecutive employment.

#### 17.12 General Provisions

The following provisions apply to employees and employers making agreement referred to in 17.9, 17.10 and 17.11:

- 17.12.1 Such agreement must be recorded in writing, and must be recorded in the time and wages records kept in accordance with clause 16.7. Where the employee is a member of the union and so requests, the union must be given an opportunity to represent the employee before an agreement is reached;
- 17.12.2 Each day or shift of paid leave taken (including paid rostered days off but excluding annual leave and long service leave) during any roster cycle must be regarded as a day or shift worked for accrual purposes.
- 17.12.3 Despite any other provision of this clause, on termination of employment an employee must be paid the value of any credits accrued from each day or shift worked in the roster cycle towards the taking of paid rostered days off duty and such payment must be made at the rate of pay applicable on termination of employment

### **18. Broken Ordinary Time Shifts**

Employees other than casual employees may be required to work ordinary time shifts which include an unpaid break period. Provided that:

- 18.1 the second part of the broken shift ends no more than 14 hours after the start of the first part, and
- 18.2 the break is not less than 4 hours nor more than 6 hours, and
- 18.3 the employee is paid a Fares Allowance as provided under Clause 12 - Allowances, and
- 18.4 the total period of paid time worked during a broken shift is not less than 4 hours nor more than 8 hours, and
- 18.5 the whole period of any broken time shift (the first part plus the unpaid break plus the second part) is counted as a single shift for the purposes of the roster cycles and required breaks prescribed under Clause 17 - Ordinary Time Hours of Work and Clause 18 - Broken Ordinary Time Shifts.

## **19. Paid Rostered Days Off Duty**

### **19.1 Rostering of Paid RDO's**

19.1.1 The employer and the employee should agree on the scheduling of an employee's paid rostered days off duty. Where agreement cannot be reached, the employer will determine the scheduling. An employee may accumulate up to ten paid rostered days off. The employer may schedule accumulated days off to suit the needs of the employer's business. However, the employer must give the employee at least four weeks notice of the days on which accumulated days off will be taken.

19.1.2 Except as provided by 19.1.3, an employee must be advised by the employer at least four weeks in advance of the weekday which is to be the paid rostered day off duty.

19.1.3 The employer with the agreement of the majority of employees affected may substitute the day an employee is to be rostered off duty (as a paid rostered day off) for another day in the case of an emergency or to meet the requirements of a particular establishment.

19.1.4 An individual employee with the agreement of the employer may substitute the day such employee is rostered off duty (as a paid rostered day off) for another day.

### **19.2 Paid Rostered Day Off Falling on a Public Holiday**

In the event of an employee's paid rostered day off falling on a Public Holiday, the employee and the employer should agree to an alternative day off duty as a substitute. In the absence of agreement the substituted day will be determined by the employer.

### **19.3 Work On Paid Rostered Day Off Duty**

Subject to 19.1, any employee required to work on their paid rostered day off must be paid in accordance with the provisions of Clause 22 - Overtime, but only where it is not possible to substitute another day for the rostered day off so worked.

### **19.4 Sick Leave and Paid Rostered Days Off**

Employees are not eligible for sick leave in respect of absences on paid rostered days off as such absences are outside their ordinary hours of duty.

### **19.5 Annual Leave and Paid Rostered Days Off**

There is no entitlement to a paid rostered day off during a period of annual leave as such days do not count as time worked for accrual purposes.

## **20. Rosters and Transfer of Employees**

### **20.1 Notice**

Employees (other than Relieving Officers and casual employees) must work their normal hours of work in accordance with a roster for which advance notice has been given. A Relieving Officer or casual employee may also, at the employer's discretion, work their normal hours of work in accordance with a roster for which advance notice has been given.

### **20.2 Display**

The employer must, by legible notice displayed at a place accessible to the employees, notify employees who work their normal hours in accordance with a roster, of the commencing and ceasing times of their rostered hours of work. Such times, once notified, may not be changed without the payment of overtime, or by seven days' notice given in accordance with this subclause. However, by agreement between the employer and the employee less than seven days' notice may be substituted.

### 20.3 Transfer of an Employee in Response to A Client's Demand

Where the employer transfers an employee in response to the clients demand and that transfer results in a loss of income for the employee, the employee must have their income at the site from which the employee was transferred maintained for the period remaining in the roster cycle.

## 21. Span Loadings - Ordinary Time Work

21.1 The following additional loadings must be applied to the appropriate ordinary time rate in regard to any portion of an ordinary time shift which falls within the spans as defined in Clause 7 - Definitions, whether or not the ordinary time shift starts before and/or ends after the defined span.

21.2 The span loading applies only to that part of the shift which is within the defined span, and does not apply to the part of the shift (if any) which falls outside the defined span.

21.3 The loadings to be applied are:

Span	Loading
Night Span (Normal)	21.7%
Night Span (Permanent Night Work)	30.0%
Saturday Span	50.0%
Sunday Span	100.0%
Public Holiday Span	150.0%

21.4 Span loadings must be paid for as worked. For example:

21.4.1 if an employee commences work at 1800 on Sunday and works through to 0600 on Monday then that employee is entitled to the Sunday Span loading (100.0%) for the first 6 hours of the shift and the appropriate Night Span loading (either 21.7% or 30.0%) for the remaining 6 hours.

21.4.2 if an employee commences work at 1700 on Monday and works through to 0100 on Tuesday then that employee is entitled to the appropriate Night Span loading (either 21.7% or 30.0%) for the 7 hours from 1800 to 0100, but not to any loading for the first hour worked.

21.5 The loadings prescribed in this clause apply in respect of ordinary hours of work only and apply to all employees including casual employees.

## 22. Overtime

### 22.1 Loading for Overtime

Subject to the provisions of 22.2, employees who are required to work overtime in addition to their ordinary time hours of work (as defined) must, in addition to the ordinary time rate provided for the employee's classification under Table 1 of Part B, be paid a loading equal to:

22.1.1 for overtime work performed during a weekday (as defined) or Saturday span (as defined), but excluding overtime work performed during a Public Holiday span (as defined), 50% of the ordinary time rate for the first two hours of overtime worked and 100% thereafter;

22.1.2 for all overtime work performed during a Sunday span (as defined), 100% of the ordinary time rate;

22.1.3 for all overtime work performed during a Public Holiday span (as defined), 150% of the ordinary time rate.

### 22.2 Appendix B - Agreements Voluntary Overtime

In lieu of the loading provided under 22.1, an employee may elect to work additional hours under an Appendix B agreement, subject to the following conditions:

22.2.1 Any such agreement must be committed to writing in the form set out in this award. Such agreement must have the written consent of the employer and the employee.

22.2.2 For all work performed under an Appendix B agreement the employee concerned must be paid at the rate of 150% of the rate of pay applicable for ordinary time worked on that day between the hours of 0600-1800.

22.2.3 No employee may work more than a total of 14 hours in any one day, including both overtime and ordinary time.

### 22.3 Calculation of Overtime Payments

In computing overtime payments, each day's work stands alone. The hourly rate is determined by dividing the appropriate weekly rate by 38, even in cases where an employee works more or less than 38 ordinary hours in a week.

### 22.4 Minimum Break

An employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that such employee has not had at least eight hours off duty between those times, must, subject to this subclause, be released after completion of such overtime until the employee has had such period off duty without loss of pay for ordinary working time occurring during such absence. If on the instructions of the employer such an employee resumes or continues work without having had such period off duty the employee must be paid at double ordinary time until released from duty for such period and such employee is then entitled to be absent until the employee has had such period off duty without loss of pay for ordinary working time occurring during such absence.

### 22.5 Non-Attendance of Other Employees

Where an employee does not attend for rostered duty with the required notice the employee on shift must agree to work up to 4 hours overtime to allow the employer to arrange for suitable relief subject to a maximum of 14 hours total time being worked in any one shift.

### 22.6

- (a) Subject to paragraph (b), an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (c) For the purposes of paragraph (b), what is unreasonable or otherwise will be determined having regard to:
  - (1) any risk to employee health and safety;
  - (2) the employee's personal circumstances including any family and carers responsibilities;
  - (3) the needs of the workplace or enterprise;
  - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (5) any other relevant matter.

### 23. Call Back

- 23.1 An employee required to attend the employer's premises and/or the premises of a client or clients of an employer for any reason after leaving the place of employment (whether notified before or after leaving the place of employment) must be paid a minimum number of hours as specified below:
- 23.1.1 where such attendance is required at the employer's premises for the purposes of a disciplinary and/or counselling interview and/or administrative procedures such as completing or attending to Workers' Compensation Forms, Accident Reports, or Break/Entry Reports, the employee must be paid a minimum payment of two hours at the appropriate rate for each such attendance;
- 23.1.2 except as provided in 23.1.1, where such attendance is required at the employer's premises on a Monday through Saturday, the employee must be paid a minimum payment of three hours at the appropriate rate for each such attendance;
- 23.1.3 where any such attendance is required at the employer's premises on a Sunday the employee must be paid a minimum payment of four hours at the appropriate rate for each such attendance.
- 23.2 This clause does not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

### 24. Public Holidays

#### 24.1 Specified Public Holidays

The days on which the following holidays are observed will be observed as public holidays under this award, namely:

New Year's Day  
Australia Day  
Good Friday  
Easter Saturday  
Easter Monday  
Anzac Day  
Queen's Birthday  
Labour Day  
Christmas Day  
Boxing Day and

any day which may hereafter be proclaimed a public holiday throughout the State; and

- 24.1.1 the first Monday in August of each year or such other day as is determined annually by mutual consent between the an employer and an employee; or
- 24.1.2 where a day, other than the first Monday in August each year, is observed by the general body of employees in any establishment then such day may be substituted for the first Monday in August as a holiday for any employees in that establishment entitled to such day or additional day as a holiday under this award.
- 24.2 Permanent Employees - Entitlement to Public Holidays

Permanent employees are entitled to the above holidays without loss of pay. However, a five-day shift worker (as defined) is only entitled to holidays that occur on Monday to Friday inclusive. An employer must not alter an employee's roster for the specific purpose of avoiding the entitlement which is provided under this subclause.

### 24.3 Holidays Falling on a Day on which a Seven-Day Shift Worker is not Rostered to Work

24.3.1 Where a holiday occurs on the rostered day off of a seven-day shift worker (as defined), other than a rostered day given pursuant to the provisions of 17.9 and Clause 19 - Paid Rostered Days Off Duty, then if such employee is not required to work on that day the employer must pay the employee 8 hours' ordinary pay in respect of such day.

24.3.2 However, the employer may, in lieu of the payment of eight hours' ordinary pay prescribed in this subclause, add a day to the annual leave entitlement of the employee concerned. Any day or days added to an employee's entitlement to annual leave in accordance with this subclause must be the working day or working days immediately following the annual leave period to which the employee is entitled to under Clause 25 - Annual Leave.

24.3.3 Where the employment of a seven-day shift worker has been terminated and the employee thereby becomes entitled under Section 4 of the Annual Holidays Act 1944 (New South Wales), to payment in lieu of an annual holiday, with respect to a period of employment, the employee is entitled also to an additional payment for each day accrued under this subclause, at the appropriate ordinary rate of pay, if payment has not already been made in accordance with the provisions of this subclause.

### 24.4 Payment Where Employees Required to Work on a Public Holiday

Permanent and casual employees who are required to work ordinary time or overtime during the 24 hour period between 0000 at the start of a public holiday and 2400 at the end of that same public holiday (whether or not that work commences before or ends after the specified span period) must be paid for all hours worked during the specified span at the rate of 150% in addition to the ordinary time rate provided for the employee's classification under Table 1 of Part B. This payment is to be in lieu of any payment which would have otherwise been required for those hours under the provisions of 24.2 or 24.3.

### 24.5 Unauthorised Absence before or after a Public Holiday.

Where an employee is absent from his or her employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee is not entitled to the payment for such holiday as is provided under 24.2.

## 25. Annual Leave

25.1 All employees are entitled to annual leave in accordance with the *Annual Holidays Act* 1944 (NSW).

### 25.2 Additional Leave for Seven-Day Shift Workers

In addition to an annual holiday of four weeks provided by section 3 of the *Annual Holidays Act*, 1944 (New South Wales), a seven-day shift worker at the end of each year of employment is entitled to the additional leave as prescribed below:

25.2.1 If during the year of employment the employee has served continuously as a seven-day shift worker, the additional leave with respect to that year is one week.

25.2.2 If during the year of employment the employee has served only a portion of it as a seven-day shift worker, the additional leave is 3 1/4 hours for each completed month of employment as a seven-day shift worker. Where the additional leave is or comprises a fraction of a day such fraction does not form part of the leave period and any such fraction must be discharged by payment only.

25.2.3 Where the employment of a seven-day shift worker is terminated and there is thereby an entitlement due under section 4 of the *Annual Holidays Act*, 1944 (New South Wales), to payment in lieu of an annual holiday with respect to a period of employment such employee is also entitled to an additional payment of 3 1/4 hour's pay for each completed month of service as a seven-day shift worker.



### 25.3 Payment for Annual Leave

All employees must receive payment for annual leave periods calculated at which ever is the greater of:

25.3.1 The ordinary time rate provided for the employee's classification under Table 1 of Part B, together with, where applicable, the leading hand allowance, relieving officer's allowance and first aid allowance prescribed in 12.3, 12.4 and 12.5 respectively, plus a loading of 17.5%, or

25.3.2 The ordinary time rate increased by any night span and/or permanent night span rates and/or weekend span rates which would have been payable for ordinary time the employee would have worked if the employee had not been on annual leave (but not including any public holiday span rate payable in respect of a public holiday occurring during the annual leave which is a public holiday on which the employee would have worked an ordinary shift) together with, where applicable, the leading hand allowance, relieving officer's allowance and first aid allowance prescribed in 12.3, 12.4 and 12.5 respectively. An employee's roster must not be altered merely for the purpose of avoiding any benefit available to the employee under this provision.

25.3.3 Despite any other provision in this clause, no loading is payable to an employee who takes an annual holiday wholly or partly in advance. However, if the employment of such an employee continues until the day when he or she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday, and is to be calculated in accordance with 25.3.1 or 25.3.2, applying the award rates of wages payable on that day. This provision applies where an annual holiday has been taken wholly or partly in advance and the entitlement to the holiday arises after that date.

### 25.4 Payment In Lieu of Annual Leave on Termination of Employment

Where the employment of a permanent employee is terminated for any reason by either party and at the time of such termination the employee has not been given and has not taken the whole of any annual leave to which the employee has become entitled (employees only become entitled to annual leave for each completed year of service), then the employee must be paid for all such untaken annual leave at the rate provided under 25.3. For an incomplete year of service employees are entitled to a payment of 1/12 of their ordinary earnings for that incomplete year of service, in lieu of annual leave.

### 25.5 Annual Leave Loading

An annual leave loading is incorporated into the provisions of 25.3 and 25.4, and no additional amount is payable in respect of Annual Leave Loading.

## 26. Long Service Leave

Employees employed under the provisions of this award are entitled to long service leave in accordance with the provisions of the *Long Service Leave Act 1955* (New South Wales).

## 27. Personal Leave

The provisions of this clause apply to full-time and part-time employees, but do not apply to casual employees.

### 27.1 Amount of Paid Personal Leave

27.1.1 Paid personal leave is available to an employee when he or she is absent due to:

personal illness or injury (sick leave); or

for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or

because of bereavement on the death of an immediate family or household member (bereavement leave).

27.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

Length Of Time Worked For The Employer	Personal Leave (Hours)
less than 2 months	15.2
after 2 months to less than 4 months	22.8
after 4 months to less than 6 months	30.4
after 6 months to less than 8 months	38.0
after 8 months to less than 10 months	45.6
after 10 months	53.2
Each year thereafter	91.2

27.1.3 After the first year of service, in any year unused personal leave accrues by the lesser of:

- (a) 76 hours less the total amount of sick leave and carer's leave taken during the year.
- (b) the balance of the year's unused personal leave.

27.1.4 Payment for personal leave must be made at the ordinary time rate provided for the employee's classification under Table 1 of Part B.

## 27.2 Immediate Family or Household

27.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:

a member of the employee's immediate family; or

a member of the employee's household.

27.2.2 The term immediate family includes:

- (a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

## 27.3 Sick Leave

### 27.3.1 Definition

Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of his or her personal illness or injury.

### 27.3.2 Entitlement

- (a) The amount of personal leave an employee may take as sick leave depends on how long he or she has worked for the employer and accrues as follows:

Length Of Time Worked For The Employer	Rate Of Accrual Of Paid Sick Leave (Hours)
Less than 2 months	0
2 month to less than 4 months	7.6
4 months to less than 6 months	15.2
6 months to less than 8 months	22.8
8 months to less than 10 months	30.4
after 10 months	38
In the second and each subsequent year	76

- (b) Accumulated personal leave may be used as sick leave if the current sick leave entitlement is exhausted.

#### 27.3.3 Employee must give notice

- (a) Before taking sick leave, an employee must inform the employer as soon as possible and in any event, prior to the start of shift, unless he or she has a good reason for not doing so.
- (b) The notice must include:
  - the nature of the injury or illness (if known); and
  - how long the employee expects to be away from work.
- (c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.
- (d) Where an employee does not notify the employer of the employee's inability to attend for duty prior to the start of shift the employee is not entitled to payment for the first eight hours of such absence. However, in cases of accident or incapacity to notify, to receive payment for the absence the employee must provide reasonable proof that he/she was unable to attend for duty on account of incapacity or illness. An employee's entitlement to sick leave (see 27.3.2) must not be reduced as a consequence of the operation of this subclause.

#### 27.3.4 Evidence supporting claim

- (a) The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, that the employee was unable to work because of injury or personal illness.
- (b) The employer is not required to accept more than two statutory declarations for single day absences in any one year. Where a single day absence occurs before or after a public holiday or rostered day off the employee must supply a medical certificate.

#### 27.3.5 The effect of workers' compensation

If an employee is receiving workers' compensation payments, he or she is not entitled to sick leave.

27.3.6 Despite anything contained in 27.1, a permanent employee suffering injury through an accident arising out of and in the course of such employee's employment (not being an injury in respect of which there is entitlement to Workers' Compensation) necessitating attendance during working hours of a doctor, chemist or trained nurse, or at a hospital, may not suffer any deduction from pay for the time (not exceeding four hours) so occupied on the day of the accident and must be reimbursed by the employer for all expenses reasonably incurred in connection with such attendance. For the purpose of this clause, expenses include fares.

### 27.4 Bereavement Leave

#### 27.4.1 Paid leave entitlement

An employee other than a casual is entitled to use up to 15.2 hours personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household dies within Australia. Where such death occurs outside Australia, the employee is entitled to use up to 7.6 hours personal leave as bereavement leave, provided that the entitlement will extend to 15.2 hours if the employee travels overseas to attend the funeral.

#### 27.4.2 Unpaid leave entitlement

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, he or she is entitled to take unpaid bereavement leave. The employer and the employee should agree on the length of the unpaid leave. In the absence of agreement, the employee is entitled to take up to 15.2 hours unpaid leave.

#### 27.4.3 Evidence supporting claim

The employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household.

### 27.5 Carer's Leave

#### 27.5.1 Paid leave entitlement

An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

#### 27.5.2 Notice required

- (a) Before taking carer's leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.
- (b) The notice must include:
  - the name of the person requiring care and support and his or her relationship to the employee;
  - the reasons for taking such leave; and
  - the estimated length of absence.
- (c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

#### 27.5.3 Evidence supporting claim

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

#### 27.5.4 Unpaid leave

An employee may take unpaid carer's leave by agreement with the employer.

## 28. Parental Leave

An employee shall be entitled to Parental Leave in accordance with Part 4 of Chapter 2 of the *Industrial Relations Act 1996*.

## **29. Jury Service**

### 29.1 Entitlement

An employee must be allowed leave of absence during any period when required to attend for jury service. Such leave will be limited to a maximum of two weeks in any period of jury service.

### 29.2 Payment

During such leave of absence, an employee must be paid the difference between the jury service fees received and the normal rate of pay as if working.

### 29.3 Proof of Attendance

An employee must produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and must give the employer notice of such requirement as soon as practicable after receiving notification to attend for jury service.

## **30. Attendance at Repatriation Centres**

Permanent employees who are ex-service personnel must be allowed, as time worked, lost time incurred whilst attending Repatriation Centres for medical examination and/or treatment, provided that:

30.1 Such lost time does not exceed four hours on each occasion and a maximum of 20 hours per annum;

30.2 The employee produces evidence satisfactory to the employer that there is a requirement to and subsequent attendance at a Repatriation Centre.

30.3 The employer may deduct from such lost time any payments the employee is entitled to receive for lost time from the Department of Veterans Affairs in respect of any such attendance.

## **31. Introduction of Change**

### 31.1 Employer's Duty to Notify

31.1.1 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.

31.1.2 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, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

### 31.2 Employer's Duty to Discuss Change

31.2.1 The employer shall discuss with the employees affected and their Union, inter alia, the introduction of the changes referred to in subclause 31.1 hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their Union in relation to the changes.

31.2.2 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 subclause 31.1 hereof.

31.2.3 For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their Union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

### 32. Redundancy

#### 32.1 Discussions Before Terminations

32.1.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing 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 with their Union.

32.1.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph 32.1.1 hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

32.1.3 For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and their Union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the termination are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

#### 32.2 Transfer to Lower Paid Duties

Where an employee is transferred to Lower paid duties for reasons set out in paragraph 32.1.1, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if his or her 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.

#### 32.3 Severance Pay

In addition to the period of notice prescribed for ordinary termination in clause 9, Termination of Employment, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph 32.1.1, shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of Continuous Service	Severance Pay
1 year or less	Nil
Over 1 year and up to the completion of 2 years	4 weeks' pay
Over 2 years and up to the completion of 3 years	6 weeks' pay
Over 3 years and up to the completion of 4 years	7 weeks' pay
Over 4 years	8 weeks' pay

Week's Pay means the ordinary time rate of pay for the employee concerned.

Provided that severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

#### 32.4 Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in paragraph 32.1.1 may terminate his or her employment during the period of notice and, if so, shall be entitle to the same benefits and

payments under this clause had the 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.

### 32.5 Alternative Employment

An employer, in a particular redundancy 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.

### 32.6 Time Off During Notice Period

32.6.1 During the period of notice of termination given by the employer for reasons set out in paragraph 32.1.1 an 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.

32.6.2 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.

### 32.7 Notice to Centrelink

Where a decision has been made to terminate employees in the circumstances outlined in paragraph 32.1.1, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

### 32.8 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 subclause 32.3, the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only. If this superannuation benefit is greater than the amount due under subclause 32.3 then the employee shall receive no payment under that clause.

### 32.9 Transmission of Business:

32.9.1 Where a business is before or after the date of this Award, transmitted from an employer (in this subclause called "the transmitter") to another employer (in this subclause called "the transferee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transferee:

32.9.1.1 the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission, and

32.9.1.2 the period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transferee.

32.9.2 In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

### 32.10 Mechanisation And Technological Changes

32.10.1 Notwithstanding any other provisions of this clause, where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes in the

industry in which the employer is engaged, the employer terminates the employment of an employee who has been employed for the preceding 12 months, such employee shall be given three months' notice of the termination of employment; provided that, if the employer fails to give such notice in full:

32.10.1.1 the employee shall be paid at the rate specified for the employee's ordinary classification in clause 11, Wages, for a period equal to the difference between three months and the period of the notice given, and

32.10.1.2 the period of notice required by this subclause to be given shall be deemed to be service with the employer for the purpose of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of those Acts; and provided further that the right of the employer to summarily dismiss an employee shall not be prejudiced by the fact that the employee has been given notice pursuant to this subclause of the termination of the employee's employment.

32.10.2 When an employer gives to an employee notice of the termination of employment on account of the introduction or proposed introduction of mechanism or technological changes, within 14 days thereafter the employer shall give notification in writing to the Industrial Registrar, the New South Wales Government Director of Vocational Guidance, the New South Wales Government Director of Technical and Further Education and the New South Wales Branch Secretary of Australian Liquor, Hospitality and Miscellaneous Workers Union, of the fact, stating the employee's name, address and usual occupation and the date when the employment terminated or will terminate in accordance with the notice given.

### 32.11 Employees With Less Than One Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

### 32.12 Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justified instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks for a period of less than 12 months.

### 32.13 Employers Exempted

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

### 32.14 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.

## 33. Enterprise Flexibility Provisions

See Principle 11 of the Wage Fixing Principles established in the Commission's State Wage Case decision 2004, as varied from time to time.



**34. Deduction of Union Dues**

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - (c) deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscription to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly or quarterly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.
- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease."
- (viii)
  - (a) In the case of employers which currently deduct union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after 19 February 2004;

- (b) In the case of employers who do not fall within sub-paragraph (i) above, but who currently make deductions, other than union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on or after 19 May 2004;
- (c) For all other employers, from the beginning of the first pay period to commence on or after 19 August 2004.

## PART B

### MONETARY RATES

**Table 1 - Rates of Pay per 38-Hour Week**

Classification	Current Rate	State Wage Case 2010	New Rate
	Per week \$	%	Per Week \$
Grade 1	645.20	4.25	672.60
Grade 2	664.80	4.25	693.10
Grade 3	676.80	4.25	705.60
Grade 4	688.90	4.25	718.20
Grade 5	712.60	4.25	742.90

**Table 2 - Other Rates and Allowances**

Item No	Clause No	Brief Description	Rate per Shift from the first pay period to commence on or after 16-Dec-2010 SWC 2010 (4.25%) \$	Rate per Shift from the first pay period to commence on or after 16-Dec-2010 SWC 2010 (4.25%) \$
	12.1	Leading Hand Allowance		Casuals only
1		up to 5 employees	29.72	5.95
2		6 to 10 employees	33.69	6.73
3		11 to 15 employees	44.06	8.81
4		16 to 20 employees	50.83	10.16
5		Over 20 employees	50.83	10.16
6		for each employee exceeding 20,extra	0.79	0.17
7	12.2	Relieving Officer	29.67	
	12.3	First Aid Allowance		Casuals only
8		Industrial	16.75	3.36
9	12.4	Gun Allowance	11.53	2.30
10	12.5	Locomotion Allowance		All employees
11		Motor Vehicle/cycle		27.36
12		Bicycle		2.88
13	12.6	Meal Allowance		8.78
14	12.7	Fares Allowance		7.54
15	12.8	Overnight Meal Allowance		71.50
			Permanent Employees Rate Per Hour	Casual Employees Rate per Hour
16	12.9	Aviation Allowance	1.19	1.23

**APPENDIX A**

**ORDINARY TIME HOURS OF WORK - SPECIFIED SITE OR SITES**

1. This document, which records an agreement reached pursuant to 17.7.1(a), must be signed by all affected employees within one month of the arrangement being implemented. An employee who is a union member is entitled to forward a copy of the signed agreement to the Union Office.
2. The following arrangement is made pursuant to 17.7.1(a) of the Security Industry (State) Award, in regard to the following site(s):  
  
Location(s) of Site(s)
3. It is agreed between the parties that the following arrangement for extended daily ordinary hours for the above location(s) is as follows (see also attached roster(s)):
4. This agreement will take effect from the beginning of the first full pay period to commence on or after.....and will remain in force for a period of.....
5. Signed on behalf of (COMPANY NAME)  
  
(Date)
6. Signed by (employees):  
  
(All affected employees to sign as acknowledging that they agree to this arrangement)
7. Where the union is represented in negotiations relating to this agreement, the agreement is to be signed on behalf of the Union:  
  
(Union Secretary) (Date)

**APPENDIX B**

**OVERTIME AGREEMENT**

1. The following arrangement is made pursuant to 22.2 of the Security Industry (State) Award in regard to the following employee(s)  
  
Name (print) Signature
2. The employee(s) who's names and signatures appear above agree to be paid for overtime worked in accordance with 22.2 in lieu of payment in accordance with 22.1
3. This agreement once signed by all parties will take effect from the beginning of the first full pay period to commence on or after.....and will remain in force unless rescinded in writing by any party giving four weeks notice
4. SIGNED ON BEHALF OF (Company name)  
  
Name (print) Signature  
  
Position

## APPENDIX C

### ORDINARY TIME HOURS OF WORK - SPECIFIED COMPANY/EMPLOYER

1. This document records an agreement reached pursuant to 17.7.1(b) of the Security Industry (State) Award and is signed by the Company and employees (and, where appropriate, the union) as certifying that the arrangement outlined hereunder was agreed to by a majority of employees of the specified Company, in a secret ballot conducted expressly for that purpose.
2. The following arrangement is made pursuant to 17.7.1(b) of the Security Industry (State) Award, and it will apply hereafter to all employees of the specified Company employed under the provisions of the Security Industry (State) Award, unless and until rescinded by either party pursuant to the provisions of 17.7.3 of the award.
3. It is agreed between the Company and its employees (and, where appropriate, the Union) that the arrangement for extended daily ordinary hours of work which are outlined below and/or which are described in the attached rosters will hereafter apply to all employees of the Company.
4. This agreement takes effect from the beginning of the first full pay period to commence on or after.....and remains in force for a period of.....
5. Signed on behalf of (COMPANY NAME)  
  
(Date)
6. Signed on behalf of employees and/or the Union:  
  
Employee representative/  
  
Union Secretary (Date)

## APPENDIX D

### NATIONAL TRAINING WAGE PROVISIONS

#### 1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Application
3.	Objective
4.	Definitions
5.	Training Conditions
6.	Employment Conditions
7.	Wages
8.	Special Arrangements
9.	Additionally and Licensing
10.	Monitoring of Agreement

#### 2. Application

- 2.1 Subject to 2.1.1.2, this appendix applies to persons:
  - 2.1.1 who are undertaking a Traineeship (as defined); and
    - 2.1.1.1 who are employed by an employer bound by this Appendix.

- 2.1.1.2 Despite the foregoing, this appendix does not apply to employees who were employed by an employer bound by this appendix prior to the date of approval of a traineeship scheme relevant to the employer, except where agreed between the employer and the union.
- 2.2 This appendix does not apply to the apprenticeship system.
- 2.3 At the conclusion of the traineeship, this appendix ceases to apply to the employment of the trainee and the award will then apply to the former trainee.

### 3. Objective

The objective of this Appendix is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of Trainees, particularly young people, and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees be displaced from employment by Trainees. Nothing in this award replaces the prescription of training requirements in the award.

### 4. Definitions

- 4.1 "Approved Training" means training undertaken (both on or off-the-job) in a Traineeship and will involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship Scheme approved by the State Training Authority. The training will be accredited and lead to qualifications as set out in 5.7.
- 4.2 "Relevant Award" means the Security Industry (State) Award that applies to a Trainee, or that would have applied, but for the operation of this Appendix.
- 4.3 "Relevant Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union.
- 4.4 "Trainee" means an employee who is bound by a Traineeship Agreement made in accordance with this Appendix.
- 4.5 "Traineeship" means a system of training which has been approved by the State Training Authority or which meets the requirements of a National Training Package developed by the Property Services Industry Training Advisory Board and endorsed by the National Training Framework Committee and which leads to an Australian Qualifications Framework qualification specified by that National Training Package at Levels 2 and 3.
- 4.6 "Traineeship Agreement" means an agreement made subject to the terms of this Appendix between an Employer and the Trainee for a Traineeship and which is registered with the State Training Authority or under the provisions of the State legislation. A Traineeship Agreement must be made in accordance with the relevant approved Traineeship Scheme and must not operate unless this condition is met.
- 4.7 "Traineeship Scheme" means an accredited training program consistent with the National Training Package applicable to security industry employees. A Traineeship Scheme will not be given approval unless consultation and negotiation with the relevant Union upon the terms of the proposed Traineeship Scheme and the Traineeship have occurred. An application for approval of a Traineeship Scheme must identify the relevant Union and demonstrate to the satisfaction of the approving authority that the abovementioned consultation and negotiation have occurred. A Traineeship Scheme must include a standard format, which may be used for a Traineeship Agreement.
- 4.8 "Parties to a Traineeship Scheme" means the employer and the relevant Union involved in the consultation and negotiation required for the approval of a Traineeship Scheme.
- 4.9 "Appropriate State legislation" means the *Vocational Education and Training Act 2005* (NSW)
- 4.10 "State Training Authority" means the NSW Department of Education and Training or its successor.

- 4.11 "Training program" means an accredited training program, which must provide for training and training related employment for a minimum of six months in the case of full-time trainees and up to a maximum twelve months in the case of part-time trainees. However, the traineeship program may be extended by agreement where an individual's assessment indicates a longer period is necessary to achieve the qualification sought.

## 5. Training Conditions

- 5.1 A traineeship must not commence until the relevant traineeship agreement, made in accordance with a traineeship scheme, has been signed by the employer and the trainee and lodged for registration with the state training authority, provided that if the traineeship agreement is not in a standard format a traineeship must not commence until the traineeship agreement has been registered with the state training authority. The employer must ensure that the trainee is permitted to attend the training course or program provided for in the traineeship agreement and must ensure that the trainee receives the appropriate on-the-job training.
- 5.2 The trainee must attend an approved training course or training program prescribed in the traineeship agreement or as notified to the trainee by the state training authority.
- 5.3 A substantial proportion of the traineeship program will be delivered through on-the-job training and instruction. Such training must:
- 5.3.1 be specified in the training program;
  - 5.3.2 where possible, be incorporated in the normal duties of a trainee; and
  - 5.3.3 must be paid in accordance with clause 8 of this appendix.
- 5.4 In addition to the on-the-job training component, a trainee will be expected to attend some off-the-job training. This will be to a maximum of 20% of an individual's total time spent in the traineeship.
- 5.5 The employer must roster work in such a way as to take account of an individual's off-the-job training commitments including any requirement for an individual to attend off-the-job training.
- 5.6 During the traineeship period, the employer must provide a level of supervision in accordance with the traineeship agreement and clause 10 of this appendix.
- 5.7 Training must be directed to:
- 5.7.1 the achievement of entry level competencies required for security industry, including key competencies, at AQF Level 2
  - 5.7.2 the achievement of an accredited Certificate at AQF Level 3 or above that is awarded on the basis of achieving the competencies specified by the Traineeship.
  - 5.7.3 The employer must submit all training agreements to the traineeship monitoring committee at Suite 2B, 187 Thomas Street, Haymarket NSW 2000, established in clause 11 of this agreement, within 28 days of lodging the traineeship agreement with the relevant new apprenticeship centre. The committee must keep the terms of the traineeship agreement private and confidential.

## 6. Employment Conditions

- 6.1 A trainee will be engaged as a full-time or a part-time employee for a maximum of one year's duration. However, a trainee will be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the state training authority, the relevant employer and the trainee may vary the duration of the traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant traineeship scheme.

- 6.2 Termination of employment during traineeship
- 6.2.1 The employer must not terminate the employment of a Trainee without firstly having provided in writing notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority. The written notice to be provided to the relevant State Training Authority must be provided within 5 working days of the termination.
- 6.2.2 No existing employee can be terminated in any manner other than pursuant to this award under which they are employed at the time of commencement of the Traineeship.
- 6.2.3 An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship must notify, in writing, the state training authority of their decision.
- 6.3 The trainee must be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the traineeship agreement.
- 6.4 Where the employment of a trainee by an employer is continued after the completion of the traineeship period, such traineeship period must be counted as service for the purposes of the award or any other legislative entitlements.
- 6.5 The traineeship agreement may restrict the circumstances under which the trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.
- 6.6 No trainee may work overtime or shiftwork on his or her own unless consistent with the provisions of the award.
- 6.7 No trainee may work shiftwork unless the parties to a traineeship scheme agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork trainees.
- 6.8 All other terms and conditions of the award that are applicable to the trainee or would be applicable to the trainee but for this appendix apply unless specifically varied by this appendix.
- 6.9 A trainee who fails to either complete the traineeship or who cannot for any reason be placed in full-time employment with the employer on successful completion of the traineeship will not be entitled to any severance payments payable pursuant to termination, redundancy provisions or similar provisions.
- 6.10 The training provider will develop and support the training program in accordance with the requirements of the AQF accreditation and the State Training Authority requirements for the delivery of the approved traineeship.
- 6.11 Existing employees who undertake a traineeship under this award must have no change in their employment status or entitlements under the agreement as a consequence of undertaking such traineeship.

## 7. Wages

- 7.1 The weekly wages payable to trainees are as provided in this clause.
- 7.2 A trainee's weekly wage rate is the relevant weekly wage rates which would otherwise have applied under this award or proportionately for part-time employees provided that off-the-job training will be unpaid.

### **8. Special Arrangements**

Subject to the foregoing, the NSW Industrial Relations Commission may be requested to determine the appropriate wage rates and/or conditions of employment for any Traineeship not regarded by the parties or any of them as appropriately covered by this Appendix.

### **9. Additionally and Licensing**

- 9.1 Trainees will not be required to perform any duties which will conflict with licensing requirements, e.g. they will not carry firearms until licensed.
- 9.2 Trainees will receive the same level of supervision as is received by new employees engaged under probation, Such supervision must continue for a period of at least three months.
- 9.3 For the first month of the level 2 traineeship, a trainee security officer must be rostered with at least one other guard on shift at the same site who is accessible to the trainee.

### **10. Monitoring of Agreement**

- 10.1 The parties to this appendix agree to the establishment of an industry committee to monitor the impact of the traineeship across the industry.
- 10.2 Such committee will be known as the traineeship monitoring committee and will meet 4 times a year.
- 10.3 The committee will comprise:
  - 10.3.1 One representative from ASIAL
  - 10.3.2 One representative from ALHMWU
  - 10.3.3 One representative from the Property Services Training Co.

---

Printed by the authority of the Industrial Registrar.



**SHOP EMPLOYEES (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C0104	18/05/2001	First pay period on or after 07/03/2001	324	935
Part B	C0106	18/05/2001	First pay period on or after 02/04/2001	324	1088
33, Part B	C0490	07/09/2001	First full pay period on or after 28/07/2001	327	742
32 (1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
Part B - Table 2: Items 3, 4 & 7	C1300	09/08/2002	First full pay period on or after 22/04/2002	335	904
38(b), Part B	C1379	13/09/2002	First full pay period on or after 28/07/2002	336	259
Arrangement, 31A Part B	C1877	27/06/2003	First full pay period on or after 21/03/2003	340	105
38(b) & Part B	C2106	24/10/2003	First full pay period on or after 28/07/2003	341	874
Part B - Table 2	C2738	20/08/2004	On and from 15/04/2004	346	94
2, 4, 5, 11, 16, 17, 18, 23, 26, 28, 35, 37	C3234	01/04/2005	On 14/07/2004	349	925
15, 34, 38, Part B	C3107	15/04/2005	On or after 28/07/2004	350	277
34, 38, Part B	C3960	21/10/2005	First full pay period on or after 28/07/2005	354	717
17	C4380	17/03/2006	On and from 01/02/2006	358	218
Part B - Table 2	C4398	14/04/2006	First full pay period on or after 20/2/2006	358	966
1, 5A	C4753	06/10/2006	From 10/03/2006	361	318
5A	C4805	06/10/2006	From 10/03/2006	361	319
1, 5, 20, 21, 21A	C5137	20/10/2006	From 19/12/2005	361	573
38, Part B	C4960	15/12/2006	First full pay period on or after 28/07/2006	361	1152
Part B - Table 2	C5412	20/04/2007	First full pay period on or after 27/02/2007	362	644
Correction to C4380	C6256	30/11/2007		364	631
38, Part B	C6264	08/02/2008	First full pay period on or after 28/07/2007	364	1131
2, 37	C6439	11/04/2008	On and from 13/02/2008	365	626
34, Part B	C6449	02/05/2008	First full pay period on or after 13/02/2008	365	1077
38, Part B	C6832	30/01/2009	First full pay period on or after 28/07/2008	367	120
34, Part B	C7091	31/07/2009	First full pay period on or after 27/03/2009	368	1120
38, Part B	C7134	25/09/2009	First full pay period on or after 06/08/2009	369	187
34, Part B	C7456	26/03/2010	First full pay period on or after 27/03/2010	370	65
38, Part B	C7603	02/09/2011	First full pay period on or after 16/12/2010	671	694

**PART A****1. Arrangement**

## PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Engagement, Payment and Termination
4.	Part-time Employees
5.	Casual Employees - All Shops
5A.	Secure Employment
6.	Meal Allowances
7.	Flexibility of Work
8.	Commitment to Training and Careers
9.	Mixed Enterprise
10.	Hours
11.	Shift Work (Night Fill) - General Shops
12.	Special Provisions for Substituted Late Shopping Night (General Shops)
13.	Savings Clause
14.	Weekend and Late Night Penalty Rates and Loadings
15.	Overtime
16.	Meal Times and Rest Pauses
17.	Holidays
18.	Sick Leave
19.	Blood Donor Leave
20.	Bereavement Leave
21.	Personal/Carer's Leave
21A.	Parental Leave
22.	Jury Service
23.	Annual Holiday Loading
24.	Travelling Time, Expenses, Allowances, etc.
25.	Uniforms, Protective Clothing
26.	Facilities
27.	Renovations in Retail Shops
28.	Notations
29.	Exemptions
30.	Cleaning Duties
31.	Dispute Settlement Procedures
31A.	Deduction of Union Membership Fees
32.	Anti-Discrimination
33.	Redundancy
34.	Supported Wage System for Workers with Disabilities
35.	Allowances and/or Additional Rates
36.	Agricultural, Pastoral or Horticultural Societies' Shows, etc.
37.	Area, Incidence and Duration
38.	Wages

## PART B

## MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

## 2. Definitions

- (i) "General Shops" means and includes all shops other than special shops, and confection shops as defined in this award.
- (ii) "Special Shops" means and includes audio shops, book shops, video shops, cake and pastry shops, cooked provisions shops, take-away food shops, fish shops, flower shops, garden plant shops, hairdressers' shop, newsagencies, pet shops, souvenir and gift shops, tobacconists' shops (each as defined in Schedule 1 to the Shops and Industries Regulation 2007 to the *Shops and Industries Act 1962*), small shops (as defined in Section 78B of the *Shops and Industries Act 1962*) and retail liquor shops.
- (iii) "Confection Shops" means and includes confectioners' shops, refreshment shops and fruit and vegetable shops as defined in Schedule 1 of the Shops and Industries Regulation 2007 to the *Shops and Industries Act 1962*,
- (iv) "Light Refreshments" means and includes a beverage, hot or cold, served with biscuits, cakes, pastry, sandwiches, meat pies or the like.
- (v) "Shop" - See Section 78 of the *Shops and Industries Act 1962*.
- (vi) "Ticket Writer" means employees engaged in forming or designing letters or figures on paper or cardboard having an area not exceeding 7741.92 square centimetres or on pulp board, beaver board and other similar board having dimensions not exceeding 508 millimetres by 762 millimetres or designing or lettering price tickets on any medium having dimensions not exceeding 508 millimetres by 762 millimetres, provided that the paper board and tickets are for the employer's own use and not for sale.
- (vii) "Salesperson Outdoor" shall mean an employee employed to solicit retail sales or in the hire of goods by retail, away from the employer's place of business.
- (viii) "Section Head" means an employee appointed as such in a section of a shop where there are four or more employees.
- (ix) "Qualified First-aid Attendant" shall mean an employee who is a qualified first-aid attendant and is employed to carry out the duties of a first-aid attendant.
- (x) "Qualified Automotive Parts and Accessories Salesperson" shall mean an employee who has passed an appropriate course of technical training.
- (xi) "Retail Merchandiser" local and country shall mean a person who is employed to stack shelves in a shop and/or carry out such other duties normally associated with the work of a shop assistant, excluding persons employed by a bread manufacturer and, except in an emergency, the preparation of gondola ends and display units where defined in the Commercial Travellers, &c. (State) Award published 9 November 2001 (329 I.G. 329) This classification shall not apply to any persons employed by a retail employer in a shop.
- (xii) "Improver Waiter/Waitress" shall mean a waitress in a confection shop under 21 years of age with not more than six months experience.
- (xiii) "Rostered Day Off" means the day off arising from the working of ordinary hours in a 19-day four-week cycle.
- (xiv) "Long Day" means a day on which ordinary hours exceed nine hours but shall not exceed 11 hours.
- (xv) "Trolley Collector" means an employee who is engaged by a retail store, wholesaler or contractor, and who is responsible for the collection of shopping trolleys and the loading onto a trailer for transporting to designated storage areas, and the unloading of the trolleys at those areas.

- (xvi) "Union" means the Shop, Distributive and Allied Employees' Association, New South Wales and/or the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern New South Wales.

### 3. Engagement, Payment and Termination

- (i) Engagement - An employee may be employed as a weekly, part-time or a casual employee. Provided that no later than three months after the coming into force of this award, in a general shop employing 13 or more employees (employee as defined in paragraph (ix) of subclause (II), General Shops - Rosters for Five-day Week, of clause 10, Hours) the total number of hours worked by casual employees shall not exceed 25 per cent of the total hours worked in that shop. Hours worked by shift work (night fill) employees shall not be included in this calculation. Provided that the 25 per cent limitation on casual hours in general shops shall not apply to: tourist resort areas during the tourist extended trading hours, Christmas and Easter, and provided further that any shop which at the time of the making of the award employs casuals to an extent exceeding 25 per cent of total hours worked in the shop may continue to do so, provided that no additional casuals are employed until the limit of hours of 25 per cent is achieved. The 25 per cent limitation contained in this subclause does not apply to the employment of retail merchandisers as defined.

An employer who is of the opinion that a shop may not operate efficiently within the prescribed limit may seek exemption from this provision by application to the Industrial Relations Commission of New South Wales.

- (ii) Proof of Age - Upon the engagement of an employee, such employee, if required to do so, must furnish to the employer a correct statement in writing of his or her age certified to by statutory declaration or birth certificate. When an employee cannot prove his or her age in the ordinary way, a passport, military or naval discharge or Consular document shall be proof of age.
- (iii) Time and Payment of Wages - All wages shall be paid weekly in addition to any commission, bonus or premium to which the employee is entitled. Such payment shall be made on the same day of each week, which shall not be a Friday, a Saturday or a Sunday except as herein provided for, and shall be made up to and including at least the third day preceding the day of payment; provided that, in a week where an award holiday falls on the day in which wages are usually paid, payment thereof shall be made not later than the working day immediately preceding the award holiday. Other arrangements regarding payment may be made by agreement between the employer and the union.

Notwithstanding the foregoing:

- (1) Overtime shall be paid not later than a week from the second day succeeding the day on which it was earned. Provided that where an employee is paid fortnightly in accordance with paragraph (7) of this subclause, then overtime worked in the second week of a pay period may be paid in the following pay period.
- (2) Where employment is terminated an employee shall be paid forthwith all ordinary wages due and shall be paid all overtime and other moneys due within seven days of the date of the termination of employment.
- (3) In the event of an employer not paying the said overtime and other moneys due at the time on which he/she has undertaken to pay, then the employer shall reimburse the employee all expenses he/she has incurred in attending to collect the amounts due to him/her.
- (4) By mutual agreement between the employer and employee, casual employees and part-time employees may elect to be paid on a Friday, Saturday or Sunday.
- (5) When an employee is required by an employer to wait beyond the ordinary ceasing times of the employee for payment of ordinary wages or, when an employee is terminated, to wait for payment of ordinary wages after the period of the termination for a period of more than 15 minutes, he/she shall be paid ordinary wages for the period during which he/she is so required to wait.

- (6) Wages may be paid by electronic funds transfer. Provided that where wages are paid by electronic funds transfer, additional costs associated with the introduction and operation of electronic funds transfer shall be paid for by the employer.
  - (7) Wages may be paid fortnightly, provided that the employee is paid no later than the third day of the second week of the pay period.
- (iv) Termination of Employment -
- (a) In the case of misconduct justifying instant dismissal an employee may be instantly dismissed.
  - (b) In all other cases employment may be terminated by either party -
    - (1) during the first month of employment by a moment's notice;
    - (2) thereafter, by one week's notice or by the payment or forfeiture of one week's pay.
  - (c) Employment shall not be terminated, except for misconduct, while the employee is legitimately absent from duty on accrued sick leave.
  - (d) Termination Immediately Prior to Holiday - Subject to paragraph (ii) of subclause (A) of clause 17, Holidays, a full-time or part-time employee after more than two weeks' employment whose employment is terminated by the employer on the business day preceding a holiday or holidays, other than for misconduct, shall be paid for such holiday or holidays.
  - (e) Termination Prior to Christmas - Notwithstanding the provisions of paragraph (d) of this subclause, an employee engaged on or after 1 December in any year whose employment finished before Christmas Day and who is not re-employed within four weeks of Christmas Day by the same employer is not entitled to payment for the Christmas holidays.
  - (f) Certificate of Service - An employee who has been employed for not less than one month, on leaving or being discharged shall, upon request, be entitled to a statement in writing containing the date when the employment began and the date of termination. The statement shall be the property of the employee and shall be returned to him/her un-noted by any subsequent employer within seven days of the engagement.

#### **4. Part-Time Employees**

- (A) General Shops -
- (a) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.
  - (b) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours work per day nor less than 12 hours work per week nor more than 30 hours work per week.
- Provided further that where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a weekly employee and paid as such.
- Provided that employees employed prior to the first pay period in August 1988 shall work their ordinary hours, except where such employees agree otherwise, as follows:
- (i) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours work per day nor less than 16 hours work per week nor more than 30 hours work per week, except as provided in subparagraph (ii) of this paragraph.

- (ii) Provided that where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a full-time employee and paid as such.
  - (c) Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
  - (d) Notwithstanding the provisions of paragraphs (a) to (c) of this subclause, the union and an employer may agree, in writing, to observe other conditions in order to meet special cases.
- (B) Special and Confection Shops -
- (a) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.
  - (b) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not, in any case, be less than three hours work per day nor less than nine hours work per week nor more than 30 hours work per week.

Provided that the minimum weekly engagement for all part-time employees employed as at 26 September 1990 shall be 12 hours per week.

Provided further that where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a full-time employee and paid as such.

Provided further that employees employed prior to the first pay period in October 1988 shall work their ordinary hours, except where such employees agree otherwise, as follows:

The ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for weekly employees but shall not, in any case, be less than 20 hours per week.

- (c) Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
- (d) Notwithstanding the provisions of paragraphs (a) to (c) of this subclause, the union and an employer may agree, in writing, to observe other conditions in order to meet special cases.

### 5. Casual Employees - All Shops

All Shops - Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38, plus 15 per cent, calculated to the nearest half cent with a minimum payment on any one shift of three hours work.

Provided that upon employment, a new casual employee may be engaged for a minimum of two hours for the first two engagements, provided that these engagements shall be for the purpose of training only.

NOTATION: See Saturday penalty rates in clause 14, Weekend and Late Night Penalty Rates and Loadings, as shown in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- (a) Theatres, Sportsgrounds, etc. - Night interval employees, other than at continuous picture shows, working only during the interval of picture shows, theatres and like places of amusement, during not more than one hour at any interval, shall be paid at an hourly rate equal to the appropriate casual rate prescribed by this clause plus, for each night worked, the amount shown in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates. Provided that employees working only one night per week shall be paid such appropriate casual hourly rate plus, for each night worked, the amount shown in Item 2 of Table 2. 'Night interval' or 'night' shall include Saturday afternoon.
- (b) Employees engaged only in selling goods from trays in picture shows, theatres and like places of amusement, other than continuous picture shows, shall be paid a sum of money per night equal to 12.5

per cent commission on all sales made by them; provided that such payment shall allow the employees to receive per week a sum not less than 17.5 per cent of the appropriate adult weekly rate; provided also that an employee employed on only one night in any week shall be guaranteed for such night one-fifth of the above amount, plus six cents.

For the purposes of this paragraph, "night" includes Saturday afternoon. Persons employed in accordance with the provisions of this paragraph shall not be under 14 years of age and shall not be required to perform any work other than tray work.

- (c) Sports Grounds, etc. - Employees working at sports grounds and the like shall be paid an hourly rate equal to the appropriate adult weekly rate divided by thirty-eight, plus 7.5 per cent, with a minimum payment on any one day for four hours.
- (d) Personal/Carers Entitlement for Casual Employees
  - (i) Subject to the evidentiary and notice requirements in paragraphs (b) and (d) of subclause (1) of Clause 21 Personal/Carer's Leave, casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subparagraph (ii) of paragraph (c) of subclause (1) of Clause 21 Personal/Carer's Leave, who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (e) Bereavement Leave Entitlements for Casual Employees
  - (i) Subject to the evidentiary and notice requirements in paragraphs (b) and (d) of subclause (1) of Clause 21 Personal/Carer's Leave casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subparagraph (ii) of paragraph (c) of subclause (1) of Clause 21 Personal / Carer's Leave.
  - (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## **5A. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of twelve months

shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of twelve months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW).

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (ix) Exemption

The abovementioned casual conversion clause will not apply to persons who:



- (a) perform work pursuant to the *Technical and Further Education Commission Act 1990* and/or the *Public Sector Employment and Management Act 2002*.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 6. Meal Allowances

- (i) An employee who works overtime after 6.30 pm shall be paid, on such day, the amount set out in Item 3 Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, as a meal allowance or with the prior agreement of the union, shall be provided with a suitable meal approved of by the union, provided that in general shops:

- (a) An employee who is working their normal ordinary hours after 6.30 p.m. on a Thursday or Friday night shall not become entitled to a meal allowance until that employee works overtime of more than 30 minutes after the completion of such ordinary hours.
  - (b) An employee who is required to work overtime on a Sunday beyond 1.00 pm shall be paid, on that day, the amount set out in Item 3 of the said Table 2, as a meal allowance and if required to work beyond 6.00 pm a further sum of the same amount.
  - (c) A full-time or part-time employee in a general shop employed in the industry prior to 25 July 1984 (who elects not to work ordinary hours on a Saturday after 12 noon or on the second additional late night after 6.00 pm), who works after 6.00 p.m. on Thursday (Friday in the Shire of Gosford and the Shire of Wyong), shall be paid the amount set out in Item 3 of Table 2 as a meal allowance, provided that if the shop closes at 7.00 p.m. or earlier, such meal allowance shall not be payable.
- (ii) Breakfast - An amount set out in Item 4 of Table 2 shall be paid.

### **7. Flexibility of Work**

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

Employees shall take all reasonable steps to achieve quality, accuracy and completion of any job or task assigned to the employee.

Employees shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times.

### **8. Commitment to Training and Careers**

The parties acknowledge that varying degrees of training are provided to employees in the retail industry, both via internal, on the job and through external training providers.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the retail industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

The parties are committed to encouraging young people to view the retail industry as one which has the capacity to provide them with an interesting career as they progress not only through junior ranks but also as adults.

The parties agree to continue discussions on issues raised by the unions relating to training.

### **9. Mixed Enterprise**

A mixed enterprise is defined as an establishment where the primary operation is not covered by this award to the extent that at least 75 per cent of employees are engaged in an industry other than the retail industry.

For the purpose of increasing productivity, flexibility and efficiency in mixed enterprises, as well as enhancing opportunities for employees, broadbanding may extend, by agreement between an employer and an employee, to allow the employee to perform any work in a mixed enterprise within the scope of their skills and competence. Discussion shall take place at the enterprise with a view to reaching agreement for employees to perform a wider range of tasks, removal of demarcation barriers and participation of employees in additional training.

Subject to the provisions of the previous paragraph, employees in a mixed enterprise shall not impose or continue to enforce demarcation barriers between the work of employees, provided that it is agreed that the work lies within the scope of the skill and competence of the employee concerned.

### 10. Hours

(I) General Shops - Hours -

(i) Weekly Hours - The ordinary hours of work of employees in shops shall not exceed 38 per week, to be worked in accordance with subclause (II), General Shops - Rosters for Five-day Week, of this clause, Monday to Saturday (Monday to Sunday in shops which may lawfully trade on a Sunday), both days inclusive and, save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

(ii) Commencing Times and Ceasing Times -

7.00 am to 6.00 pm - Monday, Tuesday, Wednesday and Saturday.

7.00 am to 9.00 pm - Thursday and Friday.

8.00 am to 5.00 pm - Sunday.

Employees in supermarkets/food stores and hardware shops or departments can be rostered to commence one hour earlier.

(iii) Within the commencing and ceasing times prescribed respectively in paragraph (ii) of this subclause, full-time and part-time employees on engagement shall be notified of:

- (a) the quantum of ordinary hours to be worked each week;
- (b) the days of the week on which such work is to be performed; and
- (c) the commencing and ceasing times of such hours of work for each day of the week on which work is to be performed.

The above subparagraphs (a), (b) and (c) shall not be changed except:

upon not less than seven days' notice; or

by agreement between the employee and the employer where the extra/other hours may be expressly agreed to be worked as part of a roster change and paid at ordinary rates; where no expressed agreement exists overtime rates must apply.

In the event of an emergency, subparagraphs (b) and (c) above may be changed, the quantum of hours may be increased but not decreased.

Provided that where it is alleged by the unions that a change in rosters is contrary to the wishes of the majority of employees or operates unfairly or to the disadvantage of employees, the employer shall give, in lieu of seven days' notice, 14 days' notice, during which time there shall be discussions and, where practicable, agreement reached with the union.

(iv) Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts back to the previous pattern in the following week, then work done by the employee because of the roster change shall be paid for at the overtime rate of pay. (This does not apply where an agreed change to a roster is made at the request of the employee.)

## (II) General Shops - Rosters for Five-day Week -

- (i) All full-time and part-time employees shall be rostered their ordinary hours of work on any five days of the week, Monday to Saturday inclusive (Monday to Sunday in shops which may lawfully trade on a Sunday), on the following basis:
- (a) At least once every two weeks an employee shall be granted two consecutive days off which shall not include the rostered day off (RDO).
  - (b) There shall not be more than one long day in any week. A long day is defined as a day exceeding nine ordinary hours of work. Provided that, by mutual agreement, additional long days may apply.
  - (c) The maximum number of ordinary hours which may be worked on any one day shall be 11 hours.
  - (d) Provided that ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days.
  - (e) The following provisions shall apply in general shops which may lawfully trade on a Sunday:
    - (i) Once every four weeks, an employee who works ordinary hours on a Sunday shall be given three consecutive days off (not including the 19-day month RDO) which shall include Saturday and Sunday. By mutual agreement alternative arrangements may apply.
    - (ii) Where an employee transfers at his/her own request to a store where Sunday trading is already lawful, the employee will not have the right to refuse to work on Sundays at the new store.
- Where an employee transfers at the employer's request to another store where Sunday trading is already lawful, the employee will retain the right to refuse to work on Sundays at the new store.
- (f) Subparagraphs (a) to (e) of this paragraph do not apply to employees engaged pursuant to clause 11, Shift Work (Night Fill) - General Shops.
  - (g) Each full-time weekly employee shall be rostered so that the maximum number of hours that shall constitute an ordinary week's work without the payment of overtime shall not exceed, on average, 38 per week and may be worked in any of the following forms:
    - (i) 38 hours in one week;
    - (ii) 76 hours in two consecutive weeks;
    - (iii) 114 hours in three consecutive weeks;
    - (iv) 152 hours in four consecutive weeks.
  - (ii) There shall be not less than a ten-hour break between finishing work (including overtime) one day or shift and the commencement of work on the next day or shift.
  - (iii) When establishing a roster or changing a roster, the employer will have regard for the family responsibilities of the employee.

In having regard for the family responsibilities, it is accepted that the existence of such responsibilities does not in itself prevent an employer changing an employee's roster where necessary.

- (iv) Full-time and part-time employees shall be provided with a regular roster which shall not be subject to frequent variations unless by mutual agreement.
- (v) Provided further that in shops with five or less full-time and part-time employees the rostered days off shall be decided by mutual arrangement between the employer and employees.
- (vi) Provided further that the rostering of store managers shall be by mutual arrangement between the employer and employees.
- (vii) Provided that in shops employing on a regular basis 20 or more employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employee shall not be required to work ordinary hours on more than 19 days in each four-week cycle.

Where specific agreement exists between an employer and an employee, the employee may be worked on the basis of:

not more than four hours work on one day in each two-week cycle;

not more than six hours work on one day per week.

- (viii) Provided that in shops employing on a regular basis more than five employees but less than 20 employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employees may be worked their ordinary hours on one of the following bases at the employer's direction:

not more than 19 days work in each four-week cycle;

not more than four hours work on one day in each two-week cycle;

not more than six hours work on one day in each week.

Where specific agreement exists between an employer and an employee, the employee may be worked on not more than 7.6 hours per day.

Provided further that no existing employee who was employed as at 26 September 1990 and who was entitled to a rostered day off shall lose their entitlement to such rostered day off.

- (ix) Provided that in shops employing on a regular basis five or less employees per week, employees may be worked their ordinary hours on one of the following bases at the employer's discretion:

not more than 19 days in each four-week cycle;

not more than four hours work on one day in each two-week cycle;

not more than six hours work on one day in each week;

not more than 7.6 hours work on any day.

- (x) In any case where agreement is reached between an employer and an employee pursuant to paragraphs (vii) and (viii) of this subclause, the relevant union shall be notified seven days prior to the implementation of such agreement. Any dispute as to such agreement shall be referred to the Industrial Registrar.

- (xi) Provided that, for the purposes of this clause, "employing on a regular basis" includes persons of the following types:

- (a) employees of the employer engaged on the premises whose terms of employment are not regulated by this award;

- (b) employees other than those employed by the employer whose terms of employment are regulated by this award and who regularly work on the premises performing work as demonstrators and the like, but not including the employees of a bona fide franchisor operating on the premises.
  - (xii) Every employer shall, by legible notice which shall bear the date when it is fixed, exhibit in a place accessible to employees the current starting and finishing times for each employee for each day of the week. The employer shall retain superseded notices for 12 months. The roster of hours shall, upon request, be produced for inspection by any person authorised to inspect the same.
- (III) Special and Confection Shops - Hours and Rosters -
- (i) Weekly Hours - The ordinary hours of work of employees in shops shall not exceed 38 per week and shall be worked on five days of the week, Monday to Sunday, inclusive. Provided that ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days. Save for meal times prescribed, all time between the actual commencing time and ceasing time on any one day shall count and shall be paid for as time worked. Provided that an employee may be worked so that the maximum number of hours that shall constitute an ordinary week's work without the payment of overtime shall not exceed an average of 38 per week and may be worked in any one of the following forms:
    - (a) 38 hours in one week;
    - (b) 76 hours in two consecutive weeks;
    - (c) 114 hours in three consecutive weeks;
    - (d) 152 hours in four consecutive weeks.
  - (ii) Commencing Times - The commencing time of the ordinary hours of work shall be 7.00 am (6.00 am in take-away food shops, fruit and vegetable shops and newsagencies).
  - (iii) Ceasing Times - The time for the cessation of the ordinary hours of work by employees shall be:
    - (a) In cake and pastry shops, cooked provisions shops, fish shops, pet shops, souvenir and gift shops, tobacconists' shops and small shops, Monday to Sunday, both days inclusive - 10.30 pm.
    - (b) In take-away food shops, Monday to Sunday, both days inclusive-midnight.
    - (c) In flower shops and garden plant shops, Monday to Sunday, both days inclusive - 8.30 pm.
    - (d) In hairdressers' shops, Monday to Friday, both days inclusive - 5.45 pm and Saturday - 12.45 pm.
    - (e) In retail liquor shops, Monday to Sunday, both days inclusive - 10.00 pm. Provided that for employees employed prior to the first pay period in October 1988 the following provisions shall continue to apply, unless the employees agree otherwise:

In retail liquor shops, Monday to Saturday, both days inclusive 10.00 pm.
    - (f) In newsagencies, Monday to Sunday, both days inclusive - 9.00 pm.
    - (g) In book shops, Monday to Sunday, both days inclusive - 9.00 pm.
    - (h) In video shops, Monday to Sunday, both days inclusive - midnight.

- (i) In fruit and vegetable shops, Monday to Sunday, both days inclusive - 9.00 pm.
- (j) In confectionery and refreshment shops, Monday to Sunday, both days inclusive - 11.30 pm.
- (k) Audio Shops - Monday to Sunday, both days inclusive - 9.00 pm. All employees employed prior to 25 October 1991 will continue to be employed and paid in accordance with general shops award conditions.
- (iv) Within the commencing and ceasing times prescribed respectively in paragraphs (ii) and (iii) of this subclause, employees shall be given a regular starting and ceasing time for each day which shall not be changed except upon not less than seven days' notice, unless by agreement with the employee or in the event of an emergency.
- (v) Every employer shall, by legible notice, which shall bear the date when it is fixed, exhibit and keep exhibited in a place accessible to the employees, the current starting and finishing times for each employee for each day of the week and shall show thereon any change in the commencing time and ceasing time of any employee and the date on which the change was effected.

The employer shall retain superseded notices for 12 months.

The roster of hours shall, upon request, be produced for inspection by any person authorised to inspect the same.

- (vi) There shall be not less than a ten-hour break between finishing work (including overtime) on one day or shift and the commencement of work on the next day or shift.
- (vii) When establishing a roster or changing a roster, the employer will have regard for the family responsibilities of the employee.

In having regard for the family responsibilities, it is accepted that the existence of such responsibilities does not in itself prevent an employer changing an employee's roster where necessary.

- (viii) Full-time and part-time employees shall be provided with a regular roster which shall not be subject to frequent variations unless by mutual agreement.

- (IV) 38-Hour Week Special and Confection Shops - Method of Implementation - Method of implementation of the 38-hour week is at the employer's discretion, except where the special/confection shop is under the same roof as a company general shop, then the same method of implementation that operates in the general shop would operate in the special/confection shop.

### **11. Shift Work (Night Fill) - General Shops**

Application: This clause shall apply only to night fill operations performed in a shop.

- (a) Full-time Employees -
  - (i) Notwithstanding any other provision for ordinary hours within the award, an employee may be engaged to work on any five days, Monday to Saturday, afternoon or night shifts, providing they are paid the following additional allowances:
    - (a) Monday to Friday -
      - (1) Afternoon shift - finishing after 6.00 pm and at or before midnight - 17.5 per cent.
      - (2) Night shift - finishing after midnight and at or before 8.00 am - 30 per cent.

- (b) Saturday - Shifts as defined in subparagraph (a) of this paragraph, finishing after midnight on a Friday and at or before midnight on a Saturday - 50 per cent.
- (c) Sunday - Night shift finishing after midnight Saturday and at or before 8.00 am on a Sunday - 100 per cent.

The shift loading payable for the entire shift shall be determined by the time at which the shift finishes.

Provided further that the above shift provisions do not apply to an employee engaged on either of the late shopping nights (Thursday or Friday) finishing at or before 9.00 pm.

- (ii) Junior shift workers shall receive the following percentages of the appropriate adult rate prescribed in subclause (c) of clause 38, Wages:
  - (a) At 18 years of age and under - 70 per cent.
  - (b) At 19 years of age - 80 per cent.
  - (c) At 20 years of age - 90 per cent.

Plus the appropriate additional allowance as prescribed in paragraph (i) of subclause (a) of this clause.

(b) Part-time Employees -

- (i) Ordinary hours of work, exclusive of meal times, shall not be less than three hours work per shift nor less than 16 hours per week nor more than 30 hours work per week.

All time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

- (ii) Starting and finishing times of an employee on a given shift may be changed, provided the employee can be contacted prior to arriving at work.
- (iii) Nights on which an employee is rostered to work shall not be altered except upon not less than seven days' notice prior to the commencement of the employee's roster cycle.
- (iv) Each part-time employee shall receive a guaranteed minimum number of hours of work each week.
- (v) The performance of work on any night which is additional to those nights contained in an employee's particular roster week shall be at the option of the employee.

Where an employee agrees to work an additional night or nights, then the employee shall be paid at ordinary time for the additional night or nights (provided the employee is informed of this prior to agreeing to work), unless the work performed is in excess of eight hours on any shift or in excess of 30 hours in any week or in excess of five starts for the week.

- (vi) The provisions contained under this subclause shall apply only to part-time employees working afternoon shift and/or night shift.

In the case of an employee working day shift plus afternoon and/or night shift in a single week, the provisions of this subclause shall only apply in respect to any afternoon and/or night shift.

- (vii) The provisions of subclause (a), Full-time Employees, of this clause shall apply to part-time employees.

NOTATION: The above provisions are intended to cover the special features of night-fill work and will not be used as a precedent to achieve similar flexibility for day work.



## (c) Casual Employees -

- (i) Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38, plus 15 per cent, and the appropriate additional allowance as prescribed in paragraph (i) of subclause (a) of this clause, calculated to the nearest half cent, with a minimum payment on any shift of three hours.

Provided that for junior casual employees such hourly rate shall be determined by reference to the percentages prescribed in paragraph (ii) of subclause (a) of this clause.

- (ii) Casual employees may only be employed after the prescribed ceasing time pursuant to paragraph (iii) of subclause (I) General Shops-Hours, of clause 10, Hours, except on the late shopping nights (Thursday and Friday) or any substitute late shopping night(s) when the employee may be engaged not prior to 8.00 pm on such a night.

## (d) Overtime - An employee engaged on shift work shall be paid overtime at the rate of time and a half for the first two hours and double time thereafter for all work:

- (i) in excess of 38 hours per week;
- (ii) in excess of an average of 38 hours per week;
- (iii) in excess of five days in any week;
- (iv) in excess of eight hours on any shift;
- (v) in excess of 30 hours per week in the case of part-time employees.
- (vi) Before an employee's regular commencing time on any one day and/or after an employee's regular ceasing time on any one day, except in the case of part-time employees whose commencing and/or ceasing time has been varied within the terms of paragraph (ii) of subclause (b), Part-time Employees, of this clause.
- (vii) Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes, and any portion of an hour over 30 minutes shall be reckoned as one hour.

## (e) Crib Breaks and Rest Pauses -

- (i) An employee engaged on shift work shall be provided with a crib break of not less than 20 minutes where that employee works more than five hours. Such crib break shall be taken between the fourth and sixth hour of work and shall be counted and paid for as time worked.
- (ii) An employee who works seven hours or more on any day shall be allowed both a crib break and one paid rest pause of ten minutes. Provided that where such crib break commences on or before the middle of a shift, then the rest pause shall be taken after the crib break and where the crib break commences after the middle of a shift, then the rest pause shall be taken before the crib break.
- (iii) An employee who works for five hours or less but more than four hours on any shift shall be allowed a paid rest pause of ten minutes.
- (iv) No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after any crib break.

## (f) Exemptions - The general provisions of this award shall apply to shift workers with the following exemptions: clause 4 Part-time Employees, clause 5 Casual Employees - All Shops, clause 14 Weekend and Late Night Penalty Rates and Loadings, clause 15 Overtime, clause 16 Meal Times and Rest Pauses, and subclause (2) Junior Employees of Table 1, Wages.

### 12. Special Provisions for Substituted Late Shopping Night (General Shops)

- (i) Where a public holiday falls on a Thursday and trading is not permitted, a substituted late night shall apply automatically on the preceding Tuesday.
- (ii) Where a public holiday falls on a Friday and trading is not permitted, a substituted late night shall apply automatically on the preceding Wednesday.
- (iii) During any week in which a Thursday and/or Friday is substituted for another specified day in accordance with subclause (i) and/or (ii) of this clause, then such specified day shall be deemed to be a Thursday and/or Friday, and Thursday and/or Friday shall be deemed to be the specified day for all purposes of this award except as to clause 17, Holidays.
- (iv) Provided that where a public holiday pursuant to the said clause 17 falls on a Thursday and/or Friday and Thursday and/or Friday is deemed to be another day, employees shall not receive less time off than they might otherwise have received had the substitution not been made.

### 13. Savings Clause

#### (A) General Shops -

- (i) Notwithstanding anything otherwise contained in this award, full-time and part-time employees employed in the industry prior to 23 July 1984 shall not be required to work their ordinary hours of work after 12.00 noon on Saturdays nor be required to work their ordinary hours of work past 6.00 pm on any night of the week, Monday to Friday, other than Thursday night (Friday night in the Shire of Gosford and the Shire of Wyong).
- (ii) Provided that by mutual agreement an employer and an employee employed in the industry prior to 23 July 1984 may agree to observe different provisions, such provisions to be otherwise consistent with this award.
- (iii) Provided further that persons who were employed as full-time or part-time employees of:

Fosseys (Australia) Pty Limited;

Katies Fashions Pty Limited;

Woolworths Variety Division;

employed as at 22 April 1988 under the Shop Employees' (Major General Shops) (State) Interim Award published 3 February 1988 (247 I.G. 450) shall not by reason only of the making of this award, while their service with that employer remains continuous, suffer a reduction in any items in the award that affect wages payable to them under that award.

- (iv) The following provisions shall apply in general shops which may lawfully trade on a Sunday:
  - (a) All work on Sundays within ordinary hours of work shall be voluntary for all employees (including casuals) employed in that shop at 25 October 1991.
  - (b) Where a shop gains the right to trade lawfully on a Sunday after 25 October 1991 all work on Sundays within ordinary hours of work shall be voluntary for all employees (including casuals) employed in that shop at the date that the Sunday trading becomes lawful.

- (B) Special and Confection Shops - Persons employed in fruit and vegetable shops as at 25 May 2000 shall not be required to commence these ordinary hours prior to 7.00 am.

#### 14. Weekend and Late Night Penalty Rates and Loadings

- (a) Saturday -
- (i) All ordinary hours worked by full-time and part-time employees on Saturday shall be paid for at the rate of time and one-quarter.
- All employees engaged by their employer on or prior to 25 August 1989 shall continue to be paid for Saturday afternoon work in ordinary time at the employee's penalty rate applicable at that time. No employee shall be disadvantaged by this variation to the award.
- (ii) General Shops - Casual employees working on a Saturday shall receive the amounts set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, by way of a fixed loading in addition to the day's pay.
- (iii) Special and Confection Shops - Casual employees working on a Saturday shall receive the amounts set out in the said Item 5 by way of a fixed loading in addition to the day's pay.
- (b) Sunday -
- (i) All ordinary hours worked by employees on a Sunday in a shop that may lawfully trade shall be paid at the rate of time and one-half.
- (c) Late Night Trading -
- (i) General Shops Only - All ordinary hours worked by full-time and part-time employees after 6.00 pm on Thursday and Friday shall be paid for at the rate of time and one-quarter.
- (ii) Confection Shops Only - Finishing after 10.00 pm - Any employee continuing ordinary hours of work after 10.00 pm on any night shall be paid an additional amount set out in Item 6 of Table 2 for such night.
- (d) The provisions of section 52 of the *Industrial Relations Act* 1996 are hereby expressly excluded in respect of the fixed loading additions referred to in this clause.
- (e) The penalties and loadings prescribed in this clause shall not be taken into consideration in calculating any payment for overtime or public holidays, or for any period of sick leave.

#### 15. Overtime

The rate of overtime shall be time and one-half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time.

- (i) An employee shall be paid overtime for all work as follows:
- (a) In excess of:
- (1) 38 hours per week; or
- an average of 38 hours per week in accordance with clause 10, Hours;
- (2) five days per week (or six days or four days pursuant to subparagraph (d) of paragraph (i) of subclause (II) and paragraph (i) of subclause (III) of the said clause 10);
- nine hours on any one day, provided that on one day per week up to 11 hours may be worked without the payment of overtime; by mutual agreement, additional days of up to 11 ordinary hours may be worked without the payment of overtime;

in general shops 30 hours per week for a part-time employee, where that work is not done on a regular basis.

- (b) before an employee's regular commencing time on any one day;
  - (c) after the prescribed ceasing time on any one day;
  - (d) outside the ordinary hours of work.
  - (e) In general shops full-time employees who work on their rostered day off or part-time employees who work on any day on which they would not normally work shall be paid overtime with a minimum payment of four hours at the appropriate overtime rate.
  - (f) As prescribed by paragraphs (iii) and (iv), of subclause (I), of clause 10, Hours.
- (ii) Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time, with a minimum payment of four hours at such rate.
- (iii) Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes and any portion of an hour over 30 minutes shall be reckoned as one hour, except where an employee is required to work after closing time to attend to customers then in the shop, or in connection with closing the shop, including the checking of cash received, when the time actually worked shall count.
- (iv) By mutual agreement the rate for overtime may be time off in lieu of overtime, provided that:
- (a) Time off shall be calculated at the penalty equivalent.
  - (b) The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.
  - (c) Time off must be taken within one calendar month of the working of the overtime, or it shall be paid out.
- (v) Subject to clause (v)(a) an employer may require an employee to work reasonable overtime at overtime rates, or as otherwise provided for by this Award.
- (a) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
  - (b) For the purposes of clause (v)(a) what is unreasonable or otherwise will be determined having regard to:
    - (i) any risk to employee health and safety;
    - (ii) the employee's personal circumstances including any family and carer responsibilities;
    - (iii) the needs of the workplace or enterprise;
    - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
    - (v) any other relevant matter.

#### **16. Meal Times and Rest Pauses**

- (i) When and where it can be conveniently arranged by the employer, an employee who works more than four ordinary hours on any day shall be allowed a rest pause of ten minutes.

- (ii) A rest pause shall be counted and paid for as time worked. No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after any meal break.
- (iii) In general shops an employee who works more than five hours on any day must be allowed both a rest pause of ten minutes and a meal break of one hour (45 minutes in any establishment in which a clean, well ventilated room, adequate table and seating accommodation and sufficient crockery, cutlery and hot water are provided for the employee), provided that where agreement exists between the employee and the employer, a meal break of 30 minutes may apply.

In special and confection shops the meal break will be not less than 30 minutes nor more than one hour, the duration of which will be decided by the employer having regard to the needs of the business.

- (iv) A meal break shall be given and taken so that no employee shall work more than five consecutive hours without a meal break.
- (v) Meal breaks are not counted and not paid for as time worked.
- (vi) An employee who works nine hours or more on any day shall be allowed two rest pauses (each of ten minutes duration) if only one meal break is taken; or one rest pause of ten minutes if two meal breaks are taken.

Provided that where two rest pauses and one meal break are taken, then one rest pause shall be taken before the meal break and one rest pause shall be taken after the meal break.

Provided further that where two meal breaks and one rest pause are taken during any shift, then the rest pause shall be taken during the longest unbroken part of such shift.

- (vii) Confection Shops - An employee commencing before 7.00 am in circumstances not covered by paragraph (ii) of subclause (III) of clause 10, Hours, shall be allowed not less than 30 minutes nor more than one hour off for breakfast before 9.00 am. If, through distance of residence, the employee cannot return home for breakfast, the employee shall be paid the sum set out in subclause (ii) of clause 6, Meal Allowances, for breakfast each morning the employee starts work before 7.00 am.
- (viii) Special and Confection Shops - Subject to the provisions contained in this clause, the actual period of the meal break shall be determined by the employer but shall be subject to discussions and, where practicable, agreement with the union concerned in respect of any individual shop where it is alleged arrangements adopted as to the duration or time of a meal break are contrary to the wishes of the majority of employees or operate unfairly or to the disadvantage of employees.

## 17. Holidays

### (A) Public Holidays -

- (i) Subject to subclause (B), work done on any of the holidays prescribed in paragraph (ii) of this subclause shall be paid for at the rate of double time and one-half, with a minimum payment of three hours.
- (ii)
  - (a) The days observed as New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, the first Tuesday in November, Christmas Day, Boxing Day and all days proclaimed as public holidays for the State shall be holidays; provided that any day proclaimed as a holiday for the State for a special purpose but observed throughout the State on different days also shall be a holiday.

- (b) For all holidays not including the first Tuesday in November:

Every full-time or part-time employee allowed a holiday specified herein shall be deemed to have worked in the week in which the holiday falls the number of ordinary working hours that he/she would have worked had the day not been a holiday.

Provided that any full-time or part-time employee whose roster is changed with the intent of avoiding or reducing payment due or the benefit applicable under this clause and who would, but for the change of roster, have been entitled otherwise to a payment or benefit for a public holiday or holidays shall be paid for such holiday or holidays as if his/her roster had not been changed.

Provided further that where a full-time or part-time employee working an average of five days per week is rostered so that he/she does not work his/her ordinary hours on the same days each week and the employee's rostered day off falls on a day prescribed as a holiday in subparagraph (a) of this paragraph, the employee shall be paid by mutual agreement between the employer and the employee in one of the following methods:

- (1) payment of an additional day's wages;
- (2) addition of one day to the employee's annual holidays;
- (3) another day may be allowed off with pay to the employee within 28 days after the holiday falls, or during the week prior to the holiday.

For the purposes of this paragraph, "day" means the average number of hours in the employee's normal roster cycle worked by the employee prior to the day on which the public holiday falls.

- (iii) A full-time or part-time employee absent without leave on their last working day before or their first working day after any award holiday shall be liable to forfeit wages for the day of absence as well as for the holiday, except where an employer is satisfied that the employee's absence was caused through illness, in which case wages shall not be forfeited for the holiday; provided that an employee absent on one day only either before or after a group of holidays shall forfeit wages only for one holiday as well as for the period of absence.

- (B) The first Tuesday in November - Full-time and part-time employees rostered to work shall be entitled to a holiday without loss of pay on the first Tuesday of November in any year.

Work on the first Tuesday in November shall not be paid at the rate of double time and a half, but shall be paid as follows:

Where the establishment of an employer remains open and a full-time or part-time employee volunteers to work on the first Tuesday in November, such employee shall then be given another day off without loss of pay. Such alternative day shall be given and taken not later than 28 days after the nominated day on a day mutually agreed between the employer and the employee.

Provided that in no circumstances shall an employee forfeit entitlement to the additional holiday and should such extenuating circumstances arise where the day is not taken as described above, it must be given and taken on a day without loss of pay added to the employee's next period of annual leave.

Provided further that where an employee's employment terminates prior to the taking of such alternative day, the employee shall receive an additional day's pay on termination.

Provided further that employees on annual leave or long service leave on the day referred to in this subclause shall have an additional day added to their next period of annual leave.

**18. Sick Leave**

- (i) This clause only applies to full-time and part-time employees.
- (ii) An employee who, subject to subclause (iii) of this clause, is unable to attend for duty during ordinary working hours by reason of personal illness or personal incapacity not due to his/her own serious and wilful misconduct, shall be entitled to be paid at ordinary-time rates of pay for the time of such non-attendance, subject to the following:
  - (a) An employee shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
  - (b) A full-time employee shall not be entitled during his/her first year of continued employment with an employer to sick pay for more than 38 hours and during the second or subsequent years of continued employment with an employer to sick pay for more than 61 hours. Part-time employees have a pro rata entitlement to sick leave based on the number of hours worked in the week in comparison to 38 hours.

Any period of paid sick leave allowed by the employer to an employee in any year of continued employment shall be deducted from the period of sick leave which may be allowed or may be carried forward under this award in or in respect of such year.
  - (c) The rights under this clause shall accumulate from year to year so long as employment continues with the employer whether under this or any other award so that any part of the entitlement prescribed in paragraph (b) of this subclause which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed by this clause, in a subsequent year of such continued employment. Provided that in any year an employee shall not be entitled to take more than 380 hours accumulated sick leave.
- (iii) The payment for any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the employer until the employee completes such three months of employment, at which time the payments shall be made.
- (iv) The granting of sick leave shall be subject to the following conditions and limitations:
  - (a) The employee shall, within 24 hours of the commencement of such absence, inform the employer of his/her inability to attend for duty and, as far as possible, state the nature of the illness or injury and the estimated duration of the absence.
  - (b) The employee shall furnish to the employer such evidence as the employer reasonably may desire that he/she was unable by reason of such illness or injury to attend for duty on the day or days for which sick leave is claimed.
  - (c) For the purposes of this clause as it relates to part-time employees, "day" shall mean the number of hours the employee would have worked on the day on which he/she was absent, had he/she not been sick.
- (v) For the purpose of this clause, continuous service shall be deemed not to have been broken by:
  - (a) any absence from work on leave granted by the employer; or
  - (b) any absence from work by reason of personal illness, injury or other reasonable cause, proof whereof shall, in each case, be upon the employee.
- (vi) Service before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.
- (vii) For the purpose of this clause, the word "year" shall mean a period of 12 months commencing on the day on which the employment commenced.

- (viii) For the purpose of sick leave accumulated for years prior to June 1988 (1984 for general shops) the term 'day' shall mean a period of eight hours or pro rata for part-time employees.

### **19. Blood Donor Leave**

A full-time or part-time employee who is absent during ordinary working hours for the purpose of donating blood shall not suffer any deduction of pay up to a maximum of two hours on each occasion and subject to a maximum of four separate absences for the purpose of donating blood each calendar year.

Provided further that such employee shall arrange for his/her absence to be on a day suitable to the employer and be as close as possible to the beginning or ending of the ordinary working hours.

Proof of the attendance of the employee at a recognised place for the purpose of donating blood, and the duration of such attendance, shall first be furnished to the satisfaction of the employer.

Further, the employee shall notify the employer as soon as possible of the time and date upon which the employee is requesting to be absent for the purpose of donating blood.

### **20. Bereavement Leave**

- (1) An employee, other than a casual employee, shall be entitled to up to three days bereavement leave without deduction of pay on each occasion of the death of a person as prescribed in subclause (3) of this clause. Where the death of a relative named herein occurs outside Australia and the employee does not attend the funeral, he/she shall be entitled to one day only, unless he/she can demonstrate to his/her employer that additional time up to a period of three days is justified.
- (2) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death, together with proof of attendance in the case of a funeral outside of Australia.
- (3) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 21, Personal/ Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (4) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (5) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said clause 21. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

### **21. Personal/Carer's Leave**

- (1) Use of Sick Leave -
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c), who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 18, Sick Leave, of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
  - (b) The employee shall, if required,
    - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or



- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person."

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
      1. "relative" means a person related by blood, marriage or affinity;
      2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
      3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Notation:

In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes, the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 31 Dispute Settlement Procedures should be followed.

(2) Unpaid Leave for Family Purpose -

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) above who is ill or who requires care due to an unexpected emergency.

- (3) Annual Leave -
- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
  - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
  - (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
  - (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.
- (4) Time Off in Lieu of Payment for Overtime -
- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of subclause (iv) of clause 15 Overtime, the following provisions shall apply.
  - (b) 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 within 12 months of the said election.
  - (c) 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.
  - (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
  - (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time -
- (a) An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.
- (6) Rostered Days Off -
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

**21A. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
    - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 22. Jury Service

A full-time or part-time employee shall be allowed leave of absence during any period when required to attend for jury service.

During such leave of absence, an employee shall be paid the difference between the jury service fees received and the employee's award rate of pay as if working.

An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such requirement as soon as practicable after receiving notification to attend for jury service.

## 23. Annual Holiday Loading

- (i) In this clause the *Annual Holidays Act 1944* is referred to as "the Act".
- (ii) Before an employee is given and takes their annual holiday or, where by agreement between the employer and employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause. (NOTE: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (vi).)
- (iii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act.
- (iv) The loading is to be calculated in relation to any period of annual holiday under the Act (but excluding days added to compensate for public or special holidays falling on an employee's rostered day off not worked) or, where such a holiday is given and taken in separate periods, then in relation to each such separate period. (NOTE: See subclause (vi) as to holidays taken wholly or partly in advance.)
- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by Part B, Monetary Rates, or the appropriate junior percentage rate of this award, for the classification in which the employee was classified when the loading is paid. Such wage shall also include payments under subclauses (i) and (ii) of clause 35 Allowances and/or Additional Rates, where applicable, but shall not include other allowances, penalty rates, overtime rates or any other payments prescribed by this award.
- (vi) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when he/she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (v) of this clause, applying the rates of wages payable on that day.
- (vii) Where, in accordance with the Act, an employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned -
  - (a) An employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause (v) of this clause.

- (b) An employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him/her under the Act such proportion of the loading that would have been payable to him/her under this clause if he/she had become entitled to an annual holiday prior to the closedown as his/her qualifying period of employment in completed weeks bears to 52.
- (viii)
- (a) When the employment of an employee is terminated by the employer for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he/she has become entitled after 1 February 1974, he/she shall be paid a loading calculated in accordance with subclause (v) for the period not taken.
  - (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.
- (ix) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if he/she had not been on holiday; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

#### **24. Travelling Time, Expenses, Allowances, etc.**

- (i) If an employee is required by the employer to temporarily transfer from one branch to another the employee shall be allowed any extra cost of travelling and shall be paid at ordinary rates for any excess time occupied in travelling.
- (ii)
- (a) A window dresser employed by an employer who contracts to dress windows for retail shops shall, at the direction of the employer, present themselves for work at the job at their usual time of starting work.
  - (b) The employee shall be paid for all time spent in excess of the time usually spent by themselves in travelling to or from their home to the employer's business premises at their ordinary rate of pay, except on a Sunday or a public holiday, when payment shall be at the rate of time and one-half.
  - (c) The employee also shall be paid any extra cost of travelling and shall be provided with first-class hotel accommodation at the employer's expense and where rail travelling necessarily is involved first-class rail ticket and sleeping car accommodation, where available, shall be provided.
- (iii) Where an employee is required to work after the ordinary ceasing time prescribed by this award until it is too late to travel by train, omnibus, vessel, or other regular conveyance to his or her usual place of residence, the employer shall provide either proper conveyance or the fare for such conveyance to the employee's usual place of residence.

#### **25. Uniforms, Protective Clothing**

- (i) In any shop where an employee wears a uniform, cap, coat, overall or other uniform dress the same shall be provided by the employer and shall be laundered by the employer at the employer's expense. Provided that where, by mutual agreement, the laundering is done by the employee or the employer having refused, neglected or failed to launder the articles and laundering is done by the employee, the employee shall be paid the allowances set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- (ii) Suitable protective clothing shall be provided, upon request, to employees who are to load or unload trucks or customers' vehicles.

## 26. Facilities

- (i) First-aid Outfit - See Occupational Health and Safety Regulation 2001.
- (ii) Lockers - Where practicable, an employer shall provide locker accommodation for each employee. Lockers, where provided, shall be maintained in good working order. Any dispute as to the practicability of providing the locker accommodation may be referred by the employer or the union to the Industrial Relations Commission of New South Wales.
- (iii) Dining Accommodation - Where practicable, an employer shall provide a room containing adequate seating accommodation with a sufficient supply of hot water to allow employees to partake of meals during their lunch hour.

Any dispute as to the practicability of providing such a room may be referred by the employer or the union to the Industrial Relations Commission of New South Wales.

- (iv) Notice Board - An employer shall permit the erection, in a prominent position to be decided by the employer, on the premises of a notice board of reasonable dimensions or a number of such notice boards reasonable in the circumstances, upon which an accredited representative of an industrial union of employees bound by this award shall be permitted to post formal union notices signed by the Secretary of the union concerned. Provided that such notices shall be referred to the employer before being posted on the notice board. Any notice posted on a board not so signed or not referred to the employer may be removed by an accredited representative of the union concerned or by the employer.

## 27. Renovations in Retail Shops

- (i) As soon as practicable after a decision has been made to undertake the renovations of premises, the employer shall notify the following:
  - the workplace occupational health and safety committee;
  - the employees affected;
  - the appropriate union.
- (ii) The employer shall take appropriate measures to minimise and, where possible, eliminate any disabilities caused by the renovations.
- (iii) Where an issue or disagreement arises regarding the renovations, such issue or disagreement shall be resolved by taking the matter through the following procedures until it is settled: -
  - (a) discussions between the union and the Company;
  - (b) discussions between the union and The Australian Retailers Association - New South Wales;
  - (c) referral of the matter to the Industrial Registrar and/or to WorkCover.

## 28. Notations

- (i) Annual Holidays - See *Annual Holidays Act 1944*. Provided that a full-time employee shall be entitled to not less than a total period of annual leave equivalent to 152 ordinary hours of work and pro rata thereof in the case of part-time employees.
- (ii) Long Service Leave - See *Long Service Leave Act 1955*.
- (iii) Manual handling procedures will be consistent with the Occupational Health and Safety Regulation 2001.
- (iv) Right of Entry - See Chapter 5 - Part 7 of the *Industrial Relations Act 1996*.

### 29. Exemptions

- (i) Members of The Australian Retailers Association of New South Wales and the R.H.I. Stall Holders' Association shall be exempt from clause 36 Agricultural, Pastoral or Horticultural Societies' Shows, etc., during such time as the members observe the provisions of Industrial Agreement No. 8712, or any other agreement which rescinds or replaces the said agreement, made between the said Associations and the Shop, Distributive and Allied Employees' Association, New South Wales and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales, filed with the Industrial Registrar on 25 March 1992.
- (ii) Leave is reserved to the parties to apply to have the exemption varied or removed in its present terms from this award.
  - (a) Members of the Timber Trade Industrial Association shall be exempt from observing the provisions of subclause (B), Picnic Day, of clause 17, Holidays, and in lieu thereof shall observe the additional holiday provisions for New South Wales in paragraph (a) of subclause (ii) of clause 17, Holidays, of the Federal Timber Industry Award in force from time to time.
  - (b) This award shall not apply to employees covered by the Ski Industry (State) Award published 12 March 1993 (273 I.G. 972), as varied, performing duties within the confines of the Kosciusko National Park

### 30. Cleaning Duties

- (i) It shall be part of employees' duties to perform cleaning functions incidental to their work. Without limiting the generality of the foregoing, the dusting of shelves and of stock, the sweeping up of string and wrapping around counters, the cleaning of implements and fixtures used in the work, and the cleaning (including vacuum cleaning) of the immediate work area, shall be so included.
- (ii) An employee shall not be required to wet wash floors, clean lavatories, sweep pavements or clean the exteriors of windows other than for the removal of occasional defacements.
- (iii) An employee shall not be required to carry out systematic cleaning duties which go beyond the incidental functions as outlined in subclause (i) of this clause.

### 31. Dispute Settlement Procedures

The procedure for the resolution of grievances and industrial disputation concerning matters arising under this award shall be in accordance with the following procedural steps:

- (i) Procedure relating to a grievance of an individual employee:
  - (a) The employee shall notify the employer (in writing or otherwise) as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.

- (f) The employee may be represented by an industrial organisation of employees for the purpose of each procedure.
- (ii) Procedure for a dispute between an employer and the employees:
  - (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits must be allowed for discussion at each level of authority.
  - (c) While a procedure is being followed, normal work must continue.
  - (d) The employer may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purpose of each procedure.

### **31A. Deduction of Union Membership Fees**

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
  - (c) deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (d) there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five per cent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the employer a minimum of two months' notice of any such change.



- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.

### 32. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977* 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) Nothing in this clause is to be taken to affect:
  - (a) Any conduct or act which is specifically exempted from anti-discrimination legislation.
  - (b) Offering or providing junior rates of pay to persons under 21 years of age.
  - (c) Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*.
  - (d) A party to this award from pursuing matters of unlawful discrimination in any state or federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
  - (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
  - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects ..... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

### 33. Redundancy

- (1) Application -
  - (i) This clause shall apply in respect of full-time and part-time employees
  - (ii) This clause shall apply in respect of employers who employ 15 employees or more immediately prior to the termination of employment of employees, in the terms of subclause 3, Termination of Employment.
  - (iii) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service, and the general obligation on employers

shall be no more than to give such 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.

- (iv) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

(2) Introduction of Change -

(i) 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 the union to which they belong.
- (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, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award specified in subclause 1, Application, makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(ii) Employer's duty to discuss change:

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (i) of this subclause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in the said paragraph (i).
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iii) Discussions before terminations:

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subparagraph (a) of paragraph (i) of subclause 2, Introduction of Change, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (a) of this subclause and shall cover, inter alia, any reason for the proposed terminations, measures to avoid or

minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(3) Termination of Employment -

- (i) Notice for changes in Organisation or structure - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from Organisation or structure in accordance with subclause 2, Introduction of Change:

- (a) In order to terminate the employment of an employee, the employer shall give to the employee the following notice:

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (ii) Notice for technological change - This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from technology in accordance with the said subclause 2.

- (a) In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

(iii) Time off during the notice period -

- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, 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.

- (iv) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the 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.
- (v) Statement of employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (vi) Notice to Centrelink or its successor - Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible, giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (vii) Employment Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an Employment Separation Certificate in the form required by Centrelink or its successors.
- (viii) Transfer to lower paid duties - Where an employee is transferred to lower paid duties for reasons set out in paragraph (i), Employer's duty to notify, of subclause 2, Introduction of Change, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary-time rates for the number of weeks of notice still owing.
- (4) Severance Pay -
- (i) Where an employee is to be terminated pursuant to subclause 3, Termination of Employment, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service:
- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of service	Under 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

Years of service	Over 45 years of age entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (ii) "Week's pay" means the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, overaward payments, shift penalties and allowances paid in accordance with the relevant clauses of this award.
  - (iii) Incapacity to pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (i) of this clause.
  - (iv) The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in the said paragraph (i) will have on the employer.
  - (v) Alternative employment - Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (i) if the employer obtains acceptable alternative employment for an employee.
- (5) Savings Clause - Nothing in this award shall be constructed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the Industrial Organisation of Employees and any employer bound by this award.

#### **34. Supported Wage System for Workers With Disabilities**

Employees Eligible for a Supported Wage -

- (a) Definition - This clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:
  - (i) 'Supported Wage System' means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process".
  - (ii) 'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
  - (iii) 'Disability Support Pension' means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time or any successor to that scheme.
  - (iv) 'Assessment Document' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
- (b) Eligibility Criteria - Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a Disability Support Pension.

(This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment)

The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a

disability support pension, except with respect to an Organisation which has received recognition under section 10 or section 12A of the said Act, or if a part only has received recognition, that part.

- (c) Supported Wage Rates - Employees to whom this clause applies shall be paid the appropriate percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing, according to the following schedule:

Assessed capacity (subclause (d))	Percentage of prescribed award rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$71.00 per week.)

Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support

- (d) Assessment of Capacity - For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:
- (i) the employer and a union party to the award, in consultation with the employee or, if desired, by any of these;
  - (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.
- (e) Lodgement of Assessment Document -
- (i) All assessment documents under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
  - (ii) All assessment documents shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and will take effect unless an objection is notified to the Registrar within ten working days.
- (f) Review of Assessment - The assessment of the appropriate percentage should be subject to annual review or earlier on the basis of a reasonable request for a review. The process of review must be in accordance with the procedures for assessing capacity under the Supported Wage System.
- (g) Other Terms and Conditions of Employment - Where an assessment has been made, the appropriate percentage will apply to the wage rate only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as all other workers covered by this award, paid on a pro rata basis.
- (h) Workplace Adjustment - An employer wishing to employ a person under the provisions of this clause must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work Organisation in consultation with other workers in the area.

- (i) Trial Period -
- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
  - (ii) During the trial period the assessment of capacity must be undertaken and the proposed wage rate for a continuing employment relationship must be determined.
  - (iii) The minimum amount payable to the employee during the trial period shall be no less than an amount as set out in subclause (c) of this clause.
  - (iv) Work trials should include induction or training as appropriate to the job being trialled.
  - (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (d) of this clause.

### 35. Allowances and/Or Additional Rates

- (i) The rates set out in the following Items of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, shall be paid in addition to the appropriate adult weekly rate prescribed in Table 1 of Part B Monetary Rates:

Item No. (Table 2)

(a)	Section head	9
(b)	Qualified adult automotive parts and accessories salesperson	10
(c)	An employee who holds a licence under the <i>Liquor (Repeals and Savings) Act 1982</i>	11

Provided that an employee paid in accordance with Group 4 of Table 1 - Clause 38 Wages, shall not receive less than the amount shown in Item 11 of the said Table 2 per week, in addition to the appropriate rate prescribed by Clause 38 Wages.

- (ii) The rates set out in the following Items of Table 2 shall be paid in addition to the appropriate weekly rates prescribed by the said Clause 38 Wages or the appropriate junior percentage rate:

(a)	Employee delivering goods (other than newspapers and the like) by box tricycle	12
(b)	Employee engaged on photographic or other modelling or mannequin work, whilst so engaged	13
(c)	Qualified first-aid attendant	14
(d)	Employee employed by a shop to speak a language in addition to English for the purpose of making sales in that shop	15
(e)	Ticket writer who has passed an appropriate technical college course,	
	21 years of age and over	16
	Under 21 years of age	16

- (iii) An employee who attends an appropriate course of training at a technical college at the request of his/her employer shall be reimbursed at the completion of this course, if successful, the fees for such course.
- (iv) An employee required to provide a bicycle or motorcycle shall be paid the amounts set out in Item 17 of Table 2 per week extra. An employee required to provide a motor car shall be paid the amount set out in Item 18 of Table 2 per week extra. Provided that where an employee occasionally uses his/her car by agreement with his/her employer, on the employer's business, he/she shall be paid an allowance for each kilometre so travelled as set out in Item 19 of Table 2. If the employer provides a vehicle, he/she shall pay the whole of the cost of the upkeep, registration, insurance and running expenses.

Provided that a full-time retail merchandiser local or country shall receive the benefits of this subclause where applicable, with the exception of the occasional kilometre allowance.

Provided further, a part-time or casual retail merchandiser local or country shall be paid for the use of his/her motor vehicle an amount set out in Item 19 of Table 2 per kilometre travelled in connection with his/her employment, with no standing charge contained in this subclause to apply.

(v) Freezer and Dairy Allowance and Conditions -

(a) Employees whose primary function is the handling or loading of goods into or out of freezer rooms or freezer cabinet (i.e. a room or cabinet with an inside temperature falling below 0 degrees Celsius) shall:

- (1) be paid a disability allowance of the amount set out in Item 20 of Table 2, in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
- (2) when working in freezer rooms be provided with the following protective clothing:
  - (i) fully insulated parka with hood;
  - (ii) fully insulated protective gloves;
  - (iii) fully insulated protective trousers (upon request).

(b) Employees whose primary function is working in a public dairy room or backfilling a dairy cabinet shall:

- (1) be paid a disability allowance of the amount set out in Item 21 of Table 2 per week in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
- (2) be provided with the following protective clothing:
  - (i) fully insulated parka with hood;
  - (ii) fully insulated protective gloves;
  - (iii) fully insulated protective trousers;
  - (iv) waterproof boots.

(c) Employees whose primary function is backfilling in a freezer room (i.e., a room with an inside temperature falling below 0 degrees Celsius), shall:

- (1) be paid a disability allowance of the amount set out in Item 22 of Table 2 per week in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
- (2) be provided with the following protective clothing:
  - (i) fully insulated protective boiler suit;
  - (ii) fully insulated protective head gear;
  - (iii) fully insulated protective gloves;
  - (iv) fully insulated protective boots;



- (3) not be required to work in such room for longer than two hours without a ten-minute paid rest pause and, where applied, such rest pause shall be in substitution for any other rest pause under the award, which occurs at or around the same time.
- (d)
  - (1) Employees whose primary function is the handling or loading of goods into or out of freezer cabinets shall be provided with fully insulated protective gloves and, upon request, a fully insulated parka.
  - (2) Employees whose primary function is the handling or loading of goods into or out of dairy cabinets shall be provided with fully insulated protective gloves.
- (e) Items of protective clothing detailed in this clause shall be laundered by the employer at the employer's expense.

### **36. Agricultural, Pastoral Or Horticultural Societies' Shows, Etc**

Subject to the Minister for Industrial Relations giving approval to any agricultural, pastoral or horticultural society's show or any trade exhibition or trade fair under section 101 of the *Shop and Industries Act 1962*, persons employed thereat shall be paid as follows:

(i) Casual Employees -

- (a) The hourly rate of pay for all time worked between 9.00 am and 6.00 pm shall be as set out in Item 23 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, with a minimum payment of six hours on any day or part thereof.

NOTE: The *Annual Holidays Act 1944* requires that casual employees shall, in addition to their ordinary pay, receive for annual holiday purposes an additional amount equivalent to 1/12 of their ordinary pay.

Upon any increase to the weekly rates prescribed by subclause (a) of Clause 38 Wages, the hourly rates contained herein shall be adjusted by adding thereto one thirty-eighth of the increase in the weekly rate calculated to the nearest cent, any part of a cent not exceeding half a cent to be disregarded.

- (b) Saturday Penalty - The additional amount set out in Item 23 of the said Table 2, shall be paid by way of fixed penalty addition for any Saturday worked.
- (c) Time and one-half shall be paid for all time worked in excess of eight hours or after 12 noon on Saturday or before 9.00 am or after 6.00 pm on any one day. Double time shall be paid for all time worked on public holidays and Sundays.
- (d) Meal Money - Unless a suitable meal consisting of at least two courses and a beverage is provided, an amount set out in Item 3 of Table 2 shall be paid nightly to each employee who works after 6.00 pm

(ii) Regular Employees - The provisions of the award shall apply to an employer in respect of any regular employee of his/her covered by this award except as to subclause (v) of clause 10, Hours, and the following provisions which shall be in substitution for the appropriate provisions of the award:

- (a) An amount set out in Item 3 of Table 2 shall be paid as meal money if the employee works after 6.00 pm on any day, Monday to Friday, inclusive, and on Saturdays and Sundays a lunch allowance of the same amount if he/she works after 12.30 pm and a tea allowance of the same amount if he/she works after 8.00 pm
- (b) For each Saturday worked a fixed penalty addition as set out in Item 23 of Table 2 shall be paid.
- (c) Payment at the rate of time and one-half for all time worked after 12 noon on any Saturday during the said show, other than Easter Saturday, shall be made.

- (d) Payment at the rate of double time for all time worked on public holidays, with a minimum payment as for four hours worked, shall be made.
- (e) For each day they attend the show, etc., an additional amount to reimburse them for fares equal to the normal bus fare from the city to the show and return shall be paid, but in the case of the Royal Agricultural Show this amount shall be the special bus fare from the city to the Showground and return. This reimbursement shall not be made when transport to the show is provided by the employer.

### **37. Area, Incidence and Duration**

This award rescinds and replaces the following award:

- (a) Shop Employees (State) Award published 2 June 1995 (286 I.G. 28) as varied.

It shall apply to all classes of employees employed under classifications in this award who work in or in connection with a retail shop, employees employed in the sale of goods by retail away from the employer's place of business in the State within the jurisdiction of the Retail Employees (State) Industrial Committee and the Salesmen, Outdoor (State) Industrial Committee, excluding the County of Yancowinna.

It shall take effect from the beginning of the first pay period to commence on or after 7 March 2001 and shall remain in force for a period of 12 months.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 13 February 2008.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## **PART B**

### **MONETARY RATES**

#### **38. Wages**

- (a) The minimum rate of pay for each classification incorporating both the base rate and supplementary payments is expressed for each classification as set out in Table 1 - Wages.
- (b) The rates of pay in this award include the adjustments payable under the State Wage Case 2010. These adjustments may be offset against:
  - (i) any equivalent overaward payments, and/or
  - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.'
- (c) Junior Employees - Junior employees and improver waiters/waitresses shall receive the percentages set out in (iv) of Table 1 - Wages of the appropriate adult rate prescribed in Group No. 1 of Table 1 - Wages.

**Table 1 - Wages**

(i)

Group No	Description	Former Rate Per Week \$	SWC 2010 4.25% \$	Total Rate Per Week \$
1	Shop assistants, demonstrators, trolley collector, salespersons outdoor, employees driving a forklift or using mechanical equipment as required, the role of Santa Claus, ticket writers, mannequins, order hands, reserve stock hands (including reserve stock hands in theatre distributing services), employees delivering goods (other than newspapers and the like) by bicycle or tricycle, employees engaged in the cooking or the preparation of provisions for sale in the shop of the employer, cashiers in special shops, persons employed on information desks and/or on customer services or as full-time messengers, employees engaged in the installation (other than installation requiring trade skill), servicing, stocking, collection of money from, and preparation of, commodities for sale in automatic vending devices, employees engaged in the pre-packing, weighing, pricing of fruit and/or vegetables on the shop premises, employees principally engaged in hiring out activities in a shop, and waitresses in confection shops employed waiting on tables for two hours or more per day	623.10	26.50	649.60
2	(a) Window Dresser Employees principally engaged in dressing windows. (b) Window dressers under 21 years of age shall be paid as per Item 8 of table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the rates prescribed by subclause (c) of Clause 38 Wages.	629.50	26.80	656.30
3	Branch Supervisor Shop assistants engaged in supervising branch grocery shops	634.60	27.00	661.60
4	Shop Assistants in charge of a shop or a department in a shop not being a shop assistant temporarily in charge during the absence of persons ordinarily in charge of the shop or department, but including employees employed as relieving shop assistants in charge of a shop:			
	(i) Without the duty of buying - In charge of from nil to 4 assistants In charge of from 5 to 12 assistants In charge of from 13 to 25 assistants In charge of over 25 assistants	634.70 643.70 655.00 663.40	27.00 27.40 27.80 28.20	661.70 671.10 682.80 691.60
	(ii) With the duty of buying - In charge of from nil to 4 assistants In charge of from 5 to 12 assistants In charge of from 13 to 25 assistants In charge of over 25 assistants	636.30 646.30 659.60 667.10	27.00 27.50 28.00 28.40	663.30 673.80 687.60 695.50
5	Employees in charge of a motor and/or horse drawn vehicle selling stock carried on the vehicle products of a kind which usually are sold by confection/ take-away food shops Employees under the age of 21 years but not less than the age of 18 years shall be paid the percentages of the rate for an adult contained in (ii) of Table 1 - Clause 38 Wages.	641.70	27.30	669.00
6	Retail Merchandiser as defined by subclause (xi) of clause 2. Definitions	623.10	26.50	649.60

Notation: Hourly rates of pay for full-time, part-time and casual employees shall be calculated to the nearest half cent.

(ii) Juniors - Selling from a vehicle

	Percentage
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

(iii) Retail Merchandiser - Juniors

	Percentage
At 18 years of age and under	70
At 19 years of age	80
At 20 years of age	90

(iv)

(a) Juniors

	Percentage
Under 16 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

Improver Waiters/Waitresses

	Percentage
1st 3 months	78.5
2nd 3 months	82.5
Thereafter	100

Junior rates shall be calculated to the nearest five cents, any part of five cents not exceeding half of five cents to be disregarded.

**Table 2 - Other Rates & Allowances**

Item No.	Clause No.	Brief Description	Amount \$
1	5(a)	Night interval employees	2.40 per shift
2	5(a)	Night interval employees (working one night per week)	3.82 per shift
3	6(i) (b),(c) 36(i)(d) 6(ii)(a)	Meal Allowances	12.70
4	6(ii) 16(vii)	Breakfast Allowance	6.90

5	14(a)(ii)	General Shops - Loading for casual employees working on a Saturday:  Engagements up to and including four hours - Adult employees Employees under 21 years of age  Engagements exceeding four hours - Adult Employees Employees under 21 years of age	7.00 per shift 4.70 per shift  14.40 per shift 7.90 per shift
	14(a)(iii)	Special and Confection Shops - Loading for casual employees working on a Saturday: Adult Employees Employees under 21 years of age	7.00 per shift 4.70 per shift
6	14(c)(ii)	Confection Shop - Employees working after 10.00 p.m. on any night	2.00 each night
7	25(i)	Laundering Allowance (if any article requires ironing): Full-time employee Part-time and casual employee Maximum payment  Laundering Allowance (if none of the articles require ironing): Full-time employee Part-time and casual employee Maximum payment	9.40 3.20 9.40  5.60 1.90 5.60
8	38(1)(i)2(b)	Window Dressers under the age of 21	9.70 per week
9	35(i)(a)	Section Head	14.20 per week
10	35(i)(b)	Qualified adult automotive parts and accessories salesperson	32.20 per week
11	35(i)(c)	Employee with a licence under the <i>Liquor Act</i> 1982	22.10 per week
12	35(ii)(a)	Employee delivering goods	4.90 per week
13	35(ii)(b)	Employee engaged in photographic or other modelling	46.80 per week 9.36 per day
14	35(ii)(c)	First-aid attendant	1.83 per day
15	35(ii)(d)	Employee engaged to speak a second language	9.30 per week
16	35(ii)(e)	Ticket writer - At or over 21 years of age Under 21 years of age	19.00 per week 9.50 per week
17	35(iv)	Bicycle Allowance  Motorcycle Allowance	11.40 per week  34.10 per week
18	35(iv)	Motor Car Allowance:  car up to and including 2000cc car over 2000cc allowance per kilometre travelled	119.10 per week 141.90 per week 0.35 per km
19	35(iv)	Allowance for kilometre travelled:  car under and including 2000cc car over 2000cc	0.55 per km 0.59 per km
	35(iv)	Part-time or Casual Retail Merchandiser local or Country, for the use of his/her vehicle.	0.646 per km
20	35(v)(a)(1)	Disability allowance for employees working in freezer room	9.00 per week
21	35(v)(b)(1)	Disability allowance for employees working in public dairy room	13.60 per week

22	35(v)(c)(1)	Disability allowance for employees backfilling in a freezer room	18.00 per week
23	36(i)(a)	Casual hourly rate of pay for persons employed at trade fairs, etc., between 9.00 a.m. and 6.00 p.m., with a minimum payment of six hours - At 19 years of age and over	16.43 per hour
	36(ii)(b)	Under 19 years of age Saturday Loading - Adult Employees Under 21 years	16.12 per hour 7.00 4.70

## RETAIL EMPLOYEES (STATE) INDUSTRIAL COMMITTEE

### Industries and Callings

#### Section I

All persons employed in or in connection with a shop<sup>2</sup> and/or automatic vending device<sup>3</sup> including (but without limiting the generality of the foregoing) sales assistants, self-service employees, demonstrators, ticket writers, checkout operators, grocery orderperson, reserve stock hands, display hands, window dressers, persons engaged in the hiring of goods in a shop, office assistants, telephone attendants, delivery clerks, persons employed on machines designed to perform or assist in performing any clerical work whatsoever, and cashiers employed solely as cashiers and/or on other clerical duties, in the State, excluding the County of Yancowinna;

*excepting -*

Van salesperson;

Storeperson and packers;

Employees, other than sales assistants, in restaurants, tea shops and cafeterias;

Persons employed selling motor oils, accessories and petrol at or in motor garages and parking and/or service stations or petrol from petrol pumps;

Drivers of trolleys, drays, carts, motor and other power-propelled vehicles, loaders, brakesperson, extra hands, grooms, stableperson and yardperson;

Cleaners;

Employees, other than sales assistants, in or in connection with hospitals, mental hospitals, public charitable institutions or ambulance work;

Butchers, persons engaged in the sale of uncooked meat by retail, carters and other persons delivering such meat, and cashiers in butchers' shops;

*and excepting persons employed by -*

Sydney Electricity;

The Australian Gas Light Company;

The Council of the City of Newcastle;

Newcastle Gas Company Limited;

*and excepting also employees within the jurisdiction of the following Industrial Committees -*

Commercial Travellers (State);

County Councils (Electricity Undertakings) Employees;

Models and Mannequins (State);

Motor Vehicle Salesperson (State);

Northern Rivers County Council;

Pharmacies (State);

Shortland County Council.

NOTE:

<sup>1</sup>In establishing this committee on 23 March 1977 the Commission (Macken J., Matter 109 of 1977) stated:

Section I of the committee shall convene and sit as a separate section when matters are raised which fall solely within the constitution of Section I.

Section II of the committee shall convene and sit as a separate section when matters are raised which fall solely within the constitution of Section II.

Both sections of the committee will sit together when a matter extends beyond the constitutions of either one of the sections of the committee.

<sup>2</sup>"Shop" in this constitution shall have the same meaning as "shop" as defined in section 78 of the *Shops and Industries Act 1962*, or in any Act amending or replacing that Act.

<sup>3</sup>"Automatic vending device" in this constitution means any automatic machine or mechanical contrivance in which goods are offered for sale by retail.

## Section II

Shop<sup>1</sup> assistants, cashiers, office assistants and workers employed in or in connection with automatic vending devices<sup>2</sup>, confectioners, soft drinks, fountain drinks, milk drinks, sundae, fruit and vegetable shops, including persons engaged in the reception, sale or delivery of goods in such shops, and including also employees engaged in the preparing or serving of light refreshments<sup>3</sup> in such shops in the State, excluding the County of Yancowinna;

excepting -

Storepersons and packers, carters and cleaners;

Employees within the jurisdiction of the Cement Workers, &c. (State) Industrial Committee.

NOTE:

<sup>1</sup>"Shop" in this constitution means place, building or any part thereof, stall, tent, vehicle, boat or pack in which goods are sold or offered or exposed for sale by retail.

<sup>2</sup>"Automatic vending device" in this constitution means any automatic machine or mechanical contrivance in which goods are offered or exposed for sale by retail.

<sup>3</sup>"Light refreshment" in this constitution means a beverage, hot or cold, served with biscuits, cakes, pastry, sandwiches, meat pie or the like.

---

Printed by the authority of the Industrial Registrar.



## TEACHERS (NON-GOVERNMENT EARLY CHILDHOOD SERVICE CENTRES OTHER THAN PRE-SCHOOLS) (STATE) AWARD 2009

### AWARD REPRINT

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

#### Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	C7333	26/02/2010	First full pay period on or after 24/11/2009	369	1615

#### Arrangement

##### PART A

Clause No.	Subject Matter
1.	Definitions
2.	Salaries
3.	Shift and Penalty Loadings
4.	Director's and Authorised Supervisor's Allowance
5.	Annual Leave and Public Holidays
6.	Annual Holiday Loading
7.	Personal Leave
8.	Hours of Work
9.	Overtime and Time In Lieu
10.	Miscellaneous
11.	Other Leave
12.	Union Representatives
13.	Terms of Engagement and Information to be Provided to Teachers
14.	Procedure for Dealing with Job Performance Problems
15.	Disputes and Grievance Procedures
16.	Anti-Discrimination
17.	Savings Clause and Leave Reserved
18.	Superannuation
19.	Enterprise Consultation
20.	Labour Flexibility
21.	Area, Incidence and Duration

**PART B****MONETARY RATES**

Table 1 - Rates of Pay

Table 2 - Director's Allowances

Table 3 - Other Rates and Allowances

Table 4 - Authorised Supervisor's Allowance (Clause 4.2(i))

Table 5 - Authorised Supervisor's Allowance (Clause 4.2(ii))

**PART C****REDUNDANCY****ATTACHMENT A****ATTACHMENT B****PART A****1. Definitions**

For the purposes of this award, except for subclause (c) or (x) of this clause and clause 4, Director's and Authorised Supervisor's Allowance, all reference to teachers in this award shall include Director or Authorised Supervisor, and:

- (a) "Teacher" means any person employed as such in an ECS Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (p), (q), (r) and (s) of this clause.
  - (i) "Full-time Teacher" means any teacher other than a casual, temporary, or part-time teacher.
  - (ii) "Part-time Teacher" means any teacher who is engaged to work regularly and not more than 0.8 of the normal hours which a full-time teacher at the Centre is required to work provided that a part-time teacher may work up to 0.9 of the normal hours of a full-time teacher if he or she is entitled to a preparation session equivalent to 0.1 of a teachers normal hours. Provided further that a part-time teacher employed as at 31 January 1990 shall not be required by that employer to work in excess of 0.8 of the normal hours of a full-time teacher.
  - (iii) "Temporary Teacher" means a teacher employed to work full-time or part-time for a specified period which is not more than a full Centre year but not less than 20 days. Provided that a teacher may be employed for a specific period in excess of a full year but not more than two full years where such a teacher is replacing a teacher who is on leave for a specified period in excess of a full year.
  - (iv) "Casual Teacher" means a teacher engaged as required by an employer for up to 20 working days in any one period of employment. Provided that the period may be extended as required by the employer if the employer has been notified that the permanent teacher will be absent beyond the 20 day period.
- (b) "Centre Year" means the number of weeks for which a particular ECS Centre is open over the course of a calendar year.
- (c) "Director" means the teacher who is responsible for the day to day operation and management of the Early Childhood Services Centre as defined in subclause (d) of this clause, holding Early Childhood qualifications as defined in subclauses (p), (q), (r) and (s) of this clause.
- (d) "Early Childhood Services (ECS) Centre" means an establishment which provides child care and/or educational development programmes and/or services for children under school age and shall include early intervention services, long day care centres and multi-purpose centres. It shall not include a Recognised School or Pre-School. For the purposes of this clause:

- (i) "Early Intervention Service" means a service which provides individual programmes for developmentally delayed or disabled children, or children at risk of being developmentally delayed or disabled, aged 0-6 years, aimed at providing assistance to the child and his or her family in the areas of physical, emotional, social and educational needs;
  - (ii) "Long Day Care Centre" means a child care establishment which usually provides services over a period of approximately eight hours or more each day for approximately 48 weeks or more during the year;
  - (iii) "Multi-Purpose Centre" means a child care establishment which usually provides the services of a long day care centre, together with the services of a full day care centre and/or a sessional care centre.
- (e) "Pre-School" means a kindergarten, day school or nursery school and shall include:
- (i) "A Full Day Care Centre" which means a child care establishment which does not operate on a sessional basis, but which operates during hours and terms which approximate those of a recognised school.
  - (ii) "A Sessional Care Centre" which means a child care establishment which operates on the basis of morning and/or afternoon sessions and which operates during hours and terms which approximate those of a recognised school.
- (f) "Unit" means a group or class of children which does not at any one time exceed 25 children, but which need not necessarily consist of the same children at all times.
- (g) "Shift" means a daily period of work in an ECS Centre and shall be either:
- (i) "afternoon shift" which means any shift finishing after 6.30 pm and at or before midnight; or
  - (ii) "night shift" which means any shift finishing subsequent to midnight and at or before 8.00 am or any shift commencing at or after midnight and before 5.00 am; or
  - (iii) "early morning shift" which means any shift commencing at or after 5.00 am and before 6.30 am; or
  - (iv) "night shift, non-rotating" which shall mean any shift system in which night shifts are worked which do not rotate or alternate with another shift so as to give the teacher at least one third of his or her working time off night shift in each roster cycle; or
  - (v) "Saturday shift" which means any shift worked on Saturday.
- (h) "Infants Department" means Kindergarten, Grades 1 and 2 in a recognised school.
- (i) "Recognised School" means a school registered under the provisions of the Education Act 1990.
- (j) "Teacher Training Institution" means an Australian College of Advanced Education, Australian Teachers College or Australian Institute of Education recognised by the Tertiary Education Commission or its replacement.
- (k) "University" means an Australian University
- (l) "Graduate" means a teacher who holds specialist B. Ed (Early Childhood) from a Recognised University or Recognised Teacher Training Institution.
- (m) "Equivalent Qualifications or Equivalent Course" means a qualification or course as the case may be which the employer and the teacher agree as being equivalent to the qualification or course prescribed by the clause in question in this award, or which the Conciliation Committee determines as being so equivalent.

- (n) "Two Years Trained Teacher" means:
- (i) A teacher who has satisfactorily completed a two year full-time course of study in Early Childhood Education at a Recognised Teacher Training Institution; or
  - (ii) A teacher who was employed as a Two Years Trained Teacher as at 1 February 1991; or
  - (iii) A teacher who has acquired other equivalent qualifications.
- (o) "Three Years Trained Teacher" means:
- (i) A teacher who has satisfactorily completed a Three Years full-time course of study in Early Childhood Education at a Recognised Teacher Training Institution; or
  - (ii) A teacher who, in addition to satisfying the requirements for classification as a Two Years Trained Teacher, has satisfactorily completed a course of study in Early Childhood Education at Category UG2 level; or
  - (iii) A teacher who was employed as a Three Years Trained Teacher as at 22 April 1986; or
  - (iv) A teacher who has acquired other equivalent qualifications; or
  - (v) A three year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (p) "Four Years Trained Teacher" means:
- (i) A teacher who is a graduate holding B. Ed (Early Childhood) (four years full-time course); or
  - (ii) A teacher who is a graduate and who holds a Diploma in Early Childhood Education from a recognised University or Recognised Teacher Training Institution; or
  - (iii) A teacher who has, in addition to satisfying the requirements for classification as a Three Years Trained Teacher, satisfactorily completed a course of study in Early Childhood Education at Category PGI Level; or
  - (iv) A teacher who was employed as a Four Years Trained Teacher as at 22 April, 1986; or
  - (v) A teacher who has acquired other equivalent qualifications; or
  - (vi) A four year Primary School trained teacher who has been recognised as equivalent by the New South Wales Department of Community Services.
- (q) "All Other Teachers" means a teacher whose qualifications and experience in Early Childhood Education do not qualify that teacher for classification as a Two Years, Three Years or Four Years Trained Teacher.
- (r) "Multi-Purpose Centre" means an establishment which provides child care and educational development programs and services for children and may include services of an Early Childhood Service Centre together with the services of a Pre-School, occasional care, outside of school care or vacation care.
- (s) "Occasional Care" means services that provide short-term care to parents.
- (t) "Outside School Care" means services that provide care for school age children before and after normal school hours.
- (u) "Vacation Care" means services that provide care for school aged children during non-term time.

- (v) "Authorised Supervisor" means a teacher who is appointed as Authorised Supervisor under the *Children and Young Person (Care and Protection) Act 1988* or its replacement, that is, as the person who is authorised under the Act to have the overall supervision of the provision of the child care service to which it relates and who is not appointed as a Director.

## 2. Salaries

2.1 The minimum fortnightly salary payable to full-time teachers shall, subject to the other provisions of this award, be calculated by dividing the per annum rates as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates, by 26.07.

(a) All Other Teachers

A person who is classified as a teacher on this scale shall complete three years of service on Step 1 of the scale before progressing to Step 2 of the scale, and shall progress according to normal years of service thereafter.

(b) Two Years Trained Teachers

(i) A Two Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 8 of the scale. A Two Years Trained Teacher who, without satisfying additional academic requirements, completes three years of service on the rate prescribed for Step 8 of the scale shall progress to Step 9 of the scale.

(ii) A Two Years Trained Teacher who, by further study satisfactorily completes the equivalent of one third of a degree course in Early Childhood Studies, shall be paid an additional increment with retention of normal incremental date and shall thereafter progress in accordance with normal years of service to Step 9 of the scale.

(c) Three Years Trained Teachers

(i) A Three Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 11 of the scale.

(ii) A Three Years Trained Teacher who, as at 1 February 1991, has completed eight or more years of full-time service, or its part-time equivalent, shall progress to Step 9 of the scale with retention of normal incremental date, and shall thereafter progress according to normal years of service to Step 11 of the scale.

(iii) A Three Years Trained Teacher being paid on Steps 1 to 10 of the scale who, by further study satisfactorily completes the equivalent of one third of degree course, shall receive a salary advance of one increment with retention of incremental date and shall thereafter progress in accordance with normal years of service to Step 11 of the scale.

(d) Four Years Trained Teachers

(i) A Four Years Trained Teacher shall commence on Step 1 of the scale and progress according to normal years of service to Step 9 of the scale.

(ii) A Four Years Trained Teacher who, as at 1 February 1991, has completed eight or more years of full-time service, or its part-time equivalent, shall progress to Step 9 of the scale with retention of normal incremental date.

2.2 Part-Time and Temporary Teachers

- (a) A part-time teacher, including a temporary part-time teacher, shall be paid at the same rate as a full-time teacher with the corresponding classification, but in that proportion which the teachers normal working hours bear to the hours which a full-time teacher at that ECS Centre is normally

required to work. For the purpose of this calculation, the normal working hours of a full-time teacher shall be not greater than 38 hours per week (see clause 8, Hours of Work).

- (b) The days of attendance and normal hours of work of a part-time teacher may be varied at the commencement of each calendar year or by giving four weeks' notice during the year. Provided that the days of attendance and the normal hours of work may be varied or increased at any time by mutual agreement between the employer and the teacher. Such agreement will not be unreasonably withheld by either party.
- (c) A temporary full-time teacher shall be paid at the same rate as that prescribed for a full-time teacher with the corresponding classification.

### 2.3 Casual Teachers

The salary payable to a casual teacher shall be a daily, half daily, or quarter daily rate, plus 20% of such rate, which shall be calculated as follows:

- (a) The appropriate rate prescribed by subclause 2.1 of this clause, in accordance with years of full-time service, shall be divided by 26.07 to provide a fortnightly rate, provided that the maximum rate shall be as follows:

All Other Teachers	Third Step
Two Years Trained	Fourth Step
Three Years Trained	Fourth Step
Four Years Trained	Fourth Step

- (b) The fortnightly rate thus obtained shall then be divided by:

- (i) 10, to obtain a daily rate of pay; or
- (ii) 20, to obtain a half daily rate of pay; or
- (iii) 40, to obtain a quarter daily rate of pay.

and the amount thus obtained shall then be increased by 20% of such amount.

- (c) The amount obtained by the operation of paragraphs (a) and (b) of this subclause is exclusive of the pro rata payment to which the teacher is entitled under the *Annual Holidays Act, 1944*.

### 2.4 Travelling Expenses

- (a) Where a teacher is required to use his or her vehicle in connection with the teachers employment other than for journeys between home and the place of employment, the teacher shall be paid an allowance per kilometre of travel, as set out in Item 1 of Table 3 - Other Rates and Allowances of Part B, Monetary Rates.
- (b) Travelling and other out of pocket expenses reasonably incurred by a teacher in the course of duties required by the employer shall be reimbursed by the employer.

### 2.5 Calculation of Service

- (a) For the purpose of this clause, any teacher if required by the employer so to do, shall upon engagement establish to the satisfaction of the employer, the length of his or her teaching service in any Pre-school, ECS Centre, Multi-Purpose Centre or in early childhood education services for children up to eight years of age, or in the Infants Department of Schools registered or certified under the appropriate legislation in other States or Territories of the Commonwealth of Australia, and that period so established shall be taken to be the length of such service for the purpose of that employment.

- (b) For the purpose of this clause, a period of service other than service within paragraph (a), shall be counted as service in accordance with the following principles:
- (i) A period of service as a lecturer in early childhood education or child development, as a child development officer, or as a Family Day Care Co-ordinator or equivalent shall be recognised as service.
  - (ii) A period of service as a carer in the child care industry, including service as a Family Day Care carer (as recognised under State Government Regulations), a Child Care Certificate worker or equivalent shall be recognised as service at the rate of one increment for each complete three years so engaged to a maximum of four increments.
- (c) For the purpose of calculating service:
- (i) Any employment as a full-time employee (including employment as a temporary full-time employee) as referred to in paragraphs (a) and (b) of this subclause shall be counted as service.
  - (ii) The amount of service of a part-time teacher (including a temporary part-time teacher) shall be calculated by reference to the ratio which the number of hours taught by the teacher in any year bears to the normal number of days worked by a full-time teacher at that ECS Centre in the same year, PROVIDED that a period of part-time service in terms of paragraph (b) of this subclause shall count as service in the proportion that the part-time employment bore to full-time employment in that occupation.
  - (iii) The amount of service of a casual teacher shall be calculated by reference to the ratio which the number of days (or equivalent) worked by the teacher in any year bears to the normal number of days worked by a full-time teacher at that ECS Centre in the same year, provided that only casual service performed in the preceding four years shall be included in determining incremental progression.
  - (iv) Provided also that the salary incremental date of any teacher who has taken leave without pay may be altered by adding the period of such leave without pay to the salary incremental date applicable to that teacher prior to the leave without pay.

## 2.6 Re-Classification

The transfer to a higher salary scale of a teacher who has completed a course of training which makes the teacher eligible to be so transferred and the progression of such teacher through the salary steps on that higher salary scale shall be effected as follows:-

- (a) A teacher seeking such transfer shall make application in writing to the employer and shall attach to such application documentary evidence establishing that he or she has had or will have conferred on him or her the diploma, degree or equivalent recognition of the completion of the course of training which makes him or her eligible to be so transferred.
- (b) Where an application is made under paragraph (a) above which establishes that a teacher is eligible to be transferred to a higher salary scale, such transfer shall take effect:
  - (i) From the beginning of the first pay period to commence on or after the date of completion of formal course requirements. Provided that the application for transfer is received by the employer no later than four months after the conferral of the diploma, degree or equivalent recognition of the completion of such course of training; or
  - (ii) Where the application for transfer is not received by the employer within the time specified in subparagraph (i) of this paragraph, from the beginning of the first pay period to commence on or after the date on which the employer receives such application.

- (c) A teacher who has completed a course of training entitling the teacher to transfer to a higher salary scale pursuant to this subclause shall, for the purpose of advancing through the steps on the higher salary scale to which the teacher has been so transferred, retain the teacher's normal salary incremental date.

Provided that if the transfer of the teacher to the higher salary scale coincides with the teachers normal salary incremental date, the increment shall be applied prior to the teacher being transferred to the higher salary scale.

- (d) A teacher shall be transferred to the higher salary scale on the following basis:
- (i) A Two, Three or Four Years Trained Teacher shall be transferred to the salary step on the higher salary scale which shall be determined by the teachers years of service on the lower scale.
- (ii) A teacher classified on the All Other Teachers scale shall be transferred to the salary step on the new salary scale which shall be determined as follows:
- (1) A teacher classified on the 1st or 2nd incremental step on the old scale shall be transferred to the 1st step on the new scale.
- (2) A teacher classified on the 3rd or 4th incremental step on the old scale shall be transferred to the 2nd step on the new scale.
- (3) A teacher classified on the 5th incremental step on the old scale shall be transferred to the 3rd step on the new scale.
- (e) The transfer to a higher salary scale of a teacher who has acquired a qualification (other than the completion of a course of training) which makes the teacher eligible to be so transferred, and the progression of such teacher through the steps on that higher salary scale shall be effected in accordance with the provisions of paragraphs (a), (b), (c) and (d) of this subclause.

## 2.7 Payment of Any Monies

- (a) The salary payable to any teacher pursuant to this clause, shall be payable fortnightly or half monthly by either cash, cheque or Electronic Funds Transfer into an account nominated by the teacher. Casual teachers may, by mutual agreement, be paid in the same manner as full-time teachers.
- (b) The rates of pay in this award include the adjustments payable under the State Wage Case 2001. These adjustments may be offset against:
- (i) any equivalent over-award payments; and/or
- (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
- (c) For the purposes of implementation of increases from a State Wage Case, a half-monthly pay period shall be deemed to commence on the first date occurring after the operative date of any increase in salaries given under the State Wage Case decision, calculated by fortnightly periods commencing on the 31 January, 1977.
- (d) Where the pay day for a half-monthly pay period falls on a Saturday, Sunday or public holiday, salaries shall be paid on the day not being a Saturday, Sunday or public holiday immediately preceding the said pay day.



## 2.8 Overpayments

Where excess payments are made in circumstances which were not apparent or could not reasonably have been expected to be detected by the teacher, the relevant parties shall seek agreement on the matter of the overpayment including, when necessary and appropriate, discussion between the New South Wales Independent Education Union and relevant employer representatives.

## 2.9 Salary Packaging

- (a) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of the employees annual remuneration including allowances. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (b) Salary packaging shall mean that the employee will have part of their annual remuneration including allowances packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (c) The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
  - (i) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
  - (ii) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
  - (iii) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information, or if maintained manually, on request;
  - (iv) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
  - (v) prior to entering into any salary packaging agreements, the employee will be given the opportunity by the employer to seek independent advice in respect of salary package arrangements including advice from the union;
  - (vi) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
    - (1) the ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
    - (2) the applicable rate specified in Table 1, Rates of Pay of this Award.
  - (vii) notwithstanding any of the above arrangements, the employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
  - (viii) Superannuation Guarantee Contributions will be calculated with reference to the annual remuneration including allowances the employee would have been entitled to receive but for the salary packaging arrangement;
  - (ix) Any payment including any allowances, penalty rates, overtime, payment for unused leave entitlements shall be calculated by reference to the annual remuneration including allowances which would have applied to the employee but for the salary packaging

arrangement and payable during employment or on termination of employment or on death;

- (x) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.

### 3. Shift and Penalty Loadings

3.1 For the purposes of calculating only the loadings provided for in this subclause:

- (a) a weekly rate of pay shall be obtained by dividing the teacher's annual salary, including all applicable allowances, by 52.14;
- (b) a daily rate of pay shall be obtained by dividing the weekly rate as provided for in paragraph (a) of this subclause, by 5.

Provided that the rate of pay for a casual teacher shall be first calculated according to subclause 2.3 of clause 2, Salaries.

3.2 In addition to the annual rate of salary and applicable allowances provided for in this award, a loading shall be payable to teachers required to perform shift work which is in accordance with the following rates:

- |   |        |
|---|--------|
| (a) early morning shift                               | 10%,   |
| (b) afternoon shift                                   | 15%,   |
| (c) night shift, rotating with day or afternoon shift | 17.5%, |
| (d) night shift, non-rotating                         | 30%,   |
| (e) Saturday  | 25%    |

3.3 Notwithstanding subclause 3.2, an employer may reach agreement with a teacher to allow for flexible work arrangements which could have the effect that shift loadings will not be payable for shifts commencing at or after 5.00 am and before 6.30 am or later and ending no later than 8.00 pm. Any such agreement shall be made in accordance with Attachment B of this award, a copy of which shall be kept with the pay records.

The parties to the award agree to review the operation of this subclause six months after the making of this award.

3.4 A teacher may be required to attend for work on Saturdays in accordance with the following provisions:

- (a) a teacher shall be employed for a minimum of three hours;
- (b) no teacher employed by an employer as at the date of making of this award shall be required to work on Saturday although he or she may be invited to work;
- (c) a teacher employed by an employer after the date of making of this award who is required to work on Saturday shall be advised in writing prior to appointment of such requirement and of the regular days of work which shall be worked by such teacher.

#### 4. Director's and Authorised Supervisor's Allowance

##### 4.1 Director's Allowance

- (a) A full-time teacher who is appointed as a Director as defined in clause 1, Definitions, shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries, on a fortnightly basis, an allowance for a Director calculated by dividing the per annum rates set out in Table 2 - Directors' Allowance, of Part B, Monetary Rates, by 26.07.
- (b) A part-time teacher who is appointed as a Director as defined in Clause 1, Definitions of this award, shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries of this award, an allowance in accordance with Table 2 - Director's Allowance, a proportionate basis to the hours they work.
- (c) Any teacher required by the employer to act as Director for at least ten consecutive working days shall be paid for so doing at the rate prescribed for that position.

Provided that a teacher shall not be required to carry out such duties in an acting capacity for more than a full year except that a teacher may be required to carry out such duties for up to two full years where such a teacher is replacing a Director who is on leave for a specified period in excess of a full year.

##### 4.2 Authorised Supervisor's Allowance

- (a) A full time teacher who is an Authorised Supervisor as defined in clause 2 shall be paid an allowance as set out below and shall be advised by the employer on appointment which allowance is to apply:
  - (i) Where the licensee is involved in the operation of the service for an average of 20 hours or more per week or an average of 80 hours or more in a four week period and a Director is not employed, the Authorised Supervisor shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries on a fortnightly basis an allowance by dividing the per annum rates set out in Table 4 - Authorised Supervisor's Allowance of Part B, Monetary Rates, by 26.07.
  - (ii) Where the licensee is involved in the operation of the service for an average of less than 20 hours per week or an average of less than 80 hours over a four week period and a Director is not employed, the Authorised Supervisor shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries on a fortnightly basis an allowance by dividing the per annum rates set out in Table 5 - Authorised Supervisors Allowance of Part B, Monetary Rates, by 26.07.
  - (iii) Where a Director is employed and is not the Authorised Supervisor, the Authorised Supervisor shall be paid in addition to the amounts payable pursuant to clause 2, Salaries on a fortnightly basis an allowance calculated by dividing the per annum rates set out in the applicable Table 4 - Authorised Supervisors Allowance.

Provided that a teacher appointed as an Authorised Supervisor who is not in receipt of the Directors Allowance, shall not be responsible for the day to day operation and management of the Early Childhood Services Centre.

- (b) Where a licensee proposes to change his/her hours of attendance which would result in a change in the entitlement of the allowance set out in Table 4 or 5 Authorised Supervisor's Allowance of Part B, Monetary Rates four weeks written notice will be given.
- (c) A part-time teacher who is appointed as an Authorised Supervisor, as defined in Clause 1, Definitions of this award, shall be paid, in addition to the amounts payable pursuant to clause 2, Salaries of this award, an allowance in accordance with Table 4 or 5 - Authorised Supervisor's Allowance on a proportionate basis to the hours they work.

- (d) Any teacher required by the employer to act as Authorised Supervisor for at least ten consecutive working days shall be paid for so doing at the rate prescribed for that position.

Provided that a teacher shall not be required to carry out such duties in an acting capacity for more than a full year except that a teacher may be required to carry out such duties for up to two full years where such a teacher is replacing a Authorised Supervisor who is on leave for a specified period in excess of a full year.

- (e) It is not intended that Directors shall be displaced by the appointment of an Authorised Supervisor as a result of the operation of this clause.

## 5. Annual Leave and Public Holidays

### 5.1 Annual Leave

- (a) A teacher, on completion of 12 months' continuous service, shall be entitled to a minimum of four weeks leave of absence on full pay.
- (b) See *Annual Holidays Act 1944*.

### 5.2 Public Holidays

- (a) The following days shall be holidays for the purposes of the award: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day and Boxing Day. All days proclaimed as public holidays for the State shall be holidays, provided that any day proclaimed as a holiday for the State for a special purpose but observed throughout the State on different days also shall be a holiday.
- (b) Where a teacher is required to work on a holiday he or she shall be paid in addition to the teacher's ordinary rate of pay at the rate of one and a half times for the time so worked.

## 6. Annual Holiday Loading

- 6.1 Subject to subclause 6.6 hereof, where a teacher other than a casual teacher, is given and takes his or her annual holiday each year he or she shall be paid an annual holiday loading calculated in accordance with this clause.
- 6.2 The loading shall be payable in addition to the pay payable to the teacher for the period of the annual holiday.
- 6.3 The loading shall be calculated in relation to such period of a teacher's annual holiday as is equal to the period of annual holiday to which the teacher is entitled for the time being under the *Annual Holidays Act 1944* at the end of each year of the teacher's employment.
- 6.4 The loading shall be the amount payable for the period specified in subclause 6.3 of this clause at the rate of 17.5% of the weekly equivalent of the teacher's annual salary.
- 6.5 For the purpose of this clause, "salary" shall mean the salary payable to the teacher at the first day of the month in which the loading is payable together with, where applicable, the allowance prescribed by subclause 4.1 of clause 4, Director's Allowance, but not including any other allowance or amount otherwise payable in addition to salary.
- 6.6 This clause extends to a teacher who is given and takes an annual holiday and who would have worked as a shift worker if he or she had not been on holiday, provided that if the amount to which the teacher would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the teacher would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the teacher in lieu of the loading.

## 6.7

- (a) Where the employment of a teacher is terminated for a cause other than misconduct and at the time of the termination the teacher has not been given and has not taken the whole of an annual holiday to which the teacher became entitled, the teacher shall be paid a loading calculated in accordance with subclause 6.4, of this clause, for the period not taken.
- (b) Except as provided in paragraph (a), of this subclause, no loading is payable on the termination of a teachers employment.

**7. Personal Leave**

- 7.1 A full-time, temporary or part-time teacher shall be entitled to 15 days' personal leave with pay in the first year of service with the employer and 25 days' personal leave with pay in the second and subsequent years of continuous service with the same employer.

During the first three months of service with an employer the period of personal leave shall not exceed five days. Following the completion of three months service with an employer, the teacher shall be entitled to the balance of personal leave not taken up to the maximum of 15 days in the first year of service.

- 7.2 The personal leave set out in subclause 7.1 of this clause may be taken as:

- (a) Up to one day's leave on the date of the spouse's confinement or on the day on which she leaves hospital following a confinement; and/or

- (b) Up to one day's leave for the purpose of adopting a child; and/or

- (c)

- (i) Up to three days' bereavement leave up to and including the day of the

funeral, on the death within Australia of a member of the teacher's family or household (as defined in section (ii) of subparagraph (c) of subclause 7.71 of this clause). A teacher must notify the employer as soon as practicable of the intention to take bereavement leave and will provide, to the satisfaction of the employer, proof of death.

- (ii) Bereavement leave shall be available to the teacher in respect of the death of a person prescribed for the purposes of personal/carer's leave as set out in subclause 7.7.1(c)(ii) of this clause, provided that for the purpose of bereavement leave, the teacher need not have been responsible for the care of the person concerned.

Provided that a teacher shall not be entitled to bereavement leave under this clause during any period in respect of which the teacher has been granted other leave.

- (iii) Provided that bereavement leave may be taken in conjunction with other leave available under paragraphs 7.7.1, 7.7.2, 7.7.3, 7.7.4, 7.7.5, 7.7.6 and 7.7.7 of subclause 7.7 of this clause. In determining such a request the employer will give consideration will be given to the circumstances of the teacher and the reasonable operational requirements of the employer; and/or

- (iv) Bereavement entitlements for casual teachers

- (a) Subject to the evidentiary and notice requirements in (i) casual teachers are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in (ii) of subparagraph (c) of subclause 7.7 1.

- (b) The employer and the teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the

teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance

- (c) An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual teacher are otherwise not affected.
- (d) Up to one day's leave on the day of an examination of a course run by a recognised teaching institution undertaken by the teacher to further his or her early childhood teacher training; and/or
- (e) Personal/Carer's leave in accordance with the provision outlined in subclause 7.7 of this clause; and
- (f) Sick leave - Subject to subclause 7.7 of this clause, a teacher may take all of their personal leave entitlement as sick leave provided that five days of their personal leave entitlement in each year of service is only used as sick leave.

7.3 The taking of leave outlined in subclause 7.2 of this clause shall be subject to the following conditions and limitations:

- (a) A teacher intending to take leave shall notify the employer at the earliest practicable opportunity and in any event prior to the commencement of the first activity for the day of their:
  - (i) inability to attend work;
  - (ii) the reason for their inability to attend work; and
  - (iii) the estimated duration of the absence.
- (b) A teacher who fails to comply with the procedure outlined in paragraph (a) of this clause shall not be entitled to paid leave unless they can satisfy the employer that they took all reasonable steps to notify the employer or were unable to take such steps.
- (c) To qualify for sick leave, a teacher may be required to provide evidence satisfactory to the employer that they were sick.
- (d) A teacher shall not be entitled to sick leave for any period in respect of which such teacher is entitled to workers' compensation.

7.4 Notwithstanding the provisions of subclauses 7.1 and 7.2 of this clause, the personal leave entitlement of a part-time teacher and temporary teacher shall be in that proportion which the teacher's number of working hours in a full ECS Centre week bears to the number of working hours which a full-time teacher at that ECS Centre is normally required to work.

7.5 Untaken leave in the second year of service and thereafter shall accumulate up to a maximum of 120 days. Subject to the provisions of subclause 7.7 of this clause, such accumulated leave may only be taken as sick leave.

7.6 Transitional Arrangements

The following transitional arrangements will apply:

- (a) Teachers employed prior to 18 October 1996 in accordance with the Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award published 1 March 1996 (290 I.G. 1246), as varied, retained all full-pay sick leave accumulated in accordance with that award.

- (b) All half-pay sick leave entitlements accumulated prior to 18 October 1996 in accordance with the said award were converted to half the number of days on full pay and added to the existing, full-pay, sick leave accumulation.

## 7.7 Personal/Carer's Leave

### 7.7.1 Use of Sick Leave

- (a) A teacher, other than a casual teacher, with responsibilities in relation to a class of person set out in subclause 7.7.1(c)(ii) of this clause who needs the teacher's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in subclauses 7.1 and 7.2 of this clause, for absences to provide care and support, for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The teacher shall, if required,
- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the teacher.

In normal circumstances, a teacher must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to: -

- (i) the teacher being responsible for the care of the person concerned; and
- (ii) the person concerned being: -
- (1) a spouse of the teacher; or
- (2) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bono fide domestic basis although not legally married to that person; or
- (3) a child or an adult child (including an adopted child, a foster child or an ex nuptial child), parent (including foster parent and legal guardian), grandparent, grandchild or sibling of the teacher or spouse or defacto spouse of the teacher; or
- (4) a same sex partner who lives with the teacher as the de facto partner of that teacher on a bona fide domestic basis; or
- (5) a relative of the teacher who is a member of the same household, where for the purposes of this paragraph: -

"relative" means a person related by blood, marriage of affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives or the other; and

"household" means a family group living in the same domestic dwelling

- (d) A teacher shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the teacher to give prior notice of absence, the teacher shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and teacher shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and teacher's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 15 should be followed.

#### 7.7.2 Unpaid Leave for Family Purpose

A teacher may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subclause 7.7.1(c)(ii) above who is ill or who requires care due to an unexpected emergency.

#### 7.7.3 Annual Leave

- (a) A teacher may elect with the consent of the employer to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph 7.7.3(a) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) A teacher may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) A teacher may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

#### 7.7.4 Time Off in Lieu of Payment for Overtime

- (a) For the purpose only of providing care and support for a person in accordance with clause 7.7.1(c)(ii) above, and despite the provisions of Clause 9.3 the following provisions shall apply.
- (b) A teacher may elect, with consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within twelve (12) months of the said election.
- (c) 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.
- (d) If, having elected to take time as leave in accordance with paragraph 7.7.4(a) above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve (12) month period or on termination.
- (e) Where election is made in accordance with paragraph 7.7.4, the teacher shall be paid overtime rates in accordance with the award.

#### 7.7.5 Make-up Time

- (a) A teacher may elect, with the consent of the employer, to work "make-up time", under which the teacher takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.



- (b) A teacher on shift work may elect, with the consent of the employer, to work "make-up time" (under which the teacher takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

#### 7.7.6 Rostered Days Off

- (a) A teacher may elect, with the consent of the employer, to take a rostered day off at any time.
- (b) A teacher may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (c) A teacher may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and teacher, or subject to reasonable notice by the teacher or the employer.
- (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, an providing a reasonable opportunity for the union(s) to participate in negotiations.

#### 7.7.7 Personal Carers Entitlement for Casual Teachers

- (a) Subject to the evidentiary and notice requirements in subclause 7.7.1(a) and 7.7.(b) of this clause, casual teachers are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 7.7.1(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the teacher shall agree on the period for which the teacher will be entitled to not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual teacher is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual teacher because the teacher accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual teacher are otherwise not affected.

### **8. Hours of Work**

- 8.1 The ordinary hours of work, inclusive of crib breaks shall be an average of 38 hours per week.
- 8.2 The ordinary hours of work for all teachers may be worked between the hours of 6.30 am and 6.30 pm, on any five days Monday to Saturday and subject to subclause 8.6, shall not exceed eight hours duration.
- 8.3 The method of implementation of the 38 hour week shall be by way of:
  - (a) a 19 day month;
  - (b) accumulation;
  - (c) by teachers working more than eight ordinary hours one or more days during the work cycle.
- 8.4 Method of Implementation of the 19 day month
  - (a) By agreement between the teacher and the employer, the teacher may fix one work day off in each four week cycle as a rostered day off to the extent to which they are accrued pursuant to paragraph (b).
  - (b) Accrual

- (i) A teacher shall accrue one rostered day off for each 20 days of service, one day of which is to be included in the annual leave entitlement.
- (ii) Each day of paid leave taken including each public holiday and the annual holiday (but not including long service leave nor periods of service in non-term time) shall be regarded as a day worked for accrual purposes.
- (iii) Notwithstanding the provisions of subparagraph (i) of this paragraph, a teacher shall be entitled to no more than 12 paid rostered days off in any 12 months of consecutive employment.
- (iv) A teacher who has not worked a complete four week cycle in order to accrue a rostered day off shall be paid a proportionate payment for each day worked in that cycle equivalent to:

$$\frac{P}{200}$$

where P is the fortnightly salary payable to the teacher. A teacher shall be entitled to be paid on termination of employment for rostered days off which have been accumulated but not taken or entitlements pursuant to this paragraph at the rate of pay on the date of termination.

- (v) A teacher shall not be entitled to sick leave in respect of illness whilst on a rostered day off. In the event of a rostered day off falling on a public holiday, the teacher and the employer shall agree on an alternative day off as a substitute.

#### 8.5 Method of Implementation of Accumulation

In lieu of the provision contained in paragraph (a) of subclause 8.4 of this clause, a teacher may choose to accrue sufficient rostered days off to enable such days to be taken as a block of not more than 12 days at any one time in any 12 months of consecutive employment.

#### 8.6 Method of Implementation of teachers working more than eight ordinary hours one or more days during the work cycle

- (a) In lieu of the provisions contained in subclauses 8.4 and 8.5 of this clause, the employer and teacher(s) may agree that the 38 hour week shall be implemented on one of the following bases:
  - (i) by the teacher(s) working three 10 hour shifts and one 8 hour shift per week; or
  - (ii) by the teacher(s) working four 9.5 hour shifts per week; or
  - (iii) any other shift arrangement whereby a teacher works no more than 10 hours per day or 38 hours per week.
- (b) Prior to implementing a shift pursuant to paragraph (a) of this subclause, the employer shall:
  - (i) consult with the teacher(s) and their representative if requested as to the appropriateness of the proposed shift arrangement;
  - (ii) reach an agreement with the teacher to trial the proposed shift arrangement for six weeks;
  - (iii) record such consultation and agreement in writing, signed by each party.
- (c) After the six week trial period the employer and the teacher or teachers (and their representatives if requested) will consult again and the employer may introduce the shift which has been trialed.

- (d) If the teacher agrees to work a shift longer than eight (8) hours the teacher shall receive an additional paid crib break of 10 minutes which shall be taken at a time convenient to the employer.
- (e) Any dispute in relation to the operation of this subclause shall be dealt with pursuant to clause 15, Disputes and Grievance Procedures.

#### 8.7 Part-time, Casual and Temporary Teachers

- (a) Nothing in this clause shall entitle a teacher who works less than 38 hours per week (inclusive of crib breaks) to accumulate rostered days off pursuant to this clause, and a teacher's conditions of employment shall not be downgraded as a consequence of this variation.
- (b) Temporary Teachers (other than Part-Time Teachers)

A temporary teacher, other than a part-time teacher, shall by agreement with the employer, and according to the period of the employment of the teacher, be entitled to either:

- (i) accumulate rostered days off in accordance with clause 8.4 of this clause; or
- (ii) be paid an additional loading of 5% pursuant to this clause in lieu of an entitlement to rostered days off.

#### 8.8 Establishments Operating 41 to 47 Weeks Per Annum

Where an ECS Centre operates from 41 to 47 weeks per annum and a teacher receives in consequence more than four weeks paid leave per annum, then the teacher shall accrue rostered days off to a maximum of seven days in any 12 months of consecutive employment and any days accrued in excess of seven days in any 12 months period of employment shall be deemed to be subsumed into the period of paid leave in excess of four weeks.

### **9. Overtime and Time in Lieu**

- 9.1 All hours required by the employer to be worked outside the ordinary hours of work prescribed by clause 8 Hours of Work, including where a teacher is required to stay back to supervise children who have not been picked up or to cover staff absences but excluding the normal preparation and programming duties of a teacher, shall be paid at the rate of time and one half for the first two hours and double time thereafter. Provided that teachers may be required to attend up to a maximum of two hours per month and directors up to four hours per month where such time involves parental meetings, staff meetings and other duties not including the supervision of children without any payment being due. Part-time teachers may be required to attend such meetings outside of ordinary hours on a pro rata basis.
- 9.2 Provided that part-time employees who agree to work in excess of their normal hours shall be paid at ordinary time for up to eight hours provided that the additional time worked is during ordinary hours of operation of the ECS centre. No part-time employee shall be required to work for longer than 8 (eight) hours in any day without payment of overtime. Any additional hours shall be paid at overtime rates as per clause 9.1.
- 9.3 Time Off in Lieu of Overtime
  - (a) By agreement between the teacher and the employer, a teacher may take time off in lieu of payment for overtime.
  - (b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour off for each hour worked.
  - (c) An employer shall, if requested by a teacher, provide payment at the rate provided for in subclause 9.1, for any overtime worked where such time has not been taken within four weeks of accrual. Notwithstanding anything contained elsewhere in this clause, on notice from the

employer a teacher must elect within six months of accrual, whether to take overtime worked as an overtime payment or as time off work at the ordinary rate of pay.

## 10. Miscellaneous

### 10.1 Crib Break

Not more than 30 minutes nor less than 20 minutes shall be allowed to teachers each day for a midday paid crib break. Such crib break shall be counted as time worked.

Provided however that a teacher may, by agreement with the employer, leave the premises or elect not to be on call during the crib break. Where a reasonable request has been made by the teacher, the employer shall give favourable consideration to any such request. During this time the teacher cannot be counted as part of the child/staff ratios under the *Children (Care and Protection) Act 1987*. Such time away from the premises or not on call shall not count as time worked nor shall any payment be made for such time.

However if the teacher is called back to perform any duties within the centre or the break is interrupted for any reason the teacher shall be paid at time and a half for a minimum of 15 minutes and thereafter to the nearest quarter hour until an uninterrupted break or the balance of the break is taken.

Notation:

It is agreed between the parties that any agreement between the teacher and the employer concerning an unpaid crib-break must be genuine. For example, a teacher cannot be required by the employer to agree to an unpaid crib-break as a condition of on-going employment. Any agreement should be recorded in writing and kept with pay records. It is agreed between the parties to the award that the IEU may apply to vary this provision during the nominal term of this award (while the employers retain the right to oppose the particular variation sought by the IEU) should the IEU be able to demonstrate that the clause is not operating as intended by the parties.

### 10.2 Professional Development, Training and Planning:

- (a) Teachers are responsible for ensuring that they are aware of new developments in early childhood education. However, the parties recognise that continuing professional development of teachers is a joint responsibility of both the employer and the teacher.
- (b) The employer may request a teacher to attend any courses in non-term time or after hours relating to professional development, training and planning. The teacher cannot unreasonably refuse to attend such courses, provided that a full-time teacher who receives no more than four weeks' annual leave in a calendar year shall receive time in lieu for time spent at any courses outlined in this clause.
- (c) Any dispute in relation to attendance shall be dealt with in accordance with clause 15, Disputes and Grievance Procedures.

### 10.3 First Aid Certificate

- (a) Teachers shall be required to obtain and maintain an approved first aid certificate.
- (b) Teachers will be granted paid leave to attend a first aid course, or when a first aid course is in the teacher's own time, teachers will receive time in lieu at ordinary rates for course attendance time.

### 10.4

- (a) Teachers shall receive a minimum of one hour and a quarter hours per week non contact time to perform programming and planning duties. Teachers will not be required to supervise children during this time.

- (b) Teachers appointed as Directors or Authorised Supervisors shall receive a minimum of two and a half hours per week non contact time to perform administrative duties.

## 11. Other Leave

### 11.1 Long Service Leave

See the *Long Service Leave Act 1955*

### 11.2 Residential Study Leave

A teacher who, for the purposes of furthering his or her Early Childhood teacher training, enrolls in any course at a recognised University or recognised Teacher Training Institution shall be granted leave without pay for the purpose of attending any compulsory residential school which is a part of such course.

### 11.3 Parental Leave

11.3.1 Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

11.3.2 An employer must not fail to re-engage a regular casual teacher (see section 53(2) of the Act) because:

- (a) the teacher or teacher's spouse is pregnant; or
- (b) the teacher is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual teachers are not affected, other than in accordance with this clause.

#### 11.3.3 Right to request

- (a) A teacher entitled to parental leave may request the employer to allow the teacher:
  - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
  - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
  - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the teacher in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing

The teacher's request and the employer's decision made under 11.3.3(a)(ii) and 11.3.3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where a teacher wishes to make a request under 11.3.3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the teacher is due to return to work from parental leave.

#### 11.3.4 Communication during parental leave

- (a) Where a teacher is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing parental leave; and
  - (ii) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing parental leave.
- (b) The teacher shall take reasonable steps to inform the employer about any significant matter that will affect the teacher's decision regarding the duration of parental leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.
- (c) The teacher shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (a).

11.3.5 This variation shall take effect from 19 December 2005.

#### 11.4 Jury Service

- (a) A full time or part time teacher required to attend for jury service during ordinary working hours shall be provided with paid leave for this purpose. The teacher shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the teacher's attendance for such jury service and the amount of wage the teacher would have received in respect of the ordinary time he or she would have worked had he or she not been on jury service.
- (b) The teacher shall notify the employer as soon as possible of the date upon which he or she is required to attend for jury service. The teacher shall provide to the employer a copy of the summons to attend jury duty and a record of payments received as proof of attendance.

### **12. Union Representatives**

- 12.1 The employer shall permit the union representative in the ECS Centre to post union notices relating to the holding of meetings on a staff room noticeboard.
- 12.2 The union representative shall be permitted in working hours to interview the employer on union business. Such interview shall take place at a time and place convenient to both parties.
- 12.3 Meetings of union members who are employed at the ECS Centre may be held on the premises at times and places reasonably convenient to both union members and the employer.

### **13. Terms of Engagement and Information to be Provided to Teachers**

- 13.1 The employer shall provide all full-time, part-time and temporary teachers with a letter of appointment on engagement stating the classification and rate of salary on appointment, the hours of operation of the Centre, the teacher's entitlements to personal leave, annual leave and long service leave, the procedure as to alteration of days of attendance and notice on termination.
- 13.2 The employer may, if the employer deems appropriate, provide a teacher of children with special needs with a letter of appointment which outlines the teacher's teaching load, days of attendance, and place of

employment which may be varied throughout the period of engagement. Such variations would occur from time to time and with not less than four weeks notice or otherwise by agreement.

- 13.3 The employment of a teacher during the first three calendar months of employment shall be probationary if the employer has advised the teacher on or prior to the engagement that there is a probationary period. Either party may terminate the employment during this period by two weeks notice.

Notation - It is strongly recommended that prior to terminating a teachers employment under this clause an employer:

- (i) clearly identify to the teacher the problems they have with his or her employment;
- (ii) clearly outline their expectations as to how the teacher's performance should improve; and
- (iii) give the teacher a reasonable time frame to improve his or her behaviour.

- 13.4 Subject to subclause 13.3 of this clause, the employment of any teacher (other than a casual teacher) shall not be terminated without at least four weeks notice on either side or the payment of or forfeiture of four weeks salary in lieu of notice.

- 13.5 Nothing in this clause shall affect the right of the employer to dismiss summarily any teacher for incompetence, misrepresentation, neglect of duty or other misconduct.

- 13.6 Upon the termination of service of a teacher other than a casual teacher the employer shall provide a statement of service setting out the length of service, the age of children taught, the positions held and any special and/or additional duties performed by such teacher.

13.7

- (a) On termination of casual employment, the employer shall indicate on the teacher's service card (see Attachment A - Record of Casual Employment) the length of service with that employer.
- (b) Upon request, a casual teacher shall be supplied with a statement setting out the number of days of duty undertaken by the casual teacher during the period of his or her engagement provided that such request is made during or on termination of the casual engagement.

- 13.8 Where an employer proposes either:

- (a) to make alterations to the type of services provided by the ECS Centre in which a teacher is employed; or
- (b) to transfer a teacher from the ECS Centre in which the teacher is employed

which shall have the consequence that the provisions of this Award will no longer apply to the teacher, the employer shall as soon as practicable in any case after a firm decision has been made, give the teacher notice of the change and shall, if the teacher so requests, hold discussions:

- (i) with the teacher; or
- (ii) with a representative of the teacher,

as soon as practicable after making the decision and in any event not less than four weeks prior to the implementation of the decision.

- 13.9 Job Share

The parties recognise that job share involves the following principles:

- (a) Job share for teachers shall mean dividing the one job so that job share teachers have equal responsibility or share responsibility.
- (b) The division of work has to be negotiated and mutually suitable to all parties.
- (c) Job share teachers are treated as part-time teachers and receive pro rata entitlements.
- (d) If a job share teacher is ill, or on annual leave or a rostered day off, then the other teacher may be offered the day(s) of work by the employer. This work, if accepted, is to be paid at ordinary rates in accordance with clause 2, Salaries.
- (e) If a job share teacher leaves the employment, the remaining teacher may be offered the residue of employment.

If the employer does not wish to offer the residue of employment or part thereof to the teacher, and the parties wish to continue the job share arrangement the employer may consult with the teacher about the implementation of a new arrangement, including the selection of a new teacher to fill the balance of the position. If the employer or the teacher does not propose to continue the job share arrangement the remaining teacher may be employed on a part-time basis.

- (f) Adequate opportunities for consultation between job share teachers will be provided by the employer.
- (g) The employer may determine the number of job share positions in any centre.

#### 13.10 Redundancy

Refer to Part C of this award.

#### **14. Procedure for Dealing With Job Performance Problems**

It is recommended that employers follow the procedure outlined below when dealing with job performance related problems:

- (a) Where a problem arises with respect to a teacher's performance of his/her duties the employer should discuss the problem with the teacher who will be given an opportunity to respond.
- (b) The employer should:
  - (i) clearly identify the problem;
  - (ii) clearly outline their expectations;
  - (iii) set a reasonable period of time for the problem to be rectified;
  - (iv) provide a review period at the end of the time period; and
  - (v) note the results of the meeting in a diary.
- (c) If the problem continues to exist then a formal warning should be given to the teacher in writing or in the presence of a witness. The warning should set out:
  - (i) what aspects of the teacher's performance needs to be improved;
  - (ii) what should be done to rectify the problem;
  - (iii) what assistance will be provided;
  - (iv) a specified period for review; and



- (v) the action already taken by the employer and what further action may be taken if the performance problem is not rectified.

The employer should note the results of the meeting in a diary.

- (d) If the specified problem(s) are not rectified, the employer should give the teacher a final warning. This may be in writing or issued in the presence of a witness specifying the process already taken by the employer and the fact that if the performance of the teacher does not improve the employment of the teacher will be terminated. The employer should identify the performance problem(s), the employer's expectations, the steps required to rectify the problems and a time period for review. The employer should note the results of the warning in a diary.
- (e) Where a teacher's performance improves as a result of a review period, the employer should notify the teacher that the period of review is completed and that the required improvement in the teacher's performance has been achieved.
- (f) The employer and teacher are entitled to have a witness present at any step in the process and may be represented by an industrial organisation of employees or an industrial organisation of employers.
- (g) An employer has a right to dismiss a teacher summarily for misrepresentation, neglect of duty or misconduct.
- (h) Nothing in this procedure shall be construed to override an employer's discretion to adopt a procedure other than contained in this clause. However, the employer shall advise the teacher of any other procedure.
- (i) Nothing in this procedure shall be construed to remove the right of a teacher or employer to refer a dispute to the Industrial Relations Commission of New South Wales pursuant to the *Industrial Relations Act 1996*.

## 15. Disputes and Grievance Procedures

### 15.1 Procedures relating to grievances of individual teachers

- (a) The teacher is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
- (b) The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- (c) Reasonable time limits must be allowed for discussion at each level of authority.
- (d) At the conclusion of the discussion, the employer must provide a response to the teacher's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (e) While a procedure is being followed, normal work must continue.
- (f) The teacher may be represented by an industrial organisation of employees.

### 15.2 Procedures relating to disputes, etc. between employers and their teachers

- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher level of authority.
- (b) Reasonable time limits must be allowed for discussion at each level of authority.
- (c) While a procedure is being followed, normal work must continue.

- (d) The employer may be represented by an industrial organisation of employers and the teachers may be represented by an industrial organisation of employees for the purposes of each procedure.

### **16. Anti-Discrimination**

- 16.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 16.2 It follows that in fulfilling their obligation under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 16.3 Under the *Anti-Discrimination Act 1977*, 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.
- 16.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 16.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### **NOTES**

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects...any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

### **17. Savings Clause and Leave Reserved**

- 17.1 A teacher's conditions of employment, other than those provided in this award, shall not be altered as a consequence of the introduction of this award.
- 17.2 Leave is reserved to the New South Wales Independent Education Union to apply in respect of procedures relating to child protection.

### **18. Superannuation**

- 18.1 Definitions

For the purpose of this clause:

- (a) "Basic earnings" shall mean:
  - (i) the rate of salary prescribed from time to time by this award;
  - (ii) the amount of any allowance prescribed from time to time including the allowance payable to a Director and any shift loading which may be payable pursuant to this award.
- (b) "Teacher" means a teacher, Director or Authorised Supervisor, and includes a casual, part-time, or temporary teacher.
- (c) "HESTA" means the Health Employees Superannuation Trust Australia, established by Trust Deed Articles on 30 July 1987.
- (d) "ASSET" means the Australian Superannuation Savings Employment Trust constituted by deed made 14 October 1987.

#### 18.2 Fund

- (a) For the purposes of this clause contributions made by employers in accordance with the provisions of subclause 18.3 of this clause shall be as follows:
  - (i) the employer shall offer each teacher a choice between HESTA or ASSET;
  - (ii) the teacher shall nominate the fund into which contributions shall be made.
- (b) Each employer shall become a participating employer in HESTA and/or ASSET in accordance with the choice of teachers of the employer.
- (c) Each employer shall become party to HESTA or ASSET upon the acceptance of the respective Trustee of a Deed of Adoption, duly signed and executed by each employer and the respective Trustee.
- (d) A teacher shall become eligible to join HESTA or ASSET in accordance with the following:
  - (i) in the case of a teacher who is employed at 1 July 1988, from the beginning of the first pay period commencing on or after 1 July 1988; and
  - (ii) in the case of a teacher employed after 1 July 1988, from the beginning of the first pay period commencing on or after the teacher's date of engagement.

#### 18.3 Benefits

- (a) Except as provided in paragraphs (c) and (d) of this subclause, each employer shall, in respect of each teacher employed by it, pay contributions to the respective Trustee at the rate of 9% of the teacher's basic earnings.
- (b) Contributions shall be paid at intervals and in accordance with the procedures and subject to the requirements of the respective Fund.
- (c) An employer shall not be required to make contributions pursuant to this clause in respect of a teacher in respect of a period when that teacher is absent from his or her employment without pay.
- (d) Part-time and Casual Teachers

An employer shall pay contributions pursuant to this clause at the rate of 3% if the basic earnings of the casual or part time employee are between \$200 and \$450 per calendar month and 9% if the basic earning exceeds \$450 per calendar month.

- (e) Where a new teacher commences in employment, the employer shall advise the teacher in writing of the teacher's entitlements under this clause and of the action to be taken by the teacher to obtain the benefit of those entitlements.
- (f) Notwithstanding the date upon which a teacher signs an Application Form, contributions in accordance with paragraph (a) of this subclause shall be made from the date when the teacher became eligible for membership.

#### 18.4 Records

The employer shall retain all records relating to the calculation of payments due to the Fund(s) in respect of each teacher and such records shall be retained for a period of six years.

#### 18.5 Exemptions

Employers of teachers who are eligible to become contributors to the following superannuation funds or any scheme/s replacing such funds shall be exempt from the provisions of this clause:

State Superannuation Fund

State Public Service Superannuation Scheme

Public Authorities Superannuation Scheme

- 18.6 Leave is reserved to the Employers' Federation of New South Wales to vary this clause following the decisions of the Full Commission in the Nurses Superannuation Case Matter Nos. IRC 883, 884 and 995 of 1994.

### **19. Enterprise Consultation**

Enterprises covered by this award shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

### **20. Labour Flexibility**

- (a) An employer may direct a teacher to carry out such duties as are within the limits of the teacher's skill, competence and training provided that such duties are not designed to promote deskilling.
- (b) An employer may direct a teacher to carry out such duties and use such tools and equipment as may be required, provided that the teacher has been properly trained in the use of such tools and equipment.
- (c) Any direction issued by an employer pursuant to subclauses (a) and (b) of this clause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

### **21. Area, Incidence and Duration**

- 21.1 This award shall apply to all teachers employed in ECS centres as defined in subclause (d) of clause 1, Definitions, of this award excepting:

- (a) Teachers of music or other individual arts who are remunerated on an individual fee basis; and
- (b) Members of a recognised religious teaching order and/or Clerks in Holy Orders, and/or Ministers of Religion (including a Minister-teacher or a Missionary-teacher who is a member of the Seventh Day Adventist Church and who teaches in a school operated by a local Conference of the Australasian Division of the Seventh Day Adventist Church), provided that application may be made on behalf of any such member to be included within the scope of this award; and
- (c) Employees of all city, municipal, shire and county child care centres; and

- (d) Employees within the jurisdiction of the Independent Schools and Colleges, General Staff &c (State) Industrial Committee and Kindergartens &c (State) Industrial Committee; and
- (e) Teachers and directors employed by the KU Children's Services and Sydney Day Nursery and Nursery Schools Association; and
- (f) Teachers employed in a licensed child care centre operated by or on behalf of any recognised independent school or special school registered under the provisions of the *Education Reform Act 1990*, in the State, including the independent schools listed below:

Kincoppal Rose Bay

Rosebank College

Stella Maris College

St Vincent's College; and

- (g) Teachers covered by the Teachers (Catholic Early Childhood Service Centres and Pre-Schools) (State) Award made on 1 July 2005; and
- (h) Teachers employed in an Early Intervention Service whose hours and conditions of work approximate those hours and conditions of a teacher employed in a recognised school.

21.2 This award rescinds and replaces the Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award published 19 May 2006 (359 IG 307).

21.3 This award shall take effect from 24 November 2009 provided that the increases in rates of pay and allowances shall be effective from the first full pay period on or after 24 November 2009.

21.4 This award shall remain in force until 24 November 2011.

## PART B

### MONETARY RATES

**Table 1 - Rates of Pay**

The following minimum annual salaries shall apply from the beginning of the first full pay period specified in each column respectively:

Classification/ Incremental Salary Step	24 November 2009 Per annum (4%) \$	1 September 2010 Per annum (4%) \$	1 September 2011 Per annum (4%) \$
<b>All Other Teachers</b>			
Step 1	34,213	35,582	37,005
Step 2	35,036	36,437	37,894
Step 3	35,962	37,400	38,896
Step 4	37,252	38,742	40,292
Step 5	38,824	40,377	41,992
<b>Two Years Trained Teachers</b>			
Step 1	37,306	38,798	40,350
Step 2	41,329	42,982	44,701
Step 3	43,434	45,171	46,978

Step 4	45,703	47,531	49,432
Step 5	47,802	49,714	51,703
Step 6	49,978	51,977	54,056
Step 7	52,391	54,487	56,666
Step 8	53,713	55,862	58,096
Step 9	55,014	57,215	59,504
Three Years Trained Teachers			
Step 1	42,982	44,701	46,489
Step 2	45,170	46,977	48,856
Step 3	47,532	49,433	51,410
Step 4	49,713	51,702	53,770
Step 5	51,976	54,055	56,217
Step 6	54,490	56,670	58,937
Step 7	55,860	58,094	60,418
Step 8	57,219	59,508	61,888
Step 9	59,498	61,878	64,353
Step 1 0	61,877	64,352	66,926
Step 11	63,544	66,086	68,729
Four Years Trained Teachers			
Step 1	45,704	47,532	49,433
Step 2	48,536	50,477	52,496
Step 3	51,265	53,316	55,449
Step 4	54,292	56,464	58,723
Step 5	57,106	59,390	61,766
Step 6	59,498	61,878	64,353
Step 7	61,877	64,352	66,926
Step 8	64,557	67,139	69,825
Step 9	67,139	69,825	72,618

**Table 2 - Director's Allowance**

Units	24 November 2009 Per annum (4%) \$	1 September 2010 Per annum (4%) \$	1 September 2011 Per annum (4%) \$
1	4,798	4,990	5,190
2	5,856	6,090	6,334
3	7,310	7,602	7,906
4	9,131	9,496	9,876

**Table 3 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Amount \$
1	3.4(a)	Travel Allowance - use of teacher's own vehicle	0.51 per km

**Table 4 - Authorised Supervisor's Allowance (Clause 4.2(i))**

Units	24 November 2009 Per annum (4%) \$	1 September 2010 Per annum (4%) \$	1 September 2011 Per annum (4%) \$
1	1,559	1,621	1,686
2	1,903	1,979	2,058

3	2,381	2,476	2,575
4	2,974	3,093	3,217

**Table 5 - Authorised Supervisor Allowance (Clause 4.2(ii))**

Units	24 November 2009 Per annum (4%) \$	1 September 2010 Per annum (4%) \$	1 September 2011 Per annum (4%) \$
1	3,120	3,245	3,375
2	3,806	3,958	4,116
3	4,759	4,949	5,147
4	5,949	6,187	6,434

## PART C

### 1. Redundancy

- 1.1 This Part shall apply in respect of full-time and part-time teachers.
- 1.2 This Part shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of teachers.
- 1.3 Notwithstanding anything contained elsewhere in this award, the provisions of this part shall not apply to teachers with less than one year's continuous service and the general obligation on employers shall be no more than to give such teachers 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 teachers of suitable alternative employment.
- 1.4 This Part shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual teachers or teachers engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

### 2. Employers Duty to Notify and Discuss

- 2.1 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 teachers, the employer shall notify the teachers who may be affected by the proposed changes and the union to which they belong.
- 2.2 The employer shall discuss with the teachers affected and the union to which they belong the introduction of such changes and the likely effect on the employees and the measures taken to avert or mitigate the adverse effects of such changes.
- 2.3 'Significant effects' include termination of employment, major changes in the composition, operation or size of the employers workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of teachers to other work or locations and the restructuring of jobs.

### 3. Discussions Before Terminations

- 3.1 Where an employer has made a definite decision that the employer no longer wishes the job the teacher has been doing done by anyone and that decision may lead to the termination of employment, the employer shall hold discussions with the teachers directly affected and with the union to which they belong.

- 3.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subclause 3.1 of this clause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination of the teachers concerned.
- 3.3 For the purposes of the discussion the employer shall, as soon as practicable, provide to the teachers concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information, the disclosure of which would adversely affect the employer.

#### **4. Notice for Changes in Production, Program, Organisation Or Structure**

- 4.1 This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'production', 'program', 'organisation' or 'structure' in accordance with clause 2 of this Part.

- 4.1.1 In order to terminate the employment of a teacher the employer shall give to the teacher the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- 4.1.2 In addition to the notice above, teachers over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.

- 4.1.3 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- 4.2 Notice for Technological Change

This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from 'technology' in accordance with clause 2 of this part.

- 4.2.1 In order to terminate the employment of a teacher the employer shall give to the teacher 3 months notice of termination.

- 4.2.2 Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- 4.2.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.

- 4.3 Time off during the notice period

- 4.3.1 During the period of notice of termination given by the employer a teacher shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.

- 4.3.2 If the teacher has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the teacher shall, at the request of the employer, be



required to produce proof of attendance at an interview or the teacher shall not receive payment for the time absent.

#### 4.4 Teacher leaving during the notice period

If the employment of a teacher is terminated (other than for misconduct) before the notice period expires, the teacher shall be entitled to the same benefits and payments under this clause had the teacher remained with the employer until the expiry of such notice. Provided that in such circumstances the teacher shall not be entitled to payment in lieu of notice.

#### 4.5 Statement of employment

The employer shall, upon receipt of a request from a teacher whose employment has been terminated, provide to the teacher a written statement specifying the period of the teacher's employment and the classification of or the type of work performed by the teacher.

#### 4.6 Notice to Centrelink

Where a decision has been made to terminate teachers, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the teachers likely to be affected and the period over which the terminations are intended to be carried out.

#### 4.7 Department of Social Security Employment Separation Certificate

The employer shall, upon receipt of a request from a teacher whose employment has been terminated, provide to the teacher an 'Employment Separation Certificate' in the form required by the Department of Social Security.

#### 4.8 Transfer to lower paid duties

Where a teacher is transferred to lower paid duties for reasons set out in clause 2 of this part, the teacher shall be entitled to the same period of notice of transfer as the teacher would have been entitled to if the teacher'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 ordinary time rate for the number of weeks of notice still owing.

### 5. Severance Pay

#### 5.1 Where a teacher is to be terminated pursuant to clause 4 of this part, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the following severance pay in respect of a continuous period of service:

##### 5.1.1 If a teacher is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

##### 5.1.2 Where a teacher is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

5.1.3 'Weeks Pay' means the all purpose rate of pay for the teacher concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

5.1.4 Where a teacher is subject to a reduction of working hours of 6 or more hours per fortnight, the reduction will be treated as a partial redundancy. A pro rata payment will be made in accordance with the severance payments set out in paragraphs 5.1.1 and 5.1.2 above.

## 5.2 Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 5.1.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause 5.1 above will have on the employer.

## 5.3 Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 5.1 if the employer obtains acceptable alternative employment for a teacher.

## ATTACHMENT A

This attachment is to be used in accordance with clause 12.7 of this Award.

### CASUAL TEACHERS/DIRECTORS RECORD OF CASUAL EMPLOYMENT TO BE MAINTAINED BY TEACHER

1. Name:

---

2. Number of years of training:

---

3. Name of qualification:

---

4. Year of attainment of this qualification:

Period of engagement (from date to date)	No. of days/hours worked in total, classification, years trained and step	Name, address and telephone number of Centre	Signed by Centre Director (signature, date and name)

**ATTACHMENT B**

**EARLY AND/OR LATE SHIFT AGREEMENT BETWEEN THE EMPLOYER AND THE TEACHER**

This attachment is to give effect to an agreement reached pursuant to clause 3.3 of this Award.

This agreement has the effect that shift loadings do not apply to certain early and/or late shifts as set out below and in the award.

1. This document records an agreement reached pursuant to Clause 8.4 - Hours Of Work and Clause 3.3 - Shift Penalty Loadings, and is signed by the employer and the teacher as certifying that the arrangement outlined hereunder was an agreed arrangement between the parties.
2. The following arrangement is made pursuant to Clause 8.3 - Hours of Work and Clause 3.3 - Shift Penalty Loadings of the Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award, and it shall apply unless rescinded by the parties by agreement.
3. It is agreed between the Employer and the Teacher that the arrangement for extended daily ordinary hours of work which are outlined below and/or which are described in the attached rosters shall hereafter apply to the teacher and clause 3.3 shall apply so that the shift loadings referred to in Clause 3.2 are not applicable to these shifts in the circumstances.

Commencing and finishing time of shift to be worked by teacher

.....

Any Other Benefits Agreed:

.....

.....

.....

4. This agreement shall take effect from the beginning of the first full pay period to commence on or after

.....

5. The teacher agrees that the employer provided a draft copy of this agreement and notified him/her of the right to seek advice or representation from a representative (including the Union) seven (7) days prior to entering into this agreement.

6. Signed On Behalf Of An Authorised Representative Of The Employer:

.....

.....

(Date)

7. Signed By The Teacher:

.....

.....

(Date)

\_\_\_\_\_

Printed by the authority of the Industrial Registrar.

**TRANSPORT INDUSTRY - REDUNDANCY (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar*.

**Schedule of Award and Variations Incorporated**

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B9293	08/09/2000	On 28/04/2000	318	458
7(iv)	C1587	06/12/2002	On and from 30/08/2002	337	349
3, 11	C2673	30/07/2004	On 19/03/2004	345	606
7	C3245	21/01/2005	On and from 10/09/2004	348	130
11	C6103	08/02/2008	On and from 31/07/2007	364	1166

**1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Title
3.	Application
4.	Introduction of Change
5.	Redundancy
6.	Termination of Employment
7.	Severance Pay
8.	Grievance and Dispute Resolution Procedures
9.	Anti-Discrimination
10.	Savings Clause
11.	Area, Incidence and Duration

**2. Title**

This award shall be known as the Transport Industry - Redundancy (State) Award.

**3. Application**

(i) This award shall apply in respect of full-time and part-time persons employed in the classifications specified in the following awards:

1. Ice Cream Carters and Van Salespersons (State) Award, published 8 December 2000 (320 I.G. 1114), as varied - clause 5, Area, Incidence and Duration.

2. Milk Treatment, &c., and Distribution (State) Award, published 30 November 2001 (329 I.G. 1084), as varied - clause 30, Area, Incidence and Duration.
  3. Transport Industry (State) Award published 20 April 2000 (315 I.G. 192), - clause 50, Area, Incidence and Duration.
  4. Transport Industry - Cash -in-Transit (State) Award, published 4 April 2003 (339 I.G. 63), as varied - clause 38, Area, Incidence and Duration.
  5. Transport Industry - Mixed Enterprises Interim (State) Award, published 23 November 2001 (329 I.G. 748), as varied - clause 5, Area, Incidence and Duration.
  6. Motor Bus Drivers and Conductors (State) Award, published 16 November 2001 (329 I.G. 661), as varied - clause 44, Area, Incidence and Duration.
  7. Transport Industry - Petroleum, &c., Distribution (State) Award, published 24 August 2001 (327 I.G. 62), as varied - clause 5, Area, Incidence and Duration.
  8. Transport Industry - Quarried Materials (State) Award, published 24 August 2001 (327 I.G. 39), as varied - clause 5, Area, Incidence and Duration.
  9. Transport Industry - Waste Collection and Recycling (State) Award, published 19 December 2003 (342 I.G. 447), as varied - clause 38, Area, Incidence and Duration.
  10. Transport Industry - Tourist and Service Coach Drivers (State) Award, published 18 August 2000 (317 I.G. 1079), as varied - clause 34, Area, Incidence and Duration.
  11. Transport Industry - Trade Waste (State) Award, published 14 December 2001 (330 I.G. 299), as varied - clause 38, Area, Incidence and Duration.
  12. Transport Industry - Wholesale Butchers (State) Award 2000, published 11 May 2001 (324 I.G. 722), as varied - clause 4, Area, Incidence and Duration.
  13. Transport Industry - Wood and Coal (State) Award, published 23 November 2001 (329 I.G. 791), as varied - clause 4, Area, Incidence and Duration.
  14. Heggies Bulkhaul Limited Bulk Haulage Enterprise Consolidated Award, published 14 June 2002 (334 I.G. 409), as varied - clause 45, Area, Incidence and Duration.
- (ii) In respect to employers who employ 15 or more employees immediately prior to the termination of employment of employees, in the terms of Clause 6, Termination of Employment.
- (iii) Notwithstanding anything contained elsewhere in this award, this award shall not apply to employees with less than one year's continuous service, and the general obligation on employers shall be no more than to give such 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.
- (iv) Notwithstanding anything contained elsewhere in this award, this award shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

#### **4. Introduction of Change**

- (i) Employers 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 the union to which they belong.

- (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employers workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award specified in subclause (i) of clause 3, Application, makes provision for alteration, it shall be deemed not to have significant effect.

(ii) Employer's Duty to Discuss Change

- (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in subclause (i) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
- (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 subclause (i) of this clause.
- (c) For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## 5. Redundancy

(i) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to paragraph (a) of subclause (i) of Clause 4, Introduction of Change, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provision of subclause (a) of this clause and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would adversely affect the employer.

## 6. Termination of Employment

- (i) Notice of changes in production, program, organisation or structure - This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, program, organisation or structure in accordance with paragraph (a) of subclause (i) of clause 4, Introduction of Change.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of notice, with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (ii) Notice for technological change - This subclause sets out the notice to be applied to terminations by the employer for reasons arising from technology in accordance with paragraph (a) of subclause (i) of the said clause 4.
- (a) In order to terminate the employment of an employee, the employer shall give to the employee 3 months' notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.
- (iii) Time off during the notice period -
- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes 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.
- (iv) Employee leaving during the notice period - If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause to which the employee would have been entitled had the 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.
- (v) Statement of employment - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.
- (vi) Notice to Centrelink - Where a decision has been made to terminate employees, the employer shall notify the Centrelink thereof, as soon as possible giving relevant information, including the number of categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.



- (vii) Centrelink Employment Separation Certificate - The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by the Centrelink.
- (viii) Transfer to lower paid duties - Where an employee is transferred to lower-paid duties for reasons set out in subclause (i) of the said Clause 4, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, 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 ordinary time rates for the number of weeks of notice still owing.

### 7. Severance Pay

- (i) Where an employee is to be terminated pursuant to clause 6, Termination of Employment, of this award, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service:

- (a) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and Over Entitlement
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) "Weeks pay" means the all purpose rate for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid in accordance with the relevant clauses of the awards listed in clause 10, Area, Incidence and Duration.
- (ii) Incapacity to pay - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (i) of this clause will have on the employer.

- (iii) Alternative employment - Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause (i) of this clause if the employer obtains acceptable alternative employment for an employee.

- (iv) "TNT Australia Pty Ltd is exempted from any obligation to make severance payments under clause 7, Severance Pay, of this award as a result of the de-merger of the TNT Logistics business (including TNT Automotive Logistics)."

This exemption applies in respect of any employee of TNT Australia Pty Ltd who is offered employment with TNT Logistics (Australia) Pty Ltd as a result of the de-merger, provided that in respect of any particular employee, the employee's entitlements upon commencement with TNT Logistics (Australia) Pty Ltd are unchanged and TNT Logistics (Australia) Pty Ltd recognises the employee's period of service with TNT Australia Pty Ltd.

- (v) McPhee Transport Pty Ltd is exempt from any obligation to make severance payments under clause 7 - severance pay of this award arising out of the progressive merger of the operations of that company with TNT Australia Pty Ltd trading as "TNT Express" with respect to any employee of McPhee Transport Pty Ltd who:
1. Who is offered employment with TNT Australia Pty Ltd to commence immediately upon the cessation of employment with McPhee Transport Pty Ltd.
  2. The work to be performed under the employment so offered is the same as was previously performed under substantially the same working conditions.
  3. The employee will be afforded in all respects the same remuneration as if he or she had continued to be employed by McPhee Transport Pty Ltd.
  4. All and any entitlements, whether statutory, contractual or arising under any industrial instrument and whether contingent or vested will be preserved and continue to be applied to the employee as if he or she had been employed by TNT Australia Pty Ltd throughout the whole of his or her period of employment with McPhee Transport Pty Ltd, including superannuation entitlements.

### **8. Grievance and Dispute Resolution Procedures**

- (i) Procedures Relating to Grievances of Individual Employees
- (a) The employee is required to notify the employer (in writing or otherwise) as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussions, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.
  - (f) The employee may be represented by an industrial organisation of employees.
- (ii) Procedures Relating to Disputes etc. between Employers and their Employees
- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
  - (b) Reasonable time limits be allowed for discussion at each level of authority.

- (c) The employer may be represented by an industrial organisation of employers and the employee may be represented by an industrial organisation of employees for the purposes of each procedure

### **9. Anti-Discrimination**

- (i) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- (ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (iii) Under the *Anti-Discrimination Act 1977*, 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.
- (iv) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; or
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

### **10. Saving Clause**

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the industrial organisation of employees and any employer bound by this award.

### **11. Area, Incidence and Duration**

This award rescinds and replaces the Transport Industry - Redundancy (State) Award published 7 April 1995 (284 I.G. 1395).

The area and incidence of this Award shall be the same as prescribed by the specified clauses of the specified awards in clause 3, Application, of the award, or in the equivalent clauses in any award rescinding or replacing those awards.

This award shall take effect on 28 April 2000 and shall remain in force for a period of 12 months.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 31 July 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

\_\_\_\_\_

Printed by the authority of the Industrial Registrar.

**TRANSPORT INDUSTRY (STATE) AWARD****AWARD REPRINT**

This reprint of the abovementioned award is published by the authority of the Industrial Registrar under section 390 of the *Industrial Relations Act 1996*, and under Rule 6.6 of the *Industrial Relations Commission Rules 2009*.

I certify that the form of this reprint, incorporating the variations set out in the schedule, is correct as at the latest date of effect therein mentioned.

G. M. GRIMSON *Industrial Registrar.*

## Schedule of Award and Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol.	Page
Award	B9022	20/04/2000	First pay period on or after 10/04/2000	315	192
Erratum to B9022	B9086	26/05/2000		315	1301
Table 10, Part B	B9470	03/11/2000	First pay period on or after 01/10/2000	319	1268
Table 10, Part B	B9644	08/12/2000	First pay period on or after 01/10/2000	320	1251
Erratum to B9022	C0930	14/12/2001		330	486
49 (49.1)	C1016	08/03/2002	On and from 31/05/2001	331	1077
15, Part B - Table 10	C1326	30/08/2002	First pay period on or after 16/05/2002	335	1397
Part B - Tables 1 - 10	C1821	16/05/2003	Tables 1 to 6 - First pay period on or after 13/11/2002/; Tables 7 to 10 - First pay period on or after 30/8/2002	339	542
Erratum to C1821	C1939	13/06/2003		339	994
2a & Part B	C2361	20/02/2004	First pay period on or after 13/11/2003	343	390
1, 19, 23, 30, 33, 35, 40, 43, 45, 48	C2696	01/10/2004	On 02/04/2004	346	7
2A, Part B	C3235	13/05/2005	First full pay period on or after 13/11/2004	350	1213
Part B	C4223	24/02/2006	First pay period on or after 13/11/2005	357	541
2A, Part B	C4355	24/02/2006	First pay period on or after 17/11/2005	357	542
50	C4451	20/10/2006	From 03/03/2006	361	566
50	C4566	20/10/2006	First full pay period on or after 10/03/2006	361	567
Arrangement, 51	C4740	20/10/2006	From 21/03/2006	361	570
2A, Part B	C5333	09/03/2007	First pay period on or after 20/12/2006	362	283
20, 21, 22	C5445	25/05/2007	On and from 19/12/2005	362	813
2A, Part B	C6243	14/12/2007	First pay period on or after 20/12/2007	364	781
50	C6105	08/02/2008	On and from 31/7/2007	364	1171
2A, Part B	C6741	31/10/2008	First pay period on or after 20/12/2008	366	1105
2A, Part B	C7397	26/02/2010	First pay period on or after 23/12/2009	369	1712
2A, Part B	C7613	02/09/2011	First pay period on or after 16/12/2010	371	713

**Arrangement**

Clause No.      Subject Matter

## PART A

## SECTION I - WAGES, ALLOWANCES, AND HOURS OF EMPLOYMENT

1.      Wages
2.      Allowances
- 2A.    Commitment
3.      Hours of Employment
4.      Shift Work
5.      Overtime
6.      Saturday and Sunday Work
7.      Travelling and Living Away Allowances
8.      Meal Breaks and Allowances
9.      Casual Employees
10.     Part-time Employees
11.     Young Employees
12.     Payment of wages

## SECTION II - LONG DISTANCE WORK

13.    Long Distance Work
14.    Rate of Pay
15.    Future Adjustment of Rates of Pay
16.    Rostered Days Off

## SECTION III - LEAVE ENTITLEMENTS AND PUBLIC HOLIDAYS

17.    Annual Leave
18.    Long Service Leave
19.    Sick Leave
20.    Personal/Carer's Leave
21.    Bereavement Leave
22.    Parental Leave
23.    Public Holidays

## SECTION IV - INDUSTRIAL RELATIONS AND THE UNION

24.    Dispute Resolution Procedure
25.    Union Delegate
26.    Union Notice Board
27.    Union Right of Entry
28.    Union Picnic Day

## SECTION V - OTHER PROVISIONS

29.    Employees' Duties
30.    Mixed Functions
31.    Termination of Employment
32.    Redundancy
33.    Superannuation
34.    Jury Service
35.    Limitation of Driving Hours

36. Limitation of Overtime
37. Recall
38. Absences From Duty
39. Commitment to Training
40. Amenities and First Aid Outfits
41. Uniforms and Protective Clothing
42. Tools and Apparatus
43. Cabins, Hoods and Windscreens
44. Unauthorised Persons Riding on Vehicles
45. Laundry and Dry Cleaning - Special Provisions
46. Chauffeurs - Special Provisions
47. Award Modernisation
48. Definitions
49. Anti - Discrimination
50. Area, Incidence and Duration
51. Secure Employment

## PART B

### MONETARY RATES

- Table 1 - Wages (Clause 1.1 - General Rates)  
 Table 2 - Wages (Clause 1.2 - Mobile Cranes &c., Rates)  
 Table 3 - Wages (Clause 1.3 - Ancillary Plant Drivers)  
 Table 4 - Wages (Clause 1.4 - Mobile Concrete Pump  
 Driver/Operators)  
 Table 5 - Wages (Clause 1.5 - Furniture Removals)  
 Table 6 - Wages (Clause 1.6 - Chauffeurs)  
 Table 7 - Allowances  
 Table 8 - Travelling and Living Away Allowance (Clause 7)  
 Table 9 - Meal Allowances (Clause 8)  
 Table 10 - Long Distance Rates (Clause 14)  
 Table 11 - Income Protection On Six Day Rosters - Saturday  
 (Clause 3.2.1)  
 Table 12 - Income Protection On Six Day Rosters - Sunday  
 (Clause 3.2.2)  
 Table 13 - Income Protection On Seven Day Rosters -  
 Saturday And Sunday (Clause 3.2.3)

## PART A

### SECTION I - WAGES, ALLOWANCES AND HOURS OF EMPLOYMENT

#### 1. Wages

The wage rates set out in Part B of this award for the classifications set out in this clause are total weekly rates of pay.

##### 1.1 General Rates

1.1.1 Rates of Pay: employees falling within this division shall be paid the rates of pay set out in Table 1 of Part B of this award.

##### 1.1.2 Class C Driving Licence

TRANSPORT WORKER GRADE ONE: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

extra hand;

yardperson;  
rider of a motorcycle;  
rider or driver of a horse;  
driver of a tow motor;  
bicycle courier.

Employees appointed to this grade can also be required to perform occasional driving of vehicles for which a Class 1A driving license is necessary provided that it is incidental to the preceding functions.

TRANSPORT WORKER GRADE TWO: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of two-axle rigid vehicles with a gross vehicle mass of up to 4.5 tonnes;  
driver of forklifts with a capacity of up to 4.5 tonnes;  
Transport Facility Worker (1)

TRANSPORT WORKER GRADE THREE: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of two-axle rigid vehicles with a gross vehicle mass of over 4.5 tonnes;  
driver of forklifts with a capacity of over 4.5 tonnes and up to 9 tonnes;  
Transport Facility Worker (2)

driver of a straddle truck.

TRANSPORT WORKER GRADE FOUR: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of three-axle rigid vehicles;  
driver of forklifts with a capacity of over 9 tonnes and up to 15 tonnes.

TRANSPORT WORKER GRADE FIVE: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of four-axle rigid vehicles;  
driver of articulated vehicles with a total of three axles;  
driver of rigid vehicle-trailer combinations with a total of three axles;  
driver of forklifts with a capacity of over 15 tonnes and up to 30 tonnes.

TRANSPORT WORKER GRADE SIX: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of articulated vehicles with a total of four axles;  
driver of rigid vehicle-trailer combinations with a total of four axles;



driver of forklifts with a capacity of over 30 tonnes and up to 60 tonnes.

TRANSPORT WORKER GRADE SEVEN: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of articulated vehicles with a total of five axles or six axles;

driver of rigid vehicle-trailer combinations with a total of five axles or six axles or seven axles;

driver of forklifts with a capacity of over 60 tonnes;

TRANSPORT WORKER GRADE EIGHT: employees appointed to this grade can be required to perform any of the following functions for which they have been trained:

driver of double articulated vehicles (i.e. "B-double combination vehicles");

driver of rigid vehicle-triple trailer combinations (i.e. "road trains");

driver of gantry crane;

## 1.2 Mobile Crane &C. Rates

Persons engaged as Drivers/Operators of Mobile Cranes and Mobile Hydraulic Platforms employed by general carriers in connection with their business, the carriage and delivery of goods, merchandise and the like and/or in the performance of work incidental to the loading, unloading, handling and/or placement of goods, shall be classified as follows and shall be paid as provided for in Table 2 of Part B of this award:

### 1.2.1 Mobile Cranes:

GRADE A:	Up to 20 tonnes;
GRADE B:	From 21 tonnes and up to 40 tonnes;
GRADE C:	From 41 tonnes and up to 80 tonnes;
GRADE D:	From 81 tonnes and up to 100 tonnes;

Thereafter for each additional 20 tonnes lifting capacity an additional amount per week as set out in Table 2 of Part B shall be paid.

### 1.2.2 Mobile Hydraulic Platforms:

GRADE A:	Trainee (undergoing structured training program in accordance with agreed standards);
GRADE B:	Boom length up to and including 11 metres (including trainee);
GRADE C:	Boom length over 11 metres and up to 17 metres;
GRADE D:	Boom length over 17 metres and up to 23 metres;
GRADE E:	Boom length over 23 metres and up to 28 metres;

Where the boom length rating is in excess of 28 metres an additional amount per metre per week as set out in Table 4 of Part B shall be paid.

GRADE F: Mobile hydraulic platform with an underbridge unit.

### 1.2.3 Crane Offsider.

### 1.2.4 Advanced Crane Offsider.

### 1.3 Ancillary Plant Driver Rates

Persons engaged as Ancillary Plant Drivers shall be classified as follows and shall be paid as provided for in Table 3 of Part B of this award:-

GRADE A:	Up to 65 BHP;
GRADE B:	Over 65 BHP and up to 130 BHP;
GRADE C:	Over 130 BHP and up to 295 BHP;
GRADE D:	Over 295 BHP and up to 500 BHP;
GRADE E:	Over 500 BHP and up to 600 BHP;
GRADE F:	Over 600 BHP.

(BHP refers to brake horsepower)

### 1.4 Mobile Concrete Pump Driver/Operator Rates

Persons engaged in the delivery and/or placement of concrete by means of a mobile concrete pump shall be classified as follows and shall be paid as provided for in Table 4 of Part B of this award:-

GRADE A:	Extra Hand;
GRADE B:	Driver/operator - boom length up to and including 11 metres;
GRADE C:	Driver/operator - boom length over 11 metres and up to 17 metres;
GRADE D:	Driver/operator - boom length over 17 metres and up to 23 metres;
GRADE E:	Driver/operator - boom length over 23 metres and up to 28 metres;

Where the boom length rating is in excess of 28 metres an additional amount per metre per week as set out in Table 4 of Part B shall be paid.

### 1.5 Furniture Removals

Furniture Removalist Offsiders shall be paid as provided for in Table 5 of Part B.

### 1.6 Chauffeurs

Chauffeurs/drivers of vehicles used for the purpose of carrying passengers shall be paid as provided for in Table 6 of Part B.

## 2. Allowances

For the purposes of computing wages, overtime etc., the additional amounts set out in Part B of this award and referred to in this clause form part of the weekly wage for the work performed unless otherwise specified.

### 2.1 Furniture Removals

All employees engaged in furniture removals shall receive the appropriate weekly rate of pay specified in this Part B of this award according to the appropriate classification and in addition thereto an additional amount as provided for in Item 1 of Table 7 of Part B.

### 2.2 Ready Mixed Concrete

Persons involved in the cartage of ready mixed concrete shall be paid the additional amounts provided for as follows and set out in Table 7 of Part B :

2.2.1 Drivers of Ready Mixed Concrete Agitator Trucks - Employees who are engaged in the driving and/or operating of ready mixed concrete trucks shall be paid an additional rate as set out in Item 2 of Table 7 of Part B, up to a maximum amount per week as provided for in Item 3 of Table 7 of Part B, subject to the following :

2.2.1.1 Such additional rate is in recognition of the skill and responsibility involved in assessing the slump and ingredients in accordance with the employer's requirements.

2.2.1.2 The additional rate shall only become payable to an employee who has had at least three (3) months' service with the current employer, and who is actually engaged in the delivery of concrete; provided that in the case of an employee who has had prior experience in the driving and/or operating of ready-mixed concrete trucks, the additional rate shall be paid after one (1) month's service with the current employer.

2.2.2 Employees (other than agitator drivers) engaged in the delivery and/or placement of concrete - The rate specified in Table 1 of Part A of this award for Transport Worker Grade One and in addition thereto the amount specified in Item 4 of Table 7 of Part B.

### 2.3 Leading Hands

Employees appointed as leading hands shall be paid the rate specified in Tables 1,2,3 or 4 of Part B for the appropriate classification in this clause and in addition thereto the amount specified in Item 5 of Table 7 of Part B.

### 2.4 Butcher's Bones etc.

Employees principally engaged in the collection of butchers' bones, fat, etc., shall be paid the rate specified in Table 1 of Part B for the appropriate classification in this clause and in addition thereto the amount specified in Item 6 of Table 7 of Part B.

### 2.5 Additional Horses

Employees driving more than one horse shall be paid the rate specified in Table 1 of Part B for a Transport Worker Grade One and in addition thereto the amount specified in Item 7 of Table 7 of Part B for each horse in addition to one.

### 2.6 Working in the Open

Employees working in the open in forest locations and without amenities such as change rooms, lunch rooms, lockers, lavatories and washing facilities, shall be paid the additional amount specified in Item 8 of Table 7 of Part B. This allowance is intended as compensation to cover the factors mentioned above and other factors such as working at isolated and undeveloped locations, difficult terrain and undergrowth, exposure to extremes of heat, cold and wind, and wet, dusty and muddy conditions.

### 2.7 Long and Wide Loads

2.7.1 An employee who is engaged driving a loaded vehicle which together with its special load exceeds:-

2.7.1.1 2.9 metres in width or 18.29 metres in length or 4.3 metres in height measured from the level shall be paid, in addition to all other rates payable, the amount specified in Item 9 of Table 7 of Part B whilst so engaged with a minimum payment of the amount specified in Item 10 of Table 7 of Part B.

2.7.1.2 3.36 metres in width or 21.34 metres in length or 4.58 metres in height measured from ground level shall be paid, in addition to all other rates payable, the amount specified in Item 11 of Table 7 of Part B whilst so engaged with a minimum payment of the amount specified in Item 12 of Table 7 of Part B.

2.7.2 Where any load is being carried by an articulated vehicle which is equipped with rear-end steering and a steersperson is engaged in addition to the tractor driver then both the tractor driver and the steersperson shall be paid in addition to all other rates payable the amount specified in

Item 13 of Table 7 of Part B whilst so engaged with a minimum payment of the amount specified in Item 14 of Table 7 of Part B. Provided however, that this payment shall not be in substitution thereof. Provided further that the rates payable under this subclause shall not be taken into account in the calculation of overtime.

2.7.3 None of the allowances in clause 2.7 shall apply to drivers of "B-double combination vehicles" or road trains.

## 2.8 Mechanical Lifting Devices

Drivers of vehicles equipped with sidestacking or sideloading devices, HIAB or similar type cranes, or any similar type of mechanical lifting device (excluding rear-lift tail-gates), shall be paid the rate specified in Table 1 of Part B for the appropriate classification in this clause and in addition thereto the amount specified in Item 15 of Table 7 of Part B.

## 2.9 Carrying Furniture

Employees (other than those covered by clause 2.1) who are engaged in the removal or delivery of furniture, pianos, pianolas, refrigerators, iron safes, and similar articles, which have to be carried by the employees, shall be paid the rate specified in Part B for the appropriate classification in this clause and in addition thereto the amount specified in Item 16 of Table 7 of Part B.

## 2.10 Used Diapers

Employees engaged in the handling or transport of used diapers shall be paid, in addition to the rate specified in Part B for the appropriate classification, the amount specified in Item 17 of Table 7 of Part B in the case of weekly employees and the amount specified in Item 18 of Table 7 of Part B in the case of casual employees.

## 2.11 In Charge of Plant

Ancillary plant drivers in charge of plant shall be paid the appropriate weekly rate specified in Table 3 of Part B and in addition thereto the amount specified in Item 19 of Table 7 of Part B. An employee shall be deemed to be in charge of a plant item where:-

2.11.1 Two or more operators are employed on a unit of plant at the same time and the employee is the operator specifically entrusted with the superintendence and responsibility; or

2.11.2 When an operator is instructed by the supervisor of the work that the operator's duties are to include repairs to the operator's unit or plant in addition to the work of operating the plant but not when the operator merely assists the fitter or the engineer to do such work.

For the purpose of this allowance a field service grease truck will be regarded as a unit of plant and an employee placed in charge of such a truck shall be eligible for payment.

## 2.12 Collecting Moneys

Employees who are required to collect moneys, excluding not negotiable cheques, on behalf of the employer and/or employer's clients, upon delivery of goods, shall be paid additional rates as provided for in Table 7 of Part B according to the amount of money carried as set out below:

Where the amount collected per week :

2.12.1 Exceeds \$30 but does not exceed \$150 - Item 20

2.12.2 Exceeds \$150 but does not exceed \$250 - Item 21

2.12.3 Exceeds \$250 but does not exceed \$400 - Item 22

2.12.4 Exceeds \$400 but does not exceed \$600 - Item 23

2.12.5 Exceeds \$600 - Item 24

This clause shall not apply to household furniture removals.

### 2.13 Carrying Goods

All goods required to be physically carried by the employee, as at present recognised in the industry, shall be paid for at the rates provided for in Table 7 of Part B:

2.13.1 On the level - Item 25

2.13.2 Upstairs - Item 26

### 2.14 Carrying Salt

All drivers engaged in the delivery of salt in sacks or bags which have to be physically carried away from the vehicle by the employee at the customer's premises shall be paid as provided for in Item 27 of Table 7 of Part B for all salt delivered.

### 2.15 Obnoxious Materials

2.15.1 Employees directly engaged in the loading and/or unloading or the loading and transporting and unloading of the material named in this clause 2.15.1, subject to the conditions set out herein, shall be paid the additional rates specified in Table 7 of Part B as provided for as follows:

2.15.1.1 Soda ash, Lignosol, Bulk Sulphur, Phosphate Rock, Manganese, Carbon Black, Lamp Black or Fish Meal (other than in undamaged steel drums, undamaged casks or undamaged polythene bags) Item 28

2.15.1.2 Oxides, including, antimony oxide, zinc oxide, yellow oxide, titanium, red lead, litharge or any oxide with a similar base when free or packed in sacks or bags (other than in undamaged steel drums, undamaged casks or undamaged polythene bags) Item 29

2.15.2 Drivers engaged on duties in connection with the loading and/or unloading of any of the materials mentioned in clause 2.15.1.1, subject to the conditions set out herein, required to carry out such work on wharves, jetties or the like for a period of more than two hours on any one day, shall be paid the additional rate specified in Item 30 of Table 7 of Part B.

2.15.3 Employees engaged in the transportation only of any of the materials mentioned in clause 2.15.1, when free or packed in sacks or bags, shall be paid the additional rate specified in Item 31 of Table 7 of Part B.

2.15.4 Employees engaged in the loading and/or transportation and/or unloading of hydrogen fluoride shall be paid at the rate of double time whilst so engaged.

2.15.5 Employees engaged in the loading and/or transportation and/or unloading of any of the materials mentioned in clause 2.15 and for which extra rates are provided, shall, subject to the conditions specified herein, be paid a minimum of four hours at the appropriate rate for each day upon which the employee is so engaged.

2.15.6 Employees engaged in the loading, unloading or handling by mechanical appliance of any materials in unbroken containers in circumstances such that the employee is not exposed to any disability arising from the obnoxious nature of the materials shall not qualify for the extra rates stipulated herein.

2.15.7 Employees engaged in the loading and/or transporting of hot slag from No.4 Blast Furnace, No. 5 Blast Furnace, the B.O.S. Plant, the No.2 Open Hearth and from No.21 Dump of Australian Iron

and Steel Pty. Ltd. Port Kembla, or from No.4 Blast Furnace and from the liquid pits (excluding the scull area) at Broken Hill Proprietary Co. Ltd., Newcastle, shall be paid in addition to the rate specified in Table 1 of Part B as specified in Clause 1, Wages, of this award, for the appropriate classification, the additional rate specified in Item 32 of Table 7 of Part B whilst so engaged.

2.15.8 In the event of any dispute as to the obnoxious nature of any additional materials not mentioned in this clause 2.15, or the extra rate to be paid for any goods classified as obnoxious materials or as to the application of clause 2.15.6, of this clause, any party to these proceedings may refer the matter to the Conciliation Committee or the Industrial Relations Commission of New South Wales for determination.

#### 2.16 First Aid

An employee appointed by the employer to perform first-aid shall be paid the amount specified in Item 33 of Table 7 of Part B, in addition to the employee's ordinary rate during such appointment.

#### 2.17 Garaging

Where an employee, at the request of the employer, garages the employer's vehicle in covered garage space provided by the employee, such employee shall be paid the amount specified in Item 34 of Table 8 of Part B for each vehicle so garaged in addition to any other payments due to the employee.

### 2A. Commitment

The wage increases arising under this award may be offset against any existing over award payments. The Union will not seek any increase in award rates that would be effective prior to 16 December 2010.

### 3. Hours of Employment

3.1 The ordinary hours of work for all employees shall not exceed 38 hours per week or 76 hours per fortnight or 114 hours per 3 weeks or 152 hours per 4 weeks and shall be worked between Monday and Friday inclusive.

3.2 Weekend Work as Ordinary Hours of Work.

3.2.1 Saturday as an Ordinary day. The ordinary hours of work prescribed in 3.1 may also be worked upon a Saturday, provided that:

3.2.1.1 The number of ordinary hours to be worked on a Saturday shall not be less than 7.6 or more than 8;

3.2.1.2 Employees working ordinary hours on a Saturday shall be paid an additional 50% of the rates prescribed for their respective classifications for the ordinary hours worked on that day;

3.2.1.3 Any permanent employee employed at the date of the making of the Transport Industry (State) Award, 1996, published 26 September, 1997 by an employer who, prior to the making of this award, regularly worked ordinary hours Monday to Friday and overtime Saturday, and as a result of this award is required to work Saturday as an ordinary day, shall receive not less than the amounts shown in Table 11 of Part B of this award for the relevant classification for ordinary hours worked; provided that this restriction shall not apply where an employee elects to forego income which exceeds the employee's base rate of pay in return for an alternative benefit (eg. time off in lieu of overtime, increased leisure time etc), or otherwise where the union agrees that it shall not apply. "Regularly" in this context means at least two weeks in four. The amounts referred to in Table 11 are only payable in a pay week in which the employee actually worked Saturday as an ordinary day.

- 3.2.1.4 Any employee required to work ordinary hours on a Saturday will be given a minimum of 7 days notice; and
- 3.2.1.5 The employee must have Sunday and Monday as days off (unless they are worked as overtime).
- 3.2.2 Sunday as an Ordinary Day. The ordinary hours of work prescribed in 3.1 may also be worked upon a Sunday by agreement in writing with individual employees affected (ie. you don't have to work Sunday if you don't want to), provided that:
- 3.2.2.1 The number of ordinary hours to be worked on a Sunday shall not be less than 7.6 or more than 8;
- 3.2.2.2 Employees working ordinary hours on a Sunday shall be paid an additional 100% of the rates prescribed for their respective classifications for the ordinary hours worked on that day;
- 3.2.2.3 Any permanent employee employed at the date of the making of this award by an employer who, prior to the making of this award, regularly worked ordinary hours Monday to Friday and overtime Sunday, and as a result of this award agrees to work Sunday as an ordinary day, shall receive not less than the amounts shown in Table 12 of Part B of this award for the relevant classification for ordinary hours worked; provided that this restriction shall not apply where an employee elects to forego income which exceeds the employee's base rate of pay in return for an alternative benefit (eg. time off in lieu of overtime, increased leisure time etc), or otherwise where the union agrees that it shall not apply. "Regularly" in this context means at least two weeks in four. The amounts referred to in Table 12 are only payable in a pay week in which the employee actually worked Sunday as an ordinary day; and
- 3.2.2.4 The employee must have two consecutive days off (unless they are worked as overtime).
- 3.2.3 Saturday and Sunday as Ordinary days. The ordinary hours of work prescribed in 3.1 may also be worked upon Saturday and Sunday by agreement in writing with individual employees affected (i.e. you don't have to work Sunday if you don't want to), provided that:
- 3.2.3.1 The number of ordinary hours to be worked on the Saturday and the Sunday shall not be less than 7.6 or more than 8 on either day;
- 3.2.3.2 Employees working ordinary hours on a Saturday shall be paid an additional 50% and on a Sunday an additional 100% of the rates prescribed for their respective classifications for the ordinary hours worked on that day;
- 3.2.4.3 Any permanent employee employed at the date of the making of this award by an employer who, prior to the making of this award, regularly worked ordinary hours Monday to Friday and overtime on Saturday and Sunday, and as a result of this award agrees to work Saturday and Sunday as ordinary days, shall receive not less than the amounts shown in Table 13 of Part B of this award for the relevant classification for ordinary hours worked; provided that this restriction shall not apply where an employee elects to forego income which exceeds the employee's base rate of pay in return for an alternative benefit (eg. time off in lieu of overtime, increased leisure time etc), or otherwise where the union agrees that it shall not apply. "Regularly" in this context means at least two weeks in four. The amounts referred to in Table 13 are only payable in a pay week in which the employee actually worked Sunday as an ordinary day; and
- 3.2.3.4 The employee must have two consecutive days off (unless they are worked as overtime).

- 3.3 The ordinary hours of work for all employees shall not exceed 8 hours per day, exclusive of meal breaks, and shall be worked between the hours of 5.00 am and 6.00 p.m.
- 3.4 The 38 hour week may be worked under one of the following methods:
- 3.4.1 Rostered Day Off in a 4 Week Cycle
- 3.4.1.1 Employees shall work to a roster drawn up in each workplace providing for 19 days each of eight hours over a continuous four week period.
- 3.4.1.2 Each employee shall take a rostered day off in accordance with the roster.
- 3.4.1.3 Rostered days off may be accumulated to a maximum of ten (10) days over a 40 week period. Rostered days off may be credited to and be taken by an employee in advance to a maximum of five (5) days.
- 3.4.1.4 In those arrangements where rostered days off are not accumulated an employer may, due to operational requirements, require an employee not to take a rostered day off during the period it accrues. In this event, a replacement rostered day off shall be taken on the following basis :
- 3.4.1.4.1 Where the rostered day off not taken was either a Friday or Monday, the next practicable Friday or Monday shall be taken as a replacement rostered day off.
- 3.4.1.4.2 Where the rostered day off not taken was a Tuesday, Wednesday or a Thursday, the replacement rostered day off shall be taken on the first practicable day available for the taking of such replacement rostered day off.
- 3.4.1.5 Otherwise an employee's normal rostered day off may be changed during the currency of a roster period by agreement between the employer and such employee. In the absence of such agreement 48 hours notice of such alteration shall be given to the employee.
- 3.4.1.6 Calculation of Payment : Payment shall be for 7 hours 36 minutes per day with accrual as entitlement for a rostered day off being made on the basis of a nineteen day period where an employee works 152 hours within a work cycle not exceeding twenty-eight consecutive days at 24 minutes per day.
- 3.4.1.7 An employee whose rostered day off occurs on a pay day shall be paid wages on the next ordinary working day following the rostered day off.
- 3.4.1.8 Where an employer is required to service a particular industry or plant or section thereof and there has been a cessation of operations resulting from annual closedown, such employer may require employees to take a rostered day or days off to coincide with the day or days that the operations are closed. In this event, a rostered day or days off which would normally become due to the employee shall not become so due for the number of days taken pursuant to the provisions of this paragraph; provided however that an employee disadvantaged in terms of leisure time by a rostered day or days off normally falling on a Friday or a Monday being required to be taken on a Tuesday, Wednesday or Thursday, then such employee shall be rostered to take a Friday or Monday day off on the earliest practicable opportunity upon the normal roster being resumed.
- 3.4.1.9 Where an employee works an ordinary day on a Saturday pursuant to clause 3.2, such employee's rostered day off must not be rostered to occur on a Saturday.



- 3.4.2 Other Than a Rostered Day Off in a 4 Week Cycle:
- 3.4.2.1 Where an employer is required to service a particular industry or plant or section thereof which is operating under arrangements for a reduced working week other than that provided for in clause 3.4.1, the employer may arrange the hours of work of an employee to be applicable to that particular industry or plant, or section thereof, provided that such hours shall not be in excess of the normal hours of work permitted by this clause.
- 3.4.2.2 The employer may require employees to work ordinary hours over five days, Monday to Friday inclusive, which shall not exceed 38 hours, which may be worked over four days of 8 hours each and one day of 6 hours. On the day on which 6 hours is worked, those 6 hours may be worked continuously without a meal break.
- 3.4.2.3 The employer may require employees to work ordinary hours over a two week period (10 working days) Monday to Friday inclusive of not more than 76 hours. To achieve this, the employer may roster employees off, half a day (4 hours) on one of the days in one of those normal working weeks.
- 3.5 More than one of the methods of implementation of an average 38 hour working week referred to in this clause may be simultaneously implemented for different groups of workers in the one workplace; provided that agreement shall be reached with the majority of employees so affected.
- 3.6 Methods of implementation of an average 38 hour working week other than those referred to in this clause may be instituted by arrangement with the Union.
- 3.7 In response to changed requirements of the employer's clients, the employer may alter the method(s) by which a 38 hour week is worked in the workplace, provided that the altered method(s) so chosen shall comply with the requirements of this clause.
- 3.8 Start and finish times
- 3.8.1 Within the limits prescribed in this clause, each employer shall fix the time and place at which each employee shall be in attendance at the workplace or other agreed starting place ready to commence work in ordinary working hours and work shall be deemed to have commenced, for each employee in attendance, at the time and place so fixed.
- 3.8.2 Working in ordinary working hours shall be deemed to have finished, for those employees in attendance, when a period of eight hours, exclusive of a break for a meal, calculated from the fixed starting time, has elapsed.
- 3.8.3 Different starting times within the span of ordinary hours may apply to different groups of employees in a workplace.
- 3.8.4 Any employee who is not in attendance at the workplace or other agreed starting place ready to commence work at the fixed starting time or who fails to attend for eight hours from that time shall be paid only for the actual hours worked.
- 3.8.5 The employer may only alter the time and place fixed in accordance with clause 3.8.1, by notice posted for 7 days at the workplace or other agreed starting place; provided that the start time may be changed where it is necessary for reasons beyond the employer's control by notification before the end of the previous day's work or with 24 hours notice where work has not been performed the previous day.

#### 4. Shift Work

##### 4.1 Definitions

- 4.1.1 "Early Morning Shift" shall mean a shift which commences at or after 4.00 am and before 5.00 am.
- 4.1.2 "Afternoon Shift" shall mean a shift which commences after 10.00 am and at or before 4.00 p.m.
- 4.1.3 "Night Shift" shall mean a shift which commences after 4.00 p.m. and before 4.00 am.
- 4.1.4 "Alternate Night/Afternoon Shift" shall mean a shift which alternates between night shift and afternoon shift or night shift and afternoon shift and day work.
- 4.1.5 "Shift Work" shall mean work extending for at least 4 weeks and performed either in daily recurrent periods or in regular rotating periods within the limits defined for "Early Morning Shift" or "Afternoon Shift" or "Night Shift".

##### 4.2 Shift Work - Weekly Employees

###### 4.2.1 Hours of Work

- 4.2.1.1 The hours of work of weekly employees on shift work shall be an average of 38 per week.
- 4.2.1.2 Such work shall be arranged as provided for by Clause 3, Hours of Employment, of this Award, provided that employees may be rostered to work shift work over five days within a six or seven day spread with two consecutive days off.
- 4.2.1.3 Crib time on any shift shall be at a time fixed by the employer and shall not be varied except in an emergency: provided that an employee shall not be required to work more than 5 hours without a crib break.

###### 4.2.2 Shift Roster

- 4.2.2.1 There shall be a shift roster which shall provide for rotation unless otherwise agreed between the employer and the employee.
- 4.2.2.2 Such shift roster shall specify the commencing and finishing times of arranged ordinary hours of respective shifts. A copy of such shift roster shall be kept in a prominent place. Such roster having been fixed may be varied by agreement between the employer and the employee affected to suit the circumstances of the workplace, provided that the Union is notified of such agreement, or in the absence of such agreement by seven (7) days' notice of such alteration given by the employer to the employee affected or in the case of changes necessitated by circumstances outside the control of the employer by twenty-four (24) hours' such notice.
- 4.2.2.3 Day workers may be transferred to shift work by seven (7) days' notice given by the employer to the employee or in cases where sudden or unforeseen circumstances make the change necessary by twenty four (24) hours' such notice.

##### 4.3 Shift Work - Allowances

- 4.3.1 For ordinary hours of shift work, shift workers shall be paid the following extra percentages of the rates prescribed for their respective classifications:
  - 4.3.1.1 Early Morning Shift 12.5%

4.3.1.2 Permanent Afternoon Shift 17.5%

4.3.1.3 Permanent Night Shift - 30%

4.3.1.4 Alternate Night/Afternoon Shift:

When on afternoon shift:17.5%

When on night shift : 30%

4.3.2 Shift workers rostered on a shift the major portion of which is performed on a Saturday, Sunday or public holiday shall be paid as follows:-

4.3.2.1 Saturday: At the rate of time and a half.

4.3.2.2 Sunday: At the rate of double time.

4.3.2.3 Public Holidays: At the rate of double time and a half.

The penalty rates prescribed by this clause 4.3.2 for work on a Saturday, Sunday or a public holiday shall be payable in lieu of the shift allowances prescribed in clause 4.3.1.

4.3.3 Notwithstanding anything contained herein, each shift shall be paid for at the rate applicable to the day on which the major portion of the ordinary time of the shift is worked.

#### 4.4 Shift Work - Overtime

For all time worked outside or in excess of the arranged ordinary shift hours or pursuant to circumstances under clause 4.2.2.2 shift workers shall be paid at time and a half for the first 2 hours and double time thereafter and provided that for shifts the major portion of which fall on a Sunday or a public holiday all overtime shall be paid at the rate of double time.

#### 4.5 Shift Work - Casual Employees

4.5.1 Casual employees may be engaged on shift work on less than 38 hours per week.

4.5.2 Casual shift workers shall be entitled to the appropriate shift penalty as provided for in clauses 4.3.1 and 4.3.2 plus 15% loading.

4.5.3 Casual shift workers who work in excess of the arranged ordinary hours of the shift on which they are rostered shall be entitled to the appropriate overtime rates provided for in clause 4.4.

4.5.4 Casual shift workers for work on a rostered shift the major portion of which is performed on a Saturday, Sunday or public holiday shall be paid at the appropriate rates provided for in clause 4.3.2 and in addition thereto a loading of 15%, provided that such payments for work on a Saturday, Sunday or public holiday shall be in lieu of the shift allowances provided for in clause 4.3.1.

4.5.5 After a maximum of 5 hours work a casual shift worker shall be entitled to paid crib time of 20 minutes.

#### 4.6 Shift Work - Meal Time

All shift workers whilst working on early morning, afternoon or night shift shall be entitled to a paid crib time of 20 minutes. Such crib time shall be allowed and taken as prescribed in clause 4.2.1.3.

#### 4.7 Shift Work - Prior Arrangements

Arrangements as to shift work entered into between the Union and any employer prior to the introduction of this clause into the Award which provide for more advantageous conditions for employees than this clause shall not be altered without the agreement of the Union.

### 5. Overtime

5.1 Overtime at the rate of time and one-half for the first two (2) hours and double time thereafter shall be paid to all employees, including casuals, as follows :

5.1.1 For all time worked within the spread of ordinary hours referred to in clause 3.3 in excess of the ordinary hours of work in any week.

5.1.2 For all time worked within the spread of ordinary hours referred to in clause 3.3 in excess of the daily limitations on working of hours prescribed in clause 3 or before the fixed commencing time or after the fixed finishing time.

5.1.3 For all time worked outside the spread of ordinary hours referred to in clause 3.3.

5.1.4 For the purpose of the computation of overtime each day shall stand alone; provided that where work continues beyond midnight, double time shall be paid until the completion of such overtime.

5.2 In the calculations of overtime, portions of hours shall be taken to the nearest one-tenth of an hour.

5.3 Casuals - In the case of casual employees, the overtime rate shall be calculated on the casual rate of pay.

### 6. Saturday and Sunday Work

6.1 Saturday Work

6.1.1 An employee required to work on a Saturday (where it is not an ordinary day pursuant to clause 3.2) shall be paid at the rate of time and one-half for the first two (2) hours and double time thereafter for all time worked, with a minimum payment of four (4) hours at the appropriate rate of pay, whether the employee works for that period of time or not.

6.1.2 An employee (other than an employee working on ordinary shift) who is required to commence work on a Saturday at 12 noon or thereafter, shall be paid at double time.

6.2 An employee required to work on a Sunday shall be paid at the rate of double time for all time worked, with a minimum payment of four (4) hours at the appropriate rate of pay, whether the employee works for that period or not. (To avoid doubt, where Sunday is worked as an ordinary day pursuant to clause 3.2, any hours worked in excess of the ordinary hours of work shall be paid at the overtime rate of double time.)

### 7. Travelling and Living Away Allowances

7.1 An employee who, on any day, is required by the employer to start or finish work or at a place other than the usual workplace or other agreed starting place, shall be in attendance at such place at the time stipulated by the employer ready to commence work but, for all time reasonably spent in reaching such place in excess of the time normally spent in travelling from home to the workplace or other agreed starting place, the employee shall be paid at ordinary rates (except on Sundays and holidays when the rate shall be time and one-half) and the employee shall also be paid any fares reasonably incurred in excess of those normally incurred in travelling between the employee's home and the usual workplace or other agreed starting place or vice versa as the case may be.

7.2 All time spent in travelling by an employee in ordinary working hours in connection with work shall be paid for at ordinary rates (except on Sundays and holidays when the rate shall be time and one-half).

- 7.3 All time spent in travelling by an employee outside ordinary working hours in connection with work shall be paid for at ordinary rates (except on Sundays and holidays when the rate shall be time and one-half). Travelling referred to in this clause 7.4 shall mean travelling either by train, boat or other conveyance and shall not include travelling by an employee between home and the employer's workplace or other agreed starting place.
- 7.4 Employees engaged on work or in travelling in connection with work which precludes them from reaching their home at night shall be paid all reasonable and actual expenses incurred in obtaining accommodation for the night, including an evening meal, bed and breakfast, provided that :
- 7.4.1 The employee shall submit to the employer an itemised list, with supporting accounts, showing the detail of the expenses incurred.
- 7.4.2 Before an employee proceeds on the work, the subject of this clause 7.4, the employee shall be given in advance an amount of money calculated, so far as that is reasonably practical, to cover the expenses to be incurred. Upon the employee's return from such work and the submission of the itemised list referred to in clause 7.4.1, any balance due to the employer or the employee shall be paid to or by the employee as the case might be.
- 7.4.3 Should an employee not submit the itemised list as required by clause 7.4.1, the employee shall be paid the amount specified in Item 1 of Table 8 of Part B, provided that such employee has not been given an advance pursuant to clause 7.4.2 in excess of such amount.
- 7.5 An employee, other than an employee referred to in clauses 7.7 and 7.8, who is required by the employer to spend a Saturday, Sunday or a public holiday away from home but who is not required to work on such days, shall be paid, in addition to the amount due to the employee in accordance with the provisions of this clause, the amount specified in Item 2 of Table 8 of Part B for each day the employee is required to spend away from home. The said amount being to compensate the employee for any additional expense and for any inconvenience and/or disability the employee might incur by being required to spend such days away from home.
- 7.6 An employee who is temporarily transferred to a location which requires the employee to live away from home for a period exceeding one week shall be paid all reasonable and actual expenses incurred in obtaining board and lodging.
- 7.7 When an employee is required to camp out at an established camp connected with the job in relation to which the employee is engaged, the employer shall provide, free of charge, sufficient tent, with fly and equipment, to properly house the employee and the employee shall be paid, in lieu of the payments referred to in this clause, the amount specified in Item 3 of Table 8 of Part B in addition to all other payments due to the employee. If the employee is required to camp out less than 7 days in any week the employee shall be paid the amount specified in Item 4 of Table 8 of Part B for each day the employee is required to camp out.
- 7.8 An employee shall not be entitled to an allowance under this clause for any working day on which the employee is absent from duty except in cases of sickness or for any reason beyond the employee's own control.
- 7.9 The maximum travelling time to be paid for shall be twelve hours out of every twenty-four hours, or when sleeping berth is provided by the employer for all-night travel, eight hours out of every twenty-four hours. A sleeping berth shall not include a vehicle's sleeper cab.

## **8. Meal Breaks and Allowances**

### **8.1 Meal Breaks**

- 8.1.1 On the ordinary days of work there shall be one unpaid break of not less than 30 minutes nor more than one (1) hour for lunch between the hours of 11 a.m. and 2 p.m. or otherwise to comply with the requirements of the *Road Transport (General) Act 1999*.

Provided that in the case of an employee working in or in connection with the maritime industry and being engaged in the transportation of cargo to and/or from wharves, container terminals and/or container depots, the break for lunch may be given and taken between the hours of 11.45 a.m. and 1.45 p.m.

Provided further that an employee shall not be required to take the lunch break before a period of four hours, calculated from the normal starting time, has elapsed.

8.1.2 Within the limitation prescribed in clause 8.1, the employer shall nominate the length of the lunch break to be taken by the various employees and this shall be recognised as their regular lunch break. Once fixed, the length of the lunch break may only be altered by three (3) days' notice being given to the employee concerned.

8.1.3 An employee whose regular lunch break exceeds 30 minutes may be required by the employer, on any day, to take a lunch break of a lesser period, not being less than 30 minutes and in this case shall be paid at the rate of time and one-half for the time worked during the employee's regular lunch break.

8.1.4 An employee engaged in the carriage of frozen or chilled commodities may be required by the employer on any day to continue work through the regular lunch break but, if so required, shall be paid at the rate of time and one-half from the time of commencement of the regular lunch break until such time as the employee is released from duty for lunch.

## 8.2 Crib Breaks

8.2.1 An employee who is required to work overtime on any week day for a period of two hours or more after the employee's normal finishing time shall be allowed a paid crib break of 20 minutes not later than 5 hours after the end of the lunch break and, shall, unless notified the previous day or earlier that the employee would be required to work such overtime, be paid a meal allowance of the amount specified in Table 9 of Part B. Where notification to work overtime has been given on the preceding day or earlier and such overtime is then cancelled on the day such overtime was to be worked, an employee shall be paid a meal allowance of the same amount.

8.2.2 An employee, who, on any weekday, is recalled to work after having finished work for the day or who is called upon to work before the employee's normal starting time and where such work does not continue up to the employee's normal starting time shall be allowed a paid crib break of 20 minutes for each 5 hours worked calculated from the time of commencement of work or from the end of the previous crib break, whichever applies.

8.2.3 An employee who, on any weekday, is required to start work prior to 6.30 a.m. and to continue such work up to and after the employee's normal starting time shall be allowed a paid crib break of 15 minutes between the hours of 8 a.m. and 9 a.m.

## 8.3 Saturdays, Sundays and Public Holidays

8.3.1 An employee required to work on a Saturday (where it is not an ordinary day pursuant to clause 3.2), Sunday or public holiday shall be allowed a paid crib break of twenty (20) minutes for each five (5) hours worked; the said five (5) hours to be calculated from the time of commencement of work or from the end of the previous crib break, whichever applies.

8.3.2 An employee required to work for a period of eight (8) hours between the hours of 7 a.m. and 5.30 p.m. on a Saturday (where it is not an ordinary day pursuant to clause 3.2), Sunday or public holiday may be allowed the usual weekday lunch break and, in that case, the provisions of clause 8.3.1 shall not apply.

8.4 Employees working, whether permanently or from time to time, in or in connection with an industry or establishment where it is the custom to allow conditions relating to meal breaks, crib breaks or meal

allowances different from those prescribed in this clause may, at the discretion of the employer, be allowed such different conditions.

- 8.5 Except so far as is altered expressly by this clause, existing custom and practice concerning crib breaks and meal hours shall continue during the currency of this award.

### **9. Casual Employees**

- 9.1 Casual employees shall be paid the rate specified in Part B for the appropriate classification specified in clause 1 of this award, and in addition 15 per centum of such rate.
- 9.2 Irrespective of hours worked, a casual employee shall be paid a minimum of four hours work for each start.
- 9.3 No employer shall engage casual employees in excess of one quarter of the number of weekly employees (i.e. other than casual employees) employed plus one additional casual employee.
- 9.4 Upon request, any employer employing casual employees under this award shall furnish an accredited representative of the union with the number of employees engaged on any specified day, showing separately the number of casuals employed on such day.

### **10. Part-Time Employees**

Employees may be employed on a permanent basis to work regular days and regular hours less than 38 hours per week, provided that :-

- 10.1 The set weekly hours for such an employee shall be determined upon engagement and thereafter not changed other than by agreement;
- 10.2 Notwithstanding (i) above, the hours set for a part-time employee shall not be less than 4 consecutive hours in any day or less than 20 hours in any week.
- 10.3 All work over the set hours determined at engagement shall be paid at overtime penalty rates.
- 10.4 The spread of ordinary hours allowable for part-time employees shall be as set out in Clause 3, Hours of Employment, and their hourly rate equal to the appropriate rate as set out in Clause 1, Wages, and divided by 38.
- 10.5 The ratio of full-time employees to non-full-time employees (including casual and permanent part-time employees), shall remain 4:1.
- 10.6 All other provisions of this Award, where applicable, shall apply to part-time employees in the same ratio as their ordinary hours of work are to 38 hours per week.

### **11. Young Employees**

#### **11.1 Young Employees - Definitions and Duties**

11.1.1 For the purpose of this award a "young employee" shall mean a person under the age of 21 years.

11.1.2 Subject to the conditions set out herein young employees may be employed only in the capacities encompassed by the classification of Transport Worker Grade One.

#### **11.2 Young Employees - Restrictions**

11.2.1 No young employee under the age of 19 years shall be required to lift or carry any weight exceeding 41 kg.

11.2.2 Young employees shall not be employed as casuals unless they receive the adult casual rate.

11.2.3 Young employees shall not be employed on shift work except by agreement between the employer and the union.

11.2.4 Young employees may be employed in the following proportions to the number of adult employees, not including casuals, employed by an employer:

When 5 adults are employed-1 young employee may be employed.

When 10 adults are employed-2 young employees may be employed.

When 20 adults are employed-3 young employees may be employed.

When 40 adults are employed-4 young employees may be employed.

When 60 adults are employed-5 young employees may be employed.

When 80 adults are employed-6 young employees may be employed.

When 100 adults are employed-7 young employees may be employed.

No employer may employ more than 7 young employees.

11.2.5 Any young employee employed under conditions not in accordance with those set out in this clause shall receive the same rate of pay prescribed by this award for an adult worker performing the same class of work.

### 11.3 Young Employees - Payment

11.3.1 Young employees employed under the conditions prescribed in this clause shall be paid in accordance with their age a weekly wage calculated as a percentage of the wage specified in Part B of this award for the classification of Transport Worker Grade One. Such weekly wage shall be calculated to the nearest ten cents. Any fraction of ten cents in the result not exceeding five cents to be ignored.

11.3.2 Young employees employed in the capacity of a Transport Worker Grade One:

Percentage of the Wage for a Transport Worker Grade 1:

At 18 years of age and under	75
At 19 years of age	85
At 20 years of age	90

## 12. Payment of Wages

12.1 Subject to clause 12.6, all wages shall be paid weekly in cash or by electronic funds transfer, on Thursday or Friday, as determined by the employer, and the day, on being fixed, shall not be altered more than once in three months. Where a public holiday falls on a Friday, the payment of wages that week shall, as far as practicable, be made on the preceding Wednesday. Provided that wages may be paid by cheque with the agreement of a majority of employees at each yard.

12.2 No employee should have the pay day changed unless given at least seven (7) days' notice.

12.3 Except as otherwise provided for in this clause no employer shall hold more than two days' wages in hand.

12.4 Where an employer holds less than two days' wages in hand, payment for any overtime worked after the normal finishing time on the last day of the pay week shall be paid to the employee on the next succeeding pay day.



- 12.5 Casual employees shall be paid at the end of each day or at the termination of their casual employment.
- 12.6 Where wages are paid in cash, they shall be paid to the employee at the workplace or other agreed starting place or otherwise by agreement between the employer and the employee or employees concerned.
- 12.7 Where wages are paid in cash, wages shall be paid without unnecessary delay after the employee ceases work on pay day. An employee kept waiting for wages on pay day for more than a quarter of an hour after ceasing work shall be paid at overtime rates after that quarter of an hour with a minimum payment equal to 1/5th of an hour.
- 12.8 In the case of an employee whose services are terminated on other than a pay day such employee shall be paid all wages due either prior to or immediately upon cessation of work on the final day of employment.
- 12.9 An employee, other than a casual employee, who desires to terminate employment on a day other than pay day shall give notice to the employer on commencing work in the morning in which case the employee shall be paid all wages due when the employee has finished the day's work, otherwise wages may be paid on the following working day at a time stipulated by the employer but not later than 12 mid-day.
- 12.10 Each employee shall be supplied with a pay envelope or statement in writing on which shall be endorsed
- 12.10.1 The name and classification of the employee.
  - 12.10.2 The gross amount of wages, inclusive of overtime and other earnings.
  - 12.10.3 The amount paid as overtime or such information as will enable the amount paid as overtime to be calculated by the employee.
  - 12.10.4 The amount deducted for taxation purposes.
  - 12.10.5 Particulars of all other deductions or the total amount of such deductions; and
  - 12.10.6 The net amount paid.

## **SECTION II - LONG DISTANCE WORK**

### **13. Long Distance Work**

- 13.1 "Long Distance Work" shall mean driving work on return trips which are always in excess of 500 road kilometres.
- 13.2 Employers who employ employees for the specific purpose of regularly performing long distance work may apply the provisions of this section of the award to such employees rather than paying such employees according to the usual wages and overtime method.

### **14. Rate of Pay**

#### **14.1 Minimum Weekly Payment**

An employee covered by this section must receive each week no less than the wage rate prescribed for the appropriate classification in clause 1 of this award and in addition 30 percent.

#### **14.2 Kilometre Rate**

An employee covered by this section shall be paid the amounts set out in Table 10 of Part B of this award for each road kilometre travelled according to the appropriate classification in clause 1 of this award:

## 14.2.1

Transport Worker Grade Seven or below	Item 1
--	--------

## 14.2.2

Transport Worker Grade Eight	Item 2
---------------------------------	--------

## 14.3 Payment for Loading and Unloading

14.3.1 An employee covered by this section shall be paid for any time worked loading or unloading a vehicle at an hourly rate calculated by dividing the appropriate classification rate in clause 1, Wages, by 38. The overtime penalty rates prescribed by clause 5, Overtime, and clause 6, Saturday and Sunday Work, shall apply to such hourly rate for such time worked outside the span of hours of 6.00 am - 6.00 p.m. All loading and unloading duties performed in excess of eight hours shall be paid at the rate of time and one half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime work.

14.3.2 Where there is a written agreement between the employer and an employee a fixed allowance based on the hourly rates provided for in clause 14.3.1 may be paid to cover loading and unloading duties, provided that such written agreement is attached to the time and wages record, and provided a minimum of one hour is paid for each period spent loading and/or unloading.

## 14.4 Applicability of Allowances

The payments provided for in Clauses 7, Travelling and Living Away Allowances, are fully applicable to employees covered by this section. This provision is for the purpose of clarity and is not intended to preclude the operation of any other allowance.

### 15. Future Adjustment of Rates of Pay

The Union may apply to the Industrial Relations Commission for adjustment to the kilometre rate provided for in clause 14.2 in order that the rate remains equal to the kilometres rate provided for in the Transport Workers (Long Distance Drivers) Award (an award of the Australian Industrial Relations Commission), as varied, or any award succeeding or replacing that award, for the following classifications:

15.1 A Grade 6 driver engaged in other than NSW, for the purposes of the rate in clause 14.2.1; and

15.2 A Grade 8 driver engaged in NSW, for the purposes of the rate in clause 14.2.2.

### 16. Rostered Days Off

16.1 For every day of 8 hours or more worked, an employee covered by this section shall accrue 24 minutes towards a paid rostered day off.

16.2 When a rostered day off is taken, an employee shall be paid for that day an amount equivalent to the weekly rate for the appropriate classification set out in clause 1, Wages, divided by 5, and in addition 30 percent. Such a payment shall count for the purposes of the minimum weekly payment provided for in clause 14.1, but shall be in addition to any payments earned by the employee pursuant to clauses 14.2 and 14.3 in that pay week.

16.3 Rostered days off may be given and taken according to the method set out in clause 3.4.1 of this award.

**SECTION III - LEAVE ENTITLEMENTS AND PUBLIC HOLIDAYS****17. Annual Leave**

- 17.1 See *Annual Holidays Act 1944*
- 17.2 An employee at the time of entering upon a period of annual leave in accordance with the Annual Holidays Act shall be entitled to an additional payment in respect of the period of employment to which the said leave is referable, calculated on the basis of three and one-third (3 1/3) hours' ordinary pay for each month.
- 17.3 Upon an employee taking annual leave, the work cycle in respect of which the employee becomes entitled to a weekly accrual for time off pursuant to clauses 3.4.1 and 3.4.2 shall be suspended and the employee shall not be entitled to further accrual until the employee's return from leave. Upon resumption of work, the entitlement period for accrual shall resume and the employee shall be entitled to be rostered to take time off and shall so take time off upon completing the balance of the work cycle.
- 17.4 Seven-day shift workers, i.e. employees whose ordinary working period includes Sundays and holidays on which they may be regularly rostered for work :
- 17.4.1 In addition to the benefits provided by clause 17.2, and by section 3 of the *Annual Holidays Act 1944*, (with regard to an annual holiday), an employee who, during the year of employment with respect of which the employee becomes entitled to the said annual holiday, gives service as a seven-day shift worker shall be entitled to the additional leave as specified hereunder:
- 17.4.1.1 If during the year of employment the employee has served continuously as such seven-day shift worker - additional leave with respect to that year shall be one week.
- 17.4.1.2 Subject to clause 17.4.1.4, if during the year of employment the employee has served for only portion of it as such seven-day shift worker - the additional leave shall be one day for every thirty-six ordinary shifts worked as a seven-day shift worker.
- 17.4.1.3 Subject to clause 17.4.1.4, the employee shall be paid for such additional leave at the ordinary rate of wages to which the employee is entitled under Clause 1, Wages, of this award, for the number of ordinary hours of work for which such employee would have been rostered for duty during the period of additional leave had such employee not been on such additional leave.
- 17.4.1.4 Where the additional leave calculated under this clause 17.4.1 is or includes a fraction of a day such fraction shall not form part of the leave period and any such fraction shall be discharged by payment only.
- 17.4.1.5 In this clause reference to "one week" and "one day" includes holidays and non-working days.
- 17.4.2 Where the employment of an employee has been terminated and the employee thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, to payment in lieu of an annual holiday, with respect to a period of employment, the employee also shall be entitled to an additional payment of three and one-half hours at such ordinary rate of wages with respect to each twenty-one shifts of service as such seven-day shift worker which the employee has rendered during such period of employment.

**18. Long Service Leave**

- 18.1 See *Long Service Leave Act 1955*.

- 18.2 Where an employee takes long service leave the entitlement to accrue towards time off pursuant to clause 3.4.1 shall cease. The employee shall not be entitled to time off during the period of long service leave. In lieu, the employee shall be paid the value of accrued entitlement outstanding on the last day of work prior to taking long service leave.

### 19. Sick Leave

- 19.1 "Year" shall mean a period of twelve months measured for each employee from the date of commencement of the employee's current period of employment.

- 19.2 An employee, other than a casual employee, with not less than three months continuous service as such in the industry covered by this award, who is absent from work by reason of personal illness or injury not being illness or injury arising from the employee's misconduct or from an injury arising out of or in the course of employment, shall be entitled to leave of absence, without deduction of pay, subject to the following conditions and limitations:

19.2.1 The employee shall, unless it is not reasonably practicable so to do (proof whereof shall be on the employee), before the ordinary starting time on the first day of the employee's absence, and in any event within twenty-four hours, inform the employer of the employee's inability to attend for duty and, as far as practicable, state the nature of the illness and the estimated duration of the absence.

19.2.2 The employee shall furnish to the employer such evidence as the employer may reasonably desire that the employee was unable, by reason of such illness or injury, to attend for duty on the day or day for which sick leave is claimed.

19.2.3 Except as hereinafter provided, the employee shall not be entitled in any year (as defined) to leave in excess of five days of ordinary time.

Provided that:

19.2.3.1 If the employee's employment continues with the one employer after the first year, the sick leave entitlement shall increase to a maximum of eight days of ordinary working time at which figure it shall remain for each subsequent year of continued employment.

19.2.3.2 If the employment of an employee who has become entitled to leave in accordance with proviso (1) above is terminated for any reason, the employee shall not be entitled, in that year, to leave in excess of five days of ordinary working time.

- 19.3 For the purpose of administering clause 19.2.3 an employer, within one month of this award coming into operation or within two weeks of the employee entering employment, may require an employee to make a statutory declaration or other written statement as to what paid leave of absence the employee has had from any employer during the then current year and upon such statement the employer shall be entitled to rely and to act.

- 19.4 The rights under this clause shall accumulate from year to year, so long as the employment continues with the one employer, so that any part of the leave entitlement which has not been allowed in any one year may be claimed by the employee and shall be allowed by that employer, subject to the conditions prescribed by this clause, in a subsequent year of continued employment.

- 19.5 If an award holiday occurs during an employee's absence on sick leave then such award holiday shall not be counted as sick leave.

- 19.6 Service before the date of coming into force of this clause shall be counted as service for the purpose of assessing the sick leave entitlement in any year under clause 19.2.3, but shall not be taken into consideration in arriving at the period of accumulated leave.

- 19.7 Accumulated sick leave to the credit of an employee at the commencement of this award shall not be affected nor reduced by the operation of this clause.
- 19.8 Where an employee is sick or injured on the week day the employee is to take off in accordance with the provisions of clause 3.4, the employee shall not be entitled to sick pay nor will the sick pay entitlement be reduced as a result of sickness or injury on that day.

## 20. Personal/Carer's Leave

### 20.1 Use of Sick Leave

20.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 20.1.3 who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 19, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

20.1.2 The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

20.1.3 The entitlement to use sick leave in accordance with this subclause is subject to the employee being responsible for the care of the person concerned; and the person concerned being:

- 20.1.3.1 a spouse of the employee; or
- 20.1.3.2 a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- 20.1.3.3 a child or an adult child (including an adopted child, step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling the employee of spouse or de facto spouse of the employer; or
- 20.1.3.4 a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- 20.1.3.5 a relative of the employee who is a member of the same household, where for the purposes of this paragraph :

"relative" means a person related by blood, marriage or affinity;

"affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

20.1.4 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the

employee, the reasons for taking such leave and 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 opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 24, Disputes Resolution Procedure, should be followed.

## 20.2 Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.1.3 above who is ill or who requires care due to an unexpected emergency.

## 20.3 Annual Leave

20.3.1 An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

20.3.2 Access to annual leave, as prescribed in paragraph 20.3.1 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

20.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five (5) consecutive annual leave days are taken.

20.3.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

## 20.4 Time Off in Lieu of Payment for Overtime

20.4.1 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 within twelve (12) months of the said election.

20.4.2 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.

20.4.3 If, having elected to take time as leave in accordance with paragraph 20.4.1 above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve (12) month period or on termination.

20.4.4. Where no election is made in accordance with paragraph 20.4.1, the employee shall be paid overtime rates in accordance with the award.

## 20.5 Make-Up Time

20.5.1 An employee may elect, with the consent of the 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 award, at the ordinary rate of pay.

20.5.2 An employee on shift work may elect, with the consent of the 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 work rate which would have been applicable to the hours taken off.

## 20.6 Rostered Days Off

- 20.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- 20.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- 20.6.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or employer.
- 20.6.4 This subclause is subject to the employer informing the union where it has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

20.7 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 20.1.2 and 20.1.4 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 20.1.3 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 21. Bereavement Leave

- 21.1 A permanent employee shall be entitled to a maximum of two days without loss of pay on each occasion and on production of satisfactory evidence of the death in Australia of the employee's husband, wife, father, mother, brother, sister, child, stepchild or parents-in-law. For the purposes of this clause the words "wife" and "husband" shall include de facto wife or husband and the words "father" and "mother" shall include foster-father or mother and stepfather or mother.
- 21.2 A permanent employee shall be entitled to a maximum of two days' leave without loss of pay on each occasion and on the production of satisfactory evidence of the death outside of Australia of an employee's husband, wife, father or mother and where such employee travels outside of Australia to attend the funeral.
- 21.3 Where an employee would otherwise become entitled to bereavement leave, but such day or days occur on a day or days rostered for the employee to take off pursuant to clause 3.4, the employee shall not be entitled to bereavement leave nor will bereavement leave be reduced as a result of the employee taking leave on that day or days.
- 21.4 Bereavement entitlements for casual employees
- 21.4.1 Subject to the evidentiary and notice requirements in 21.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 20.1.3 of clause 20, Personal/Carer's Leave.
- 21.4.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

21.4.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 22. Parental Leave

- (1) Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing
 

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time
 

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

- (4) Communication during parental leave
  - (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
    - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and



- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 22. Parental Leave

See Part 4 of Chapter 2 of the *Industrial Relations Act 1996*.

## 23. Public Holidays

- 23.1 The days on which New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day are observed in the areas concerned together with such other days which may be proclaimed by the Government and which are observed as public holidays for the area covered by this award shall be recognised as public holidays. Employees, other than casual employees, shall be entitled to these specified public holidays without loss of pay.
- 23.2 An employee, other than a casual employee, required to work on:
- 23.2.1 Christmas Day or Good Friday shall be paid at the rate of double time for the actual time worked in addition to the day's pay to which the employee is entitled for those days in accordance with clause 23.1.
  - 23.2.2 Any of the other days prescribed in clause 23.1 shall be paid at the rate of time and one-half for the actual time worked in addition to the day's pay to which the employee is entitled for those days in accordance with clause 23.1.
- 23.3 Should any of the prescribed public holidays fall on a Saturday or Sunday and another day in lieu thereof is not proclaimed by the Government for the observance of such public holiday, an employee, other than a casual employee, required to work on such public holiday shall be paid for all work performed on:
- 23.3.1 Christmas Day, double time for the actual time worked and in addition, ordinary time for the actual time worked up to a maximum of eight (8) hours' pay at ordinary time.
  - 23.3.2 Any of the other days prescribed in clause 23.1, time and one-half for the actual time worked and, in addition, ordinary time for the actual time worked up to a maximum of eight (8) hours' pay at ordinary time.
- 23.4 A casual employee required to work on any of the public holidays prescribed in clause 23.1 shall be paid double time for all time worked, with a minimum payment for four (4) hours' work.
- 23.5 An employee required to work on any of the public holidays prescribed in clause 23.1 shall be guaranteed four (4) hours' work or shall be paid for four (4) hours at the appropriate rate.
- 23.6 An employee, other than a casual employee, whose services are dispensed with within seven (7) days of the commencement of any week in which one or more public holidays occur and who is re-engaged by the same employer within seven (7) days of the said week, shall be paid an ordinary day(s) pay for each public holiday so occurring at the rate prescribed for the class of work performed by the employee prior to the employee's services being dispensed with.

- 23.7 An employee, other than a casual employee, who, without permission of the employer or without reasonable cause, is absent from duty on the working day immediately preceding or the working day immediately succeeding any public holiday or series of holidays, shall not be entitled to payment for such public holiday, or series of public holidays, provided that if an employee is absent on one only of the working days preceding or succeeding a series of public holidays the employee shall lose the holiday pay only for the holiday closest to the day of the employee's absence.
- 23.8 Where an employee is rostered to take time off pursuant to clause 3.4 and such rostered time off falls on any of the public holidays referred to in clause 23.1, the employee shall be entitled to replacement time off, to be taken on the following basis :
- 23.8.1 Where the time off taken fell on either a Friday or Monday, the next practicable Friday or Monday shall be taken for the purposes of replacement time off.
- 23.8.2 Where the time off not taken fell on a Tuesday, Wednesday or a Thursday, the replacement time off shall be taken on the first practicable day available for the taking of such replacement time off.

## SECTION IV - INDUSTRIAL RELATIONS AND THE UNION

### 24. Disputes Resolution Procedure

- 24.1 Subject to the *Industrial Relations Act* 1996, any dispute shall be dealt with in the following manner :
- 24.1.1 The representative of the Union on the job and the appropriate supervisor shall attempt to resolve the matters in issue in the first place.
- 24.1.2 In the event of failure to resolve the dispute at job level the matter shall be the subject of discussions between an organiser of the Union and the workplace manager.
- 24.1.3 Should the dispute still remain unresolved the Secretary of the Union or a representative will confer with senior management.
- 24.1.4 In the event of no agreement being reached at this stage, the dispute will be referred to the Industrial Relations Commission of New South Wales for resolution.
- 24.2 All work shall continue normally while these negotiations are taking place.

### 25. Union Delegate

- 25.1 An employee appointed as Union delegate to the workplace shall, upon notification thereof to the employer by the Secretary/Treasurer or Sub-Branch Secretary of the Union, be recognised as the accredited representative of the Union.
- 25.2 Any matter arising in the workplace affecting members of the Union may be investigated by the delegate and discussed with the employer or a representative. The delegate shall, upon request, be allowed a reasonable opportunity to carry out such duties at a time reasonably convenient to the delegate and the employer.
- 25.3 If a matter in dispute is not settled, the delegate shall, on request, be allowed access to a telephone for a reasonable opportunity of notifying the union branch or sub-branch concerned.

### 26. Union Notice Board

The employer shall supply a notice board of reasonable dimensions to be erected or to be placed in a prominent position in the workplace upon which accredited representatives of the Union shall be permitted to post formal Union notices signed by such representative or representatives.

### 27. Union Right of Entry

See Part 7 of Chapter 5 of the *Industrial Relations Act* 1996. (NOTE : This provides that a duly accredited representative of the union shall have the right to enter any work place or premises for the purpose of interviewing employees and investigating suspected breaches of awards or agreements or the Industrial Relations Act 1996 and in such investigations inspect time and pay sheets - so long as the representative does not unduly interfere with the work being performed by any employee during working time).

### **28. Union Picnic Day**

- 28.1 Easter Saturday shall be recognised as the Union's Picnic Day.
- 28.2 In addition to all other payments due, a financial member of the union, other than a casual employee, shall upon proof thereof, be paid an additional day's pay in the pay period in which Easter Saturday falls.
- 28.3 A financial member of the Union who is required to work on Easter Saturday shall, in addition to the additional day's pay required by clause 28.2, be paid at the rate of time and one-half for the actual time worked and, in addition, ordinary time for the actual time worked up to a maximum of eight (8) hours pay at ordinary time.
- 28.4 For the purpose of the clause, "financial member of the Union" shall mean an employee who is, at the time of the Picnic Day, a financial member, or who was a financial member of the Union as at 31st December of the preceding year.

## **SECTION V - OTHER PROVISIONS**

### **29. Employees' Duties**

- 29.1 Employees within each grade in the classification structure are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.
- 29.2 Subject to agreement at enterprise level, employees are to undertake training for the wider range of duties and for access to higher classifications.
- 29.3 The parties will not create barriers to advancement of employees within the award structure or through access to training.
- 29.4 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Award, provided that such duties are not designed to promote de-skilling.
- 29.5 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 trained in the use of such tools and equipment.
- 29.6 Where required by the employer, drivers' duties shall include minor repairs such as changing tail lights and each driver shall be ready, willing and able to change tyres and perform similar non specialist vehicle maintenance tasks.

### **30. Mixed Functions**

- 30.1 An employee required by the employer to work for less than two hours a day on work carrying a higher rate of pay shall be paid at the higher rate for the actual time so worked and when required to work for more than two hours a day on such work the employee shall be paid as for a whole day's work.
- 30.2 This clause shall not apply to actual periods of one hour or less or to interchange of work arranged between employees to meet their personal convenience.
- 30.3 On any day on which an employee covered by this award is engaged for more than two hours in the cartage or distribution within New South Wales, of petrol or petroleum products from refineries, terminals or depots of oil companies which are respondents to the Transport Workers' (Oil Companies)

Award 1998 in force from time to time, the employee shall be paid for each such day at the rate of pay prescribed by this award, or the rate of pay prescribed by the Transport Workers' (Oil Companies) Award 1998 whichever is the higher rate.

### **31. Termination of Employment**

- 31.1 The employment of a weekly or part-time employee may be terminated only by one week's notice on either side which may be given at any time or by payment by the employer or forfeiture by the employee of a week's pay in lieu of notice. This shall not affect the right of the employer to dismiss an employee without notice in the case of an employee guilty of misconduct.
- 31.2 An employee with more than two months' service on leaving or being discharged shall, upon request, be given a reference or certificate of service in writing. Such reference or certificate of service shall at least contain information as to the length and nature of the employment of the employee.

### **32. Redundancy**

See the Transport Industry - Redundancy (State) Award, 284 IG 1395.

### **33. Superannuation**

See the Transport Industry (State) Superannuation (No.2) Award made on 6 November 1995.

### **34. Jury Service**

- 34.1 An employee required to attend for jury service during ordinary hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of attendance for such jury service and the amount of wage the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.
- 34.2 An employee shall notify the employer as soon as possible of the date upon which the employee is required to attend for jury service. Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.
- 34.3 Where the day or days upon which an employee is required to attend for jury service coincide with time rostered for the employee to take off pursuant to clause 3.4, such rostered time off shall be deemed to have been taken in accordance with the roster.

### **35. Limitation of Driving Hours**

See the *Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999*

### **36. Limitation of Overtime**

- 36.1 Subject to the provisions of clause 36.3 and Clause 8, Meal Breaks and Allowances, of this award, an employee may be required to work for a continuous period amounting to fifteen (15) hours, excluding meal breaks, from the time of commencing work.
- 36.2 Except in the case of accident or circumstances over which the employer has no control an employee shall not work and an employer shall not require an employee to work more than a total of twenty (20) hours' overtime in any week exclusive of unpaid intervals allowed for meals.
- 36.3 An employee, other than one on shift work, who is required to work for a continuous period amounting to twelve (12) hours or more from the time of commencing work shall be entitled to be absent from work until the employee has had ten (10) consecutive hours off duty. Should the said ten (10) hours or any part thereof coincide with the employee's ordinary hours of work the employee shall be paid at ordinary rates for the time which falls within ordinary hours of work.

36.4 Clause 36.3 shall not apply to work carried out by M. Collins and Sons (Contractors) Pty. Ltd. during the period of eight (8) days prior to and five (5) days subsequent to Good Friday in any year in connection with the Royal Agricultural Society's Easter show : Provided that during such period all necessary overtime in connection with such Show shall, as far as practicable, be divided amongst all available drivers employed on such work.

### 37. Recall

An employee recalled for work shall be guaranteed and shall for at least four (4) hours' work for each start at the appropriate rates of pay.

This clause shall also apply to any employee called upon to work before normal starting time, and whose overtime work does not continue up to such starting time.

### 38. Absences from Duty

Where an employee is absent from duty (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, bereavement leave or jury service) the employee shall for each day absent, lose average pay for each such day calculated by dividing the weekly wage rate by 5. An employee who is absent for part of a day shall lose average pay for each hour or part thereof the employee is absent, calculated by dividing the weekly wage rate by 38. An employee so absent from duty will not accrue the entitlement for normal rostered time off provided for clause 3.4 of this award. The employee shall take time off as rostered but shall be paid, in respect of the week during which the rostered time off is taken, the weekly pay less an amount calculated according to the following formula:

$$\frac{\text{Number of day(s) absent during cycle} \times 0.4 \text{ hours} \times \text{Weekly Wage Rate}}{38}$$

### 39. Commitment to Training

39.1 The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of the transport industry and transport operations generally, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

39.1.1 developing a more highly skilled and flexible workforce;

39.1.2 providing employees with career opportunities through appropriate training to acquire additional skills; and

39.1.3 removing barriers to the utilisation of skills acquired.

39.2 Following proper consultation with the union, or through the establishment of a training committee, an employer shall develop a training programme consistent with:

39.2.1 the current and future skill needs of the enterprise;

39.2.2 the size, structure and nature of the operations of the enterprise;

39.2.3 the need to develop vocational skills relevant to the enterprise and the transport industry through courses conducted by accredited educational institutions and/or providers.

39.3 Where it is agreed a training committee be established that training committee should be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example :-

39.3.1 formulation of a training programme and availability of training courses and career opportunities to employees;

- 39.3.2 dissemination of information on the training programme and availability of training courses and career opportunities to employees;
- 39.3.3 the recommending of individual employees for training and reclassification;
- 39.3.4 monitoring and advising management and employees on the on-going effectiveness of the training.
- 39.4 Where, as a result of consultation with the union, or through a training committee and with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to clause 39.2 should be undertaken by an employee, that training may be undertaken either on or off the job. Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.
- 39.5 Any costs associated with standard fees for prescribed courses and prescribed textbooks (including those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress.
- 39.6 Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.
- 39.7 Clauses 39.2, 39.3, 39.4, 39.5 and 39.6 of this clause shall operate as interim provisions and shall be reviewed after nine months' operation. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in clause 39.1. In this connection, the Union reserves the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meet the needs of an individual enterprise and/or the transport industry.
- 39.8 Any disputes arising in relation to subclauses 39.2 and 39.3 shall be subject to the provisions of Clause 24, Dispute Resolution of this Award.

#### **40. Amenities and First Aid Outfits**

- 40.1 The following facilities shall be available at all workplaces where employees are engaged under the provisions of this award:
- 40.1.1 Proper dressing rooms with adequate washing facilities, including showers with both hot and cold water.
- 40.1.2 Proper lock-up clothing lockers.
- 40.1.3 Where employees are required to partake of meals at the employers' workplace; a dining room with adequate seating and table accommodation for the partaking of meals, also facilities for boiling water and heating food.
- 40.1.4 Proper lavatory facilities.
- 40.2 Employees shall place all personal belongings in the lockers provided.
- 40.3 First-aid Outfit : A first-aid outfit shall be provided by the employer at each workplace where there are employees covered by this award. Such outfit is to comprise of a First-aid Ambulance Chest which shall:-
- 40.3.1 be of wood or metal, be dustproof and be distinctly marked with a white cross upon a green ground;

40.3.2 be so equipped and maintained as to contain at least the articles and appliances specified by clause 20 of the NSW Occupational Health and Safety Regulations 2001;

(Note : The employer shall display a copy of the appropriate Schedule, above referred to, on or adjacent to the First-aid Ambulance Chest).

40.3.3 contain nothing except requisite articles and appliances for first-aid;

40.3.4 be readily accessible to the persons employed in the workplace; and

40.3.5 be placed under the charge of a responsible person or persons who or one of whom shall always be readily available during working hours. A clearly legible notice stating the name or names of the person or persons in charge of the ambulance chest shall be affixed in a conspicuous position on or adjacent to the chest.

#### **41. Uniforms and Protective Clothing**

- 41.1 Where an employee is required by the employer to wear distinctive dress the same shall be provided, free of cost, by the employer.
- 41.2 When requested by the employee, an employer shall provide rubber gloves, gum boots and waterproof coat or apron, free of cost, for the use at work by an employee required to wash vehicles.
- 41.3 An employee engaged as a motor cycle driver shall be provided by the employer with waterproof trousers and coat for use in connection with the work.
- 41.4 Wet weather clothing consisting of waterproof hat, coat and trousers shall be provided for employees required to work in rain.
- 41.5 The clothing provided in accordance with this clause shall be renewed when reasonably necessary. It shall only be worn when the employee is engaged on work for the employer and shall remain the property of the employer and shall be returned to the employer on demand in a condition commensurate with normal wear and tear. An employee may be required by the employer to sign a receipt for such clothing upon it being issued.
- 41.6 Steel-capped boots and gloves shall be provided for drivers and loaders engaged regularly in the cartage of steel.
- 41.7 Where an employee comes into contact with direct or reflected sunlight during working hours and requires special clothing and/or headgear to protect himself/herself from the sun these shall be provided, free of cost, by the employer.
- 41.8 An employee who comes into contact with direct or reflected sunlight during working hours shall be provided with Australian Standard, AS 1067 Sunglasses, free of cost, by the employer. Those employees who require Safety Sunglasses shall be provided, free of cost, by the employer, with Australian Standard AS 1337 or AS 1338 Safety Sunglasses.
- 41.9 An employee who comes into contact with direct or reflected sunlight during working hours shall be provided with sufficient quantities of broad spectrum SPF 30+ Sunscreen to protect himself/herself from the sun, free of cost, by the employer.

#### **42. Tools and Apparatus**

- 42.1 The employer shall provide and maintain all necessary tools, ropes and packing.
- 42.2 In all cases where employees are called upon to handle pianos, pianolas or the like, piano straps shall be provided.

42.3 In all cases where employees are called upon to move heavy articles reasonably requiring the use of a samson or other suitable type of truck this shall be provided.

42.4 An employee when instructed to cart, load or unload wool shall be provided with a suitable wool hook.

Delete the words "NSW Traffic Act and Motor Traffic Regulations" in Clause 43, Cabins, Hoods and Windscreens, and insert in lieu thereof the following:

*Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*

#### **43. Cabins, Hoods and Windscreens**

The employer shall provide all vehicles with hood, windscreen, cushioned seat and back rest. The driver's cabin of each vehicle shall be ventilated adequately and shall be supplied with cabin doors and windows: where this is not practicable side curtains may be fitted as an alternative. No driver shall be required to drive a vehicle with a cracked or broken windscreen, windows, rear vision mirror or lights which contravenes the *Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*. A requirement that employers provide air-conditioning in the cabin of each vehicle shall be the subject of future consideration by the parties.

#### **44. Unauthorised Persons Riding on Vehicles**

An employee shall not permit any unauthorised person to accompany the employee on the vehicle, nor permit any such persons to assist the employee in the delivery of goods, wares, merchandise or material unless such person has been engaged as an employee or is the owner of such goods, wares, merchandise or material or is the agent or representative of such owner.

#### **45. Laundry and Dry Cleaning - Special Provisions**

45.1 The provisions of this clause shall apply only to employees engaged in or in connection with the cartage of laundry and dry cleaning.

45.2 Any driver employed delivering or collecting laundry who is required to leave the vehicle to make deliveries or collect shall not be liable for the cost or any part thereof of any article that may be lost or stolen there from whilst the vehicle is unattended unless the employee is either -

45.2.1 provided with an extra hand; or

45.2.2 the vehicle is capable of being closed and securely locked.

This clause 45.2 shall not be read or taken to relieve the employee from responsibility to the employer for ordinary diligence, care and honesty.

45.3 Credit shall not be given by any employee unless authorised by the employer. An employee shall not be held responsible for or called upon to make good any bad debts or part thereof unless contracted in contravention of this clause 45.3.

45.4 Employees may by individual agreement in writing work ordinary hours over a seven day spread under the terms of the relevant provisions of the award covering the majority of employees in the enterprise.

45.5 Employees who are required to collect moneys, excluding not negotiable cheques, on behalf of the employer and/or the employer's clients shall be paid an additional amount by the employer to compensate for this work. Clause 2.12, Collecting Moneys, shall not apply.

45.6 The employer may deduct the value of items of uniform not returned upon termination if such deduction is authorised by the employee concerned.

#### **46. Chauffeurs - Special Provisions**



- 46.1 Chauffeurs and drivers of vehicles used for the purpose of carrying person(s) who are paid not less than 20 percent above the total weekly rate of pay prescribed by Clause 1 shall be exempted from Clause 3, Hours of Employment, and Clause 36, Limitation of Overtime, of this Award.
- 46.2 Members of the Bus and Coach Association whose employees regularly drive vehicles with more than one but less than eight passengers, shall be exempt from the provisions of this Award, in so far as such employees are concerned; provided that they observe in lieu thereof the terms and conditions of the Transport Industry - Motor Bus Drivers and Conductors (State) Award.
- 46.3 Notwithstanding clause 3, the span of ordinary hours for chauffeurs shall be 6.00 am to 7.00 p.m.

#### **47. Award Modernisation**

- 47.1 The parties are committed to modernising the terms of the Award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- 47.2 In conjunction with testing the new award structure that is to be introduced, the parties agreed that discussion should also take place at an enterprise level. Such discussion is intended to further the aims sought to be achieved by, and as are expressed in clause 47.1 hereof.
- 47.3 At each yard, depot or enterprise, an employer, the employees and their Union shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that yard, depot or enterprise.

Where yard, depot or enterprise discussions are considering matters requiring any Award variation, the Union and the employer's Association shall be advised of the broad details including the award area/s likely to be affected, and, prior to agreement being reached, or at their request they shall be invited to participate. Such invitation shall be in writing and addressed to the Secretary of the Union and executive officer of the Association (or their nominee).

- 47.4 At any stage in the development and/or conduct of enterprise level discussions, the parties may utilise the Dispute Resolution Procedure (Clause 24) for assistance in progressing discussions.
- 47.5 Nothing in this clause shall prohibit the Union and an employer Association assisting in making an agreement to cover a number of enterprises in the same section of industry or in a similar business or enterprise which will assist or enhance the efficient operation of any enterprise and further the aims of clause 47.1 hereof.
- 47.6 The terms of any genuine agreement reached between the parties in any establishment/s shall substitute for the provisions of this award to the extent that they are contrary to the award, provided that :

47.6.1 The majority of employees affected genuinely agree.

47.6.2 All employees have been provided with the current provisions eg. Award or Industrial Agreement applicable to those employees at the yard, depot or enterprise.

47.6.3 No employee shall lose income as a result of the change; provided that this restriction shall not apply where an employee has elected to forego income which exceeds their base rate of pay in return for an alternative benefit, eg. time off in lieu of overtime payments, increased leisure time through the implementation of a 12 hour shift system, etc.

For the purposes of this paragraph "income" shall mean the employee's regular weekly earnings upon which the employee could reasonably have come to rely.

47.6.4 The agreement shall be committed to writing and shall include a date of operation and a date of expiration.

47.6.5 The agreement shall be signed by the employer, the representative/s of employees or the Union and a copy shall be sent to the Secretary of the Union and to the executive officer of the relevant employer's association/s.

47.6.6 The Union and relevant employer association/s shall have 21 days in which to notify the employer (who shall then notify the employees' representatives) of any objection to the agreement, including the reasons for such objection.

Where an objection is raised the parties should confer in an effort to resolve their different views. If the matter is not resolved in that way the employer may make application to vary the award to facilitate the agreement. Such application shall be made to the Industrial Relations Commission of NSW.

47.6.7 The Union and/or employer's Association/s shall not unreasonably oppose any agreement reached under this clause.

47.6.8 If no party objects, a consent application shall be made to the Industrial Relations Commission to have the Agreement ratified.

47.7 Where an agreement is ratified by the Industrial Relations Commission under the procedure hereof, and the agreement relates to any provisions of this Award, then the name of the establishment/s to which the agreement applies, the date of operation of the agreement, the award provisions from which the said establishment/s is/are exempted, and the alternative provision s which are to apply in lieu of such award provisions (or reference to such alternative provisions), shall be set out in a Schedule to this Award.

47.8 Under the terms of this clause any award matter or condition of employment can be raised for discussion.

47.9 All registered industrial organisations which are parties to this award will continue to meet with the aim of modernising the award.

#### **48. Definitions**

48.1 Advanced Crane Offsider shall mean an employee who has the responsibility, being directly in charge of the initial work of setting up the mobile crane, to ensure all rigging work is carried out in a safe and efficient manner, adhering to the regulations or in the absence of regulations to sound established custom and practice. Such an employee acting as a rigger must hold the appropriate certificates issued in accordance with State requirements.

48.2 Ancillary Plant shall mean mechanically powered vehicles and/or equipment other than trucks, mobile cranes, forklifts, and tow motors used by the employer in the loading, unloading, stacking, moving sorting and/or handling of goods and/or materials in connection with work which is part of and ancillary to the business of the employer.

48.3 Articulated Vehicle shall mean a motor propelled vehicle used for the conveyance of goods or merchandise and the like and comprising two separate units, viz., a tractor and a semi-trailer.

48.4 Casual Employee shall mean an employee engaged by the day or at the conclusion of the casual employment.

48.5 Conciliation Committee shall mean the Transport Industry (State) Conciliation Committee.

48.6 Courier shall mean an employee who drives a vehicle and who is engaged in the delivery of documents, packages, etc, as part of a "courier service" as recognised in the industry covered by this award.

48.7 Crane Offsider shall mean an employee who has the responsibility to carry out the work of slinging loads and to control the movement of such loads when handled by lifting appliances. In addition, it is such an employee's responsibility to control loads not in full view of the crane driver. Such an employee acting as a dogman must hold the current appropriate certificates issued in accordance with State requirements.

- 48.8 Double Time shall mean the employee's ordinary rate of pay plus 100 per cent.
- 48.9 Drivers shall mean any person engaged to drive or control any type of vehicle specified in this award irrespective of any other duties. This definition shall not exclude other duties (including delivery of goods) ordinarily performed by a driver.
- 48.10 Extra Hand shall mean a person who usually accompanies a driver on a vehicle to assist in loading, unloading, delivering, collecting and safeguarding goods, merchandise and the like being transported or to be transported.
- 48.11 Leading Hand shall mean an employee who, in addition to any other duties, is required to direct the work and/or conduct, during working hours, of other employees.
- 48.12 Manufacturer's Gross Vehicle Mass (GVM) shall mean the mass of a vehicle and its load as specified by the manufacturer. It may be ascertained by reference to the model specification plate attached to the vehicle or, failing this, by reference to the Roads and Traffic Authority, the manufacturer of the vehicle or its agent.
- 48.13 Mobile Concrete Pump Driver/Operator shall mean a person who is competent in all function consistent with the driving and operation of a mobile concrete pump.
- 48.14 Ordinary Rate shall mean the employee's ordinary time rate of pay which the employee is entitled to receive for work performed in ordinary working hours.
- 48.15 Other Agreed Starting Place shall mean a place, other than the employer's workplace, at which it is agreed between the employer and the employees affected, such employees will be in attendance at the time or times fixed ready to commence work in ordinary working hours. Upon such agreement having been reached between the employer and the employees, as aforesaid, the employer shall forthwith notify the branch or sub-branch secretary of the union of the location of such other agreed starting place.
- 48.16 Rear End Steering means any device which forms part of an articulated vehicle or of a component of the trailing section of an articulated vehicle which is used to control the direction of the rear-most end of such vehicle. Such device may be operated mechanically or hydraulically from an independent auxiliary power source or remotely by a mechanical linkage with another vehicle.
- 48.17 Semi-trailer shall mean that portion of an articulated vehicle on which goods or merchandise or the like are loaded and which is attached to and is hauled by a tractor and shall include vehicles known as low loaders, floats and jinkers.
- 48.18 Steersman means a person engaged to operate a rear-end steering device whether as a member of the crew of the articulated vehicle or as the driver of another vehicle.
- 48.19 Time and one-half shall mean the employee's ordinary rate of pay plus 50 per cent.
- 48.20 Tractor shall mean that portion of a vehicle, not being a motor wagon, which provides the motive power.
- 48.21 Trailer shall mean a vehicle, not having its own motive power, attached by means of a draw-bar to a motor wagon and hauled behind such motor wagon.
- 48.22 Transport Facility Worker (1) shall mean an employee who performs one or more of the following duties:
- loading or unloading any goods, wares, merchandise or materials on or from any vehicle and work incidental to such loading and unloading including supervision of the work and/or of other employees;
- loading and unloading rail trucks in a siding on the employer's own premises;

engaged sorting goods and in performing clerical work in connection with the carriage and/or delivery of such goods.

48.23 Transport Facility Worker (2) shall mean an employee who performs one or more of the following duties as well as the duties of a Transport Facility Worker (1):

- loading and unloading goods onto or from road vehicles,
- stacking goods on the goods yard platform,
- stowing and un-stowing goods into and from rail trucks or containers of all descriptions,
- loading and unloading goods from shelving, checking and sorting loads,
- checking and sorting goods in the depot,
- operating mechanical handling appliances (including but limited to pallet jacks), and
- clerical duties, including the compilation of manifests and load summaries, associated with such work.

48.24 Union shall mean the Transport Workers' Union of New South Wales.

48.25 Yardman shall mean an employee engaged in or about a workplace and whose duties shall include, if required, the washing and greasing of motor vehicles and other equipment and/or servicing of tyres.

48.26 Year shall mean the period from 1 July to 30 June, next following.

#### **49. Anti - Discrimination**

49.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

49.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

49.3 Under the *Anti-Discrimination Act 1977*, 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.

49.4 Nothing in this clause is to be taken to affect:

- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
- (b) offering or providing junior rates of pay to persons under 21 years of age;
- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; or
- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

49.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### **50. Area, Incidence and Duration**

This award shall apply to employees of the classifications specified herein within the jurisdiction of the Transport Industry (State) Industrial Committee.

Provided that this award does not apply in respect of persons covered by the following awards:

- 50.1 The Road Transport Facility - Port Kembla (The Broken Hill Proprietary Company Limited) Award 1994, made February 1995;
- 50.2 The Heggies Bulkhaul Limited Bulk Haulage Enterprise Award 1994; and
- 50.3 The Comet Sydney Sortation Award 1995;
- 50.4 the Zoological Parks Board of New South Wales Wages Employees' Award

and any award or enterprise agreement succeeding, replacing or modifying the above awards.

This award does not apply to Assistant Concrete Pump Operators covered by the General Construction and Maintenance, Civil and Mechanical Engineering &c. (State) Award.

This Award does not apply to Mobile Concrete Pump Hosepersons or Line Hands covered by the Building and Construction Industry (State) Award.

This Award does not apply to Mobile Concrete Line Pump Operators and Mobile Concrete Boom Pump Operators covered by the Plant, &c., Operators on Construction (State) Award.

This award rescinds and replaces the Transport Industry (State) Award, published 26 September, 1997 (301 IG 204) and shall operate on and from the beginning of the first pay period to commence on or after 10 April 2000, and shall remain in force thereafter for a period of two years.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 31 July 2007.

This award remains in force until varied or rescinded, the period for which it was made already having expired.

## **TRANSPORT INDUSTRY (STATE) INDUSTRIAL COMMITTEE**

### **Industries and Callings**

All drivers and loaders of trolleys, drays, carts, floats, articulated or semi-articulated vehicles and trailers and motor and other power-propelled vehicles, including motor cycles engaged in the carriage of goods, merchandise and the like, together with bicycle couriers, employees engaged in greasing or washing any such vehicle, employees without supervisory or other duties beyond those of loading or unloading vehicles employed by common carriers or who are not engaged upon or in connection with the premises of the employer, not being a common carrier, and employees of common carriers receiving, sorting and loading or unloading goods for delivery or re-delivery, carters, tip carters and tip wagon drivers, brakesmen or extra hands, trace boys, and all grooms, stablemen and yardmen employed in connection with any of the above, and drivers of mobile cranes, auto trucks and fork lifts employed by general carriers in connection with the carriage of goods, merchandise and the like, employees driving or operating mobile cranes, fork lifts, tractors, tow motors, industrial trucks, yard trucks or utility vehicles in and about wholesale oil stores, persons, other than storemen and packers, employed in the loading, stacking and unloading of railway trucks, in the State, excluding the County of Yancowinna, but including motor lorry drivers employed by the roads and Traffic Authority in or in connection with the construction or maintenance of roads and bridges in that part of the County of Yancowinna which is outside the Municipality of Broken Hill;

and

Brick, tile & pottery carters, timber carters and dry cleaning & laundry carters, including drivers of motor and other power - propelled vehicles

and grooms, stablemen, yardmen, trace boys and brakemen or extra hands employed in or in connection therewith in the State, excluding the County of Yancowinna;

and

Chauffeurs and motor car drivers employed on motor coaches, cars and all motor vehicles, used for purpose of carrying passengers, persons or workmen notwithstanding such vehicles are not plying for hire, provided such vehicles are normally capable of carrying less than eight sitting passengers or persons, in the State, excluding the Country of Yancowinna, excepting drivers of motor wagons which are not used for the purpose of conveying passengers or workmen, and employees who are not engaged in business or trade;

excepting employees of -

State Rail Authority of New South Wales

State Transit Authority of New South Wales;

Sydney Water;

The Hunter District Water Board;

The Council of the City of Sydney;

Sydney Electricity;

The Council of the City of Newcastle;

Municipal, Shire and County Councils;

Electricity Commission of New South Wales (Pacific Power);

Motor Car Washers, &c., (State)

Quarries, Gravel and Sand Pits (State);

Butter, &c., Factory Employees (Newcastle and Northern);

Butter, &c., Factory Employees (State);

Fruit Packing Houses Employees (State);

Malted Milk Manufacturing (State);

Sawmillers, &c., (State);

Sugar Manufacturers (State);

Tubemakers of Australia Limited, Newcastle

Tubemakers of Australia Limited, Yennora;

Shoalhaven Scheme;

Googong Dam Project;

Country Councils (Electricity Undertakings) Employees;

Shortland County Council;

University Employees, &c., (State);

excepting employees also -

Motor lorry drivers, assistants, loaders, washers and greasers employed by breweries;

Persons coming within the jurisdiction of the Crown employees (Skilled Tradespersons) Industrial Committee.

The said Industrial Committee shall consist of two (2) representatives of employers and two (2) representatives of employees.

The representatives of employers shall be appointed, upon nomination as prescribed, by the New South Wales Road Transport Association.

The representatives of employees shall be appointed, upon nomination as prescribed, by the Transport Workers' Union of Australia, New South Wales Branch.

### **51. Secure Employment**

(a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
  - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
    - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
  - (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
    - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
    - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;



- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## PART B

### MONETARY RATES

<b>Table 1 - Wages (Clause 1.1 - General Rates)</b>			
	Former Rate Per Week \$	SWC 2010 %	New Rate Per Week \$
Transport Worker Grade One	644.00	4.25	671.40
Transport Worker Grade Two	662.30	4.25	690.40
Transport Worker Grade Three	675.10	4.25	703.80
Transport Worker Grade Four	686.20	4.25	715.40
Transport Worker Grade Five	714.70	4.25	745.10
Transport Worker Grade Six	721.90	4.25	752.60
Transport Worker Grade Seven	743.60	4.25	775.20
Transport Worker Grade Eight	788.00	4.25	821.50

<b>Table 2 - Wages (Clause 1.2 Mobile Cranes &amp;c., Rates)</b>			
	Former Rate Per Week \$	SWC 2010 %	New Rate Per Week \$
<b>(i) Mobile Cranes</b>			
Grade A	782.00	4.25	815.20
Grade B	799.70	4.25	833.70
Grade C	817.30	4.25	852.00
Grade D	834.60	4.25	870.10
Additional Amount	17.70	4.25	18.50
<b>(ii) Mobile Hydraulic Platforms</b>			
Grade A	713.40	4.25	743.70
Grade B	717.30	4.25	747.80
Grade C	743.20	4.25	774.80
Grade D	761.10	4.25	793.40
Grade E	782.00	4.25	815.20
Additional Amount	1.70	4.25	1.80
Grade F	782.00	4.25	815.20
<b>(iii) Crane Offsider</b>	782.00	4.25	815.20
<b>(iv) Advanced Crane Offsider</b>	817.30	4.25	852.00

<b>Table 3 - Wages (Clause 1.3 - Ancillary Plant Drivers)</b>			
	Former Rate Per Week	SWC 2010	New Rate Per Week
	\$	%	\$
Grade A	726.60	4.25	757.50
Grade B	748.10	4.25	779.90
Grade C	760.80	4.25	793.10
Grade D	769.90	4.25	802.60
Grade E	777.20	4.25	810.20
Grade F	806.50	4.25	840.80

<b>Table 4 - Wages (Clause 1.4 - Mobile Concrete Pump Driver/Operators)</b>			
	Former Rate Per Week	SWC 2010	New Rate Per Week
	\$	%	\$
Grade A	702.60	4.25	732.50
Grade B	717.30	4.25	747.80
Grade C	743.20	4.25	774.80
Grade D	761.10	4.25	793.40
Grade E	782.00	4.25	815.20
Additional Amount	1.70	4.25	1.80

<b>Table 5 - Wages (Clause 1.5 Furniture Removals)</b>			
	Former Rate Per Week	SWC 2010	New Rate Per Week
	\$	%	\$
Furniture Removalist Offsider	650.70	4.25	678.40

<b>Table 6 - Wages (Clause 1.6 - Chauffeurs)</b>			
	Former Rate Per Week	SWC 2010	New Rate Per Week
	\$	%	\$
Chauffeurs/drivers of vehicles used for the purpose of carrying persons	649.50	4.25	677.10

<b>Table 7 - Allowances</b>				
Item No.	Clause No.	Brief Description	Old Rate SWC 2009 (2.8%) \$	New Rate SWC 2010 (4.25%) \$
1	2.1	Furniture Removals	28.70 per week	29.92 per week
2	2.2.1	Driving agitator trucks	0.57 per hour	0.59 per hour
3	2.2.1	Maximum Payment - agitator trucks	22.00 per week	22.94 per week
4	2.2.2	Delivery/placement of concrete rate	1.80 per week	1.88 per week
5	2.3	Leading Hands	34.60 per week	36.07 per week
6	2.4	Collecting Butcher Bones, Fat, etc.	7.20 per week	7.51 per week
7	2.5	Extra Horses	18.00 per horse	18.77 per horse
8	2.6	Working in Forests	22.60 per week	23.56 per week
9	2.7.1.2	Long/wide loads	1.79 per hour or part thereof	1.87 per hour or part thereof
10	2.7.1.2	Long/wide loads - minimum payments	7.18 per day	7.49 per day
11	2.7.1.3	Long/wide loads	3.36 per hour or part thereof	3.50 per hour or part thereof
12	2.7.1.3	Long/wide loads - minimum payment	13.45 per day	14.02 per day
13	2.7.2	Rear-end steering	4.93 per day	5.14 per day
14	2.7.2	Rear-end steering - minimum payment	19.63 per day	20.46 per day
15	2.8	HIAB cranes, etc.	31.54 per day	32.88 per day
16	2.9	Removal and Delivery of Furniture, etc.	5.73 per day	5.97 per day
17	2.1	Handling diapers - weekly employees	2.40 per week	2.50 per week

18	2.1	Handling diapers - casual employees	0.47 per day	0.49 per day
19	2.11	In charge of plant	16.90 per week	17.62 per week
20	2.12.1	Collecting moneys - > \$30 - \$150	5.50 per week	5.73 per week
21	2.12.2	Collecting moneys - > \$150 - \$250	7.60 per week	7.92 per week
22	2.12.3	Collecting moneys - > \$250 - \$400	11.00 per week	11.47 per week
23	2.12.4	Collecting moneys - > \$400 - \$600	16.10 per week	16.78 per week
24	2.12.5	Collecting moneys - \$600	21.40 per week	22.31 per week
25	2.13.1	Carrying goods - on the level	1.05 per tonne	1.09 per tonne
26	2.13.2	Carrying goods - upstairs	1.60 per tonne	1.67 per tonne
27	2.14	Carrying salt	1.05 per tonne	1.09 per tonne
28	2.15.1.1	Obnoxious materials - soda, ash, etc.	0.96 per hour	1.00 per hour
29	2.15.1.2	Obnoxious materials - oxides	0.76 per hour	0.79 per hour
30	2.15.2	Obnoxious materials - loading and unloading	0.96 per hour	1.00 per hour
31	2.15.3	Obnoxious materials - transportation	0.53 per hour	0.55 per hour
32	2.15.7	Obnoxious materials - blast furnaces, etc.	0.79 per hour	0.82 per hour
33	2.16	First Aid	2.31 per day	2.41 per day
34	2.17	Garaging	22.10 per week	23.04 per week

**Table 8 - Travelling and Living Away Allowance (Clause 7)**

Item No.	Clause No.	Brief Description	Former Rate \$	New Rate \$
1	7.4.3	Overnight Expenses	40.25 per day	40.25 per day
2	7.6	Weekend/Holiday Expenses	37.35 per day	37.35 per day
3	7.7	Camping out - weekly	86.80 per week	86.80 per week
4	7.7	Camping out - daily	12.60 per day	12.60 per day

**Table 9 - Meal Allowances (Clause 8)**

Clause No.	Brief Description	Former Amount \$	New Amount \$
8.2.1	Meal Allowance	12.30	12.30

**Table 10 - Long Distance Rates (Clause 14)**

Item No.	Classification	Former Amount (cents/km)	New Amount (cents/km)
1	Transport Workers Grade 7 and below	31.50	31.50
2	Transport Worker Grade 8	33.00	33.00

**Table 11 - Income Protection On Six Day Rosters - Saturday (Clause 3.2.1)**

	Former Rate Per Week \$	Rate Per Week \$
Transport Worker Grade One	542.00	542.00
Transport Worker Grade Two	561.00	561.00
Transport Worker Grade Three	574.00	574.00
Transport Worker Grade Four	585.00	585.00
Transport Worker Grade Five	615.00	615.00
Transport Worker Grade Six	622.00	622.00
Transport Worker Grade Seven	644.00	644.00
Transport Worker Grade Eight	690.00	690.00

<b>Table 12 - Income Protection On Six Day Rosters - Sunday (Clause 3.2.2)</b>		
	Former Rate Per Week \$	Rate Per Week \$
Transport Worker Grade One	634.80	634.80
Transport Worker Grade Two	657.00	657.00
Transport Worker Grade Three	672.30	672.30
Transport Worker Grade Four	685.70	685.70
Transport Worker Grade Five	720.20	720.20
Transport Worker Grade Six	728.90	728.90
Transport Worker Grade Seven	755.10	755.10
Transport Worker Grade Eight	808.70	808.70

<b>Table 13 - Income Protection On Seven Day Rosters - Saturday And Sunday (Clause 3.2.3)</b>		
	Former Rate Per Week \$	Rate Per Week \$
Transport Worker Grade One	811.10	811.10
Transport Worker Grade Two	839.40	839.40
Transport Worker Grade Three	859.00	859.00
Transport Worker Grade Four	876.10	876.10
Transport Worker Grade Five	920.20	920.20
Transport Worker Grade Six	931.30	931.30
Transport Worker Grade Seven	964.90	964.90
Transport Worker Grade Eight	1033.40	1033.40

---

Printed by the authority of the Industrial Registrar.