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CONTENTS

Vol. 365, Part 5

30 May 2008

Pages 1595 - 1976

	Page
Awards and Determinations	
Awards Made or Varied	
Aerated Waters, &c. (State) Award	RIRC 1595
Armidale Women's Shelter (Remuneration For On-call) Award 1996	RVIRC 1619
CEVA Logistics (Australia) Pty Ltd (NSW Vehicle Logistics Local Fleet) Contract Determination	CD 1620
Coachmakers, &c., Road and Perambulator Manufacturers (State) Award	VIRC 1625
Crown Employees (Heritage Office 2003) Award	ROIRC 1628
Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2007	RIRC 1629
Crown Employees (Jenolan Caves Reserve Trust Division) Salaries Award	RIRC 1654
Crown Employees (New South Wales Department of Ageing, Disability and Home Care) Residential Centre Support Services Staff Award	RIRC 1678
Crown Employees (Parks and Gardens - Horticulture and Rangers Staff) Consent Award 2007	RIRC 1695
Crown Employees (Planning Officers) Award 2008	RIRC 1708
Food Preservers (State) Award	VIRC 1723
Food Preservers (State) Award	RIRC 1726
Paint and Varnish Makers, &c. (State) Award	RIRC 1778
Plumbers and Gasfitters (State) Award	VSW 1817
Pottery Industry (State) Award	RIRC 1821
Printing Industries (State) Award	RVIRC 1851
Refractory Industry (State) Award	RIRC 1855
Saddlery, Leather, Canvas and Plastic Material Workers' (State) Award	RIRC 1882
Smallgoods Manufacturers (State) Award	RIRC 1920
Tennis Strings and Sutures Industry (State) Award	RIRC 1940
Enterprise Agreements Approved by the Industrial Relations Commission	1971
INDEX FOR VOLUME 365	1972
END OF VOLUME 365 OF THE N.S.W. INDUSTRIAL GAZETTE	

(005)

SERIAL C6515

AERATED WATERS, &c. (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1520 of 2007)

Before Commissioner Bishop

14 March 2008

REVIEWED AWARD**Arrangement****PART A**

Clause No.	Subject Matter
1.	Definitions
2.	Anti-Discrimination
3.	Terms of Employment
4.	Hours and Shift Work
5.	Wages
6.	State Wage Case Adjustments
7.	Proportion of Juniors
8.	Overtime
9.	Meal Allowance
10.	Holidays and Sundays
11.	Annual Leave
12.	Sick Leave
13.	Personal/Carers' Leave
14.	Bereavement Leave
14A.	Parental leave
15.	Mixed Functions
16.	Clothing, Boots, etc
17.	Accident Pay
18.	First Aid Kit
19.	Time and Wages Sheets
20.	Union Officials
21.	Exhibition of Award
22.	Call Back
23.	Payment of Wages
24.	Dispute Resolution
25.	Redundancy
26.	Traineeships
27.	Secure Employment
28.	Area, Incidence and Duration

PART B**MONETARY RATES**

Table 1 - Wages

Table 2 - Other Rates and Allowances

PART A

1. Definitions

"Storeman" means a person primarily concerned with manufacturing operations.

"Assistant Syrup Maker" means an employee other than one covered in Classifications 1 or 3 who is involved in the syrup process after the preparation of simple syrup.

"Routine In-line Tester" means an employee who in the course of or in addition to, other duties pursuant to this award shall perform product tests of a routine and/or simple nature as prescribed by the employer. This classification shall not refer to persons under the control of the quality control section or in the laboratory.

"Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch.

2. 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. 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 and 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 intends to make or has been involved in a complaint of unlawful discrimination or harassment.
- (iv) Nothing in this clause is 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 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 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".

3. Terms of Employment

- (i) Except as provided in subclause (ix) of clause 5, Wages, of this award, employment shall be on a weekly basis.
- (ii) Employees shall perform such work as the employer shall from time to time reasonably require and an employee not attending for or not performing his/her duty shall lose his/her pay for the actual time of such non-attendance or non-performance.
- (iii)
 - (a) The employment of all employees, except casual employees, shall be terminated by a week's notice on either side given at any time during the week; or by the payment or forfeiture of a week's wages from any moneys due under this award as the case may be.
 - (b) For the purpose of this award, notice given within a period not exceeding 3 hours after the rostered starting time on any working day shall be regarded as a full day's notice; provided that notice shall not be given on either side whilst an employee is on paid sick leave, annual leave or long service leave except in the case of misconduct.
- (iv)
 - (a) This clause shall not affect the right of an employer to deduct payment for any day or portion thereof during which the employee is suspended as a result of refusal of duty, inefficiency during the first 14 days of employment, neglect of duty or misconduct on the part of the employee cannot be usefully employed because of any strike or through any breakdown of machinery or due to any cause for which the employer cannot reasonably be held responsible. Any suspended employee who informs his/her employer within a period of 24 hours after he/she is suspended that he/she prefers to terminate his/her employment without notice, shall be paid all moneys due including annual leave up to the time he/she is notified of his/her suspension.
 - (b) Any dispute arising from any such suspension shall be referred to the Industrial Relations Commission of New South Wales.
 - (c) This clause shall not affect the right of an employer to dismiss an employee without notice for refusal of duty, inefficiency during the first 14 days of employment, neglect of duty or misconduct, and in such cases the wages shall be payable up to the time of dismissal only.
- (v) An employee shall within 24 hours of the commencement of any absence inform his/her employer of the absence. In the absence of notification he/she shall be deemed to have abandoned his/her employment without notice.

4. Hours and Shift Work

- (i) Each employee shall have fixed starting and finishing times alterable at seven days' notice except in the case of emergency when 48 hours notice may be given; provided that a change in the weather cannot be considered as an emergency.
- (ii) The ordinary hours of labour of day workers shall be 40 per week Monday to Friday, inclusive, 8 hours each day exclusive of meal interval. The said hours shall be worked within the range of hours from 6am to 5pm.
- (iii) Meal intervals for day workers shall not be less than 30 or more than 60 minutes.
- (iv) An employee shall not be required to take a meal within 4 hours of his/her ordinary starting time or work longer than 5 hours from his/her ordinary starting time without a lunch break; provided that where it is not possible to grant a meal interval at the usual time an employee shall be paid at overtime rates as prescribed in clause 8, Overtime, of this award from the beginning of the usual meal interval until released for a meal.

- (v) The ordinary hours of labour of shift workers may be worked in two or three shifts but shall not exceed -
- (a) 8 consecutive hours during any consecutive 24 hours; or
 - (b) 40 hours in any one week.
- (vi) Shift workers shall be allowed 20 minutes crib time which shall be counted as time worked.
- (vii)
- (a) Shift workers whilst on afternoon shifts, that is any shift finishing after 6pm and at or before midnight shall be paid 15 per cent more than the ordinary rate for such shift.
 - (b) Shift workers may be employed on a non-rotating night shift that is a shift finishing after midnight and at or before 8am and shall be paid 30 per cent more than the ordinary rate for all ordinary time worked between midnight Sunday and midnight Friday and 50 per cent more than the ordinary rate for all ordinary time worked between midnight Friday and 8 am on Saturday.

5. Wages

- (i) The minimum weekly rates of pay shall be those contained in Table 1 - Wages, of Part B, Monetary Rates.
- (ii) Juniors - The minimum rates of wages to be paid to juniors shall be the money equivalent of the undermentioned percentages of the total rate prescribed for classification 3 in the said Table 1. The said calculations shall be taken to the nearest five cents, any broken part of five cents in the result not exceeding two cents to be disregarded.

Age	Percentage of adult rate for classification 3
Under 16 years of age	55
At 16 years of age	70
At 17 years of age	85
At 18 years of age	Appropriate adult rate of pay

- (iii) Caustic Soda - Employees handling caustic soda shall be paid an amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, per hour extra for the time so engaged.
- (iv) Cold Rooms - Employees working in a cold room where the temperature is below 1.667 degrees Celsius shall be paid an additional amount as set out in Item 2 of the said Table 2 per hour extra whilst so employed. Where the work continues for more than one hour, employees shall be allowed a rest period of ten minutes every hour without loss of pay.
- (v) Leading Hand - that is an employee who is authorised to exercise and who does exercise supervision:
- Over the work of three to ten employees, shall be paid an amount per week extra as set out in Item 3 of the said Table 2;
- Over the work of more than ten employees, shall be paid an amount per week as set out in the said Item 3.
- (vi) First-aid Attendant - An employee appointed by the employer as a first-aid attendant shall be paid the sum per day or per shift as set out in Item 4 of the said Table 2 in addition to the wage rate for his/her classification prescribed by this award.
- (vii) The extra hourly rate or daily rates prescribed in subclause (ii), (iv) and (vi) of this clause shall be paid irrespective of the times on which the work is performed and shall not be subject to any premium or penalty additions.

- (viii) Jury Service - An 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 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. 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 the such attendance and the amount received in respect of such service.
- (ix) Casual Work -
- (a) A casual employee shall mean and be deemed to be an employee engaged for a period of less than one full working week. Such casual employee's rate shall be the ordinary wages herein provided for similar weekly employees, plus 20 per cent additional. The minimum payment shall be the equivalent of four hours worked.
- (b) The hours of labour and conditions as to the time off shall be the same for casual as for other employees. Where a casual employee is worked outside the ordinary hours of employment, the appropriate overtime rates shall apply as prescribed by clause 8, Overtime, based on the casual rate as herein prescribed.

6. State Wage Case Adjustments

The rates of pay in this award include the adjustments payable under the State Wage Case of 2007. This adjustment 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. Proportion of Juniors

The proportion of juniors to adults employed shall not exceed one junior to three or fraction of three adults employed in each establishment.

8. Overtime

- (i) All work performed in excess of 8 hours per day or per shift or outside of the fixed starting and finishing times shall be overtime and shall be paid for at the rate of time and a half for the first three hours and double time thereafter.
- (ii) An employee required to work overtime on Saturday shall be paid at least 4 hours at the appropriate rate except where such overtime is continuous with overtime commenced on the previous day.
- (iii) In computing overtime each day or shift shall stand-alone.
- (iv) If an employee is so long on overtime duties that he/she has not had ten consecutive hours' rest between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day, he/she shall be allowed at least ten consecutive hours' rest without deduction of pay or shall be paid at overtime rates for all time of duty until he/she has had at least ten consecutive hours' rest. The provision of this subclause shall apply in the case of shift workers as if eight hours were substituted for ten hours when overtime is worked -
- (a) for the purpose of changing shift rosters; or
- (b) where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or
- (c) where a shift is worked by arrangement between the employees themselves.

- (v) An employee working overtime after ordinary finishing time shall be allowed a crib time of twenty minutes without deduction of pay after each four hours of overtime worked if required to work beyond such crib break.
- (vi) When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer shall provide him/her with a conveyance to reach a point where reasonable means of transport are available or if no such transport is available, to his/her home, or shall pay him/her ordinary time for the time reasonably occupied in reaching his/her home.

9. Meal Allowance

An employee required to work overtime in excess of one and one half hours after the usual finishing time without having been notified on the previous day that he or she would be so required, shall either be supplied with a meal or be paid \$1.91 by the employer, and a further meal allowance of \$1.91 after a further four hours' overtime has been worked.

10. Holidays and Sundays

- (i) For the purpose of this award the days generally observed as the following shall be holidays:

New Year's Day, Anniversary Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Labour Day, the third Monday in February, Sovereign's Birthday, Christmas Day, Boxing Day, and any other day or days proclaimed or gazetted as public holidays for the state.
- (ii) If any of the said named days fall on a Sunday and no weekday is generally observed as such day, a week day in lieu thereof shall be allowed to each employee, and shall in respect of such employee be treated as if it were such named day: Provided that this subclause shall not apply to Anzac Day.
- (iii) No deduction shall be made from the wage of any employee engaged by the week because of absence from work on a holiday.
- (iv) An employee who, without the permission or without reasonable cause, is absent on the working day immediately preceding or the working day immediately following an award holiday shall not be entitled to payment for such holiday.
- (v) No deliveries, other than to sporting functions and other special functions, shall be made on Sunday, or any holiday except New Year's Day and Easter Monday.
- (vi) All work performed on Sunday shall be paid for at the rate of double time and all work performed on holidays provided for by this award shall be paid for at the rate of double time and a half with a minimum payment of four hours in either case.
- (vii) An employer and an employee, or an employer and the majority of employees in an establishment, may agree to observe an alternative day as a holiday, in lieu of the third Monday in February.
- (viii) Where the service of a weekly employee is terminated through no fault of the employee within one week of a holiday or holidays and that employee is re-employed within one month of the holiday or holidays the employee shall be entitled to payment for the said holiday or holidays; provided that such employee has been employed for a period of three months prior to the termination.

11. Annual Leave

The provisions of the *Annual Holidays Act* 1944 shall apply.

- (i) Annual Holiday Loading - Payment for the first week of leave taken in respect of any qualifying twelve-month period shall be subject to a loading of one week's pay. Where an employee's service is terminated for reasons other than misconduct and the employee has given not less than eight weeks, continuous service he/she shall be paid the loading on a pro rata basis in the proportion that his/her service bears to a full year's service at the rate of one week's pay for a full year's service. Where the

period included a full year's service he/she shall be entitled to a week's pay as a loading in respect of that period without regard for the reason for termination.

12. Sick Leave

An employee on weekly hiring who is absent from his/her work on account of personal illness, or on account of injury by accident arising out of and in the course of his/her employment, shall be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:

- (i) He/she shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
- (ii) He/she 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 practicable, state the nature of the injury or illness and estimated duration of the absence. An employee is not required to inform the employer of these details where it is proved, to the satisfaction of his/her employer, that such notice was not reasonably practicable.
- (iii) He/she shall prove to the satisfaction of his/her employer (or in the event of a dispute, of the Industrial Relations Commission of New South Wales) that he/she is unable, on account of such illness or injury, to attend for duty on the day or days for which sick leave is claimed.
- (iv) He/she shall not be entitled during his/her first year of any period of service with an employer to leave in excess of forty hours of working time; provided that during the first six months of the first year of any period of service with an employer, he/she shall be entitled to sick leave which shall accrue on a pro rata basis of 3.33 hours of working time for each month of service completed with that employer: Provided further that on application by the employee during the seventh month of employment and subject to the availability of an unclaimed balance of sick leave the employee shall be paid for any sick leave taken during the first six months in respect of which payment was not made.
- (v) On the first day of his/her second and subsequent years of service he/she shall qualify for a further entitlement of sick leave at the rate of 64 hours for each year of service.
- (vi) Sick leave shall accumulate from year to year and any balance not taken shall be available subject to the provision of subclauses (i), (ii), (iii) and (vii), of this clause.
- (vii) Single Day Absences -
 - (a) An employee shall be allowed three single days sick leave in any one qualifying year without a medical certificate. For absences requiring a medical certificate, the employer may agree to accept a Statutory Declaration in lieu of a medical certificate.

13. 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 13(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 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 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 24, 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 13(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 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 13(1)(b) and (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 (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.

14. 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 within Australia as prescribed in 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 13, 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 13. 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 14(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 13(1)(c)(ii) of clause 13, 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.

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. Mixed Functions

- (i) Where an employee is called upon to perform two or more classes of work in any one day, he or she shall for the purpose of assessing wages to be paid, be deemed to have worked the day at the class for which the highest rate of wages is prescribed.
- (ii) A higher paid employee shall, when necessary temporarily relieve a lower paid employee without loss of pay.

16. Clothing, Boots, Etc.

- (i)
 - (a) Where it is necessary for an employee to wear protective clothing boots or clogs, they shall be provided by the employer. The question as to whether protective clothing or boots or clogs are necessary for any employee shall be settled by agreement between the employer and the union.
 - (b) Where employees are required by the employer to wear special clothing supplied by the employer then the employer shall launder such special clothing.
- (ii) Wet weather clothing for motor wagon drivers: Where an employee is required by his/her employer to continually work in conditions in which, because of their nature, his/her clothing could become saturated, he/she shall be provided with suitable protective clothing free of cost. Such protective clothing shall remain the property of the employer, and the employee shall be liable for the cost of replacement of any article of protective clothing which is lost, destroyed or damaged through the negligence of the employee.
- (iii) Freezing or cold rooms employees shall be provided with suitable protective clothing.
- (iv) All employees working on bottling machines or required to bring their hands in contact with broken glass shall be supplied with suitable protective gloves by the employer.

17. Accident Pay

- (i) For the purposes of this clause and subject to the terms of this clause the words hereunder shall bear the respective definitions set out hereunder -

"The Act" - The *Workers Compensation Act 1987* (as amended) of the State of New South Wales

"Accident Pay" -

- (a) In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the Act means a weekly payment of an amount representing the difference between on the one hand, the total amount of compensation including other allowances paid to the employee during incapacity pursuant to section 9 of the Act for the week in question and on the other hand the total 40 hours weekly award rate and weekly over-award payment being paid to such employee at the date of the injury giving rise to the said payments of compensation together with or less, as the case may be, any variation in award rates which would have been applicable to the classification of such employee for the week in question if he/she had been performing his/her normal duties providing further that in making such calculation any payment for overtime earnings, shift allowance, or other disability allowances (that is any allowances that an employee does not normally receive when he/she is absent from work with pay), fares and travelling time allowances and any other ancillary payments payable by the employer shall not be taken into account; or
- (b) In the case of an employee partially incapacitated within the meaning of the Act 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 pursuant to section 11 (1) of the Act for the week in question together with the average weekly amount he/she is earning or is able to earn in some suitable employment or business as determined expressly or by the implication by the Workers' Compensation Commission of New South Wales or as agreed between the parties and on the other hand the total 40 hour weekly award rate and weekly overaward payment being paid to such employee at the date of the injury giving rise to the said payments of compensation together with or less, as the case may be, any variation in award rates which would have been applicable to the classification of such employee for the week in question if he/she had been performing his/her normal duties providing that in making such calculation any payment for overtime earnings, shift allowance, or other disability allowances (that is any allowances that an employee does not normally receive when he/she is absent from work with pay), fares and

travelling time allowances and any other ancillary payments payable by the employer shall not be taken into account, subject to the proviso that where in respect of any claim for compensation brought by an employee in the Workers' Compensation Commission pursuant to section 11 (1) of the Act the Commission awards to him/her an amount of weekly compensation or agreement is reached that the employee should receive a weekly amount of compensation less than the difference referred to in section 11 (1) of the Act, such an award or agreement will not operate to increase any liability of the employer to pay any higher amount of accident pay pursuant to this agreement by reason of the employee receiving less than the said difference referred to in section 11 (1) of the Act and for the purpose of this calculation the employee in such event shall be deemed to have recovered the full amount of the difference referred to in section 11 (1) of the Act.

For the purposes of (a) and (b) of this definition where an employee receives remuneration by way of any form of bonus scheme in lieu of or in addition to over-award payments his/her weekly over-award payment shall be deemed to be or include the average weekly bonus earned by him/her during the 52 weeks; period immediately preceding the date of the injury or during the whole period of his/her employment, whichever is the lesser period.

"Injury"- Injury means any injury within the meaning of the Act (including but without limiting the generality thereof, injury received during daily or periodic journeys as defined by section 7 of the Act) resulting in incapacity and for which compensation is being paid within the meaning of the said Act.

"Incapacity" - Incapacity shall have the same meaning as in The Act.

- (ii) An employee shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid Accident Pay by the employer who directly employs him/her under a contract of service and is liable to pay compensation under the provisions of the said Act, which said liability by the employer for Accident Pay may be discharged by another person on his/her behalf provided that:
- (a) Accident pay shall only be payable in respect of a period or periods of any incapacity of an employee while such employee remains in the employment of the employer who employed him/her at the time of the injury causing such period or periods of incapacity provided that in respect of an employee engaged for a seasonal period the employer's liability to pay accident pay shall cease at the end of such seasonal period for which the employee was engaged and providing further that where during a period where an employee is partially incapacitated within the meaning of the Act or during a period where an employee is deemed to be totally incapacitated pursuant to section 11 (2) of the Act, the employer who is liable to pay Accident Pay or who is paying Accident Pay to such injured employee is unable to provide suitable employment to such employee who thereupon obtains such suitable employment with another employer then the employer shall continue to pay such Accident Pay as he/she would have paid or been liable to pay had the employee continued in his/her employment and where applicable as he/she would have paid if the provisions of section 11 (2) of the Act had not operated.
 - (b) No Accident Pay shall be payable in respect of any period of incapacity commencing during the first two week's continuous employment of an employee by an employer unless such period of incapacity is continuing at the date of expiration of the first two weeks of such employee's continuous employment in which case Accident Pay will be payable only in respect of that part of such period of incapacity occurring after the first two weeks of such employee's continuous employment. In the case of an injury within the meaning of section 7 (4), 7 (4A), 7 (4B) or 7 (4C) of the Act an employer shall not be liable to pay Accident Pay to an employee pursuant to this clause unless the employee has completed a minimum period of three months' service with the employer prior to the date of happening of the injury as determined by section 7 (5) of the Act and provided further that as at the date of such happening the employee is still employed by the employer under a then subsisting contract of service.
 - (c) 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.

- (d) An employee upon receiving any injury for which he/she claims to be entitled to Accident Pay shall give notice in writing of the said injury to his/her employer and of its manner of happening as soon as practicable after the happening thereof and shall provide in writing all other information as the employer may reasonably require.
- (e) An employee upon receiving any injury for which he/she is receiving payment or payments for incapacity in accordance with the provisions of the Act shall furnish evidence to the employer of such payment and compliance with this obligation shall be a condition precedent to any entitlement under this award.
- (f) Nothing in this clause shall be taken as restricting or removing the employer's right under the section 51 of the Act to require the employee to submit himself/herself to examination by a legally qualified medical practitioner, provided and paid for by the employer, and if he/she refuses to submit himself/herself to such examination or in any way obstructs the same, his/her right to receive or continue to receive Accident Pay shall be suspended in like manner as his/her right of compensation is suspended pursuant to section 51 of the Act until such examination has taken place.
- (g) Where a medical referee or Board within the meaning of section 51 of the Act gives a certificate as to the condition of the employee and his/her fitness for employment or specifies the kind of employment for which he/she is fit and the employer duly makes available to the employee the employment falling with the terms of such certificate and the employee refuses or fails to resume or perform the said employment so provided, then all payments in accordance with this clause shall cease and determine from the date of such refusal to commence such duties.
- (h) Accident Pay payable hereunder shall be payable for a maximum period or aggregate of periods in no case exceeding a total of 26 weeks for any incapacity in respect of and resulting from any one injury suffered by an employee.
- (iii) Where an employee is receiving Accident Pay and Accident Pay is payable for incapacity for part of a week the amount shall bear the same ratio to Accident Pay for a full week that normal working time during such part bears to the worker's full normal working week.
- (iv) Where there is a redemption of weekly payments by the payment under section 15 of the Act of lump sum, there shall be no further liability for Accident Pay under this clause in respect of an injury (for which weekly payments have been recovered) from the date of the said redemption in the Workers' Compensation Commission of New South Wales.
- (v) Notwithstanding clauses (vi) and (vii), of this clause, any employee who is receiving or who has received Accident Pay in respect of an injury, shall furnish all relevant information to his employer concerning any action he/she may institute or any claim he/she may make for damages in respect of that injury and shall, if required, authorise such employer to obtain information as to the progress of such action or claim from the employee's solicitors and shall, if required, provide an irrevocable authority to the employer entitling the said employer to a charge upon any money or moneys payable pursuant to any consequent verdict or settlement.
- (vi) Where the employee obtains a verdict for damages against his/her employer or is paid an amount in settlement of any claim for damages that he/she has made against his/her employer in respect of any injury for which he/she has received compensation under the Act and Accident Pay he/she shall not be entitled to any further Accident Pay within the meaning of this clause and he/she shall be immediately liable upon payment to him/her or his/her agent of such verdict for damages or amount in settlement of a claim thereof to repay to his/her employer the amount of Accident Pay which the employer has paid in respect to the employee's injury under this clause.
- (vii) Where the injury for which Accident Pay is paid was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof and the employee obtains a verdict for damages he/she has made against that other person, he/she shall immediately upon payment of such verdict or amount of money to him/her or his/her agent, repay to the employer the amount of

Accident Pay which the employer had paid in respect of the employee's injury and the employee shall not be entitled to any further Accident Pay.

- (viii) 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 his/her behalf, authorise his/her employer to obtain any information required by such employer concerning such injury or compensation payable in respect thereof from the insurance company that is liable to pay compensation to such employee pursuant to the Act.
- (ix) Nothing in this Clause shall require the employer to insure against his/her liability for Accident Pay.
- (x) In the event of the rates of compensation payable pursuant to the Act at the date hereof being varied at any time after the date hereof, such variations shall not operate so as to increase the amount of Accident Pay payable hereunder above the amount that would have been payable if such rates of compensation had not been varied.
- (xi) If the compensation payable to an employee pursuant to the Act is reduced by any amount by reason of the fact that such employee is entitled to receive Accident Pay or is in receipt of Accident Pay, then in calculating the amount of Accident Pay payable to such employee the compensation that he/she would have received if there had been no such reduction in compensation payments.
- (xii) The right to be paid Accident Pay shall terminate on the date of an employee entitled thereto and no sum shall be payable to the legal personal representatives, next-of-kin, assignee or dependant of the deceased employee, with the exception of Accident Pay accrued up to the time of death.
- (xiii) Without prejudice to the terms of this clause the Union hereby acknowledges that it shall use its best endeavours to have its members carry on 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 by or on behalf of any employer of its members.

18. First Aid Kit

A first aid kit shall be provided by the employer in each Factory, in accordance with the applicable Occupational Health and Safety legislation and regulation, as amended. In the event of an accident occurring the first aid attendant shall be allowed reasonable time to attend to employees concerned in such accident.

19. Time and Wages Sheets

- (i) All employees shall keep a time and wages sheet, which may either be combined or separate and which shall be entered in ink showing the hours worked each day and wages paid to each employee.
- (ii) The time and wages sheet shall, as to entries therein, in respect of employees covered by this award, be open for inspection to a duly accredited official of the union during the usual office hours at the place of employment.
- (iii) Time and wages record shall be kept available in accordance with the appropriate statutory requirements, and in any case for not less than twelve months.
- (iv) Time and Wages records are dealt with by the *Industrial Relations Act* 1996 and the Industrial Relations (General) Regulation 2001.

20. Union Officials

The Secretary and accredited representatives of the union may enter the employer's premises for the purpose of interviewing employees on legitimate union business at a time reasonably convenient to the employer, provided he/she first reports to the employer and obtains his/her approval to enter. Approval shall not be withheld except for a reasonable cause.

21. Exhibition of Award

This award shall be exhibited by each employer on his/her premises in a place accessible to all employees.

22. Call Back

An employee recalled to work overtime after leaving his/her employer's premises or business (whether notified before leaving the premises) shall be paid a minimum of four hours, work at the appropriate rate for each time he/she is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job he/she recalled to perform is completed within a shorter period. This clause shall not apply in cases where it is customary for an employee to return to his/her employer's premises to perform a specific job outside his/her ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. Overtime worked in accordance with this clause shall not be regarded as overtime where for the purpose of subclause (iv), of clause 8, Overtime, of this award, where the actual time worked is less than four hours on such recall or on each of such recalls.

23. Payment of Wages

- (i) Except upon termination of employment, all wages including overtime shall be paid on any day other than Friday, Saturday, Sunday in each week.
- (ii) Employees, including casuals, who are paid their wages at any time other than during their working time shall, if kept waiting more than 15 minutes, be paid overtime rate for all such waiting time.
- (iii)
 - (a) When a week's notice of termination of employment has been given, payment of all wages and moneys due shall be made at the employee's normal place of employment prior to the employee leaving such place of employment if kept waiting after ceasing time overtime rate shall be paid for all such waiting time.
 - (b) For the purpose of this subclause waiting time shall mean from ceasing time until the actual time all wages and other moneys due are received by the employee; provided that any overtime earnings in respect of the day of termination or other payments which cannot be calculated prior to the termination of the employee's ordinary hours on the last day or shift may be paid on a subsequent working day, or by arrangement, may be posted to the employee.

24. Dispute Resolution

Where a dispute arises the following steps shall be taken:

- (a) Step One: as soon as practicable after the issue has arisen, the employee or employees concerned will notify their supervisor or manager of the issue.
- (b) Step Two: 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.
- (c) Step Three: if the dispute has not been 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.
- (d) Step Four: 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.
- (e) Step Five: if the dispute is not resolved, the dispute may then be notified to the Industrial Relations Commission of New South Wales.

25. Redundancy**(A) Application -**

- (i) This clause shall apply in respect of full-time and part-time persons employed in the classifications specified in Table 1 - Wages of Part B, Monetary Rates.
- (ii) This clause shall apply, in respect of employers who employ more than 15 employees immediately prior to the termination of employment of employees, in the terms of paragraph (i) of subclause (D) of this clause.
- (iii) 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 employment.
- (iv) 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.

(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 effect 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 effect" includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, 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.

(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 discussions 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 purposes 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 the 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 -

(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 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 is practicable after the employer has made a definite decision which will invoke the provisions of subparagraph (a) of this paragraph 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.

(D) Termination of Employment-

- (i) Notice for Changes in Production, Program, Organisation or Structure - This paragraph 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 subparagraph (a) of paragraph (i) of subclause (B) of this clause.

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

Period of continuous service	Period of notice
Less than 1 year	1 week
3 years and less than 5 years	2 week
1 year and less than 3 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 termination by the employer for reasons arising from technology in accordance with subparagraph (a) of paragraph (i) of subclause (B) 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.
- (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 as those 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 the employment of 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.
- (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 the Centrelink.
- (viii) Transfer to Lower-paid Duties - Where an employee is transferred to lower-paid duties for reasons set out in subparagraph (a) of paragraph (i) of subclause (B) 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 rate 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 paragraph (i) of subclause (D) 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 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

- (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, overaward payments, shift penalties and allowances paid in accordance with clause 5, Wages.
- (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 Industrial Relations Commission of New South Wales 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 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 if the employer obtains acceptable alternative employment for an employee.
- (F) 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 agreement, taken as a whole, between the union and any employer bound by this award.

26. 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.

This variation shall take effect from the first pay period commencing on or after 6 September 2002.

27. 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) Definitions

For the purposes of this clause, the following definitions shall apply:

- (i) 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.

- (ii) 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.

(c) 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 (c)(i), upon receiving notice under paragraph (c)(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 (c)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (c)(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, consistent with any other part-time employment provisions of this award made pursuant to a part-time working arrangement made 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.
- (d) Occupational Health and Safety and Rehabilitation
- (i) 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.
 - (i) Where an employee of a contract business or labour hire business is injured whilst carrying out work or services for another employer bound by this award, then that other employer shall, in a manner co-ordinated with the contract business or labour hire business, take all reasonable steps to provide such an employee with suitable duties as part of any rehabilitation program for the employee.
 - (ii) Nothing in this subclause (d) is intended to affect or detract from any obligation or responsibility upon a contract business or labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(e) 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.

- (f) 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.

28. Area, Incidence and Duration

- (a) This award shall apply to aerated waters and beverage makers, bottlers, washers, carters, grooms, stablepersons, yardpersons, motor wagon drivers, and labourers employed in or in connection with the manufacture and/or distribution of aerated water, other soft drinks, fruit juices, cider, cordials, ginger beer, hop and other non-intoxicating beers and/or similar types of beverages with or without alcoholic content within the State excluding the County of Yancowinna.

- (b) This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Aerated Waters, &c. (State) Award published 22 February 2002 (331 I.G. 498), and all variations thereof.
- (c) 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 14 March 2008.
- (d) This award remains in force until varied or rescinded, the period for which it was made having already expired.

PART B

MONETARY RATES

No.	Classification for establishments with a flow rate of 7000 litres per hour or more	Wage Total \$
1.	Syrup maker whose syrup room operations are computerised	564.30
2.	Cordial and/or syrup maker using recipes or formulae	555.80
3.	Pre-mixer filler operator	545.10
4.	Employees who, under the direction of the employer or manager or foreman, are in charge of the running adjustment or running maintenance of automatic carbonating and/or fruit juice or aerated waters machinery or plant and/or syrup filler operator	531.90
5.	Assistant syrup maker	531.90
6.	Employee engaged on routine in-line testing	531.90
7.	Employee operating labelling palletising or de-palletising, case packing or unpacking or carton packing machines	531.40
8.	Storeman (as defined)	531.40
9.	Employees engaged in bottling or canning line operations including operating bottle washer, removing empty bottles from cases or placing empty bottles on conveyors, sight inspecting, filling cases with full bottles, and stacking cases on pallets, fruit juice extracting cordial and/or syrup room (other than in Classification No. 1, 2 and 5), loader on or off motor trucks, cleaner, storeman and warehouse employee, store assistant (as defined), plastic blow moulding machines operator and/or employee attending, feeding or operating shrink wrap machine.	531.40
10.	Case, crate, box and/or pallet repairer	531.40
11.	Fork lift driver with lifting capacity of:	
	(a) up to and including 5000 kg	543.90
	(b) Over 5000 kg and/or including twin forklift	555.30
12.	All other adult employees	531.40
13.	Trainee - first four weeks of service	524.40
	Motor wagon drivers - The rate of wages prescribed by the Transport Industry (State) Award, as varied from time to time, shall be applicable to employees classified as motor wagon drivers.	
No.	For establishments with a flow rate of less than 7000 litres per hour	
14.	Grade 1B Soft drink industry employee	524.40
15.	Grade 2B Soft drink industry employee	541.10
16.	Grade 3B Soft drink industry employee	569.60
17.	Grade 4B Soft drink industry employee	584.50

Table 1 - Wages

Motor wagon drivers - The rate of wages prescribed by the Transport Industry (State) Award, as varied from time to time, shall be applicable to employees classified as motor wagon drivers.

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	4 (iii)	Employees handling caustic soda	0.72 per hour extra
2	4 (iv)	Employees working in a cold room	0.60 per hour extra
3	4 (v)	Leading Hands - 3 to 10 employees more than 10 employees	20.45 per week extra 32.65 per week extra
4	4 (vi)	First-aid Attendant	2.44 per day

Aerated Waters, &c (State) Industrial Committee**Industries and Callings**

Aerated waters and beverage makers, bottlers, washers, carters, grooms, stablemen, yardmen, motor-wagon drivers, and labourers employed in connection therewith, in the State, excluding the County of Yancowinna.

E. A. R. BISHOP, Commissioner

Printed by the authority of the Industrial Registrar.

(1165)

SERIAL C6482

ARMIDALE WOMEN'S SHELTER (REMUNERATION FOR ON-CALL) AWARD 1996

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 1636 of 2007)

Before Commissioner Macdonald

29 February 2008

REVIEWED AWARD

1. Delete the Arrangement of the award published 27 July 2001 (326 I.G. 605), and insert in lieu thereof the following:
 1. Arrangement
 2. Title
 3. Application
 4. Definitions
 5. On-Call Remuneration
 6. Grievance and Dispute Settlement Procedure
 7. Anti-Discrimination
 8. Relationship to Parent Award
 9. Area, Incidence and Duration
2. Renumber clauses 6A, Anti-Discrimination; 7, Relationship to Parent Award; and 8, Area, Incidence and Duration to read as follows:
 7. Anti-Discrimination
 8. Relationship to Parent Award
 9. Area, Incidence and Duration
3. Delete subclauses (iv) and (v) of clause 9, Area, Incidence and Duration, and insert in lieu thereof the following:
 - (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 29 February 2008.
 - (v) This award remains in force until varied or rescinded, the period for which it was made already having expired.
4. This variation shall take effect on and from 29 February 2008.

A. MACDONALD, Commissioner

Printed by the authority of the Industrial Registrar.

CEVA LOGISTICS (AUSTRALIA) PTY LTD (NSW VEHICLE LOGISTICS LOCAL FLEET) CONTRACT DETERMINATION

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by CEVA Logistics (Australia) Pty Ltd.

(No. IRC 576 of 2008)

Before Commissioner Macdonald

6 May 2008

AWARD

1. Title

This Contract Determination shall be known as CEVA Logistics (Australia) Pty Ltd (NSW Vehicle Logistics Local Fleet) Contract Determination.

2. Parties

The parties to this Contract Determination shall be:

- 2.1 CEVA Logistics (Australia) Pty Ltd ("CEVA").
- 2.2 Transport Workers' Union of Australia, New South Wales Branch ("TWU").

3. Application

- 3.1 This Contract Determination shall apply to the car carrying operations of CEVA and shall be read in conjunction with the terms of the Transport Industry - Car Carriers (NSW) Contract Determination save and except for those matters dealt within this Contract Determination.
- 3.2 Where the terms of this Contract Determination and the terms of the Transport Industry General Carriers Contract Determination are in conflict, the terms of this Contract Determination shall prevail.

4. Local Work, Short Loads, Split Loads

- 4.1 Full loads, split loads, part loads and part split loads will be paid full load zone rate only. All zones will be calculated using the combined mileage not combined zones. All loads with a maximum of 2 drops or pick-ups (ramps down maximum on times) will be paid full load zone rate (using total mileage). Running time will not be an option.
- 4.2 Part loads offered to contract carriers for pickup or delivery, which can conveniently be carried out by the contract carrier in the course of his/her journey to or from his/her place of residence will be paid at the rate per car delivered. The contract carrier shall not be obliged to accept these loads.
- 4.3 If a contract carrier travels 4 or more zones to his/her next point of pick-up and is allocated a load to Zone 1, then the contract carrier will be paid a full load rate of Zone 2. Running time will not be an option. Where the load allocated is greater than Zone 1, the applicable zone rate applies.

NOTE: Payment for work performed pursuant to subclause 4.1, 4.2 or 4.3 shall be in accordance with Schedule 1 of the Transport Industry - Car Carriers (NSW) Contract Determination.

5. Local Work - Saturday (Excluding Wharf & Associated Dealer Deliveries)

For local work performed on Saturdays CEVA shall pay contract carriers the applicable zone rate per load. Contract carriers are entitled to claim running time if the value of the hours worked in running time exceeds the value of the accumulated zone rates. Running time will be calculated from the time the first vehicle is collected to the time the carrier returns to his/her place of residence. Running time will not apply for wharf work and associated dealer deliveries ex compounds where wharf vehicles are being delivered.

6. Futile Loads

A contract carrier shall be paid the applicable zone rate from the point of pick-up where a load was not available to next place of pick-up. Where one car only of a load of 2 or more cars is not available, the contract carrier will be paid the zone rate he would have received if the vehicle had been available.

7. Pay Queries

Contract carriers must submit all pay queries within 3 months of payment. CEVA shall process pay queries within 2 weeks of receipt.

NOTE: If pay queries are older than 3 months they will take a lot longer to process.

8. Special Jobs at After Hours Rates

NOTE: Normal dealer, compound and wharf pick-ups and deliveries do not receive after hours rates unless they are special jobs, e.g., AFS, Callout, Motorshow.

8.1 After Hours Rates

After hours rates apply between the hours of 6.30 pm and 5 am (excluding wharf work and associated dealer deliveries). Loads started prior to 6.30 pm will be paid at normal zone rate. Loads started prior to 5 am will be paid at the after hours rate. Contract carriers will be paid at after hours rates from 1 hour prior to requested start time until 1 hour after final delivery.

8.2 AFS Work

Contract carriers will be paid zone rate per load, standing rate for waiting time spent on the job and running time for time spent working on the job (e.g., washing cars). AFS work will be paid at normal standing or running time between the hours of 5 am and 6.30 pm, any work outside these hours will be paid at after hours rate and paid a minimum of 4 hours. Public holidays and Sundays are paid at after hours rates.

8.3 Callout

Contract carriers called out for special jobs out of hours will be paid at after hours rate from the time he/she leaves his/her place of residence until he/she returns to his/her place of residence. This condition applies to contract carriers working in the metropolitan area.

8.4 Motor Shows (Move-out)

If motor show move-out is performed after hours, the contract carrier will be paid after hours rate from 1 hour prior to requested start time until 1 hour after final delivery.

9. New Equipment/Driver Protocol

Where new equipment or fleet capacity is to be increased, CEVA agrees to the following processes:

9.1 Advise delegates of intended change.

- 9.2 Requests for expressions of interest to be sent to all existing fleet members, with a defined date of response nominated.
- 9.3 Upon receipt of expressions of interest the contract carriers seniority will be assessed. This assessment will be based on the number of years that the operator has been in his existing equipment, regardless of capacity. The driver with the highest number of years in existing equipment will have seniority.
- 9.4 Allocation will firstly be to existing contract carriers that are carriers who operate their own equipment. Such carriers must intend replacing existing equipment and if successful will be given a period of 2 months to sell existing equipment prior to taking up this option.
- 9.5 At the expiry of the 2 month period detailed above, should the sale of the existing equipment not be concluded, the next most senior contract carrier will have the same condition applied as per point 4 above.
- 9.6 If contract carriers are unsuccessful in meeting the criteria above then the equipment will be offered to existing fleet owners.
- 9.7 If existing fleet owners are unsuccessful CEVA will advertise externally.
- 9.8 CEVA will not be obliged to appoint an applicant who is clearly unsuitable or inappropriate to use the new equipment. Such a person shall be advised of CEVA's position and the reasons why upon receipt of his or her expression of intent. If any dispute arises it shall be dealt with under the disputes grievance procedure including ultimate referral to the Industrial Relations Commission.

10. Vehicle Sale Procedure

10.1 Purpose

The purpose of this clause is to identify a procedure whereby CEVA manages Vehicle Logistics Contract Carrier vehicle sales, in particular the process for selling vehicles within the fleet.

10.2 Scope

This procedure covers all NSW based Local fleet Contract Carriers that were engaged prior to 1st March 2008 and the sale process relative to that Contract Carrier selling their vehicle, and in addition covers all NSW based Local Fleet Contract Carriers that purchase a vehicle after 1st March 2008 and the sale process relative to those Contract Carrier selling their vehicle.

10.3 Definitions

In this clause, the following definitions shall apply:

"Existing Contract Carrier" shall mean a Contract Carrier engaged by CEVA to perform contracts of carriage prior to 1st March 2008.

"Buyer" or "Prospective Buyer" shall mean a person or business that has an interest in purchasing a Contract Carrier's vehicle.

"New Contract Carrier" shall mean a Contract Carrier engaged by CEVA to perform contracts of carriage after 1st March 2008.

"Grandfathered Contract Carrier" shall mean an Existing Contract Carrier who is governed by the Existing Vehicle Sale Procedure.

"Vehicle Sale Procedure" shall mean the procedure set at 10.4.2 below.

"Existing Vehicle Sale Procedure" shall mean the procedure set at 10.4.1 below.

10.4 Procedure

10.4.1 Existing Vehicle Sale Procedure

- (a) The Existing Contract Carrier shall provide notice to CEVA management of the intention to sell the vehicle regardless of in the fleet or not.
- (b) The Existing Contract Carrier may advertise the proposed vehicle either internally or externally.
- (c) If the Existing Contract Carrier finds a prospective buyer, the Existing Contract Carrier and prospective buyer will undertake a due diligence on the Existing Contract Carrier's books/accounts.
- (d) The prospective buyer is then introduced to CEVA management.
- (e) CEVA management shall advise the prospective buyer of its internal process's to enter the fleet.
- (f) If and when the results from item (e) set out immediately above come back positive, then CEVA management will undertake due diligence on the prospective buyer.
- (g) CEVA management shall advise the approval for sale transaction (or not, if such the case).
- (h) Assuming an approval for sale the prospective buyer is advised of their satisfactory application and commences training with the Existing Contract Carrier. This will be a minimum 2 week program.

10.4.2 Vehicle Sale Procedure - For vehicle purchases post 1st March 2008

- (a) The Existing Contract Carrier that was engaged by CEVA to perform contracts of carriage prior to 1st March 2008 will be "grandfathered".
- (b) The Grandfathered Contract Carrier will be able to sell their vehicle in the fleet, in line with the Existing Vehicle Sale Procedure.
- (c) A New Contract Carrier provides in writing notice to CEVA Management of the intention to sell the vehicle, prior to any advertising.
- (d) A New Contract Carrier may then advertise the proposed sale either internally or externally or both.
- (e) If the New Contract Carrier finds a prospective buyer, the New Contract Carrier and prospective buyer will undertake a due diligence on the New Contract Carriers's books/accounts.
- (f) The prospective buyer is introduced to CEVA management.
- (g) CEVA Management shall advise the prospective buyer of its internal processes to enter the fleet, including but not limited to; information pack, statutory declaration, medical check, probity checks etc.
- (h) If and when the results from item (g) set out immediately above come back positive, then CEVA management will undertake due diligence on the prospective buyer.
- (i) CEVA management advise the approval for sale transaction (or not, if such the case).

- (j) Assuming an approval for sale the prospective buyer is advised of their satisfactory application and commences training with the New Contract Carrier. This will be a minimum 2 week program.
- (k) The buyer of the vehicle being sold by a Existing (or Grandfathered) Contract Carrier will be advised of this Vehicle Sale Procedure and CEVA's right to include conditions of sale if/when that buyer decides to sell the vehicle in the fleet.
- (l) In line with item (k) immediately set out above, conditions of sale will include where a vehicle is 10 years old or more, then CEVA will advise the prospective buyer in writing of the requirement to replace the vehicle with a brand new vehicle, or a vehicle acceptable to the principal contractor, and will be given 12 months from date of notice to commence this vehicle in operation within the fleet.
- (m) If the buyer as per item (k) set out above is by definition a "grandfathered" or Existing Contract Carrier, this Vehicle Sale Procedure (clause 10.4.2) still applies and the Existing Vehicle Sale Procedure (clause 10.4.1).

10.5 Other Conditions

CEVA Management has the right to reject a prospective buyer at points, 10.4.1 (e), 10.4.1 (f), 10.4.2 (g) and 10.4.2 (h) of the above processes. In this case CEVA Management will advise the prospective buyer of the reason for rejection in line with Company Policy and Privacy Act requirements.

10.6 Example

The "grandfathered" Contract Carrier can sell their vehicle as per Existing Vehicle Sale Process 10.4.1.

That prospective buyer will be advised by CEVA Management that, if they intend on selling the vehicle in the fleet then any prospective buyer will be advised of the requirement to replace the vehicle as per Vehicle Sale Process 10.4.2.

11. Term

This contract determination rescinds and replaces the TNT Logistics (Australia) Pty Ltd (NSW Local Fleet) Contract Determination made on 13 February 2003.

This contract determination shall take effect from the beginning of the first pay period to commence on or after 6 May 2008 shall have a nominal term of one year.

A. MACDONALD, Commissioner

Printed by the authority of the Industrial Registrar.

COACHMAKERS, &c., ROAD AND PERAMBULATOR MANUFACTURERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Industrial Organisation of Employees.

(No. IRC 94 of 2008)

Before Commissioner Ritchie

7 March 2008

VARIATION

1. Insert in numerical order in clause 1, Arrangement of the award published 21 December 2001 (330 I.G. 629), the following new clause number and subject matter:

3A Secure Employment

2. Insert after clause 3, Contract of Employment, the following new clause:

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.
3. Delete the amount "\$45" in subclause (c) of clause 37, Supported Wage and insert in lieu thereof the following:
"\$66"
 4. Delete the amount "\$45" in paragraph (iii) of subclause (i) of the said clause 37, and insert in lieu thereof the following:
"\$66"
 5. This variation shall operate from the first full pay period to commence on or after 7 March 2008.

D.W. RITCHIE, Commissioner

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (HERITAGE OFFICE 2003) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 570 of 2007)

Before Commissioner Ritchie

8 April 2008

ORDER OF RESCISSION

The Industrial Relations Commission of New South Wales orders that the Crown Employees (Heritage Office 2003) Award published 12 March 2004 (343 I.G. 607) as varied, be rescinded on and from 8 April 2008.

D.W. RITCHIE, Commissioner

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (HOME CARE SERVICE OF NEW SOUTH WALES - ADMINISTRATIVE STAFF) AWARD 2007

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 1704 of 2007)

Before Commissioner Ritchie

3 March 2008

REVIEWED AWARD

PART A

MACHINERY OF AWARD

1. Arrangement

Clause No. Subject Matter

PART A

MACHINERY OF AWARD

1. Arrangement
2. Title
3. Area, Incidence and Duration
4. Definitions
5. Consultation
6. Grievance/Dispute-Settling Procedures

PART B

EMPLOYMENT

7. Contract of Employment
8. Part-time Employees
9. Casual Employees
10. Hours of Work
11. Flexi-time
12. Redundancy
13. Deduction of Union Membership Fees
- 13A. Secure Employment

PART C

REMUNERATION

14. Salaries
15. Appointment
16. Salary Progression
17. Classification Committee
18. Payment of Salaries
19. Overtime
20. Meal Allowance

21. Higher Duties or Relief Work
22. Travel Allowance
23. Excess Travel
24. Sustenance Allowance

PART D

LEAVE PROVISIONS

25. Public Holidays
26. Annual Leave
27. Annual Leave Loading
28. Long Service Leave
29. Sick Leave
30. Family and Community Service Leave
31. Personal/Carer's Leave
32. Parental Leave
33. Jury Service
34. Study Leave

PART E

TRAINING

35. Trade Union Training
36. Traineeships

PART F

ANTI-DISCRIMINATION

37. Anti-Discrimination

PART G

MONETARY RATES

Table 1- Salaries

Table 2 - Other Rates and Allowances

2. Title

This award shall be known as the Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2007.

3. Area, Incidence and Duration

- (i) This award shall apply to persons employed in the classifications contained in Part G, Monetary Rates.
- (ii) This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2004 published 6 May 2005 (350 I.G. 951) and all variations thereof.
- (iii) The changes made to the award pursuant to the Award Review process 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 3 March 2008.

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

4. Definitions

- (i) "Administrative Officer" means and includes all employees of the Home Care Service of New South Wales other than those employed under the Care Worker Employees - Department of Ageing, Disability and Home Care (State) Award 2006 and all variations thereof.
- (ii) "Employee" means a person employed pursuant to this award.
- (iii) "Employer" means the Home Care Service of New South Wales as constituted by the *Home Care Service Act 1988*.
- (iv) A "Full-time Employee" is one who is appointed to work 35 hours per week.
- (v) A "Part-time Employee" is one who regularly works less than 70 hours per fortnight.
- (vi) A "Casual Employee" means an employee engaged by the hour and paid as such and shall only be used for temporary and relief purposes.
- (vii) "Home Care Service" or "Service" means the body referred to in the *Home Care Service Act 1988*. The Act provides that the Director-General of the Department of Ageing, Disability and Home Care manages the Service.
- (viii) "Trainee" means an employee who is bound by the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 undertaking an approved traineeship under the *Apprenticeship and Traineeship Act 2001*.
- (ix) "Union" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

5. Consultation

The Department of Ageing, Disability and Home Care and the Union agree to continued consultation through the Joint Consultative Committee regarding matters affecting, but not limited to, those that are likely to have a significant effect on employees, such as major changes to organisational structure, programs or technology.

6. Grievance/Dispute Settling Procedures

When a dispute arises, every effort must be made to resolve the matter with haste and settle it by following the procedure as set out below:

Step 1

In the first instance the issue should be discussed between the employee(s) concerned and the Supervisor/Branch Manager. If at this stage the parties are unable to discuss the issue, an employee may seek the intervention of a Home Care Union delegate.

Step 2

If the issue has not been resolved within a reasonable time period, the employee(s) or a Home Care Union delegate may approach the Area/Section Manager to seek resolution of the dispute.

Step 3

Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the employee to advise

their immediate Manager, the notification may occur to the next appropriate level of management, including, where required, to the Department head or delegate.

Step 4

The immediate Manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within 2 working days, or as soon as practicable, of the matter being brought to attention.

Step 5

Should the parties be unable to resolve the dispute as defined in the steps above, the parties may refer the issue to their respective representatives, i.e. the authorised delegate for Home Care and the General Secretary of the Union or delegate for the employees of the Home Care Service.

Step 6

If the issue is not resolved by discussion between management and the Union, either party can refer the matter to the General Manager of the Home Care Service for resolution.

Notwithstanding the above, either party still has the option to refer the issue to the relevant industrial tribunal for resolution.

When the dispute relates to more than one branch, the procedure will start at Step 3.

It is agreed that work shall continue during the period of discussion except where there is a bona fide safety matter, in which case employees may be relocated to safe positions.

PART B

EMPLOYMENT

7. Contract of Employment

- (i) The 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 deskilling.
- (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 in the use of such tools and equipment.
- (iii) Any direction issued by the employer pursuant to subclauses (i) and (ii) of this clause shall be consistent with the employer's responsibility to provide a safe and healthy working environment.
- (iv) An employee may be engaged as full-time, part-time or casual.
- (v) The engagement of employees other than casuals shall be terminated by 2 weeks' 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 2 weeks' wages in lieu thereof.
- (vi) Notwithstanding the provisions of this clause, the employer or its representative shall have the right to terminate the services of 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.
- (vii) The employment of a casual employee may be terminated by one hour's notice.
- (viii) Upon the termination of employment, the employer shall, at the request of the employee, give to such employee a statement signed by the employer stating the period of employment, the class of work for which the employee was engaged and when the employment terminated.

8. Part-Time Employees

- (i) Part-time employees (see clause 4, Definitions) employed under this clause shall be paid an hourly rate calculated on the basis of 1/35th of the appropriate weekly rate prescribed by Table 1 - Salaries, of Part G, Monetary Rates, with a minimum payment of one hour for each start.
- (ii) Employees engaged as part-time shall be granted leave and other entitlements of this award on a pro rata basis.

9. Casual Employees

- (i) Casual employees (see clause 4, Definitions) shall receive an hourly rate of 1/35th of the appropriate weekly rate of salary prescribed in Table 1 - Salaries, of Part G, Monetary Rates, plus a casual loading of 15%, for all duties performed in ordinary time on any day, Monday to Friday, inclusive. This amount shall be the ordinary hourly rate of pay for casual employees.
- (ii) The hourly rate of pay prescribed in subclause (i) of this clause shall be calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.
- (iii) Casual employees shall receive a minimum payment of one hour for each start.

10. Hours of Work

- (i) The ordinary hours of work, exclusive of meal times, shall not exceed 7 hours per day or 35 hours per week, to be worked between the hours of 8.00 a.m. and 8.00 p.m., Monday to Friday.
- (ii) The starting and finishing times of an employee once fixed may be altered by the employer only following one month's notice to accommodate a change in office hours but may be altered at any time by agreement between the employer and the employee.
- (iii) Subclauses (i) and (ii) of this clause apply except as provided for in clause 11, Flexi-time.
- (iv) The Home Care Service may require an employee to perform duties beyond the hours determined under this clause but only if it is reasonable for the employee to do so. An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
 - (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
 - (b) any risk to employee health and safety;
 - (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
 - (d) the notice (if any) given by the Home Care Service regarding the working of the additional hours and by the employee of their intention to refuse the working of additional hours; or
 - (e) any other relevant matter.

11. Flexi-Time

- (i) Application

The provisions contained in this clause apply to all permanent employees including those employed on a part-time basis.

- (ii) Bandwidth
 - (a) The Bandwidth is 7.00am to 7.00pm, Monday to Friday, during which time normal work can be undertaken, based on the conditions contained in this clause.
 - (b) Time worked outside the Bandwidth will attract overtime in accordance with clause 19, Overtime of this award.
 - (c) Alteration to the Bandwidth shall be by agreement.
- (iii) Credit/Debit Hours
 - (a) Credit/Debit Hours are identified as being the difference between the hours an employee has accumulated in a four weekly period and the ordinary hours of 140.
 - (b) Hours in excess of 140 are credit hours, those less than 140 hours are debit hours.
- (iv) Coretime and Standard Time
 - (a) Coretime is the period during the day within Standard Hours when all employees are required to be on duty, unless on authorised leave.
 - (b) Coretime shall be set by each Work Location.
 - (c) Coretime shall be of 6 hours duration, exclusive of a meal break.
 - (d) Standard time shall be the hours a Work Location is normally open and operating and shall be set by Central Office.
- (v) Lunch and Meal Breaks
 - (a) Approval may be sought for a Work Location to have a flexible lunch period. The minimum lunch period shall be a half hour. Under normal circumstances the maximum lunch period shall be one hour.
 - (b) Lunch periods in excess of one hour shall be determined in consultation with the Authorising Officer, ensuring that such an extension does not prevent the proper functioning of the Section to which the employee is attached.
 - (c) An employee shall not be required to be on duty for more than 5 ordinary hours from the time of commencement without a break.
- (vi) Accumulation and Carry Over
 - (a) An employee may accumulate credit or debit hours throughout a period, provided that at the end of the period the number of credit hours carried forward does not exceed 14 hours and any debit hours carried forward does not exceed 10 hours.
 - (b) Where an employee's accumulation of credit hours at the end of a period exceeds 14 hours the excess hours shall be forfeited.
 - (c) Authorising Officers shall make every effort to ensure that an employee does not consistently forfeit excess credit hours at the conclusion of periods as a result of requests for flexileave being refused.
 - (d) Where an employee's accumulation of debit hours at the end of a period exceeds 10 hours, the excess hours accumulated shall be taken as annual leave where available or leave without pay where no annual leave exists.

(vii) Flexileave

- (a) An employee may take off in core time a maximum of one (2) full day or two (4) half-days at any time during a period. A half-day is three and a half hours for full-time employees and half the normal hours worked for part-time employees.
- (b) It is not necessary for an employee to have a credit balance when taking flexileave.
- (c) Flexileave may be taken immediately before or after annual leave.
- (d) Flexileave cannot be taken during any period of leave.
- (e) Flexileave may not be taken at the end of a period of leave without pay.
- (f) An employee must obtain the approval of the supervisor prior to proceeding on flexileave.

(viii) Disruption of transport

- (a) Notwithstanding any other provision contained in this clause, where an employee encounters a disruption to the mode of transport normally used in travelling from the employee's place of residence to place of employment and such disruption is caused by a transport strike or other extraordinary condition the following conditions shall apply:
 - (1) The employee may commence duty at any time and where the disruption continues throughout the day, may cease duty at any time.
 - (2) An employee affected by such a disruption will not be debited annual leave if the employee commences duty after the beginning of coretime. Time worked on such days will accumulate in the normal way.
 - (3) The employee may elect to take off the full day as flexileave where the disruption is reasonably likely to continue throughout the day.
 - (4) Flexileave taken during such disruptions shall be recorded as over and above the normal flexileave to which the employee is entitled under this clause.
- (b) Flexileave taken under these conditions shall be at the discretion of the Authorising Officer, provided that all relevant circumstances are considered, including:
 - (1) The delayed employee's usual time of arrival at the employee's place of employment.
 - (2) Where the disruption was foreseeable, the employee made reasonable attempts to arrive at the place of employment prior to the commencement of coretime.

(ix) Travelling on official business

- (a) Any travel on official business during the bandwidth on a working day shall be treated as time worked for the purposes of this clause and in accordance with all other provisions of this award.
- (b) Employees shall be compensated for travelling time outside the standard hours in accordance with clause 23, Excess Travel of this award.

(x) Transfer to other Work Locations

- (a) An employee transferred from one location to another shall carry credit or debit hours to the new location.
- (b) Work Locations shall ensure that details of a transferred employee's debit or credit hours are conveyed to the new Work Location at the time of transfer.

- (c) An employee relieving in another Work Location shall comply with the approved Bandwidth and Coretime applying in that office, branch or section.
- (xi) Termination of Service
- (a) Where an employee gives notice of resignation or retirement the employee shall, during the period of notice, take all reasonable steps to eliminate any accumulated credit or debit hours.
 - (b) Work Locations shall, as far as practicable, facilitate the elimination of accumulated credit or debit hours by such employees.
 - (c) Where an employee has an accumulation of debit hours at the completion of the last day of service, the accumulated annual leave or moneys owing to that employee shall be adjusted accordingly.
 - (d) An employee may receive compensation for accumulated credit hours to 14 hours outstanding on the last day of service:
 - (1) Where an employee's services terminate without notice for reasons other than misconduct.
 - (2) Where an application for a period of flexileave which would have eliminated the accumulated credit hours was made pursuant to this clause during the period of notice or resignation and was refused.
 - (3) In such other circumstances as the Authorising Officer may approve.
- (xii) Variations

The provisions of this clause shall not be altered without the consent of both parties. Provided that failure to reach mutual consent shall not prevent either party from seeking the assistance of the Industrial Relations Commission of NSW.

12. Redundancy

Employees whose positions are made redundant and are declared by the employer to be excess to the needs of the organisation shall be managed in accordance with the Government's policy on Managing Displaced Employees, as varied from time to time.

13. Deduction of Union Membership Fees

- (i) The Union shall provide the employer with a schedule setting out Union membership fees payable by members of the Union in accordance with the Union's rules.
- (ii) The Union shall advise the employer of any change to the amount of membership fees made under its rules. Any variation to the schedule of Union membership fees payable shall be provided to the employer at least one month in advance of the variation taking place.
- (iii) Subject to subclauses (i) and (ii) of this clause, the employer shall deduct Union membership fees from the salary of any employee who is a member of the Union in accordance with the Union's rules, provided that the employee has authorised the employer to make such deductions.
- (iv) Moneys so deducted from employees' salary shall be forwarded regularly to the Union together with all necessary information to enable the Union to reconcile and credit subscriptions to employees' Union membership accounts.

13A. Secure Employment

(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 subclause 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)(b) 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 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 (f), 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.

PART C

REMUNERATION

14. Salaries

- (i) Employees will be appointed to one of the grades as outlined in Table 1 - Salaries, of Part G, Monetary Rates.
- (ii) Should there be a variation to the Crown Employees (Public Sector - Salaries 2007) Award, or an award replacing it by way of salary increase, this award shall be varied to give effect to any such salary increase, from the same operative date of the variation of that award, or replacement award, excluding trainees as provided by subclause (iii) of this clause.
- (iii) Trainees appointed under the provisions of clause 36, Traineeships, will be appointed to an applicable rate of pay as outlined in the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 or an award replacing it.

15. Appointment

- (i) Except as provided in subclause (ii) of this clause, employees will be appointed to the first salary point in the grade range of the position to which they are appointed.
- (ii) The employer may appoint a person to a higher salary level within the grade range. In determining commencing salary, regard must be given to:
 - (a) the person's skills, experience and qualifications;
 - (b) the rate required to attract the person; and
 - (c) the remuneration of existing employees performing similar work.

16. Salary Progression

Progression within each grade range will be by annual increment, provided that the manager is satisfied with the conduct and manner of performance of duties of the employee concerned.

17. Classification Committee

At the initiative of the employer, or at the request of the Union, a Classification Committee comprised of representatives of the employer, employees and the Union shall be convened to evaluate positions and make recommendations to the Executive Director Home Care Service of NSW about the classification and grading of positions under this award.

18. Payment of Salaries

- (i) All salaries shall be paid fortnightly not later than Thursday in each pay week.
- (ii) Salaries shall be paid by deposit to nominated financial institutions, unless otherwise agreed between the employer and the employee.
- (iii) The employer shall provide to each employee a method for recording the hours worked each day which shall be verified by the employee.
- (iv) Before or at the time of payment of salaries each employee shall be issued with a docket or pay envelope showing the date of payment, period covered by such payment, the amount of salary paid for work at ordinary rate, the amount of salary for overtime, the amount of allowances, the amount and nature of any deduction and any annual leave or other leave payments.

19. Overtime

- (i) For all work directed to be performed outside the ordinary hours of work, the rates of pay shall be time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of the overtime work.

An employee who is directed to work overtime may elect to take leave in lieu of payment for all or part of his/her entitlement in respect of the time so worked, provided that:

- (a) Leave in lieu of payment shall be taken at the convenience of the Home Care Service.
- (b) The maximum period of leave in lieu that may be taken in respect of any one period of overtime worked shall be one day.
- (c) Any period of leave in excess of one day shall be paid by the employer at the appropriate rate.
- (ii) For the purpose of this clause each day shall stand alone.
- (iii) Provided that employees whose positions are graded at Grade 14 Step 1 and above shall be paid, under the provisions of this clause, overtime based on the ordinary rate of pay for Grade 13 Step 2 as contained in Table 1 - Salaries, of Part G, Monetary Rates.
- (iv) An employee may be directed by the employer to work overtime, provided it is reasonable for the employee to be required to do so. An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:
- (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
- (b) any risk to employee health and safety;
- (c) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
- (d) the notice (if any) given by the employer regarding the working of the overtime, and by the employee of their intention to refuse overtime; or any other relevant matter.

20. Meal Allowance

An employee required to work overtime for more than 2 hours, without being notified on the previous day or earlier that he/she will be so required to work, shall be paid for the purchase of a meal.

Provided that the amount paid shall be equal to the overtime meal allowance as determined by the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and as advised by the Public Employment Office.

21. Higher Duties Or Relief Work

- (i) An employee, when called upon by the employer to perform work of a classification paid at a higher grade, shall be paid at the higher grade rate of pay for the time so spent.
- (ii) No employee shall suffer a reduction in salary by reason of relieving in a classification paid at a lower grade.

22. Travel Allowance

- (i) Where an employee is required to use his/her motor vehicle on official business, he/she shall be paid at a rate per kilometre as set out Item 1 of Table 2 - Other Rates and Allowances, of Part G, Monetary Rates.

- (ii) The allowance is to be increased at the relative percentage rate to increases as determined by the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and as advised by the Director of Public Employment.
- (iii) Travel from the employee's home to the work location and return shall be excluded.
- (iv) Where an employee is required to use public transport for travel on official business, such employee is to be reimbursed the actual expenses incurred for such travel.

No payment shall be made under subclauses (i) and (ii) of this clause unless the employer is satisfied that the employee has incurred the expenditure for such travel.

23. Excess Travel

- (i) Excess travel is defined as any travel or waiting time outside the ordinary hours of work, as defined in clause 10, Hours of Work, and subject to the provisions of this clause.
- (ii) Excess travel shall be paid at the single, ordinary rate of pay or an employee may elect to take leave in lieu of such payment.
- (iii) The hours of excess travel shall not be regarded as work time for the purposes of leave and other entitlements found in this award or other understandings or agreements reached by the parties to this award.
- (iv) No payment shall be made under this clause unless the employer is satisfied the excess travel or waiting time was directed or approved.

24. Sustenance Allowance

- (i) Employees who are required to perform duties at a temporary work location necessitating the employee being away from home overnight shall be paid an allowance for the expenses incurred at the rate as set out in Table 2 - Other Rates and Allowances, of Part G, Monetary Rates. Sustenance rates contained in Table 2 include: Item 2 (Capital City - Sydney), Item 3 (Tier 1 Country Centre), Item 4 (Tier 2 Country Centre) and Item 5 (Other Country Centres) or an amount equivalent to the actual necessary expense for accommodation and meals (excluding morning and afternoon tea).
- (ii) The sustenance allowance is to be increased in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and as advised by the Director of Public Employment.

PART D

LEAVE PROVISIONS

25. Public Holidays

- (i) The days on which the following holidays are observed shall be holidays under this award: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and the picnic day of the Home Care Service to be held on the first Monday of August each year or on a day determined by the employer.
- (ii) Where in the State an additional holiday is proclaimed or gazetted by the Commonwealth or New South Wales State Government and is to be observed generally by persons throughout the State, then such day shall be deemed to be a holiday for the purposes of this award.
- (iii) Employees directed to work on any of the days prescribed in subclause (i) of this clause shall be paid 150% in addition to ordinary rates for the time so worked.

26. Annual Leave

See *Annual Holidays Act 1944*.

27. Annual Leave Loading

- (i) Employees, other than casual employees, shall be entitled to an annual leave loading based on the equivalent of 17½% of 4 weeks' ordinary pay.
- (ii) Annual leave loading shall be paid when leave due is taken.
- (iii) Annual leave loading shall not apply to proportionate leave on termination.

28. Long Service Leave

- (i) Employees accrue long service leave in accordance with the provisions of the *Long Service Leave Act 1955*. Long service leave may be taken at full pay or half pay; or at double pay in accordance with subclause (iv) of this clause.
- (ii) Long Service Leave entitlement after 7 years service - employees with 7 years or more service will be entitled to take (or be paid out on resignation) long service leave in the usual manner. The quantum of leave available is that which would have applied if pro rata leave were granted. No repayment will be required if an employee does not reach 10 years service.
- (iii) Long Service Leave entitlement after 5 years service but less than 7 years service - If the employer terminates employment for reasons other than serious and intentional misconduct, or, an employee leaves on account of illness, incapacity or domestic or other pressing necessity, the employee is entitled to 1 month's long service leave for 5 years service plus a pro-rata rate for service of between 6 and 7 years.
- (iv) Long Service Leave on Double Pay - An employee with an entitlement to long service leave may elect to take leave at double pay. The additional payment will be made as a taxable allowance payable for the period of the absence from work. The employee's leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance. Other leave entitlements, eg recreation leave, sick leave and long service leave will accrue at the single time rate where an employee takes long service leave at double time. Superannuation contributions will only be made on the basis of the actual absence from work, ie at the single time rate, except for employees who are members of the First State Super Fund or similar accumulation superannuation fund who will have their superannuation contributions calculated on the double time rate. Where an employee elects to take long service leave at double pay, in most cases a minimum period of absence of one week should be taken, ie one week leave utilising two weeks of accrued leave.
- (v) Public holidays that fall whilst an employee is on a period of long service leave will be paid and not debited from the employee's long service leave entitlement. In respect of public holidays that fall during a period of double pay long service leave an employee will not be debited in respect of the leave on a public holiday. The employee's leave balance will however be reduced by an additional day to fund the taxable allowance.

29. Sick Leave

An employee, other than a casual employee, who is unable to attend for duty during his or her ordinary working hours by reason of personal illness or incapacity not due to his or her own serious or wilful misconduct shall be entitled to be paid at the ordinary-time rates of pay for the time of such non-attendance subject to the following conditions and limitations:

- (i) The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to payment under the New South Wales workers compensation acts.

- (ii) The employee shall, as soon as reasonably practicable and during the ordinary hours of the first day of such absence, inform the employer of his or her 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. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day of such absence, the employee shall inform the employer within 24 hours of such absence.
- (iii) All periods of sickness shall be certified by a registered medical practitioner, provided that the employer may dispense with the requirements of a medical certificate where the absence does not exceed 3 consecutive days or where, in the employer's opinion, the circumstances are such as not to warrant such requirements.
- (iv) Full-time Employees

Sick leave is granted on the basis of 10 days per anniversary year, provided that:

- (a) during the first 3 months' employment, one day only of sick leave be available each month, to be granted to an employee subject to the conditions of this clause; and
- (b) on the first day of the fourth month of employment, 10 days' sick leave less such sick leave granted under paragraph (a) of this subclause shall be credited to the employee.

- (v) Part-time Employees

Sick leave is granted on a pro rata hourly basis calculated on the number of hours employed per anniversary year, provided that:

- (a) during the first 3 months of employment the equivalent of 1/10th of the pro rata hourly entitlement be available each month to be granted to an employee; and
- (b) on the first day of the fourth month of employment; the pro rata annual entitlement less such sick leave granted under paragraph (a) of this subclause shall be credited to the employee;
- (c) retrospective adjustment to sick leave entitlements will be made where part-time employees work hours in excess of their contract.

Such leave shall accumulate from year to year and may be taken by an employee in addition to the sick leave entitlement available in any one year.

- (vi) If an employee who is absent on annual leave or long service leave, furnishes to the employer a satisfactory medical certificate in respect of an illness which occurred during the leave, the employer may, subject to the provisions of this clause, grant sick leave to the employee as follows:
 - (a) in respect of annual leave, the period set out in the medical certificate;
 - (b) in respect of long service leave, the period set out in the medical certificate if such period is 5 working days or more.

The provisions of this subclause do not apply to employees on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

30. Family and Community Service Leave

- (i) The employer shall grant to an employee (other than a casual employee) some, or all of their accrued family and community service leave on full pay, for reasons relating to family responsibilities, performance of community service or emergencies. Where possible, non-emergency appointments or duties should be scheduled or performed outside of normal working hours.

- (ii) Such cases may include but not be limited to the following:-
- (a) compassionate grounds - such as the death or illness of a close member of the family or a member of the employee's household;
 - (b) emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
 - (c) emergency or weather conditions - such as when flood, fire, snow or disruption to utility services etc, threatens an employee's property and/or prevents an employee from reporting for duty;
 - (d) attending to family responsibilities such as - citizenship ceremonies, parent/teacher interviews or attending child's school for other reasons;
 - (e) attendance at court by an employee to answer a charge for a criminal offence, only if the employer considers the granting of family and community service leave to be appropriate in a particular case;
 - (f) attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for employees who are selected to represent Australia or the State; and

absence during normal working hours to attend meetings, conferences or to perform other duties, for employees holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the employee does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council.

- (iii) The definition of "family" or "relative" in this clause is the same as that provided in subparagraph (i) (c) (2) of clause 31, Personal/Carer's Leave.
- (iv) The maximum amount of family and community service leave on full pay which may, subject to this award, be granted to an employee shall be the greater of the leave provided in accordance with paragraph (a) or paragraph (b) of this subclause:
- (a) 2½ of the employee's working days in the first year of service and, on completion of the first year's service, 5 of the employee's working days in any period of 2 years; or
 - (b) After the completion of 2 years continuous service, the available family and community service leave is determined by allowing 1 day's leave for each completed year of service less the total amount of short leave or family and community service leave previously granted to the employee.
- (v) Part-time employees will accrue family and community service leave on a pro rata basis.
- (vi) If available family and community service leave is exhausted as a result of natural disasters, the employer shall consider applications for additional family and community service leave, if some other emergency arises
- (vii) If available family and community service leave is exhausted, on the death of a person defined in subparagraph (i)(c)(2) of clause 31, Personal/Carer's Leave, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to an employee.

In cases of illness of a family member for whose care and support the employee is responsible, paid sick leave in accordance with subparagraph (i)(c)(2) of clause 31, Personal/Carer's Leave, shall be granted when paid family and community service leave has been exhausted.

The employer may also grant employees other forms of leave such as accrued annual leave, time off in lieu, flex leave and so on for family and community service leave purposes.

31. 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 subparagraph(c)(2) of this subclause 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 in clause 29, Sick Leave of the award, for absences to provide care and support, for such persons when they are ill. Such leave may be taken for part of a single day.
- (b) The employee shall, if required, 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. In normal circumstances, an employee must not take carer's leave under this subclause where another person has 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:
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 stepchild, a foster child or an ex nuptial child), parent (including a foster parent or 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.
- (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.
- (ii) 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 member of a class of person set out in subparagraph(i)(c)(2) of this clause who is ill.

(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 ten consecutive annual leave days are taken.

(iv) Time Off in Lieu of Payment for Overtime

For the purpose only of providing care and support for a person in accordance with subclause (i) of this clause and, despite the provisions of clause 19, Overtime, the following provisions shall apply:

- (a) 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, and 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 paragraph (i)(a) of this clause, 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.

(vi) Personal Carers Entitlement for casual employees

- (a) Subject to the evidentiary requirements set out in paragraph (i)(b) and the notice requirements set out in paragraph (i)(d) of this clause, casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in subparagraph (i)(c)(2) of this clause who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the casual 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.

(vii) Bereavement entitlements for casual employees

- (a) Subject to the evidentiary requirements set out in paragraph (i)(b) and the notice requirements set out in paragraph (i)(d), 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 (i)(c)(2) of this clause.
- (b) The employer and the casual 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.

32. Parental Leave

(i) Maternity Leave

A female employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of maternity leave shall be granted maternity leave, subject to the following conditions:

A casual employee who has completed at least 2 years' continuous service with the employer prior to the commencement of maternity leave shall be granted unpaid maternity leave subject to the following conditions:

- (a) An employee who wishes to take maternity leave shall, in not less than 10 weeks prior to the expected date of confinement, give her employer notice in writing -
- (1) stating her intention to take maternity leave; and
 - (2) specifying the period of maternity leave she intends to take and the date of commencement and completion of that period.
- (b) Provided that an employee must give notice in writing not less than 4 weeks prior to the last day of the period of maternity leave confirming her intention to return to work. An employee who fails to comply with this requirement shall be deemed to have terminated her employment on the day after the last day on which the notice is required.
- (c) Such absence shall be supported by a medical certificate from a registered medical practitioner indicating the anticipated date of confinement.
- (d) The total absence on maternity leave shall not exceed 12 months from the date of commencement of such leave.
- (e) An employee (other than a casual employee) shall be entitled to the first 14 weeks of maternity leave at the ordinary rate of pay, at full pay, half pay or as a lump sum. The balance of the remaining maternity leave shall be unpaid.
- (f) Where an employee elects to return to work within 6 weeks after the birth of the child, the employer may require the employee to provide a medical certificate stating that she is fit to return to her normal duties.

(ii) Adoption Leave

Any employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of adoption leave, shall be entitled to adoption leave under the following conditions:

- (a) up to 14 weeks' paid leave at the time of adoption at the ordinary rate of pay, at full pay, half pay or as a lump sum; and
- (b) where the employee is the primary care-giver and, with the consent of the employer, a further 38 weeks of unpaid leave may be taken.

This entitlement shall be reduced by any period of adoption leave taken by the employee's spouse for the same child.

The total period of leave shall not exceed one year from the time of the child adoption.

An employee shall be required to:

- (a) give notice of the date of the intent to take adoption leave and the proposed length of leave; this must be done -
 - (1) within 2 months of receiving approval for adoption; or
 - (2) if a relative adoption, as soon as the child has been taken into custody pending an adoption order application;
- (b) confirm the date and period of leave by giving at least 14 days' written notice before the adoption date;
- (c)
 - (1) provide certification from an adoption agency or appropriate body of the presumed date of adoption;
 - (2) provide a statement from a government authority stating that the employee has custody of a child pending an adoption order.
- (d) make a statutory declaration stating:
 - (1) that the employee is seeking adoption leave to become the primary care-giver of a child;
 - (2) details of any adoption leave sought or taken by the employee's spouse for the same child;
 - (3) the employee will not take another job or contravene his/her employment contract while on adoption leave.
- (e) employee returning to work from adoption leave:
 - (1) shall confirm in writing their intention of returning to work not less than 4 weeks before the adoption leave expires;
 - (2) is entitled to return to the position held immediately before taking adoption leave. Where the position no longer exists, but there are other positions for which the employee is qualified and capable of performing, the employee is entitled to a position comparable in status and pay to that of the former position.

(iii) Other Parent Leave

An employee, other than a casual employee, who has completed at least 40 weeks' continuous service with the employer prior to the commencement of 'other parent' leave, shall be entitled to 'other parent' leave under the following conditions:

- (a) Up to one week's short 'other parent' leave at full pay or two weeks' leave at half pay at the time of birth or taking custody of a child in the case of adoption may be taken.
- (b) Where the employee is the primary care-giver and with the consent of the employer, a further period not exceeding 12 months, less any short 'other parent' leave in paragraph (a) of this subclause, may be taken.

- (c) The employee shall give 10 weeks' notice of their intention to take 'other parent' leave and provide satisfactory proof of the spouse's pregnancy or of the anticipated adoption.
- (d) An employee returning to work from 'other parent' leave:
 - (1) shall confirm in writing their intention of returning to work not less than 4 weeks before the 'other parent' leave expires;
 - (2) is entitled to return to the position they held immediately before taking 'other parent' leave. Where the position no longer exists, but there are other positions for which the employee is qualified and capable of performing, they are entitled to a position comparable in status and pay to that of the former position.

(iv) Right to Request

- (a) An employee entitled to either maternity, adoption or 'other parent' leave, other than a casual employee, may request the employer to allow the employee:
 - (1) to extend the period of unpaid maternity, adoption or 'other parent' leave for a further continuous period of leave not exceeding 12 months;
 - (2) to return from a period of maternity, adoption or 'other parent' 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 under paragraph (iv)(a) and the employer's decision made under paragraph (iv)(b) of this subclause must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under (iv)(a)(2) of this subclause, 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 maternity, adoption or 'other parent' leave

- (a) Where an employee is on maternity, adoption or 'other parent' 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 maternity, adoption or 'other parent' leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility of the position he or she held before commencing maternity, adoption or 'other parent' 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 maternity, adoption or 'other

parent' 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) of this subclause.

(vi) Casual Employees

- (a) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*) because:
 - (1) the employee or employee's spouse is pregnant; or
 - (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.

33. Jury Service

An employee, other than a casual employee, required to attend for jury service during his/her ordinary working hours, shall be reimbursed an amount equal to the difference between the amount paid in respect of attendance for such jury service and the amount of wages the employee would have received in respect of the ordinary time which would have been worked had the employee not been on jury service.

34. Study Leave

- (i) Study leave shall be paid leave subject to the terms and conditions set out below:
 - (a) Study leave applies to all permanent employees including those employed on a part-time basis.
 - (b) The course of study must be work-related.
 - (c) Decisions regarding the approval or otherwise for study leave shall not be the subject of an appeal to any service tribunal or any other industrial and/or lawful tribunal, commission or court.
 - (d) Study leave shall be granted and taken at the convenience of the Home Care Service. Such convenience shall take into consideration such factors as the necessity of an employee to be at work on specific days or times, availability of relief staff and service requirements concerning training or other requirements.
- (ii) Study leave shall be granted subject to the following criteria and conditions:
 - (a) Study leave is granted on the basis of half an hour of leave for each hour of face-to-face lectures, or equivalent, up to a maximum of 4 hours.
 - (b) Such leave shall be cumulative and may be taken as examination leave or for field work purposes following approval.
 - (c) Study leave shall not accumulate from year to year. Each academic year shall stand alone.
 - (d) No travel time or travel allowance is payable.
 - (e) All payment for study leave shall be at the ordinary rate of pay.

PART E

TRAINING

35. Trade Union Training

Employees nominated by the Union to attend during ordinary working hours a course recognised by the Trade Union Training Authority in the State shall do so without loss of ordinary pay, subject to the following:

- (i) that the employer receive not less than 4 weeks' written notice of nomination from the Union, setting out the time, dates, content and venues of the course;
- (ii) that not more than one person at any one time from a branch is nominated, with no individual receiving more than 5 days' training per year;
- (iii) that a maximum of 100 days per financial year, non-cumulative, be available for trade union training each year;
- (iv) that the employer is satisfied that the course will assist in reducing work place disputes and in advancing industrial harmony within the organisation.

36. Traineeships

The rates of pay and conditions of employment of trainees (see clause 4, Definitions) will be the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 as varied from time to time. Variations to the Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007 will be in accordance with the Crown Employees (Public Service Training Wage) Award 2005 as varied from time to time.

PART F

ANTI-DISCRIMINATION

37. Anti-Discrimination

- (i) It is the intention of the parties bound by this award to seek to achieve the objective 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 grievance 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 provisions 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 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."

PART G

MONETARY RATES

Table 1 - Salaries

Classification and Grades	Common Salary Point	1.7.07 Per annum \$
Home Care Gradings and Pay Scales -		
Grade 1 -		
Step 1	29	39,807
Step 2	33	41,189
Grade 2 -		
Step 1	35	41,912
Step 2	38	43,099
Grade 3 -		
Step 1	40	43,903
Step 2	43	45,188
Grade 4 -		
Step 1	45	45,967
Step 2	49	47,682
Grade 5 -		
Step 1	52	49,012
Step 2	56	50,829
Grade 6 -		
Step 1	58	51,784
Step 2	62	53,847
Grade 7 -		
Step 1	64	55,010
Step 2	68	57,117
Grade 8 -		
Step 1	70	58,341
Step 2	74	60,518
Grade 9 -		
Step 1	76	61,801
Step 2	79	63,561
Grade 10 -		
Step 1	81	64,827
Step 2	84	66,749

Grade 11 - Step 1	86	68,051
Step 2	89	70,167
Grade 12 - Step 1	90	70,862
Step 2	94	73,750
Grade 13 - Step 1	96	75,308
Step 2	100	78,427
Grade 14 - Step 1	102	79,947
Step 2	105	82,244
Grade 15 - Step 1	107	83,906
Step 2	110	86,419
Grade 16 - Step 1	112	88,113
Step 2	115	90,699
Grade 17 - Step 1	117	92,500
Step 2	120	95,472
Grade 18 - Step 1	121	96,293
Step 2	124	99,269
Grade 19 - Step 1	126	101,454
Step 2	130	105,923

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	22	Travel Allowance - use of own vehicle	0.68 cents per km
2	24	Sustenance Allowance - Capital City (Sydney)	280.25 per day
3	24	Sustenance Allowance - Tier 1 Country Centre Newcastle Port Macquarie Wagga Wagga Wollongong	202.25 per day 200.25 per day 197.75 per day 195.75 per day
4	24	Sustenance Allowance - Tier 2 Country Centre Bathurst Broken Hill Dubbo Orange	180.75 per day 180.75 per day 180.75 per day 180.75 per day
5	24	Sustenance Allowance - Tier 3 Other Country Centres	170.75 per day

D. W. RITCHIE, Commissioner.

CROWN EMPLOYEES (JENOLAN CAVES RESERVE TRUST DIVISION) SALARIES AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1685 of 2007)

Before Commissioner Ritchie

25 March 2008

REVIEWED AWARD

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Title of Award
3.	Definitions
4.	Parties
5.	Intentions
6.	Salaries
7.	Loadings
8.	Allowances
9.	Hours
10.	Rosters - Visitor Services Staff
11.	Shift Work - Visitor Services Staff
12.	Rest Breaks
13.	Temporary Employees
14.	Casual Employment
14A.	School Based Apprentices
15.	Overtime
16.	Appointments
17.	Consultation
18.	Grievance Procedures
19.	Anti Discrimination
20.	Association Subscriptions
21.	Savings
22.	Area, Incidence and Duration
	Schedule A - Base Salary Levels
	Schedule B - Competency Levels
	Schedule C - Loadings
	Supplementary Schedule C1
	Supplementary Schedule C2
	Schedule D - Cash Allowances
	Schedule E - Other Casual Entitlements

2. Title of Award

This award shall be known as the Crown Employees (Jenolan Caves Reserve Trust Division) Salaries Award.

3. Definitions

"Trust" shall mean the Jenolan Caves Reserve Trust Division, constituted under the *Public Sector Employment and Management Act 2002*.

"Employee" shall mean any person engaged to work, permanently or otherwise, for the Jenolan Caves Reserve Trust Division, under the provisions of the *Public Sector Employment and Management Act 2002*.

"Temporary Employee" shall mean a person who is engaged for a period of time to undertake a specific task and/or is required to regularly work a number of ordinary hours each week.

"Casual Employee" shall mean a person engaged and paid as such, where leave benefits do not accrue but are recognised in an enhanced rate of pay.

"Association" shall mean the Public Service and Professional Officers' Association Amalgamated Union of New South Wales.

"Union" shall mean The Australian Workers' Union, New South Wales, the Electrical Trades Union of Australia, New South Wales Branch, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, and the Construction, Forestry, Mining and Energy Union (New South Wales Branch).

"Administrative Service Staff" shall mean all persons employed to provide administrative, technical, resource and management services for the Trust, who are employed to work on a 35-hour a week basis.

"Visitor Services Staff" shall mean all persons employed to directly provide for the maintenance or interpretation of the Karst Reserve to the public, who are employed to work on a 38-hour a week basis.

"Director" shall mean the Chief Operations Officer of the Jenolan Caves Reserve Trust Division.

"Base Rate" shall mean the rates of pay as set out in Schedule A.

4. Parties

This award has been entered into by the Jenolan Caves Reserve Trust Division of the one part and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (hereinafter referred to as the "Association") representing all staff not employed as maintenance officers or tradespersons, the Australian Workers' Union, New South Wales, the Electrical Trades Union of Australia, New South Wales Branch, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, and the Construction, Forestry, Mining and Energy Union (New South Wales Branch) (hereinafter referred to as the "unions") representing labourers and tradespersons, of the other part.

5. Intentions

5.1 It is the intention of the parties that the award will partially regulate the terms and conditions of employment of employees, through the consolidation and annualisation of wages and salaries.

5.2 The annualisation of payments to employees involves the consolidation of payments for:

- (a) penalty rates for working weekends (including Saturdays and Sundays) and public holidays per year;
- (b) shift allowances and various trades allowances;
- (c) annual leave loading.

5.3 The parties to this award agree that the award will provide for improved efficiencies as set out in Schedule F in the operation, maintenance and display of caves in the Reserve, while creating a better

paid and more interesting working environment through training and skills acquisition for staff, while providing a wider range of tasks through opportunities to work in different job classifications.

6. Salaries

- 6.1 Salaries shall be those as set out in Schedule A of this award.
- 6.2 The annual salary in the said Schedule A shall be paid for the purposes of superannuation and all paid leave, except as provided in paragraph 6.2.1 of this subclause.
- 6.2.1 Extended leave will be paid at the base rate as set out in Schedule A of the position the employee is occupying at the time the leave is taken.

7. Loadings

- 7.1 Visitor Services Staff who work 42 weekends or less shall not be rostered to work more than ten consecutive weekends, unless the employee agrees to do so.
- 7.2 Schedule C of this award particularises the loadings which, when added to the base rate, shall form the annual salary.
- 7.3 Employees (other than casual employees) referred to in Schedule C1, who agree to work more weekends and public holidays than those prescribed, will be paid penalty rates on the base rate as follows for working on a:
- (a) Saturday - a 50% loading for each additional day worked.
 - (b) Sunday - a 75% loading for each additional day worked.
 - (c) Public holiday - a 150% loading for each additional day worked.
- 7.4 Employees referred to in Schedule C1 who agree to work more weekends and/or public holidays than those prescribed, will be paid an additional loading component with any loading component to which they may already be entitled, on the following bases:

Number of additional ordinary shifts worked on Sundays and/or public holidays in any 12-month period commencing with this award	Additional Payment
4-10	1/5 of one week's ordinary salary
11-17	2/5 of one week's ordinary salary
18-24	3/5 of one week's ordinary salary
25-31	4/5 of one week's ordinary salary
32 or more	one week's ordinary salary

- 7.5 Where, as a consequence of being on leave without pay, an employee has not worked the number of weekends and/or public holidays prescribed, the employee will have the relevant component to which they may not be entitled deducted from salary on the basis of the table above.
- 7.6 The salary deduction referred to in subclause 7.5 shall be commenced in December of each year by the second pay day, and shall not be deducted at a rate greater than five per cent of the employee's gross fortnightly pay.
- 7.7 The additional payment referred to in subclauses 7.3 and 7.4 shall be made by the second pay day in December of each year, provided that:
- (a) Where the employment of an employee is terminated or that employee retires, the employee shall be entitled to be paid the payment accrued under subclauses 7.3 and 7.4 on a pro rata basis from the commencement of the first pay day in December of each year, until the date of termination or retirement; and

- (b) payment shall be at the rate applying as at the date of termination or retirement.

8. Allowances

- 8.1 With the exception of allowances listed herein or in Schedule C2 of this award, all allowances contained within the Public Service of NSW Personnel Handbook shall be paid as applicable.
- 8.2 The allowances paid to employees for utilising basic skills, occupying key positions and being "on call" as required, are set out in Schedule C.
- 8.3 The following allowance, as prescribed by relevant awards, which are not included for staff in Schedule C2, shall be paid to staff on an incidence basis: Chokage Allowance - Crown Employees (Skilled Trades) Award.

9. Hours

9.1

- 9.1.1 Flexible Leave - The parties agree that an appropriate level of service be maintained between the hours of 8.30 a.m. and 5.00 p.m. on weekdays.

- 9.1.2 Ordinary hours of work shall mean:

- (a) for Administration Services staff, 35 hours per week over a 140-hour, four-week cycle, Monday to Friday; and
- (b) for Visitor Services staff, 38 hours per week over a 152-hour, four-week cycle, Tuesday to Monday.

- 9.1.3 Bandwidth shall mean the times of day between which the ordinary hours of work may be carried out. Those hours being the 12 hours between 7.00 a.m. and 7.00 p.m.

- 9.1.4 Core time shall mean:

- (a) For Administration Services staff, the period of time when an employee must be on duty, being between the hours of 9.30 a.m. and 3.30 p.m., exclusive of the meal break.
- (b) For Visitor Services staff:
- (i) For staff employed to provide for the interpretation of the Caves Reserve, 9.30 a.m. to 4.30 p.m., exclusive of a meal break; and
- (ii) for staff employed to provide for the maintenance of the Caves Reserve infrastructure, a continuous period of a minimum of seven hours, inclusive of the meal break, commencing before 9.30 a.m.

- 9.1.5 The Trust may require an employee to perform duty beyond the hours determined under subclause 9.1.3 of this clause for employees working a flexible working hours scheme and for employees working a shift, all work performed in excess of 7.6 hours, but only if it is reasonable for the employee to be required to do so. An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:

- (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
- (b) any risk to employee health and safety;

- (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
 - (d) the notice (if any) given by the Trust regarding the working of the additional hours, and by the employee of their intention to refuse the working of additional hours; or
 - (e) any other relevant matter.
- 9.1.6 Meal break shall mean an employee is entitled to a lunch break between the hours of 11.30 a.m. and 2.30 p.m. of not less than 30 minutes. If the employee wishes to substantially extend the lunch break beyond one hour they must, in agreement with their supervisor, ensure the extension will not prevent an appropriate level of service being maintained.
- 9.1.6.1 For staff conducting tours which are programmed to last more than five hours, or in cases of emergency, causing the tour to last more than five hours, they shall have a period of 30 minutes added to the time recorded as having been worked on that day.
- 9.1.7 At the end of each four-week cycle, a maximum of 10 hours debit or 14 hours credit may be carried into the next four-week cycle. Hours in excess of a credit of 14 hours will be forfeited. Hours in excess of a debit of 10 hours will be debited against accrued annual or extended leave in multiples of one quarter day.
- 9.1.8 An employee may have one full day, plus one half day, or three half days flexible leave in a four-week cycle, with the prior approval of their supervisor.
- 9.1.9 An employee who is unable to take flexible leave in any four-week cycle may "carry over" a leave entitlement of one day or a half day into the next cycle. A maximum of five days' flexible leave may be carried over in this manner into the next cycle.
- 9.1.10 Where flexible leave is carried over, the hours for the flexible leave carried over shall not be included as credit hours for the purpose of paragraph 9.1.6.
- 9.1.11 Accumulated flexible leave, which is carried over, may be taken in a block with the prior approval of the supervisor.
- 9.1.12 All flexible leave is to be taken between Monday and Friday, inclusive, excluding public holidays.
- 9.2 No employee shall be required to work for a period of more than five hours continuously without having a meal break. A morning or afternoon tea break does not breach a continuous period of work.
- 9.2.1 There shall be a paid morning tea break of ten minutes within the five hours of commencing work. An afternoon tea break may be taken during the afternoon in the course of the employees continuing their normal duties.
- 9.3 Employees will be provided with four clear rest days in each two-week period.

10. Rosters - Visitor Services Staff

- 10.1 For roster purposes, the work week shall be Tuesday to Monday, inclusive.
- 10.2 Roster shall mean a written list of days of the week on which employees are required to work. This list includes the time of day on which an employee is required to commence duties.
- 10.3 Daily Work Program shall mean the allocation of duties to be carried out by employees on a daily basis, including a specified meal break.

- 10.4 Usual Work Hours shall mean a period of 7.6 consecutive hours from the prescribed starting time worked on any one day, which is exclusive of the meal break.
- 10.5 The two-week roster of shifts for Visitor Services staff will have regard to the needs of the Trust, employees and provision of services to customers.
- 10.6 There shall be a specified meal break of not less than 30 minutes. Such meal break shall be taken no later than five hours after the commencement of work.
- 10.7 A two-week work roster of shifts and days should be set in writing and displayed at least two weeks before the roster period starts.
- 10.8 Where the two-week roster referred to above is not set in writing and displayed at least two weeks before the roster period starts, agreement on the details of the work roster will be reached between the employees and management of a work area prior to it being finalised in writing and displayed.
- 10.9 A roster of shifts may be varied at any time by mutual consent or in exceptional circumstances on 12 hours' notice, if rendered necessary by the absence of employees from duty or shortage of staff, or emergency circumstances involving rescue or disaster or short notice tour bookings.
- 10.10 Rosters shall be designed so as to allow for a break of a minimum of ten consecutive hours between the finish and commencement of ordinary work hours.
- 10.11 Permanent changes to the annual pattern of rosters for an employee, or a specific job not covered by the provisions of this award, will be done in accordance with the consultative procedure with the Association/union and the members concerned, prior to implementation.
- 10.12
- 10.12.1 For permanent and temporary Guides, the maximum number of cave inspections shall be 132 in any eight- week period, up to a maximum of four per day.
- 10.12.2 This may include showing up to four caves in a day, except that a Guide will not be required (unless by agreement with the Guide) to show more than two two-hour or three-hour adventure tours or more than two River, Jubilee or extended tours, or three Lucas tours in one day.
- 10.13 For the purpose of designing the daily work program, the time taken for group preparation is to be included in the allocated time to conduct an adventure tour.
- 10.14 No employee will spend more than 1,000 hours underground in any period 1 April - 31 March. This amount may be varied by agreement between the parties.

11. Shift Work - Visitor Services Staff

- 11.1 Shift shall mean a work period of 7.6 hours which an employee is rostered to work, which commences at or after 10.00 a.m. on a working day.
- 11.2 The number of shifts listed in Schedule C2 shall be rostered on an annual basis and are included in the annual salary for the purposes of this award.
- 11.3 Employees rostered to work a shift shall have a lunch period of one hour.
- 11.4 Employees rostered to work a shift shall not be able to utilise flexible work hours arrangements while working that shift.
- 11.5 Shift starting and finishing times and meal breaks shall be strictly adhered to.

11.6 For the purposes of this clause, employees shall be paid the following allowance once they work a shift (in the case of employees referred to in subclause 11.2, a shift in excess of the number of shifts specified therein).

Shift	Commencing Time	Payment for Shift in Addition to Base Rate
Day	At or after 6.00 a.m. and before 10.00 a.m.	Nil
Afternoon (early)	At or after 10.00 a.m. and before 1.00 p.m.	10%
Afternoon (late)	At or after 1.00 p.m. and before 4.00 p.m.	12.5%
Night	At or after 4.00 p.m. and before 4.00 a.m.	15%
Night	At or after 4.00 a.m. and before 6.00 a.m.	10%

11.7 Where employees are engaged on shift work, they shall be rostered on a rotating basis.

11.8 Provided that shift allowances for employees referred to in subclause 11.6 shall not be paid in respect of work done at weekends or on public holidays.

12. Rest Breaks

12.1 There shall be a break of at least ten consecutive hours between employees' ordinary shifts.

12.2 Employees required to continue to work after rostered finishing times are required to have a rest break of at least ten consecutive hours before commencing work, and to be paid for any ordinary working time occurring during such absence.

12.3 Where employees are directed to commence work without having their required rest break, they will be paid overtime rates until they are released from duty for the ten-hour period, and shall be entitled to be absent until the employee has had ten consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence.

13. Temporary Employees

Where an employee remains available for further ongoing temporary employment with the Trust, the Trust shall preserve their accumulated leave entitlement with the Trust and carry it over to the next period of employment, on an annual basis.

14. Casual Employment

14.1 Casual employees will be paid fortnightly, or at the termination of employment, whichever is the earlier, for the hours worked.

14.2 The casual hourly rate shall be determined by adding 20 per cent to the base hourly rate.

14.3 The base hourly rate will be determined by the following formulae:

$$\frac{\text{Base Salary}}{1} \times \frac{5}{260.8929} \times \frac{1}{\text{Number of ordinary hours of work per week}}$$

14.4 The rate of pay for casual employees shall be, for work:

Monday to Friday.	The casual hourly rate
Saturday	The casual hourly rate + 50 per cent
Sunday	The casual hourly rate + 75 per cent
Public Holidays	The casual hourly rate + 150 per cent

- 14.5 Appointment to a higher starting salary point within a salary scale, other than the base grade Year 1, may be determined by the Director, following assessment of the successful applicant's educational qualifications, work experience in a related field and/or relevant skill level and competencies in respect of the position to which they are appointed.
- 14.6 The loading payable to casuals is in lieu of all leave entitlements.
- 14.7 Casual visitor services staff are entitled to be paid overtime for time worked in excess of ten hours per day.
- 14.8 Overtime payments are calculated on the base hourly rate referred to in subclause 14.3.
- 14.9 Casual employees shall be engaged for a minimum of three consecutive hours.
- 14.10 Casual employees shall not be entitled to flexible leave arrangements.
- 14.11 Casuals shall also receive the following entitlements in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006:
- (a) Unpaid parental leave in accordance with paragraph 12(iv)(d);
 - (b) Personal Carer's entitlement in accordance with subclause 12(v); and
 - (c) Bereavement entitlement in accordance with subclause 12(vi).

This entitlement is also set out at Schedule G of this award.

14A. School Based Apprentices

14A.1 Definition

A school based apprentice is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate.

14A.2 Wages

- (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 paragraph (a) of this subclause, 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.
- (c) The wages paid for training time may be averaged over the school term or year.
- (d) 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.

14A.3 Progression Through the 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.

14A.4 Conversion from a school based apprentice 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.

14A.5 Conditions of Employment

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

15. Overtime

15.1 Definitions -

15.1.1 Overtime shall mean:

- (a) For employees working a flexible working hours scheme, all time worked outside the flexible hours bandwidth or all time worked within the flexible hours bandwidth in excess of ten hours per day where such work is at the direction of the Trust; and
- (b) for employees working a shift, all work performed in excess of 7.6 hours where such excess work is at the direction of the Trust.

15.2 An employee may be directed by the Trust to work overtime, provided it is reasonable for the employee to be required to do so. An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working unreasonable hours. In determining what is unreasonable, the following factors shall be taken into account:

- (a) the employee's prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
- (b) any risk to employee health and safety;
- (c) the urgency of the work required to be performed during overtime, the impact on the operational commitments of the organisation and the effect on client services;
- (d) the notice (if any) given by the Trust regarding the working of the overtime, and by the employee of their intention to refuse overtime; or
- (e) any other relevant matter.

15.3 Rates - Overtime, when worked on the days prescribed, shall be paid for at the following rates:

- (a) for all overtime worked Monday to Friday, inclusive, at the rate of time and one-half for the first two hours and at the rate of double time thereafter until relieved from duty;
- (b) for all overtime worked on a Saturday, at the rate of time and one-half for the first two hours and at the rate of double time thereafter;
- (c) for all overtime worked on a Sunday, at the rate of double time; and
- (d) for all overtime worked on a public holiday, at the rate of double time and one-half, i.e., ordinary rates and one-half in addition to salary.

Provided that:

- (i) Overtime rates are not paid for meal times.

- (ii) An employee receiving a salary in excess of the salary of a Level 6 as above, shall only receive overtime payments calculated on the basis of the salary of a 1st year rate of Level 6.
- (iii) An employee who works overtime on a Saturday, Sunday or public holiday shall be paid a minimum payment as for three hours' work at the base rate as prescribed by this award.

15.4 Call Back

- (a) An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of three hours' work at the appropriate overtime rates.
- (b) The employee shall not be required to work the full three hours if the job can be completed within a shorter period.
- (c) When an employee returns to the place of work on a number of occasions in the same day and the first or subsequent minimum pay period overlaps into the next call-out period, payment shall be calculated from the commencement of the first recall, until either the end of duty or three hours from the commencement of the last recall, whichever is the greater. Such time shall be calculated as one continuous period.
- (d) When an employee returns to the place of work on a second or subsequent occasion and a period of three hours has elapsed since the staff member was last recalled, overtime shall only be paid for the actual time worked in the first and subsequent periods, with the minimum payment provision only being applied to the last recall on the day.
- (e) A recall to duty commences when the employee starts work and terminates when the work is completed. A recall to duty does not include time spent travelling to and from the place at which work is to be undertaken.

Where overtime actually worked because of a call out(s) totals less than three hours between the prescribed finishing time and prescribed starting time, shall not be regarded as time worked for the purposes of clause 12, Rest Breaks, where the actual time worked is less than three hours.

15.5 Calculation

- (a) Overtime shall not be paid for periods of less than one quarter of an hour.
- (b) The formula for the calculation of overtime at ordinary rates shall be:

$$\frac{\text{Base Rate}}{1} \times \frac{5}{260.8929} \times \frac{1}{\text{Number of ordinary hours of work per week}}$$

15.6 Meal Allowance

- (a) An employee, whether entitled to payment of overtime or not, who properly and reasonably incurs expenses in obtaining a meal, shall be paid the relevant meal allowance in accordance with the overtime meal allowances in Part B, Monetary Rates, of the Crown Employees (Public Service Conditions of Employment) Award 2002:
 - (i) for breakfast when, without 12 hours' notice, required to commence work at or before 6.00 a.m. and at least one hour before the prescribed starting time; and
 - (ii) for an evening meal
 - (1) In the case of an employee not working under a flexible working hours' scheme who is required to work beyond 6.00 p.m. and for at least 1.5 hours after the prescribed ceasing time; or

- (2) in the case of an employee working under a flexible working hours' scheme who is required to work beyond 6.00 p.m. and beyond the prescribed ceasing time
 - (b) An employee required to work overtime on a Saturday, Sunday or public holiday:
 - (1) In the case of an employee whose starting time is not later than 8.30 a.m. and who is required to work until or beyond 1.30 p.m.; or
 - (2) in the case of an employee whose starting time is later than 8.30 a.m. and who is required to work until or beyond 2.00 p.m.
 - (c) An employee shall not be entitled to the allowances prescribed under this clause unless the performance of the work concerned at the time at which it was performed was necessary.
- 15.7 Adjustment of Allowances - Where an allowance under subclause 15.6, Meal Allowance, is insufficient to adequately reimburse the officer for expenses properly and reasonably incurred, a further allowance may be paid so as to reimburse the officer or employee for the additional expenses incurred.

16. Appointments

- 16.1 Appointment to a position will be in accordance with the provisions of the *Public Sector Employment and Management Act 2002*, in as much as it applies to employees of the Trust.
- 16.2 Appointments to the salary scales will be in accordance with Schedule B of this award.
- 16.3 Appointment to a higher starting salary point within a salary scale, other than Year 1, may be determined by the Director, following assessment of the successful applicant's educational qualifications, work experience in a related field and/or relevant skill level and competencies in respect of the position to which they are appointed.

17. Consultation

- 17.1 Consultative Arrangements - The Trust, Association and Unions agree to continued consultation to ensure the implementation of flexible work patterns with the view to achieving world best practice, efficiency and increased job satisfaction.
- 17.2 Joint Consultative Committee
- 17.2.1 A Joint Consultative Committee shall be established comprising the Trust, the Association and the Unions for the purpose of facilitating a constructive exchange of information, to monitor the impact of the award and survey any difficulties which may arise from its implementation.
 - 17.2.2 The Joint Consultative Committee shall be comprised of the Trust's Director and up to four additional management representatives, and up to six representatives (employees and elected members) of the Association/Unions.
 - 17.2.3 The Joint Consultative Committee will also consider workplace changes and productivity improvements put forward by staff, Association/Unions or management.
 - 17.2.4 The Joint Consultative Committee shall be required to meet on a regular basis, being no less often than four times per year.
- 17.3 A working committee will be established between the Trust and the Association/Unions to ensure the development of career paths, the acquisition of appropriate skills, competencies and qualifications of employees.
- 17.3.1 The working committee will comprise at least two employer representatives and at least two representatives nominated by the Association/Unions.

18. Grievance Procedures

- 18.1 When any grievance or dispute arises at the workplace, the employee(s) concerned will take the matter up with their immediate supervisor. The supervisor is to be given the opportunity to investigate the matter and provide a response to the grievance or claim. The supervisor will advise the employee(s) concerned, within 24 hours of receiving the grievance, of the timetable for the resolution of the grievance. The grievance is to be resolved as soon as possible.
- 18.2 When any grievance or dispute arises in the workplace between the employee(s) and their immediate supervisor, or where the matter is of such a nature that direct discussion between the employee(s) and their immediate supervisor would not be appropriate, the employee(s) may notify the local manager, Association/Union or Association delegate, who will then take up the matter with the appropriate local manager.
- 18.3 If the matter has not been settled by the immediate supervisor or local manager, the party shall report the grievance in writing. If the party so requests, the matter will be discussed as soon as practicable between a representative of the Association/Union concerned and the Director or nominee.
- 18.4 If the matter remains unresolved, it may be referred by either party to the appropriate industrial tribunal.
- 18.5 Nothing contained in these procedures will preclude the Trust and Association/Union from entering into direct negotiations on any matter.
- 18.6 Whilst these procedures or negotiations are continuing, no stoppage of work or any other form of limitation of work shall be applied.
- 18.7 The parties reserve the right to vary this procedure where it is considered that an occupational health and safety factor is involved.

19. Anti Discrimination

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 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."

20. Deduction of Union Membership Fees

- 20.1 The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.
- 20.2 The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- 20.3 Subject to subclauses 20.1 and 20.2 of this clause, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.
- 20.4 Monies so deducted from employee's pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- 20.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 20.6 Where an employee has already authorised the deduction of union membership fees 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 continue

21. Savings

Should there be a variation to the Crown Employees (Public Sector - Salaries 2007) Award, or an award replacing it, any such increase will be reflected in Schedule A of this award, either by variation or the making of a new award.

22. Area, Incidence and Duration

- 22.1 The purpose of this award is to partially regulate the terms and conditions of employment of employees, as defined, who are either seconded by the Trust, or who are employed by the Trust.
- 22.2 Other terms and conditions, except as provided for within this award, shall be those determined from time to time under the *Public Sector Employment and Management Act 2002*, the Public Sector Management (General) Regulation, 1996, in so much as they apply to employees of the Jenolan Caves Reserve Trust Division.
- 22.3 This award shall replace the following instruments in so far as they apply to employees -
 - Crown Employees (Public Sector - Salaries 2007) Award
 - Overtime provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006
 - General Construction and Maintenance, Civil and Mechanical Engineering, &c. (State) Award.

Crown Employees (General Staff - Salaries) Award 2007

Crown Employees (Skilled Trades) Award.

- 22.4 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and replaces the Crown Employees (Jenolan Caves Reserve Trust) Salaries Award published 25 February 2005 (348 I.G. 670) and all variations thereof.
- 22.5 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 the New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 25 March 2008.
- 22.6 This award remains in force until varied or rescinded for the period for which it was made already having expired.

SCHEDULE A

BASE SALARY LEVELS

The levels upon which the following base rates have been determined are in accordance with the competency descriptions set out in the attached Schedule B.

These rates will apply to all positions, and the basis for calculation of all full-time, part-time, casual, junior and apprentice rates of pay.

Position Title	Loc	Level	Base Rate	Loading of:	Annual Salary
			\$	%	\$
Administration Officer	JB	2	43,369	1.4	43,976
Administration Officer (Special)	JB	2A	44,945	1.4	45,575
Business Development Manager	B		81,415	1.4	82,555
Caretaker Jenolan Cottages	J	1A	41,727	24.4	51,908
Manager Caving Operations	J		65,527	26.8	83,088
Director	B		118,519	2.4	121,363
Guide - Grade 1	J	1A	41,727	29.2	53,911
Guide - Grade 2	J	2	43,369	29.2	56,033
Maintenance Officer	J	1	39,347	27.8	50,285
Karst Resources Officer	J	5	62,606	1.4	63,482
Senior Finance Officer	B	6	69,465	1.4	70,438
Guide - Grade 3	J	3	46,600	29.2	60,207
System Administrator/ Finance Officer	B	5	62,606	2.4	64,109
Team Leader - Electrical	J	4	54,248	24.6	67,593
Team Leader - Maintenance	J	4	54,248	26.6	68,678
Trades Officer	J	2A	44,945	10.0	49,440
Trades Officer - Electrical (W/ends)	J	3A	51,175	13.6	58,135
Visitor Services Officer (Tickets- PT)*	J	1A	41,727	39.5	58,209

* Visitor Services Officer part-time works four days per week. Base rate is 80 per cent of Level 1A base rate.

Junior Rates

Junior rates shall be paid at the following percentage of the annual salary for the position:

Under 17 years of age	80 per cent
Age 17 years	90 per cent

Apprentice Rates

Apprentice tradesperson shall be paid as follows:

- (a) the rates determined under any formal scheme of apprenticeship; or
- (b) the following percentage of the Level 2A, trades salaries, which shall be deemed to be inclusive of all penalties, trades allowances and annual leave loading:

1st year	50%
2nd year	65%
3rd year	80%
4th year	95%

whichever is appropriate in respect of Schedule C.

SCHEDULE B**COMPETENCY LEVELS**

Level	Category	Competency Description
1	Operational - Grade 1 (Maintenance) (Cleaning)	Competency at this level involves the application of knowledge and skills to a limited range of tasks and roles. There is a specific range of contexts where the choice of actions required is clear. Competencies are normally used within established routines, methods and procedures that are predictable, and within which judgement against established criteria is also involved.
1A	Operational Grade 1A (Caves Services) (Visitor Accommodation)	The competencies are likely to be applied under direct guidance with regular checking, but may be applied under less direct guidance and some autonomy if working in teams.
2	Operational Grade 2 (Caves Services) (Administration)	Competency at this level involves the application of knowledge and skills to a range of tasks and roles. There is a defined range of contexts where the choice of action is required is usually clear, with limited scope in the choice. Competencies are normally used within established routines, methods and procedures, in some cases involving discretion and judgment about possible actions.
2A	Operational Grade 2A (Trades) (Administration)	The competencies are likely to be applied under routine guidance with intermittent checking, but may take the form of general guidance and considerable autonomy if working in teams. Responsibility for some roles and co-ordination may be involved if working in a team.

3	Operational Grade 3 (Caves Services)	Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills . There is a range of tasks and roles in a variety of contexts, with some complexity in the extent and choice of actions required. procedures where some discretion and judgement is required in selection of equipment, work organisation, services, actions and achieving outcomes within time constraints.
3A	Operational Grade 3A (Trades - Electrical)	The competencies are likely to be applied under guidance with checking related to overall progress, but may take the form of broad guidance and autonomy if working in teams. Responsibility for the work of others and/or team co-ordination may be involved.
4	Administration	Competency at this level involves the application of knowledge with depth in some areas and a broad range of skills. There is a range of tasks and roles in a variety of contexts, with some complexity in the range and choice of actions required.
	Management - Grade 1 (Operational - Low Volume)	Competencies are normally used within routines, methods and procedures where discretion and judgement is required, for both self and others, in planning and selection of equipment, work organisation, services, actions, and achieving outcomes within time constraints. The competencies are likely to be applied under general guidance on progress and outcomes sought. The work of may be supervised, or teams guided or facilitated. Responsibility for and limited organisation of the work of others may be involved.
5	Environment and Technology (Graduate or Equivalent)	Competencies at this level involve the self-directed application of knowledge with substantial depth in some areas, and a range of technical and other skills to tasks, roles and functions in both varied and highly specific contexts. Competencies are normally used independently and both routinely and non-routinely. Judgement is required in planning and selecting appropriate equipment, services, techniques and work organisation for self and others. The competencies are likely to be applied under broad guidelines. The work of others may be supervised or teams guided. Responsibility for and management of the work of other may be involved
6	Management - Grade 2 (Operational - Medium Volume)	Competency at this level involves the self-directed development of knowledge with substantial depth across a number of areas, and/or mastery of a specialised area with a range of skills. Application is to major functions in either varied or highly specific contexts. Competencies are normally used independently and are substantially non routinely. Significant judgement is required in planning, design, technical or supervisory functions related to products services, operations or processes. The competencies are likely to be applied under limited guidelines in line with a broad plan, budget or strategy. Responsibility and defined accountability for the management and output of the work of others and for a defined function or functions may be involved

6A	Management - Grade 3	
6B	(Operational - High Volume)	
6C	Management - Grade 4	Competencies at this level involve the self directed development and mastery of broad and/or specialised areas of knowledge with a range of skills. Application is to major, broad, or specialised functions in highly specialised contexts.
8	Strategic Management	Competency at this level involves the self directed development and mastery of a range of knowledge and broad or specialised functions in highly varied and/or specialised contexts.
	Director	Competencies are normally used with full independence and in contexts and combinations of great variability. The highest level of complex judgement is applied in planning, design, technical and/or management functions. The competencies are likely to be applied in ways that involve full responsibility and accountability for all aspects of the work of others and functions, including planning, budgeting and strategy.

SCHEDULE C

LOADINGS

Visitor Services Staff

Loadings for Penalty Rates, Annual Leave Loading and Allowances (Refer to Subclause 7.2 of clause 7, Loadings)

Column 1	2	3	4	5	6	7	8	9	10
Position	Week ends	Public Holidays	After-noon Shift	Loading Penalties %	For Allowances %	Rounding %	Total Loading %	Annual Leave Accrual	
								Days	Wks
Caretaker Jenolan Cottages	46	10	Nil	24.28	0.00	0.12	24.4	30	6
Manager Caving Operations	42	10	Nil	26.79	0.00	0.01	26.8	30	6
Guide - Grade 1	42	10	25	26.79	2.30	0.11	29.2	30	6
Guide - Grade 2	42	10	25	26.79	2.30	0.11	29.2	30	6
Guide Grade 3	42	10	25	26.79	2.30	0.11	29.2	30	6
Team Leader - Electrical	26	7	5	19.03	5.43	0.14	24.6	25	5
Team Leader - Maintenance	26	7	5	19.03	7.51	0.06	26.6	25	5
Trades Officer	NIL	NIL	5	1.34	8.55	0.11	10.0	20	4

Trades Officer - Electrical	13	NIL	5	8.03	5.43	0.14	13.6	22	4.4
Visitor Services Officer (Tickets-PT)	42	10	25	37.9**	1.58**	0.02	39.5 **	30**	6**

** Calculated on annual part-time rate of 80 per cent (four days per week) of Level 1A base rate.

Administrative Services Staff

Loadings for Annual Leave Loading and "on Call" Allowance

Column 1	2	3	4	5	6	7	8	9	10
Position	Week ends	Public Holidays	After-noon Shifts	Loading for: Penalties Allowances		Rounding	Total Loading	Annual Leave Accrual	
				%	%			Days	Wks
Administration Officer (Special)	Nil	Nil	Nil	1.34	0.00	0.06	1.4	20	4
Business Development Manager	Nil	Nil	Nil	1.34	0.00	0.06	1.4	20	4
Senior Finance Officer	Nil	Nil	Nil	1.34	0.00	0.06	1.4	20	4
Director	As required		Nil	1.34	1.00	0.06	2.4	20	4
Karst Resources Officer	Nil	Nil	Nil	1.34	0.00	0.06	1.4	20	4
Systems Administrator and Finance Officer	As required		Nil	1.34	1.00	0.06	2.4	20	4

Rounding - The individual percentage loadings for weekend and public holiday penalty rates, leave loading, etc., and the various shift and trades allowances have been calculated to two decimal places. When brought forward to this schedule, a "rounding-up" factor has been added to enable the final loading to be expressed to only one decimal place, each ending in either .0, .2, .4, .6 or .8 as shown in column 8 above. This principle will be applied when calculating the loading for any new or revised positions.

On the following pages, there is a detailed breakdown on the percentage loadings.

Supplementary Schedule C1 - Weekend and public holiday penalties, annual leave loading and compensation for Sundays and public holidays.

Supplementary Schedule C2 - Afternoon shift allowance, trades allowances, on-call allowance.

SUPPLEMENTARY SCHEDULE C1

Percentage Loadings for Penalties, Leave Loading and Compensation for Sundays and Public Holidays Worked

Position	LOC	Annual Leave Loading		Penalties			Agreement #2225	Sub-total To Column 5 %	No. of days to be worked			Weekly Hours
		On # Weeks	%	Sat.	Sun.	Public Holidays			Sat.	Sun.	Public Holidays	
Administration Officer(Special)	JB	4	1.34					1.34				35
Business Development Manager	B	4	1.34					1.34				35
Caretaker Jenolan Cottages	J	6	1.68	4.74	13.93	2.01	1.92	24.28	23	46	10	38
Manager Caving Operations	J	6	1.68	8.47	12.71	2.01	1.92	26.79	42	42	10	38
Guide - Grade 1	J	6	1.68	8.47	12.71	2.01	1.92	26.79	42	42	10	38
Guide - Grade 2	J	6	1.68	8.47	12.71	2.01	1.92	26.79	42	42	10	38
Karst Resources Officer	J	4	1.34					1.34				35
Maintenance Officer	J	5	1.68	5.25	7.87	4.23		19.03	26	26	7	38
Senior Finance Officer	B	4	1.34					1.34				35
Guide - Grade 3	J	6	1.68	8.47	12.71	2.01	1.92	26.79	42	42	10	38
System Administrator/Finance Officer	B	4	1.34					1.34				35
Team Leader - Electrical	J	5	1.68	5.25	7.87	4.23		19.03	26	26	7	38
Team Leader - Maintenance	J	5	1.68	5.25	7.87	4.23		19.03	26	26	7	38
Trades Officer	J	4	1.34					1.34				38
Trades Officer - Electrical (Weekends)	J	4.4	1.48	2.62	3.93			8.03	13	13		38

Visitor Services Officer (Tickets- PT)*	J	6*	2.40*	12.09*	18.13*	2.88*	2.40*	37.9*	42	42	10	26.6*
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* Visitor Services Officer part-time works seven days per fortnight, including weekends and public holidays. Percentage loadings are to be applied to 70 per cent of Level 1A base rate.

Supplementary Schedule C2

Percentage Loadings for Leading Hand Afternoon Shift and Trades and on-Call Allowances

Position	Loc	Shift Allowance		Leading Hand	Chokage	Sundry Trades	Tractor and Truck	Water Clean	On Call	Sub total to Column 6 %
		No.	%							
Administration Officer	JB									0.00
Administration Officer (Special)	JB									0.00
Business Development Manager	B									0.00
Caretaker Jenolan Cottages	J									0.00
Manager Caving Operations	J									0.00
Director	B								1	1.00
Guide - Grade 1	J	25	1.26					1.04		2.30
Guide - Grade 2	J	25	1.26					1.04		2.30
Karst Resources Officer	J									0.00
Maintenance Officer	J	5	0.25		4.15	1.04	2.07	1.04		8.55
Senior Finance Officer	B									0.00
Guide - Grade 3	J	25	1.26					1.04		2.30

System Administrator/Finance Officer	B								1	1.00
Team Leader - Electrical	J	5	0.25	2.07	2.07	1.04				5.43
Team Leader - Maintenance	J	5	0.25	2.07	4.15	1.04				7.51
Trades Officer	J	5	0.25	2.07	4.15	1.04		1.04		8.55
Trades Officer - Electrical(Weekends)	J	5	0.25	2.07	2.07	1.04				5.43
Visitor Services Officer (Tickets- PT)*	J	25	1.58*							1.58*

*Visitor Services Officer part-time works seven days per fortnight, including weekends and public holidays. Percentage loadings to be applied to 70 per cent of Level 1A base rate.

SCHEDULE D
CASH ALLOWANCES

Position Title	Loc	Annual Salary \$	Plus Cash Allowances \$	Annualised Total Remuneration \$
Administration Officer	JB	43,976	250.00	44,226
Administration Officer (Special)	JB	45,575	250.00	45,825
Business Development Manager	B	82,555	250.00	82,805
Caretaker Jenolan Cottages	J	51,908	1,450.00	53,358
Manager Caving Operations	J	83,088	250.00 *	84,538
Guide - Grade 1	J	53,911	250.00	54,161
Guide - Grade 2	J	56,033	250.00	56,283
Director	B	121,363	250.00	121,613
Karst Resources Officer	J	63,482	250.00	63,732
Maintenance Officer	J	50,285	250.00	50,535
Senior Finance Officer	B	70,438	250.00	70,688
Guide - Grade 3	J	60,207	250.00 **	61,057
System Administrator/Finance Officer	B	64,109	250.00	64,359
Team Leader - Electrical	J	67,593	250.00 *	69,043
Team Leader - Maintenance	J	67,678	250.00 *	69,128
Trades Officer	J	49,440	250.00	49,690
Trades Officer - Electrical (W/ends)	J	58,135	250.00 **	58,985
Visitor Services Officer (Tickets- PT)	J	58,209	250.00	58,459

Visitor Services Officer part-time works four days per week. Base rate is 80 per cent of Level 1A base rate.

* Plus cash allowance \$1200.00 if living on site

** Plus cash allowance \$600.00 if living on site

SCHEDULE E

Other Casual Entitlements

- (i) Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (a) The Trust 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 the Trust in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(ii) Personal Carers Entitlement for casual employees

- (a) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in (iii) below who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (d), and the notice requirements set out in (e).
- (b) The Trust and the casual 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) The Trust must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the Trust to engage or not to engage a casual employee are otherwise not affected.
- (d) The casual employee shall, if required:
 - (A) 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
 - (B) 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, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (e) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Trust of their inability to attend for duty. If it is not reasonably practicable to inform the Trust during the ordinary hours of the first day or shift of such absence, the employee will inform the Trust within 24 hours of the absence.

(iii) A family member for the purposes of subclause (ii)(a) above is:

- (a) a spouse of the employee; or
- (b) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or
- (c) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the employee or of the 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 a relative of the employee who is a member of the same household where, for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

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

- (iv) Bereavement entitlements for casual employees
- (a) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Trust).
 - (b) The Trust and the casual 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) The Trust must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the Trust to engage or not engage a casual employee are otherwise not affected.
 - (d) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Trust of their inability to attend for duty. If it is not reasonably practicable to inform the Trust during the ordinary hours of the first day or shift of such absence, the employee will inform the Trust within 24 hours of the absence.

D.W. RITCHIE, Commissioner

Printed by the authority of the Industrial Registrar.

(1423)

SERIAL C6556

**CROWN EMPLOYEES (NEW SOUTH WALES DEPARTMENT OF
AGEING, DISABILITY AND HOME CARE) RESIDENTIAL CENTRE
SUPPORT SERVICES STAFF AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1707 of 2007)

Before Commissioner Ritchie

18 March 2008

REVIEWED AWARD

PART A

Arrangement

Clause No.	Subject Matter
1.	Definitions
2.	Salaries
3.	School Based Apprentices
4.	Higher Duties Allowance
5.	Hours
6.	Roster of Hours
7.	Part-time Staff Member
8.	Conditions Relating to Payment of Allowances for Work Performed at Weekends
9.	Overtime
10.	Uniforms
11.	Notice Board
12.	Recreation Leave
13.	Public Holidays
14.	Meals
15.	Association Representative
16.	Settlement of Disputes
17.	Anti-Discrimination
18.	Overtime, Penalty Rates and Part-time Rates
19.	General Conditions of Employment
20.	No Extra Claims
21.	Area, Incidence and Duration

PART B

MONETARY RATES

Schedule A - Rates of Pay
Schedule B - Special Allowances
Schedule C - Allowances
Schedule D - Salary Arrangements of Existing Staff
Members, Services Support Officer

1. Definitions

"Act" means the *Public Sector Employment and Management Act 2002* and its Regulations.

"Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Casual Employee" means any employee engaged in terms of Chapter 2, Part 2.6 Casual Employees, of the *Public Sector Employment and Management Act 2002* and any guidelines thereof or as amended from time to time.

"Chef"

Hunter Residences:

'Head Chef' means a food production manager who has overall responsibility for food preparation and the supervision of other staff involved in food preparation, timetabling for blast chilling, food banking, despatch and quality assurance in a cook/chill operation.

'Chef' means a person responsible for all facets of food preparation and compliance with quality assurance requirements in a cook/chill operation.

Metro Residences:

'Head Chef' means a person responsible for the overall food preparation and the supervision of staff involved in food preparation, requisitioning and storage of stores requires for the food preparation and serving of meals and quality assurance in a large cook fresh kitchen.

'Deputy Head Chef' means a person who assists the Head Chef in all aspects of food preparation and in the day to day supervision of staff involved in all aspects of food preparation including cleaning and food dispatch.

'Chef' means a person, other than a Head or Deputy Head Chef, as defined above, who is involved in all aspects of food preparation in a large cook fresh kitchen.

Other Residences:

'Head Chef' means a person who is responsible for the overall operations of a kitchen including cooking, cleaning, ordering of stores, storage of food supplies and supervision of other staff.

'Deputy Head Chef' means a person who assists the Head Chef in all aspects of food preparation on a day to day basis.

'Chef' means a person, other than a Head or Deputy Head Chef, as defined above, who is involved in all aspects of food preparation.

"Day Worker" means a worker 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.

"Department" means the New South Wales Department of Ageing, Disability and Home Care (DADHC).

"Large Residential Centre" or "LRC" means a Centre operated by the Department where direct care services are provided to developmental disability clients in other than a Community Residential Centre.

"Service" means continuous years of service. Future appointees shall be deemed to have the years of service indicated by the salaries at which they are appointed.

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

"Services Support Officer" -

"Services Support Officer, Grade 1" means a staff member appointed as such who is required to perform any or all of the following duties: general cleaning duties and other duties of a household-chore type, laundry duties using domestic machinery, and seamstress duties.

"Services Support Officer, Grade 2" means a staff member appointed as such who is required to perform, in addition to the duties appropriate to a Services Support Officer Grade 1, any or all of the following duties: high cleaning, outside cleaning, stripping and/or sealing of floors, operation of industrial/commercial type washing machines, sanitising of equipment, the cooking and/or preparing of light refreshments (e.g., eggs, toast, salads), making unoccupied beds.

"Services Support Officer, Grade 3" means a staff member appointed as such who is required to perform duties associated with maintaining a stores or supplies area, or undertake handyman type duties or regularly assisting trades staff.

"Staff member" means a staff member or temporary employee as defined in the Act and, unless otherwise specified in this award, includes both full-time and part-time staff.

2. Salaries

Rates of pay and allowances payable to staff members employed under this award shall be those as set out in Part B, Monetary Rates.

The salary rates in Part B, Monetary Rates, are set in accordance with the Crown Employees (Public Sector - Salaries 2007) Award and any variation or replacement award.

Staff members employed in a position covered by the classification of Services Support Officer and who were in receipt of salaries other than those prescribed in Part B, Monetary Rates, for that classification as at 19 April 1999 shall continue to receive the salaries specified in Schedule D - Salary Arrangements of Existing Staff Members, Services Support Officer, of the said Part B.

No future appointments are to be made to the classifications in Schedule D.

3. School Based Apprentices

(i) Definition

A school based apprentice is an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate.

(ii) Wages

(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 paragraph (ii)(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.

(c) The wages paid for training time may be averaged over the school term or year.

(d) 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.

(iii) Progression through the 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.
- (iv) Conversion from a school based apprentice 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 clause, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this award.

4. Higher Duties Allowance

- (i) The provisions relating to Higher Duties Allowance from the Public Sector Employment and Management (General) Regulation 1996 will apply.
- (ii) In instances where staff members are required to perform the duties of a higher classification for less than 5 consecutive days:
 - (a) For a minimum of a full shift.
 - (b) In a position which management assess as essential for the operation of the facility and maintenance of direct client services. Such assessment is to be made on an incident basis.

The staff member shall be paid an allowance at the rate equivalent to the difference between the staff member's salary and the minimum rate applicable to the higher classification for such time so spent on a daily, or full shift basis.

- (iii) This clause shall not apply when an employee in a higher grade is absent from duty by reason of his/her allocated day off duty as a consequence of working a 38 hour week.
- (iv) A Services Support Officer, Grade 1 or Grade 2, called upon to work as a Chef shall:
 - (a) be paid an allowance at the rate for "Chef", appropriate to the location of the LRC for the whole day where the period of relief is for four hours or more;
 - (b) be paid an allowance at the rate for "Chef", appropriate to the location of the LRC for the actual period of relief where such period exceeds one hour but is less than four hours;
 - (c) not be paid any allowance where the period of relief is for one hour or less.

5. Hours

- (i) The ordinary hours of work for day workers, 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. Any positions that operate under a 35-hour week prior to the making of this award will remain as such under this award.
- (ii) The ordinary hours of work for shift workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or an average of 38 hours per week in each roster cycle.
- (iii) Each day worker shall be free from duty for not less than two full days in each week and each shift worker shall be free from duty for not less than two full days in each week or four full days in each fortnight. Where practicable, such rostered days off duty shall be consecutive.

- (iv) The hours of work prescribed in subclauses (i), (ii) and (iii) of this clause shall be arranged to allow variable working hours in each roster cycle of 28 days to ensure that each staff member shall work his or her ordinary hours of work on not more than 19 days in the cycle.

The hours worked on each of those days shall be arranged to include a proportion of one hour (such proportion shall be 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 staff member's allocated day off duty on pay.

- (v) Each staff member shall be entitled to 12 allocated days off per annum.
- (vi) The staff member's allocated day off duty, prescribed in subclause (iv) of this clause, shall be determined having regard to the needs of the LRC thereof. Where practicable, such allocated day off duty shall be consecutive with the rostered days off duty prescribed by subclause (iii) of this clause.
- (vii) Once set, the allocated day off duty may not be changed in a current cycle unless there are genuine unforeseen circumstances prevailing. Where such circumstances exist and the allocated day off duty is changed, another day shall be substituted in the current cycle. Should this not be practicable, the day must be given and taken in the next cycle immediately following.
- (viii) There shall be no accrual of credit towards an allocated day off duty for ordinary recreation leave taken in accordance with clause 12, Recreation Leave. However, where a staff member has accumulated sufficient time to take his/her allocated day off duty prior to entering on recreation leave, and that day would have been taken if the staff member had not gone on recreation leave, it shall be allowed to the staff member on the first working day immediately following the period of leave.

Where a staff member has not accumulated sufficient time for an allocated day off duty prior to entering on recreation leave, time in credit shall count towards taking the next allocated day off duty falling in sequence, after the staff member has returned to duty.

- (ix) A staff member entitled to allocated days off duty, in accordance with subclause (iv) of this clause, shall continue to accumulate credit towards his/her allocated day off duty whilst on sick leave. Where a staff member's allocated day off duty falls during a period of sick leave, the staff member's available sick leave shall not be debited for that day.
- (x) Where a staff member's allocated day off duty falls due during a period of workers' compensation, the staff member on returning to duty, shall be given the next allocated day off in sequence.
- (xi) Where a staff members allocated day off duty falls on a public holiday as prescribed by clause 13, Public Holidays, the next working day shall be taken in lieu thereof.
- (xii) All time between the rostered starting and ceasing times each day shall be paid for as working time, other than for one rostered meal break of no less than 30 minutes and no more than one hour. Provided that in any cases where the employer determines that the needs of the residents are such that staff members cannot be permitted to leave the employer's premises during any meal break, any time allowed for the partaking of a meal on the employer's premises shall be regarded as working time.
- (xiii) A period of 20 minutes shall be allowed to staff members for a morning or afternoon tea break and such period shall be included in the ordinary hours of work. Time taken for such breaks shall be without interruption to service.
- (xiv) There shall be a minimum break of eight hours between ordinary rostered shifts or a break equal in length to the shift previously worked, whichever is greater.
- (xv) The ordinary hours of work for a part-time staff member will be a specified number of hours which are less than those prescribed for a full-time staff member in subclauses (ii) and (iv) of this clause, with a minimum of three consecutive hours. 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 a staff member working on a "week-on, week-off" basis in accordance with this subclause.

6. Roster of Hours

- (i) The ordinary hours of work for each staff member shall be displayed on a roster in a place conveniently accessible to staff members. Where reasonably practicable, such roster shall be displayed two weeks, but in any case at least one week, prior to the commencing date of the first working period in any roster.

Provided, that this provision shall not make it obligatory for the Department to display any roster of ordinary hours of work of members of the relieving staff.

Provided further, that a roster may be altered at any time to enable the operation of the LRC to be carried on where another staff member is absent from duty on account of illness or in an emergency, but where any such alteration involves a staff member working on a day which would have been their rostered day off, such time worked shall be paid for at overtime rates.

Furthermore, where a change in roster occurs with less than 24 hours notice to the staff member affected, all time worked outside that shown on the staff member's roster (prior to the alteration) shall be paid for at overtime rates.

- (ii) Rosters providing for shift work at a location that is normally a day-work operation shall not be introduced until such time as the proposals relating thereto are conveyed to the Department for its approval and the opportunity has been given to the Association to discuss the matter with the Department and the LRC concerned.
- (iii) The additional allocated days off duty in accordance with clause 5, Hours, are to be shown on the roster of hours for each staff member .
- (iv) Any change in the displayed roster must be notified verbally or in writing to the staff member concerned.
- (v) The working of more than seven consecutive shifts by staff members is prohibited except where a staff member makes a special request which is agreed to by the Department.

7. Part-Time Staff Members

- (i) A part-time staff member is one who is permanently appointed to work a specified number of hours, which are less than the full-time hours, per week.
- (ii) Staff members engaged pursuant to subclause (i) of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed in this award, with a minimum of three hours for each start.

In an emergency a part-time staff member may be allowed to work more than their specified number of hours and up to the specified full-time hours for the position and in such case will be paid for the hours actually worked at a rate calculated in accordance with subclause (ii) of this clause, plus 4/48ths in lieu of recreation leave for each additional hour worked.

Part-time staff members are entitled to payment of overtime in accordance with the provisions of clause 9, Overtime.

- (iii) Part-time staff members 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.

8. Conditions Relating to Payment of Allowances for Work Performed at Weekends

- (i) In addition to the rates prescribed by Part B, Monetary Rates, staff members included in Schedule A - Rates of Pay, shall be paid for all time other than overtime worked:

(a)

- (1) on afternoon shift commencing at or after 10.00 a.m. and before 1.00 p.m., at the rate of ten per cent extra;
- (2) on afternoon shift commencing at or after 1.00 p.m. and before 4.00 p.m., at the rate of 12.5 per cent extra;
- (3) on night shift commencing at or after 4.00 p.m. and before 4.00 a.m., at the rate of 15 per cent extra;
- (4) on night shift commencing at or after 4.00 a.m. and before 6.00 a.m., at the rate of ten per cent extra;

(b)

- (1) between midnight Friday and midnight Saturday, at the rate of half time extra;
- (2) between midnight Saturday and midnight Sunday, at the rate of three quarter time extra;

provided that these weekend rates shall be in substitution for and not cumulative upon the shift premiums prescribed in the preceding paragraph (a) of this subclause.

- (ii) In calculating overtime rates, the allowances referred to in subclause (i) of this clause shall be disregarded.

9. Overtime

- (i) Overtime shall be paid 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 all 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.
- (ii) A staff member recalled to work overtime after leaving the employer's premises (where notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time he/she is so recalled; provided that, except in the case of unforeseen circumstances arising, staff members shall not be required to work the full four hours if the job he/she was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for a staff member to return to his/her employer's premises to perform a specific job outside his/her ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- (iii) When overtime work is necessary it shall be so arranged that staff members have at least eight consecutive hours off duty between the work on successive days or shifts.
- (iv) When a staff member works overtime as an extension of shift and ceases work at a time when reasonable means of transport are not available, he/she shall be paid at ordinary rates for the time reasonably spent travelling from the LRC to the staff member's home, with a maximum payment of one hour.

This subclause shall not apply in the case of a call back nor where the staff member has his/her own vehicle available for conveyance home.

(v)

- (a) All time worked by part-time staff members in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time staff members employed on that shift in the unit concerned, or, where there is no such majority of full-time staff members employed on that shift

- in the LRC concerned, all time in excess of eight hours per day, shall be paid for at the applicable overtime rates.
- (b) Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time staff members employed on that shift in the unit 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.
 - (c) All time worked by part-time staff members in excess of the hours prescribed for a full-time staff member in clause 5, Hours, shall be paid for at overtime rates.
- (vi) Subject to subclause (vii) of this clause a staff member may be directed by the Department Head to work overtime.
 - (vii) A staff member may refuse to work overtime where the working of such overtime would result in the staff member working hours which are unreasonable.
 - (viii) For the purpose of subclause (vii) of this clause, what is unreasonable or otherwise will be determined having regard to;
 - (a) any risk to staff member's health and safety;
 - (b) the staff member's personal circumstances including any family and carer responsibilities, community obligations or study arrangements;
 - (c) the urgency of the work required to be performed, the impact on operational commitments and the effect on client services;
 - (d) the notice (if any) given by the employer of the overtime and by the staff member of his or her intention to refuse it; and
 - (e) any other relevant matter.

10. Uniforms

- (i) Sufficient serviceable uniforms or overalls shall be supplied, free of cost, to each staff member required to wear them; provided that any staff member to whom a new uniform or part thereof has been supplied by the Department 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) A staff member on leaving the Department shall return any uniform or part thereof supplied by the Department which is still in use by that staff member immediately prior to leaving.
- (iii) If the uniform of a staff member is not laundered at the expense of the Department, an allowance, as prescribed in Schedule B - Special Allowances, of Part B, Monetary Rates, shall be paid to such staff member .
- (iv) The allowance referred to in subclause (iii) of this clause is payable to full-time and part-time staff members but shall not be payable to casual employees.
- (v) Each staff member whose duties require them to work in rain shall be supplied with suitable protective clothing, where necessary.
- (vi) Each staff member whose duties require them to work in a hazardous situation with or near machinery shall be supplied with appropriate protective clothing and equipment.

11. Notice Board

The LRC shall permit a notice board of reasonable dimensions to be erected in a prominent position upon which the Association representatives shall be permitted to post Association notices.

12. Recreation Leave

- (i) All staff members are entitled to four weeks leave per annum.
- (ii)
- (a) Full-time and part-time staff members who are rostered to work their ordinary hours on Sundays and/or public holidays during a qualifying period of employment for recreation leave purposes shall be entitled to receive additional recreation leave as follows:

Number of ordinary shifts worked on Sundays and/or Public Holidays during qualifying period of employment for Recreation Leave purposes	Additional Recreation Leave
4 to 10	1 day
11 to 17	2 days
18 to 24	3 days
25 to 31	4 days
32 or more	5 days

For part-time staff members, the "days" referred to in the above table will be equivalent to their pro rata contracted hours.

Provided that a staff member entitled to additional recreation leave by virtue of this subclause, may elect to be paid an amount equivalent to the value of their additional leave entitlement, in lieu of taking the additional leave. Such election is to be made in writing by the staff member at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) Provided further that on termination of employment staff members shall be entitled to payment for any untaken recreation leave due under this subclause, together with payment for any untaken leave in respect of an incomplete year of employment, calculated in accordance with this subclause.
- (iii) A shift worker, as defined in clause 1, Definitions, shall be paid whilst on recreation leave their ordinary pay plus shift allowances and weekend penalties relating to ordinary time the shiftworker would have worked if they had not been on recreation leave.

Provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of recreation leave or for days which have been added to recreation leave in accordance with the provisions of clause 13, Public Holidays.

- (iv) Staff members shall be entitled to an annual leave loading of 17.5 per cent or shift penalties as set out in subclause (iv) of this clause, whichever is the greater, on up to four weeks recreation leave for non-shift workers and up to five weeks recreation leave for shift workers.

Payment of the annual leave loading will be on the first occasion a staff member takes two consecutive weeks leave for recreation purposes.

Such leave may be a combination of recreation leave, public holidays, extended leave (long service leave), leave without pay and rostered days off.

13. Public Holidays

- (i)
- (a) Public holidays shall be allowed to staff members on full pay. Except as otherwise provided in this subclause, where a staff member is required to and does work on any of the holidays as set out in this subclause, whether for a full shift or not, the staff member shall be paid at time and a half extra for the ordinary rostered hours of duty on that day. Such payment is to be in lieu of

weekend or shift allowances which would otherwise be payable had the day not been a public holiday.

Provided that, if the staff member so elects, he/she may be paid at half time extra for the ordinary rostered hours and have one day added to his/her period of recreation leave for each public holiday worked in lieu of the provisions of the preceding paragraph.

Provided further that where a staff member is rostered for a shift which crosses midnight on a public holiday and the total rostered hours on the public holiday are less than the equivalent of a full shift, the shift will be deemed to have been worked on the day on which the majority of time was actually worked.

- (b) For the purpose of this clause, 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, Local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday as gazetted in the State of New South Wales.
 - (c) Shift workers rostered off duty on a public holiday shall:
 - (1) be paid one day's pay, 7.6 hours in the case of 38-hour week workers, in addition to the weekly rate; or, if the staff member so elects,
 - (2) have one day added to the staff member's period of recreation leave.
 - (d) The election referred to in paragraphs (a) and (c) of this subclause is to be made in writing by the staff member at the commencement of each year of employment and is irrevocable during the currency of that year of employment.
- (ii) In addition to those public holidays specified in paragraph (b) of subclause (i) of this clause, staff members shall be entitled to an extra public holiday each year.

Such public holiday will occur on a date which is agreed upon between the Association and the Department and shall be regarded for all purposes of this clause as any other public holiday.

The foregoing will not apply in areas where, in each year, a day in addition to the ten named public holidays specified in paragraph (b) of subclause (i) of this clause is proclaimed and observed as a public holiday, and will not apply in areas where, in each year, at least two half days in addition to the ten named public holidays are proclaimed and observed as half public holidays.

Provided, further, that in areas where in each year only one half day, in addition to the ten named public holidays, is proclaimed and observed as a half public holiday, for the purposes of this award, the whole day will be regarded as a public holiday and no additional public holiday which would otherwise apply, as a result of this subclause, will be observed.

- (iii) Part-time staff members who are employed regularly each week shall be entitled to the provisions of subclauses (i) and (ii) of this clause for public holidays which fall on the days which they would normally be required to work. Provided that if such a staff member is required to and does work on a public holiday as defined in the said subclauses (i) and (ii), the staff member shall be paid at the rate of double time and one-half.

14. Meals

- (i) Time not exceeding one hour and not less than 30 minutes shall be allowed for each meal; provided that, where a staff member is called upon to work for any portion of the meal break, such time shall count as ordinary working time.
- (ii) A staff member 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, and all such time shall be counted as time worked.

- (iii) A staff member 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, and all such time shall be counted as time worked.
- (iv) The meals referred to in subclauses (ii) and (iii) of this clause shall be allowed to the staff member free of charge. Where the Department is unable to provide such meals, a meal allowance will be paid in accordance with the allowance rates given in, and varied from time to time, the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006.
- (v) Where a staff member is required to work an overtime shift on his or her rostered day off, or on a shift changed in accordance with clause 6, Roster of Hours, the appropriate meal breaks for that shift, as prescribed in subclause (i) of this clause, shall apply.
- (vi) Where practicable, staff members shall not be required to work more than five hours without a meal break.

15. Association Representative

A staff member appointed Association representative shall, upon notification thereof in writing to the Manager, be recognised as the accredited representative of the Association and shall be allowed the necessary time during working hours to interview the employer and staff members on matters affecting staff members

16. Settlement of Disputes

- (i) All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the appropriate department, if required.
- (ii) A staff member is required to notify, in writing, their immediate manager as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter and, if possible, state the remedy sought.
- (iii) Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti Discrimination Act 1977*) that makes it impractical for the staff member to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.
- (iv) The immediate manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two working days, or as soon as practicable, of the matter being brought to attention.
- (v) If the matter remains unresolved with the immediate manager, the staff member may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two working days or as soon as practicable. This sequence of reference to successive levels of management may be pursued by the staff member until the matter is referred to the Chief Executive Officer. .
- (vi) The Chief Executive Officer may refer the matter to the Department's Strategic Human Resources or Industrial Relations Branch for consideration.
- (vii) If the matter remains unresolved, the Department shall provide a written response to the staff member and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- (viii) A staff member, at any stage, may request to be represented by their union.
- (ix) The staff member, or the Association on their behalf, or the Department Head may refer the matter to the Industrial Relations Commission of New South Wales if the matter is unresolved following the use of these procedures.

- (x) The staff member, the Association and the Department shall agree to be bound by any order or determination by the Industrial Relations Commission of New South Wales in relation to the dispute.
- (xi) Whilst the procedures outlined in subclauses (i) to (x) of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

17. 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. 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."

18. Overtime, Penalty Rates and Part-Time Rates

For the purpose of calculating overtime payments, penalty rates and part-time rates the hourly rate of pay shall be determined by dividing the weekly equivalent of the relevant annual salary by one thirty-eighth.

19. General Conditions of Employment

It is the intention of the parties to this Award that all other conditions not specified in this Award will be in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and the Crown Employees (Public Sector - Salaries 2007) Award or any replacement awards; the Public Service of NSW Personnel Handbook; *Public Sector Employment and Management Act 2002* and the Public Sector Employment and Management (General) Regulation 1996.

The salary rates in Part B, Monetary Rates, are set in accordance with the Crown Employees (Public Sector - Salaries 2007) Award and any variation or replacement award.

20. No Extra Claims

The parties to this Award agree that no extra claims will be made in relation to this award except those allowed under Part 1, Section 17 of the *Industrial Relations Act 1996*.

21. Area, Incidence and Duration

This award applies to staff members who are employed by the Department in a classification referred to in Part B, Monetary Rates, of this Award in Large Residential Centres, and who come within the constitutional coverage of the Association.

This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (New South Wales Department of Ageing, Disability and Home Care) Residential Centre Support Services Staff (State) Award published 18 February 2005 (348 I.G. 605) and all variations thereof.

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 IG 359) take effect on and from 18 March 2008.

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

PART B

MONETARY RATES

Effective from the beginning of the first pay period to commence on or after 1 July 2007

Schedule A - Rates of Pay

Classification	1.7.07 Per annum \$
Transport Driver -	
Up to 2,950 kilograms	37,941
Over 2,950 kilos & up to 4,650 kilos*	38,250
Over 4,650 kilos & up to 7700 kilos*	38,575
Over 7,700 kilos & up to 10,800 kilos*	38,970
Over 10,800 kilos & up to 12,350 kilos*	39,306
Over 12,350 kilos & up to 15,500 kilos*	39,616
Over 15,500 kilos & up to 21,000 kilos*	40,005
Over 21,000 kilos & up to 22,450 kilos*	40,333
*Manufacturer's Gross Vehicle Mass	
Extra Hand	37,941

Services Support Officer -	
Grade 1	34,864
Grade 2	35,803
Grade 3	36,969
Apprentice Cook -	
1st six months (50%)	18,971
2nd six months (70%)	26,559
3rd six months (80%)	30,353
4th six months (85%)	32,250
5th six months (90%)	34,147
6th six months (95%)	36,044
Hunter Residences -	
Head Chef	51,228
Chef	45,353
Metro Residences -	
Head Chef	41,335
Deputy Head Chef	39,616
Chef	38,970
Other Residences -	
Head Chef	39,616
Deputy Head Chef	38,970
Chef	37,941
Outdoor Attendant Sewerage Works - Peat Island	39,616
Gardener (Tradesperson)	41,845
Gardener (non-Tradesperson)	39,306
Instructor Woodwork -	
Without Qualifications - 1st Year	45,351
Without Qualifications - 2nd Year	46,211
Without Qualifications - Thereafter	46,680
With Qualifications - 1st Year	46,314
With Qualifications - 2nd Year	47,503
With Qualifications - Thereafter	47,985
Technical Instructor Without Qualifications -	
1st Year	42,630
2nd Year	42,976
Thereafter	43,464
Technical Instructor With Qualifications -	
1st Year	44,240
2nd Year	44,567
Thereafter	45,351
Therapy Aide -	
1st Year	37,943
2nd Year	38,579
Thereafter	39,613
Supervisor - Linen Distribution -	
Rydalmere	39,998
Marsden, Grosvenor	38,215

Schedule B - Special Allowances

- (i) Services Support Officers Grade 2 shall receive an additional duties allowance of \$12.00 per week for appropriate duties involved in the maintenance and supervision of swimming pools, pest control duties on a continuing basis, driving tractors (other than drivers), maintenance of bowling greens and sporting ovals.

- (ii) Services Support Officers Grade 2 regularly required to perform work on sewerage works and grease traps or other duties considered offensive by the Department shall be paid an allowance at the rate of \$3.40 per week; the allowance is not automatically adjusted in the future.
- (iii) Services Support Officers Grade 2 required to assist in cleaning sewerage chokages and who are required to assist in opening up any soil pipe, waste pipe, drain pipe or pump containing sewerage or who are required to work in a septic tank in operation shall be paid an allowance of \$7.20 per day or part thereof.
- (iv) Drivers and Extra Hands who handle wet and dry garbage shall be paid an allowance of 38c per hour. The allowance shall be payable to Services Support Officers for those periods when they relieve Extra Hands and are required to handle wet and dry garbage.
- (v) Staff members covered by this award who are required to handle linen of a nauseous nature (other than in sealed bags) shall be paid an allowance of \$3.40 per shift.
- (vi) Leading Hand Allowance - A staff member, who is placed in charge of not less than two other staff members of substantially similar classification, shall be paid in accordance with the following:

	Per Week \$
In charge of 2 to 5 other staff members	24.80
In charge of 6 to 10 other staff members	35.30
In charge of 11 to 15 other staff members	44.90
In charge of 16 to 19 other staff members	55.00

This allowance will not be payable to those staff members whose classification and salary includes supervisory responsibilities.

- (vii) A Boiler Attendant required to attend more than one high pressure boiler shall receive an allowance of \$652 per annum.
- (viii) Uniform Allowance - If the uniform of a staff member is not laundered at the expense of the Department an allowance of \$5.35 per week shall be paid to such staff member.

Schedule C - Allowances

Staff members shall be paid the following amounts when working in situations where the conditions encountered are not normally encountered by staff members of that classification:

- (i) Cold Places - Staff members working in places where the temperature is reduced by artificial means to below 0 degrees Celsius shall be paid 60 cents per hour extra. Where the work continues for more than two hours, staff members shall be entitled to a rest period of 20 minutes every two hours without loss of pay.
- (ii) Confined Spaces - Staff members working in a place the dimensions or nature of which necessitate working in a stooped or cramped position or without sufficient ventilation shall be paid 76 cents per hour extra.
- (iii) Dirty Work - Work which a supervisor and staff member agree is of a dirty or offensive nature by comparison with the work normally encountered in the classification concerned and for which no other special rates are prescribed shall be paid for by an additional amount at the rate of 60 cents per hour above the rate prescribed by this award.
- (iv) Height Money - Staff members working at a height of 7.5 metres from the ground, deck, floor or water shall be paid 60 cents per hour extra and 17 cents per hour extra for every additional 3 metres. Height shall be calculated where it is necessary for the staff member to place his/her hands or tools in order to carry out the work to such ground, floor, deck or water. For the purpose of this subclause, deck or floor means a substantial structure which, even though temporary, is sufficient to protect a staff member from

falling any further distance. Water level means, in tidal waters, mean water level. This subclause shall not apply to staff members working on a suitable scaffold erected in accordance with the *Occupational Health & Safety Act 2000*.

- (v) Hot Places - Staff members working in the shade in places where the temperature is raised by artificial means to between 46 degrees Celsius and 54 degrees Celsius shall be paid 60 cents per hour extra; in places where the temperature exceeds 54 degrees Celsius such staff members shall be paid 76 cents per hour extra. Where work continues for more than two hours in temperatures exceeding 54 degrees Celsius, staff members shall also be entitled to 20 minutes' rest after every two hours work, without deduction of pay. The temperature shall be decided by the supervisor of the work after consultation with the staff members who claim the extra rate.
- (vi)
 - (a) Insulation Material - Staff members working in any room or similar area or in any confined (unventilated) space where pumice or other recognised insulating material is being used in insulating work shall be paid 50 cents per hour extra, or, if the insulating material be silicate, 76 cents per hour extra, whether they are actually handling such material or not; provided that such insulation material shall include granulated cork but shall not include cork board or materials contained in unbroken packages.
 - (b) Asbestos - A staff member required to work with any materials containing asbestos or to work in close proximity to staff members using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment such staff members shall be paid 61 cents per hour whilst so engaged.
- (vii) Wet Places -
 - (a)
 - (1) A staff member working in a place where water other than rain is falling so that their clothing shall be appreciably wet and/or water, oil or mud underfoot is sufficient to saturate their boots shall be paid 60 cents per hour extra; provided that this extra rate shall not be payable in respect to a staff member who is provided with suitable and effective protective clothing and/or footwear. A staff member who becomes entitled to this extra rate shall be paid such rate for such part of the day or shift as he/she is required to work in wet clothing or boots.
 - (2) Where a staff member is required to work in the rain, he/she shall be paid 60 cents per hour extra for the time so worked.
 - (b) A staff member called upon to work knee-deep in mud or water shall be paid at the rate of \$4.70 per day in addition to ordinary rates of pay prescribed for each day or portion thereof so worked; provided that this subclause shall not apply to a staff member who is provided with suitable protective clothing and/or footwear.
- (viii) Acid Furnaces, Stills, etc.- A staff member engaged on the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid \$3.04 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.
- (ix) Depth Money - A staff member engaged in tunnels, cylinders, caissons, coffer dams and sewer work and in underground shafts exceeding 3 metres in depth shall be paid 60 cents per hour.
- (x) Swinging Scaffolds -
 - (a) A staff member working in a bosun's chair or on a swinging scaffold shall be paid \$4.39 for the first four hours whilst so engaged, thence 88 cents per hour thereafter.

- (b) An staff member shall not raise or lower a bosun's chair or swinging scaffold alone and an employer shall not require a staff member to raise or lower a bosun's chair or swinging scaffold alone.
- (xi) Spray Application - A staff member engaged on all spray applications carried out in other than a properly constructed booth approved by the WorkCover Authority shall be paid 60 cents per hour extra.
- (xii) Roof Work - Staff members engaged in the fixing or repairing of a roof or any other work in excess of 12 metres from the nearest floor level shall be paid 76 cents per hour extra with a minimum payment of 76 cents.
- (xiii) Explosive Powered Tools - Staff members required to use explosive powered tools shall be paid 4 cents per hour extra with a minimum payment of \$1.41 cents per day.
- (xiv) Toxic and Obnoxious Substances -
 - (a) A staff member engaged in either the preparation and/or the application of toxic or epoxy based materials or materials of a like nature shall be paid 76 cents per hour extra.
 - (b) In addition, staff members applying such material in buildings which are normally air-conditioned shall be paid 52 cents per hour extra for any time worked when the air-conditioning plant is not operating.
 - (c) Where there is an absence of adequate natural ventilation, the employer shall provide ventilation by artificial means and/or supply an approved type of respirator and, in addition, protective clothing shall be supplied where recommended by the Department.
 - (d) Staff members working in close proximity to staff members so engaged shall be paid 60 cents per hour extra.
 - (e) For the purpose of this clause, all materials which are toxic or which include or require the addition of a catalyst hardener and reactive additives or two-pack catalyst system shall be deemed to be materials of a like nature.
- (xv) Rates Not Subject To Penalty Provisions - The special rates herein prescribed shall be paid irrespective of the times at which the work is performed, and shall not be subject to any premium or penalty conditions.
- (xvi) Extra Rate Not Cumulative - When more than one of the above rates provide payment for disabilities of substantially the same nature then only the highest of such rates shall be payable.

Schedule D - Salary Arrangements of Existing Staff Members, Services Support Officers at 19/4/99

	Rate as at 1.7.07 Per annum \$
Outdoor Attendant (Other) 11th year and thereafter *Current incumbents only.	37,640

D.W. RITCHIE, Commissioner

CROWN EMPLOYEES (PARKS AND GARDENS - HORTICULTURE AND RANGERS STAFF) CONSENT AWARD 2007

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1709 of 2007)

Before Commissioner Ritchie

8 April 2008

REVIEWED AWARD

PART A

Arrangement

Clause No.	Subject Matter
1.	Title
2.	Definitions
3.	Classification Standards
4.	Progression
5.	Appeals Mechanism
6.	Salaries
7.	Hours of Work
8.	Conditions of Employment
9.	Grievance and Dispute Settling Procedures
10.	Deduction of Union Membership Fees
11.	Consultative Committee
12.	Anti-Discrimination
13.	Area, Incidence and Duration

PART B

Monetary Rates

Table A - Salaries

1. Title

This award shall be known as the Crown Employees (Parks and Gardens - Horticulture and Rangers Staff) Award 2007.

2. Definitions

Administrative Unit means the group of staff comprising (wholly or in part) or attached to a body, organisation or group specified in Column 1 of Schedule 1 of the *Public Sector Employment and Management Act 2002*. The units covered in this award are the Royal Botanic Gardens and Domain Trust, the Centennial Park and Moore Park Trust, the Sydney Olympic Park Authority and the Parramatta Park Trust.

Association means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

Broadbanded Position means a position whose grading, skills and range of duties extend beyond those defined for a single level and will occur in Levels 2 to 15 as determined by the Director.

Director means the Executive Director of the Royal Botanic Gardens and Domain Trust, the Director and Chief Executive of the Centennial Park and Moore Park Trust, the Director Parramatta Park Trust and the Chief Executive Officer of the Sydney Olympic Park Authority.

Employee means and includes all persons permanently or temporarily employed under the provisions of the *Public Sector Employment and Management Act 2002* as varied, or other appropriate Acts. As at the operative date of this award is a person or persons who were occupying one of the positions covered by this award, or who, after that date, are appointed to or employed in one of such positions.

DPE means Director of Public Employment, as established under the *Public Sector Employment and Management Act 2002*.

Skills means the appropriate qualifications, relevant experience, demonstrated ability and completion of the training modules appropriate to each level or equivalent, as determined by the Director.

3. Classification Standards

3.1 For the purposes of this clause:

Staff means and includes employees as defined in clause 2 and special job creation and training program personnel.

Supervision means, in addition to normal supervisory responsibilities, the assessment, evaluation and training of staff and volunteers.

3.2 A position falling within the scope of this award shall have assigned to it a classification level determined in accordance with:

- (a) the classification standards detailed below; and
- (b) where such a system has been implemented, the accredited job evaluation system implemented in the Administrative Unit.

3.3 The following classification levels will apply in each Administrative Unit:

Level 1 - Positions established at this level are to be used to accommodate staff employed for limited periods of time on special training programs. The occupant of a position established at Level 1 of this award will:

- (a) work under close direct supervision and therefore will not be required to use individual judgement in following direction; and
- (b) have, as a minimum, basic communication skills and the ability required to:
 - (i) perform basic tasks (such as digging and weeding) using basic hand tools or equipment (such as spades and picks) for which either no previous training or experience is required or for which no detailed on-the-job training will be required; and
 - (ii) communicate with supervisors and peers;
- (c) be prepared to undertake the introductory technical and non-technical training modules.

Level 2 - The occupant of a position established at Level 2 of this award will:

- (a) work under general supervision and therefore will not be required to exercise individual judgement in following direction; and

- (b) have completed the TAFE Horticultural Skills 1 technical and the introductory non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the basic communication skills and other skills and relevant experience required to:
 - (i) perform basic work processes (such as mowing, planting, trenching) using equipment requiring basic training (such as brush cutters, cement mixers, power tools); and
 - (ii) communicate with supervisors and other staff; and/or
 - (iii) communicate non-technical information to the public.

Level 3 - The occupant of a position established at Level 3 of this award will:

- (a) work under minimal supervision and therefore be required to exercise limited individual judgement in following instructions; and
- (b) have completed the TAFE Horticultural Skills 2 technical training modules and fundamental non-technical training modules, or be able to demonstrate equivalent prior learning and possess, if required, a current Class 1A driver's licence, so that they have the basic communication skills and other skills and relevant experience required to:
 - (i) perform work processes of limited complexity (such as framework, concrete finishing, bitumening, soil mixing, potting) using equipment of limited complexity (such as chainsaws, soil mixing and pasteurising equipment, tractors, vehicles up to two tonnes, ride-on mowers, street sweepers) requiring detailed training but not requiring special licences; and
 - (ii) communicate with supervisors and other staff; and/or
 - (iii) communicate non-technical information to the public.

Level 4 - The occupant of a position established at Level 4 of this award will:

- (a) work under minimal supervision and therefore be required to exercise independent judgement at a semi-trade level or in routine security or law enforcement procedures; and
- (b) have completed the TAFE Horticultural Skills 3 technical and fundamental non-technical training modules, or be able to demonstrate equivalent prior learning, and possess the special licences and basic communication skills and other skills and relevant experience required to:
 - (i) perform work processes at semi-trade level (such as construction, stone work, pesticide spraying, garden bed preparation); and/or
 - (ii) operate complex equipment requiring special licences or certificates (such as trucks over two tonnes, front-end loaders); and/or
 - (iii) perform routine security or law enforcement procedures (such as locking and unlocking of buildings, general ground patrol, cash escort); and
 - (iv) communicate with supervisors and other staff and to pass on instructions to apprentices and/or to communicate non-technical information to the public.

Level 5 - The occupant of a position established at Level 5 of this award will:

- (a) work under minimal supervision and therefore be required to exercise independent judgement at trade level, or have the ability to undertake management of a stores area, or in routine security or law enforcement procedures; and

- (b) have a recognised horticultural trades certificate or equivalent and have completed the transitional non-technical training modules, or be able to demonstrate equivalent prior learning and possess the relevant licences, or have demonstrated experience in stock control, purchasing procedures and management of government stores, so that they have the developed communication and interpretation skills and other skills and relevant experience required to:
 - (i) perform trade level horticultural duties; and/or
 - (ii) maintain security or law enforcement in low risk areas; and/or
 - (iii) manage a store of a park or garden; and/or
 - (iv) perform visitor service duties; and/or
 - (v) supervise apprentices;
 - (vi) communicate with supervisors and other staff; and/or
 - (vii) communicate semi-technical information to the public.

Level 6 - The occupant of a position established at Level 6 of this award will:

- (a) work under minimal supervision and therefore be required to exercise independent judgement at an advanced trade or stores management level and exercise initiative with regard to matters of minor complexity; and
- (b) have a recognised horticultural trades certificate or equivalent and have completed the transitional non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the developed communication skills, interpretation skills and other skills and relevant experience required to:
 - (i) perform advanced trade level horticultural duties (such as development of botanical collections including detailed plant recording and documentation, field collection); or
 - (ii) maintain security or law enforcement in high risk areas; and/or
 - (iii) manage a store of a park or garden; and/or
 - (iv) supervise apprentices and/or other staff; and
 - (v) communicate with supervisors and other staff; and/or
 - (vi) communicate semi-technical information to the public.

Level 7 - The occupant of a position established at Level 7 of this award will:

- (a) work independently on assigned specialist work and/or lead a small work team on assigned work and therefore be required to exercise independent judgement and to be accountable for work performance; and
- (b) have a recognised horticultural trades certificate and have completed the intermediate non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the skills and relevant supervisory experience required to:
 - (i) manage a small specialist plant collection or work area (specialising in fields such as security or law enforcement procedures, interpretation, or recreation planning, management of a store of a large park or garden) as an individual or as the team leader of a small team of staff (normally less than 6 staff) supervising and training staff; and

- (ii) be accountable for completion of work to agreed standards; and/or
- (iii) solve technical problems of limited complexity; and
- (iv) document and communicate technical data and information to other staff and/or the public.

Level 8 - The occupant of a position established at Level 8 of this award will:

- (a) work independently on assigned specialist work and/or lead a work team on assigned work and therefore be required to exercise independent judgement and to be accountable for work performance; and
- (b) have a recognised horticultural trades certificate and have completed the intermediate non-technical training modules, or be able to demonstrate equivalent prior learning, or have demonstrated experience in running a store of a large park or garden, so that they have the skills and relevant supervisory experience required to:
 - (i) manage a specialist garden or work area (specialising in fields such as security or law enforcement, interpretation, or recreation planning, manage a store in a large park or garden) as an individual or as the leader of a team of staff (normally more than 5 staff) supervising and training staff; and
 - (ii) be accountable for completion of work to agreed standards and/or
 - (iii) solve technical problems of some complexity; and
 - (iv) document and communicate technical data and information to staff and/or the public.

Level 9 - The occupant of a position established at Level 9 of this award will:

- (a) work independently on assigned specialist work programs or projects or manage a small number (normally up to four) of work teams; and
- (b) exercise independent judgement in areas of management and/or technical expertise; and
- (c) have a recognised horticultural trades certificate (or a recognised qualification such as interpretation or recreation planning or security) and have completed the advanced non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the high level of technical and/or organisational and project co-ordination and well developed supervisory skills and relevant experience required to:
 - (i) manage works programs or projects; and
 - (ii) supervise staff; and
 - (iii) be accountable for completion of work to agreed standards, time frames and budgets; and
 - (iv) provide advice on technical matters and/or communicate technical information to the public.

Level 10 - The occupant of a position established at Level 10 of this award will:

- (a) work independently on assigned specialist work programs or projects or manage several (normally up to five or more) work teams; and
- (b) exercise independent judgement in areas of management and/or technical expertise; and

- (c) have a recognised horticultural trades certificate or equivalent (or a recognised qualification such as interpretation or recreation planning or security) and have completed the advanced non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the high level technical, organisational and project co-ordination and well developed supervisory skills required to:
 - (i) manage works programs or projects; and
 - (ii) supervise staff; and
 - (iii) be accountable for completion of work of technical complexity to agreed standards, time frames and budgets; and
 - (iv) provide advice on technical matters and/or communicate technical information to the public.

Level 11 - The occupant of a position established at Level 11 of this award will:

- (a) work independently developing and implementing specialist projects or programs and/or manage a number of specialists or work teams; and
- (b) exercise independent judgement in areas of management and/or technical expertise; and
- (c) have a recognised horticultural trades certificate or equivalent (or a recognised qualification, such as interpretation or recreation planning or security) and have completed the advanced non-technical training modules, or be able to demonstrate equivalent prior learning, so that they have the high level technical skills and knowledge and high level works organisation and management skills and relevant experience required to:
 - (i) manage major projects or programs, developing and co-ordinating works programs and schedules; and
 - (ii) supervise staff; and
 - (iii) be accountable for meeting agreed standards, time frames and budgets; and
 - (iv) provide advice on technical matters and/or communicate technical information to the public.

Level 12 - The occupant of a position established at Level 12 of this award will:

- (a) have a recognised trades certificate or equivalent (or a recognised qualification, such as interpretation or recreation planning or security), or be able to demonstrate equivalent prior learning, so that they have the superior level of works organisation and management skills and relevant experience required to:
 - (i) manage the overall functions of a small park or garden which has a small but varied plant collection and/or small turf management areas and related infrastructure, where management issues are of a minor complexity (such as low visitation and recreational demands, no or few lessees or licensees operating); and
 - (ii) approve works programs and projects and allocate resources and set priorities; and
 - (iii) monitor performance against agreed standards, time frames and budgets; and
 - (iv) take overall responsibility for the staff in a park or garden, including supervision, motivation, training and development, and occupational health and safety strategies; and
 - (v) represent the organisation.

Level 13 - The occupant of a position established at Level 13 of this award will:

- (a) have a recognised trades certificate or equivalent (or a recognised qualification, such as interpretation or recreation planning or security), or be able to demonstrate equivalent prior learning, so that they have the superior level of works organisation and management skills and relevant experience required to:
 - (i) manage the overall functions of a park or garden which has either:
 - a large and diverse plant collection or large turf management areas and related infrastructure where management issues are of minor complexity (such as low visitation and recreational demands, a large number of lessees or licensees operating) or
 - a small but varied plant collection and/or small turf management areas where management issues are of considerable complexity (such as large visitation and recreational demands, a large number of lessees or licensees operating, or there is a high level of political sensitivity attached to the park or garden); and
 - (ii) approve works programs and projects and allocate resources and set priorities; and
 - (iii) monitor performance against agreed standards, time frames and budgets; and
 - (iv) take overall responsibility for the staff in a park or garden, including supervision, motivation, training and development, and occupational health and safety strategies; and
 - (v) represent the organisation.

Level 14 - the occupant of a position established at Level 14 of this award will:

- (a) have a recognised trades certificate or equivalent (or a recognised qualification, such as interpretation or recreation planning or security), or be able to demonstrate equivalent prior learning, so that they have the superior level of works organisation and management skills and relevant experience required to:
 - (i) manage the overall functions of a large park or garden which has either:
 - a large and diverse collection of plants, where management issues are of some complexity (such as high visitation and recreational demands); or
 - a large number of simple lease and licence arrangements, and there is some political sensitivity attached to the park or garden; and
 - (ii) approve works programs and projects and allocate resources and set priorities; and
 - (iii) monitor performance against agreed standards, time frames and budgets; and
 - (iv) take overall responsibility for the staff in a park or garden, including supervision, motivation, training and development, and occupational health and safety strategies; and
 - (v) represent the organisation.

Level 15 - the occupant of a position established at Level 15 of this award will:

- (a) have a recognised trades certificate or equivalent (or a recognised qualification, such as interpretation or recreation planning or security), or be able to demonstrate equivalent prior learning, so that they have the superior level of works organisation and management skills and relevant experience required to:

- (i) manage the overall functions of a large park or garden which has a large and diverse collection of plants, where management issues are of considerable complexity (such as high visitation and recreational demands, large and complex lease or licence arrangements and there is a high level of political sensitivity attached to the park or garden); and
- (ii) approve works programs and projects and allocate resources and set priorities; and
- (iii) monitor performance against agreed standards, time frames and budgets; and
- (iv) take overall responsibility for the staff in a park or garden, including supervision, motivation, training and development, and occupational health and safety strategies; and
- (v) represent the organisation.

4. Progression

- 4.1 Appointment to vacant positions, other than progression through broadbanded positions, shall be by merit selection.
- 4.2 Progression through levels where there are broadbanded positions established within Levels 2 to 15 shall be subject to satisfactory conduct and performance and the employee acquiring the skills and demonstrating the ability to perform the tasks defined for the next level and where those tasks are required to be performed.
- 4.3 The assessment of the suitability of an employee to progress to the next level within an established broadbanded position shall normally be undertaken one month prior to the anniversary of the employee's appointment to Year 2 salary rate of their current level. The employee may also make application for progression at any other time at the discretion of the Director.

The initial assessment shall be made by the employee's supervisor and reviewed by another more senior officer from the Administrative Unit. Once this has been undertaken the assessment is forwarded to the Director or the Director's nominee for approval. An Assessment Committee will be convened only in cases where the assessing officers recommend not to approve the employee's progression. In such cases the Assessment Committee will convene within one month of the assessing officer's decision and will review the decision and make recommendations to the Director regarding the employee's suitability for progression.

- 4.4 Progression from Year 1 to Year 2 within levels shall be by way of an annual increment. It is subject to satisfactory conduct and performance, as certified by the employee's supervisor and approval by the Director or the Director's nominee. The assessment of the employee's suitability for incremental progression shall normally be undertaken one month prior to the anniversary of their appointment to their current level. The employee must be promptly notified in writing by the Director or the Director's nominee of any decision to defer payment of an increment.
- 4.5 An employee shall have the right of internal appeal to the Director on progression matters through the established grievance procedures as set out in clause 5, Appeals Mechanism. If the matter cannot be resolved through this process, the employee may apply to the Director to appoint another Assessment Committee, whose representatives differ from the original committee, to review the matters raised and to make recommendations to the Director.
- 4.6 Nothing in this clause shall preclude an employee from exercising their right, where applicable, of an external appeal to the Government and Related Employees Appeal Tribunal.

5. Appeals Mechanism

- 5.1 An employee of the Royal Botanic Gardens and Domain Trust, the Centennial Park and Moore Park Trust, the Sydney Olympic Park Authority or the Parramatta Park Trust shall have the right to appeal any decision made by their Agency in relation to their performance assessment review or in relation to promotion on merit from one level to another where this is available under the provisions of this award.

- 5.2 Employees shall submit a written submission outlining their case to the Director within 28 days of the decision being appealed.
- 5.3 The Director shall constitute an appeals committee made up of one management representative, one relevant Association representative and one peer who is acceptable to both management and the Association.
- 5.4 The appeal shall be heard within 28 days of it being lodged and the recommendation of the committee shall be forwarded to the Director or the Director's nominee.
- 5.5 The decision of the Director or the Director's nominee shall be forwarded to the employee concerned within seven working days of the appeal being heard.
- 5.6 Nothing in this appeals mechanism restricts a right of appeal to the Industrial Relations Commission of New South Wales or the Government and Related Employees Appeal Tribunal. It would be expected that the appeals mechanism would be utilised prior to a formal appeal to either body.

6. Salaries

- 6.1 The salaries rates are set out in Table A of Part B, Monetary Rates of this award.
- 6.2 The salary rates are set in accordance with the Crown Employees (Public Sector - Salaries 2007) Award or any variation or replacement award.

7. Hours of Work

- 7.1 The ordinary working hours shall be an average of 38 per week and be worked in accordance with the following provisions for a four-week work cycle:
 - (a) The ordinary working hours shall be worked as twenty-day, four week cycle, Monday to Sunday, inclusive, with nineteen working days of eight hours each. These hours shall be between 6 am and 6 pm, except in the case of Rangers, whose spread of hours shall be 6.30 am to 10 pm. 0.4 of one hour on each day worked will accrue as an entitlement to take one rostered day off in each work cycle as a day off paid for as though worked.
 - (b) The day off shall in all cases be on a rostered basis, and be subject to management's prerogative to best suit the working needs of the organisation.
- 7.2 The Administrative Unit may require an employee to perform duties beyond the hours determined under this clause but only if it is reasonable for the employee to do so. An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:
 - (a) the employees prior commitments outside the workplace, particularly the employee's family and carer responsibilities, community obligations or study arrangements;
 - (b) any risk to employee health and safety;
 - (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
 - (d) the notice (if any) given by the Authority regarding the working of the additional hours, and by the employee of their intention to refuse the working of additional hours; or
 - (e) any other relevant matter.

8. Conditions of Employment

The employees regulated by this award shall be entitled to the conditions of employment as set out in this award and, except where specifically varied by this award, existing conditions are provided for under the *Public Sector Employment and Management Act 2002*, the *Public Sector Employment and Management Regulation 1996*, the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006* and the *Crown Employees (Public Sector - Salaries 2007) Award* or any awards replacing these awards.

9. Grievance and Dispute Settling Procedures

- 9.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the Administrative Unit, if required.
- 9.2 An employee is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- 9.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti Discrimination Act 1977*) that makes it impractical for the employee to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.
- 9.4 The immediate manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- 9.5 If the matter remains unresolved with the immediate manager, the employee may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Director.
- 9.6 The Director may refer the matter to the DPE for consideration.
- 9.7 If the matter remains unresolved, the Director shall provide a written response to the employee and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 9.8 An employee, at any stage, may request to be represented by the Association.
- 9.9 The employee or the Association on their behalf, or the Director may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 9.10 The employee, Association, Administrative Unit and DPE shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 9.11 Whilst the procedures outlined in subclauses 9.1 to 9.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

10. Deduction of Union Membership Fees

- 10.1 The Association shall provide a schedule setting out Association fortnightly membership fees payable by members of the Association in accordance with the Association's rules.

- 10.2 The Association shall advise the Administrative Unit of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Association fortnightly membership fees payable shall be provided at least one month in advance of the variation taking effect.
- 10.3 Subject to subclauses 10.1 and 10.2 of this clause, Association fortnightly membership fees shall be deducted from the pay of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the employer to make such deductions.
- 10.4 Monies so deducted from the employee's pay shall be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile and credit subscriptions to employees' Association membership accounts.
- 10.5 Unless other arrangements are agreed with the Association, all Association membership fees shall be deducted on a fortnightly basis.
- 10.6 Where an employee has already authorised the deduction of Association membership fees 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 continue.

11. Consultative Committee

- 11.1 Joint Consultative Committee subcommittees shall be established to monitor the implementation of this award.
- 11.2 The committees shall consist of a representative of management and a representative of the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, the latter chosen at the Association's discretion.

12. Anti-Discrimination

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 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.

12.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

- (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."

13. Area, Incidence and Duration

13.1 This award applies to all classifications referred to in the Area, Incidence and Duration clause of the former Crown Employees (Parks and Gardens - Horticulture and Rangers Staff) Award published 24 November 1995 (289 IG 664) and also to the classification of Purchasing/Stores Officer, Royal Botanic Gardens, Sydney and Purchasing/Stores Officer, Royal Botanic Gardens, Mount Annan.

13.2 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Parks and Gardens - Horticulture and Rangers Staff) Consent Award 2004 published 1 April 2005 (349 I.G. 804), 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 8 April 2008.

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

PART B

MONETARY RATES

Table A - Salary Rates

Effective from the beginning of the first pay period to commence on or after 1 July 2007

Classification	Per annum \$
Horticultural Apprentice Year 1	20,685
Horticultural Apprentice Year 2	27,580
Horticultural Apprentice Year 3	34,475
Horticultural Apprentice Year 4	39,071
Level 1	34,010
Level 2, Year 1 (Minimum)	37,762
Level 2, (Maximum)	38,759
Level 3 Year 1, (Minimum)	40,146
Level 3, (Maximum)	41,575
Level 4, Year 1, (Minimum)	43,099
Level 4, (Maximum)	44,396
Level 5, Year 1, (Minimum)	45,967
Level 5, (Maximum)	47,196
Level 6, Year 1, (Minimum)	48,518
Level 6, (Maximum)	49,863
Level 7, Year 1, (Minimum)	51,277
Level 7, (Maximum)	52,810

Level 8, Year 1, (Minimum)	54,480
Level 8, (Maximum)	56,701
Level 9, Year 1, (Minimum)	58,925
Level 9, (Maximum)	61,128
Level 10, Year 1, (Minimum)	63,056
Level 10, (Maximum)	64,827
Level 11, Year 1, (Minimum)	70,167
Level 11, (Maximum)	74,527
Level 12, Year 1, (Minimum)	85,580
Level 12, (Maximum)	88,113
Level 13, Year 1, (Minimum)	90,699
Level 13, (Maximum)	93,418
Level 14, Year 1, (Minimum)	96,293
Level 14, (Maximum)	99,269
Level 15, Year 1, (Minimum)	102,516
Level 15, (Maximum)	105,923

D.W. RITCHIE, Commissioner

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CROWN EMPLOYEES (PLANNING OFFICERS) AWARD 2008

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 601 of 2007)

Before Commissioner Ritchie

8 April 2008

REVIEWED AWARD**PART A**

Clause No.	Subject Matter
1.	Title
2.	Definitions - General
3.	General Conditions of Employment
4.	Classifications and Salary Structures
5.	Working Hours
6.	Flex Leave
7.	Appeals Mechanism - Soft Barrier
8.	Anti-Discrimination
9.	Grievance and Dispute Resolution Procedures
10.	Savings of Rights
11.	Area, Incidence and Duration

PART B**MONETARY RATES**

Table 1 - Salaries

ANNEXURE A

Flexible Working Hours Agreement 2008

PART A**1. Title**

This Award will be known as the Crown Employees (Planning Officers) Award 2008.

2. Definitions - General

"Act" means the *Public Sector Employment and Management Act 2002*.

"Award" means the Crown Employees (Planning Officers) Award 2008.

"Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Branch Action Plan" means a document prepared by a branch within the Department that defines that branch's goals and objectives for a set period of time.

"Department" means the Department of Planning.

"Director" means an officer of the Department with management responsibilities for a region, branch, unit or discrete group of people, who has delegation, as determined from time to time, to perform the functions of the Director-General.

"Director-General" means the Chief Executive Officer of the Department of Planning as listed in Column 2 of Schedule 1 of the *Public Sector Employment and Management Act 2002*.

"DPE" means the Director of Public Employment, as established under the *Public Sector Employment and Management Act 2002*.

"Planning Officer or PO" means a person permanently or temporarily employed in the Department either as a full-time, or permanent part-time employee, in any capacity under the provisions of Part 2 of the Act, performing those professional and student planning functions previously undertaken in the Department of Urban Affairs and Planning or the Heritage Office of New South Wales. It includes officers on probation, but does not include the Director-General, statutory appointees or a member of the Senior Executive Service as defined under the Act.

"Executive Director" means a Senior Executive Service (SES) officer of the Department with significant management responsibilities, heading up a division of the Department, who has delegation, as determined from time to time, to perform the functions of the Director-General.

"Director Human Resources" means the person in charge of the Human Resource function of the Department.

"Grievance Receiver" means a Departmental officer who has been nominated to assist in the resolution of grievances. While they do not act on the officer's behalf they can help to achieve a satisfactory solution.

"Hard Barrier" means a barrier to a level within a classification that can only be accessed by merit through a competitive selection process.

"Normal Work" for the purposes of clause 9, Grievance and Dispute Resolution Procedures of this Award, means the work carried out in accordance with the officer's position or job description at the location where the officer was employed, at the time the grievance or dispute was notified by the officer.

"Officer" means a Planning Officer.

"Position" means a position pursuant to Section 9 of the Act.

"Salary Rates" means the ordinary time rate of pay for the Officer's grading excluding shift allowance, weekend penalties and all other allowances not regarded as salary.

"Service" means continuous service for salary purposes.

"Soft Barrier" means an identified progression requirement (as distinct from normal incremental progression) to move from one salary point to the next within the same level. This progression is not automatic but based on meeting specific performance or skill competency requirements as set out in this Award.

"Supervisor" means an officer of the Department with supervisory responsibilities who has delegation, as determined from time to time, to perform the functions of the Director-General.

3. General Conditions of Employment

- 3.1 Except as otherwise provided by this Award the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 will apply.
- 3.2 Provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 that do not apply include subclause 21(f) - Bandwidth, subclause 21(g) - Coretime, subclause 21(k) - Flexible working hours credit, and subclause 21(p) - Flex leave.

3.3 The following awards and agreements will continue to apply to Officers covered by this award:

Crown Employees (Transferred Employees Compensation) Award

Transferred Officers (Excess Rent Assistance) Agreement No 2354 of 1981

Crown Employees (Public Sector - Salaries 2007) Award or an award replacing it.

3.4. Conditions of employment other than those fixed by this award are determined by the *Public Sector Employment and Management Act 2002*, the *Public Sector Employment and Management (General) Regulation 1996* and the *New South Wales Government Personnel Handbook*.

4. Classifications and Salary Structures

All Planning Officers will be paid in accordance with the salary structures as set in this clause. Salary rates are as set out in Table 1 - Salaries of Part B, Monetary Rates of this Award.

Officers known as Planning Officers will have a title that reflects their functional responsibility as shown in subclauses 4.2 and 4.3 of this clause.

No officer will be disadvantaged by the application of this Award.

4.1 Increments

Incremental progression for all officers will be subject to a satisfactory performance report recommending progression other than for soft barrier progression where set criteria as detailed in this Award need to be satisfied.

4.2 PO (Professional)

The PO (Professional) classification and salary structure replaces the former Town Planner/Specialist and Legal Officer classifications for those Officers performing planning functions under this award.

4.2.1 Officers Eligible for Appointment to PO (Professional)

Appointment to the PO (Professional) classification requires a degree qualification or a qualification deemed by the Director General to be equivalent except as otherwise specified in subparagraphs (a), (b) and (c) of this paragraph.

- (a) Officers working directly in property and development activities must have an accredited property related qualification as well as demonstrated expertise and experience developed from a range of property disciplines and backgrounds such as but not limited to engineering, surveying, valuing, real estate, land economics and architecture.
- (b) Positions with special requirements such as Aboriginality may not require a degree qualification.
- (c) Officers already appointed to PO (Professional) positions do not have to satisfy the Tertiary Qualification criterion when applying for other PO (Professional) positions.

4.2.2 PO (Professional) Level 1

- (a) Positions may be established as Level 1.

Progression to Level 1(b), salary point 6, will be conditional on the Director General being satisfied that the officer has been on the maximum of salary point 5 for at least 12 months and has demonstrated competency in three or more of the following criteria:

The ability to work independently and without regular supervision;

Good communication skills;

Well developed specialist or other skills;

Project management skills;

The ability to provide high quality advice;

And

The ability to identify issues and provide practical options.

- (b) Positions may be established as Level 1(a) as part of a Graduate Recruitment Program.

Appointment to Level 1(a) will be through competitive selection.

A person who has been appointed as part of a Graduate Recruitment Program may apply to the Director General to progress to Level 1(b) following 12 months service at salary point 5. Progression will be dependant on the Director General being satisfied that work at that level exists and that the Officer would comply with the terms prescribed under subparagraph (a) of this paragraph.

- (c) Positions may be established as Level 1(b).

Appointment to Level 1(b) will be through competitive selection.

- (d) When Level 1(a) officers are directed to perform work commensurate with Level 1(b) due to absences or some other reason, they may be paid at the appropriate salary point under Clause 34 of the Public Sector Employment and Management (General) Regulation 1996.

4.2.3 PO (Professional) Level 2

Appointment to Level 2 will be through competitive selection.

4.2.4 PO (Professional) Level 3

- (a) Appointment to Level 3 will be through competitive selection.

- (b) Progression to salary point 16 requires the Director's certification that the officer has been on the maximum of salary point 15 for a period of 12 months and has demonstrated competency in three or more of the following criteria:

Management of staff

Strategic policy/program development and implementation

Representing the Department on substantial matters

Project/program management skills

Relevant technical skills

4.2.5 PO (Professional) Level 4

Appointment to Level 4 will be through competitive selection.

4.2.6 PO (Professional) Level 5

Appointment to Level 5 will be through competitive selection.

4.3 PO (Student Planner)

The commencing salary rate for an officer appointed as a Student Planner will normally be salary point 1. The officer will be eligible to progress to salary point 4.

5. Working Hours

5.1 These conditions will be determined and may be varied by Local Arrangement in terms of clause 10 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006. The Arrangement set out in Annexure A, Flexible Working Hours Agreement 2008, to this award will also cover the Department's employees not covered by this award i.e. Administrative and Clerical Officers and Senior Officers.

5.2 An officer, if directed to work or travel outside the usual hours of duty may be entitled to the 'Overtime' provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 commencing at clause 89 or the 'Excess travelling time' provisions pursuant to clauses 27 and 28 of that award.

5.3 A flexible and adaptable approach to working hours shall be adopted to meet peak demands, out of hours client demands, and the personal circumstances of officers of the Department.

Flexible working hours will only be available on the condition that an adequate service is maintained at all times. Services provided by the Department will not be withdrawn to accommodate the absence of officers under any flexible working hours arrangements.

At all times, the business needs of the Department must have priority.

6. Flex Leave

The Flexible leave entitlements in Annexure A to this award have been developed in recognition of the additional hours worked to meet the needs of the Department. Hours worked and flex leave taken are at the convenience of both the Department and the officer.

7. Appeals Mechanism - Soft Barrier

7.1 An officer has the right to appeal any decision made by the Department in relation to a soft barrier progression under the provisions of this Award.

7.2 Officers will submit a written submission outlining their case to the Director Human Resources within 28 days of the written notification of the decision.

7.3 The Director Human Resources or their delegate will convene and chair an appeals committee made up of (in addition to the convenor) one Management representative who was not a party to the decision, one representative nominated by the Association and one peer who is acceptable to both Management and the Association.

7.4 The appeal will be heard within 28 days of the submission being lodged and the recommendation of the committee will be forwarded to the Director-General or nominee for approval.

7.5 The decision of the Director-General or nominee will be forwarded to the Officer concerned within 7 working days of the appeal being heard.

7.6 This appeals mechanism does not cover matters that are properly dealt with by the NSW Industrial Relations Commission or the Government and Related Employees Appeal Tribunal.

8. Anti-Discrimination

8.1 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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 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."

9. Grievance and Dispute Settling Procedures

- 9.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the appropriate department, if required.
- 9.2 A officer is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- 9.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the officer to advise their immediate manager, the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.
- 9.4 The immediate manager, or other appropriate officer, shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- 9.5 If the matter remains unresolved with the immediate manager, the officer may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The officer may pursue the sequence of reference to successive levels of management until the matter is referred to the Department Head.
- 9.6 The Department Head may refer the matter to the DPE for consideration.

- 9.7 If the matter remains unresolved, the Department Head shall provide a written response to the officer and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 9.8 An officer, at any stage, may request to be represented by the Association.
- 9.9 The officer or the Association on their behalf, or the Department Head may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 9.10 The officer, Association, department and DPE shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 9.11 Whilst the procedures outlined in subclauses 9.1 to 9.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any officer or member of the public

10. Savings of Rights

- 10.1 At the time of the making of this Award no officer covered by this Award will suffer a reduction in his or her rate of pay or any loss or diminution in his or her conditions of employment as a consequence of the making of this Award.
- 10.2 Should there be a variation to the Crown Employees (Public Sector - Salaries 2007) Award or an Award replacing that Award officers of the Department will maintain the same salary relationship to the rest of the public service. Any such salary increase will be reflected in this Award either by variation to it or by the making of a new Award.

11. Area, Incidence and Duration

- 11.1 This Award shall apply to those officers of the Department of Planning, employed in classifications as listed in clause 4, Classification and Salary Structures of the Award.
- 11.2 This Award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Crown Employees (Environmental Planning Officers 2003) Award published 27 August 2004 (346 I.G. 107) and the Crown Employees (Heritage Office 2003) Award published 12 March 2004 (343 I.G. 607) and all variations thereof.
- 11.3 The changes made to the Award 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 8 April 2008.
- 11.4 This Award remains in force until varied or rescinded, the period for which it was made having already expired.

PART B

MONETARY RATES

Table 1 - Salaries

Operative from the beginning of the first pay period to commence on or after 1.7.07

Key: Soft barrier _____
Hard barrier _____

Classification	Salary \$	Salary Point
PO (Professional) Level 1(a)	52,324	1
	57,772	2
	61,801	3
	64,250	4
	66,749	5
Level 1(b)	70,862	6
	73,750	7
	76,064	8
	79,849	9
PO (Professional) Level 2	84,738	10
	87,197	11
	90,699	12
PO (Professional) Level 3	92,500	13
	96,378	14
	99,269	15
	103,591	16
	107,721	17
PO (Professional) Level 4	118,762	18
	123,737	19
	128,812	20
PO (Professional) Level 5	135,648	21
	139,025	22
PO (Student Planner)	37,762	1
	39,400	2
	40,857	3
	43,903	4

ANNEXURE A

FLEXIBLE WORKING HOURS AGREEMENT 2008

NSW DEPARTMENT OF PLANNING

1. Title of the Agreement

This Agreement shall be known as the Department of Planning of New South Wales Flexible Working Hours Agreement 2008.

2. Arrangements

1. Title of the Agreement
2. Arrangements
3. Definitions
4. Parties
5. Area, incidence, duration and purpose
6. Ordinary hours
7. Contract hours
8. Business hours
9. Staffing levels and rosters
10. Bandwidth
11. Core time
12. Varying hours of duty
13. Settlement period
14. Principles underlying flex leave and banking of accrued flex leave

15. Flex leave
16. Flex leave arrangements (Banking of flex leave)
17. Meal breaks
18. Accumulation, carry over and compensation for full-time staff
19. Pro-rata flex leave accumulations and carry over for part-time staff
20. Transfers
21. Breaches of flexible working hours arrangements
22. Termination of service
23. Grievance Management

3. Definitions

"The Department" - means the Department of Planning of New South Wales.

"Staff"- means all staff employed under the *Public Sector Employment and Management Act 2002* (as amended), with the exception of those employed under Chapter 3 part 3.1 Public Sector Executives.

"Part-time Staff" - means any staff member whose ordinary hours of work are less than 140 hours per settlement period.

"Flexible Working Hours" - for the purposes of this Agreement, flexible working hours hereinafter referred to as flex time, is a system of attendance at an office or worksites of the Department within which an individual staff member may select their starting and finishing time on each normal working day, subject to the concurrence of the Department, and in accordance with conditions set out in this Agreement.

"Union" - means The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Award" - means the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006

4. Parties

The parties to this Agreement are:

- (i) The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales;
- (ii) The Department of Planning of New South Wales
- (iii) The Director of Public Employment,

The parties shall co-operate in the monitoring of the operation of the Agreement by bringing identified operational and administrative problems, and any matters which cannot be resolved in the first instance at the workplace level, to the Department's Joint Consultative Committee.

5. Area, Incidence, Duration and Purpose

This Agreement is made pursuant to clause 10, Local Arrangements of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, with the approval of the Director of Public Employment, between the Department of Planning on the one part, and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales on the other part.

It replaces in part clause 11, Hours of Duty of the Award. Unless otherwise stated in this Agreement, any remaining provisions of clause 11 of the aforementioned Award remain unaffected by this Agreement and shall continue to apply for the nominal term. To the extent that any part of this Agreement conflicts with clause 11, this Agreement will prevail. This agreement is to be read in conjunction with clauses 5 and 6 of the Crown Employees (Planning Officers) Award 2008.

The parties to this Agreement are committed to the facilitation of an equitable arrangement for all staff members employed by the Department to access, and utilise accumulated credit hours over and above their contract hours, as far as practicable, and arrange for the equitable administration of this Agreement throughout the Department.

The Department will endeavour to ensure that staff levels and work rosters are adequate to ensure that staff members have access to the provisions of the Agreement. The Unions shall ensure that staff co-operate by working within the operational requirements of the Department.

6. Ordinary Hours

For staff employed under the *Public Sector Employment and Management Act 2002* the ordinary working hours for:

- (i) Full time staff are 7 hours per day, 35 hours per week (140 hours per 4 week settlement period).
- (ii) Part time staff will be set out in their part-time arrangements. (These arrangements are agreed to and documented.)

Staff members who do not wish to work additional hours will suffer no discrimination or disadvantage.

7. Contract Hours

Contract hours are the minimum hours for which a staff member would be required to be on duty during a settlement period. For the purposes of this Agreement the minimum contract hours required of a full time staff member for a settlement period shall be 140 hours. Contract hours for part-time staff members will be set out in their documented part-time arrangements.

8. Business Hours

Business hours are the span of hours during which the Department offices are open to members of the public, normally 9.30 am to 4.30 pm.

9. Staffing Levels and Rosters

- (i) The Department will ensure, and the Union shall co-operate, in the necessary arrangements, that adequate staffing levels are maintained during business hours to ensure a full range of client services are available during business hours.
- (ii) Managers and staff members in individual offices or work sites of the Department may negotiate a roster system to ensure the equitable management of the flex time and/or flex leave system, so that no individual staff member is disadvantaged in any way in relation to the operation of this Agreement.
- (iii) Where formal roster arrangements are introduced or are already in operation, those roster arrangements, and the operation of the roster, shall be negotiated between the responsible manager or supervisor and the staff members concerned. Staff members involved may request an Union delegate to assist with the negotiation of roster arrangements, if required.
- (iv) As far as practicable a timetable for roster arrangements, and operation of the roster for a period of 3 months or more should be negotiated.

10. Bandwidth

- (i) The bandwidth (span of hours) operating during the term of this Agreement for normal working days shall be between the hours of 7.00 am and 6.30 pm.
- (ii) The bandwidth may be varied by agreement with the appropriate director and the staff in a particular workgroup, unit, branch, region or directorate to suit operational, climatic needs or with specific individuals to assist with care responsibilities or other needs.

- (iii) A staff member may select their starting and finishing times within the bandwidth subject to core time provisions and the Department's concurrence.
- (v) Any time worked during a settlement period before or after the bandwidth, unless otherwise stated in this Agreement, shall not be credited to the staff member in any calculation of accumulated credit hours.
- (vi) A staff member who, for personal or family circumstances wishes to work outside the bandwidth or core time stated in Clause 11 on either a temporary or permanent arrangement shall apply to the appropriate executive director or director, in writing, for approval. Such arrangements made at the staff member's request, will not attract any additional penalty rate payment.

11. Core Time

Core time is that period of the working day when all staff are required to be on duty unless on lunch break or approved leave.

The standard core time which will apply to all staff is 9:30 am to 3:30 pm.

Whilst staff need to attend the workplace only between 9:30 am and 3:30 pm, managers/supervisors and staff may negotiate a roster system to ensure equitable management of adequate staff levels during office hours to ensure a full range of client services are available during business hours as stated in Clause 9 of this agreement. Rosters should be reviewed at 3 monthly intervals or at the request of individual staff.

In recognising that staff may need to meet their care responsibilities or other needs as well as the operational needs of the Department. Any variation must be approved by branch managers. Approvals should be written and are to be reviewed every six (6) months or earlier at the request of the staff member.

12. Varying Hours of Duties

Where a staff member as a result of their care responsibilities, or urgent personal reasons is unable to observe the general hours operating in the Department, the staff member may request a variation to their hours of attendance on a one off, short or long term subject to the following:

- (i) the variation does not adversely affect the operational requirements,
- (ii) variation in hours are the result of consultation between a manager and a staff member,
- (iii) flexitime debit or credit hours are met at the end of the settlement period where applicable,
- (iv) ongoing arrangements are documented,
- (v) no overtime or meal allowances are made to a staff member as a result of an agreement to vary the hours,
- (vi) a lunch break of one hour is available to a staff member, unless a staff member elects to reduce the break to not less than 30 minutes, and
- (vii) the variation is approved by the manager.

13. Settlement Period

The 4 week period in which time is recorded commences on a Monday and concludes on a Friday.

14. Principles Underlying Flex Leave and Banking of Accrued Flex Leave

- (i) The parties to this Agreement acknowledge that there is a need for the manager or supervisor and staff members to plan work. Tools such as a Performance Development System help with the planning of work. Managers and supervisors in consultation with staff need to plan the hours to be worked in a

settlement period, the flex leave to be taken in a settlement period, and the estimated additional paid hours of work in a particular settlement period.

- (ii) In planning working hours, account will be taken of past working hours and arrangements and agreement by the staff member/workgroup, manager or supervisor on the estimated time required to satisfactorily undertake prescribed duties. Planning for these tasks shall be on a regular basis, and any significant variation in estimated time shall be identified by either the manager or staff member and the plan jointly revised.
- (iii) All significant variations to the agreed estimated time to satisfactorily undertake prescribed duties shall be agreed between the staff member and manager prior to the time being worked.

15. Flex Leave

- (i) All flex leave granted shall be at the convenience of the Department and the requirements of the Department's clients and the public. Requests for flex leave should be discussed and negotiated between a staff member and their supervisor, reasonable notice should be given and their supervisor's approval obtained prior to proceeding on flex leave. This includes flex leave taken during transport disruptions or other emergencies.
- (ii) Flex leave may be taken as two (2) full days or four (4) half days or a combination of full and half days to a maximum of two days during a settlement period.
- (iii) It is not necessary for a staff member to have a credit balance when taking flex leave.
- (iv) A staff member working under an agreed roster, may be rostered to take a flex leave entitlement on an identified normal working day, or days, during the roster period.
- (v) Flex leave may be taken immediately before, and/or after, a period of recreation leave and any other form of approved paid leave.
- (vi) Flex leave may be taken on consecutive working days, irrespective of whether these days are in different settlement periods.
- (vii) A staff member may be requested by their manager to take flex leave if the maximum credit accrual is likely to be exceeded during or by the end of a settlement period.
- (viii) A staff member will not be able to access banked flex days in instances whereby their recreation balance exceeds 40 days.

16. Flex Leave Arrangements - Banking of Flex Leave

In a number of instances workload demands will require staff to work long hours thus accruing significant extra flex credits. In order to achieve some compensation for staff who work extra hours, the following provision for the banking of flex leave will apply: These instances could include but are not necessarily limited to, budgeting, business planning, end of financial year, and emergency service activities.

- (i) Prior agreement on workload constraints should be reached between the staff member and manager or supervisor in order for a staff member to bank a flex day.
- (ii) Where workload demands have prevented a staff member from taking flex leave (as provided for in Clause 15 (ii)) a staff member may apply to bank the flex leave that was not taken - either a full or half day. The remaining hours of credit should be added to the normal flex credit.
- (iii) A staff member does not have to be in credit to bank flex leave. When banking a full day flex leave a staff member must not be more than three hours in debit. When banking a half day flex a staff member must not be more than six and a half (6 1/2) hours in debit at the end of the settlement period. That is, the total debit may not exceed 10 hours.

- (iv) All flex leave banked is required to be in half or full days. Subject to subclause (ii) above.
- (v) Up to two (2) flex days may be accrued and banked per settlement period. Subject to subclause (ii) above.
- (vi) A staff member may bank up to a maximum of five (5) days (35 hours), which can be taken at a mutually convenient time, if the staff members recreation balance is less than 40 days.
- (vii) Banked flex leave can be taken in conjunction with other forms of approved paid leave.
- (viii) In addition to the entitlements under Clause 17(a)(3) of the Award, any banked flexi leave may be taken during transport disruptions or other emergencies.

17. Meal Breaks

- (i) A staff member shall be required to take a meal break not more than five (5) hours after commencing work, or before 2.00 pm. whichever is the earlier.
- (ii) A staff member shall be entitled to a meal break of one (1) hour. Consultation with a manager/supervisor is necessary for a meal break in excess of this time.
- (iii) The minimum meal break permitted is thirty (30) minutes.
- (iv) The maximum meal break permitted is two and half (2 1/2) hours during the span of 11.30 am to 2.30 pm.

18. Accumulation and Carry Over for Full-Time Staff

- (i) A staff member may accumulate credit or debit hours throughout a settlement period, and carry forward credit and debit hours between settlement periods provided that at the end of a settlement period the number of credit hours does not exceed ten (10) hours or debit hours does not exceed ten (10) hours.
- (ii) When a staff member's accumulation of debit hours exceeds ten (10) hours at the end of a settlement period, the excess debit hours shall be debited against any banked flex leave, or if none is available, accrued recreation leave, or if no such leave is available, debited as leave without pay.
- (iii) When a staff member's accumulation of credit hours exceeds ten (10) hours at the end of a settlement period, the excess credit hours may be banked subject to Clause 16 above. Where the staff member already has thirty five (35) hour banked any additional hours will be forfeited.
- (iv) The Department shall make every effort to ensure that an officer does not consistently forfeit excess credit hours at the conclusion of settlement periods as a result of requests for flexi leave being refused.

19. Pro-Rata Flex Leave Accumulation and Carry Over for Part-Time Staff

- (i) A staff member who is employed under a part-time work arrangement which does not require fixed starting or finishing times on all the normal working days may accrue up to the maximum pro-rata accumulated credit and debit entitlements under this Agreement.

Example: A staff member who works twenty-eight (28) hours per week would be entitled to accumulate a maximum credit or debit of eight (8) hours at the end of the settlement period i.e. normal carry - normal hours x actual hours (10-35 x 28)=8.

- (ii) Contract hours for a staff member working under a part-time agreement shall be calculated on the total number of agreed hours to be worked in a settlement period.

Example: A staff member who works twenty-one(21) hours per week -their contract hours will be 84 hours per settlement period i.e. actual hours worked x 4 (21 x 4) = 84.

- (iii) A staff member who elects to change from full-time to part-time work, by agreement may be permitted to exhaust accumulated flex leave entitlements prior to commencing part-time work, or have any existing accumulated credit balance carried over. Future entitlements for flex leave from this accumulated credit hour balance carry over shall be calculated on the basis of full-time work until exhausted.
- (iv) A staff member who changes from part-time to full-time employment by agreement may be permitted to exhaust accumulated flex leave entitlements prior to commencing full-time work, or carry over the entitlement, which continues until exhausted.
- (v) A part time staff member working under flexible working hours arrangements may be entitled to up to two (2) full days or four (4) half days or a combination of full and half days to a maximum of two days during a settlement period with the approval of their manager. The flex leave to cover the flex absence/s is the actual time absence from work.

Example: A staff member who works twenty-eight (28) hours per week - i.e. 7 hours per day, 4 days a week, the flex leave entitlement to cover one (1) days flex leave is seven (7) hours.

20. Transfers

A staff member of the Department who transfers to another Department may transfer only ten (10) accumulated credit hours, if a staff member has in excess of ten (10) hours an effort should be made to take the appropriate flex leave prior to transferring in order to reduce excess credit

21. Breaches of Flexible Working Hours Arrangements

The Executive Directors, or Directors may only direct a staff member to work standard hours where it is proven the staff member has breached a provision of this Agreement, the remaining operative sub-clauses of clause 11, Hours of Duty of the Award or an established administrative arrangement of the Department in connection with the operation of flexible working hours which was in operation at the time this Agreement was made.

22. Termination of Service

- (i) The Department shall ensure as far as practicable, that a staff member is given the opportunity to eliminate accumulated credit hours, to the limits prescribed in Clause 18, by way of flex leave prior to the completion of their last day of service with the Department through resignation or retirement.
- (ii) The Department shall debit a staff member's accumulated recreation leave or extended leave (minimum of a quarter day), or monies owing, against debit hours accumulated by a staff member at the completion of the last day of service with the Department.

23. Grievance Management of the Flexible Working Agreement

Staff members who are in conflict or have a grievance with the coverage of this Agreement should use the procedures identified in the Department's Grievance Management System.

This agreement between the parties is MADE AT SYDNEY ON

THE _____ DAY OF _____ 2008

Signed for and on behalf of the Director of Public Employment

Signed for and on behalf of the Department of Planning

Signed for and on behalf of The Public Service Association and Professional Officers' Association - Amalgamated Union of New South Wales

D. W. RITCHIE, Commissioner.

Printed by the authority of the Industrial Registrar.

FOOD PRESERVERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Industrial Organisation of Employees.

(No. IRC 91 of 2008)

Before Commissioner Ritchie

7 March 2008

VARIATION

1. Insert in numerical order in the Arrangement of the award published 16 November 2001 (329 I.G. 489), the following new clause number and subject matter.

5A. Secure Employment

2. Insert after clause 5, Contract of Employment, the following new clause:

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.
3. Delete the amount "\$45" in subclause 40.3 of clause 40, Supported Wage and insert in lieu thereof the following:
- "\$66"
4. Delete the amount "\$45" in paragraph 40.9.3 of the said clause 40 and insert in lieu thereof the following:
- "\$66"
5. This variation shall take effect from the first full pay period on or after 7 March 2008.

D.W. RITCHIE, Commissioner

FOOD PRESERVERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1535 of 2007)

Before Commissioner Bishop

7 March 2008

REVIEWED AWARD**Arrangement****PART A**

Clause No.	Subject Matter
1.	Title
2.	Definitions
3.	Wages and Classifications
4.	Rates of Pay
5.	Contracts of Employment
5A	Secure Employment
6.	Prohibition of Outdoor and/or Contract Work
7.	Special Rates
8.	Junior Employees
9.	Mixed Functions
10.	Hours of Work
10A	Implementation of a 38 Hour Week
11.	Shift Work
12.	Overtime
13.	Meal Break and Allowances
14.	First Aid Attendant
15.	State Wage Case Adjustments
16.	Morning and Afternoon Tea
17.	Free Tea, Coffee, Milk and Sugar
18.	Holidays
19.	Sunday and Holiday Rates
20.	Annual Leave
21.	Sick Leave
22.	Personal/Carer's Leave
23.	Parental Leave
24.	Bereavement Leave
25.	Implements, Materials, Protective Clothing and Uniforms
26.	Damage to Clothing
27.	Floor Covering
28.	Transport of Employees (11 p.m. to 7a.m.)
29.	Payment of Wages
30.	Aged, Slow and Infirm Workers
31.	Limitation of Employer's Liability
32.	Notice Board and Posting of Award
33.	Shop Stewards
34.	Right of Entry
35.	Jury Service
36.	Accommodation

37. Accident Pay
38. Preservation of Existing Rights
39. Avoidance of Industrial Disputes
40. Supported Wage
41. Structural Efficiency
42. Redundancy
43. Superannuation
44. Leave Reserved
45. Anti-discrimination
46. Training Wage
47. Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

PART A

1. Title

- 1.1 This award shall be known as the Food Preservers (State) Award.

2. Definitions

For the purposes of this award unless a contrary intention appears

- 2.1 "Adult employee" means an employee of the age of 18 years or more.
- 2.2 "Assistant syrup maker" means an employee engaged in the making of syrup who is not responsible for achieving the required final strength of the syrup to be used. Provided that an employee who is engaged merely in unloading sugar from bags to syringing tanks shall not be classified as an assistant syrup maker.
- 2.3 "Box or case repairer and/or maker" means an employee who repairs and/or makes wooden boxes, cases, crates, trays, slides, skips and/or pallets for use in the employer's own business.
- 2.4 "Carton assembler by hand" does not include an employee forming or partially forming single retail-pack size cartons or products.
- 2.5 "Employee" means a person or one of the classes of persons performing any of the kinds of work covered by this award who may be employed by an employer.
- 2.6 "Employer" means an employer upon whom this award is or becomes binding.
- 2.7 "Labelling machine operator" means an employee operating a continuous flow horizontal labelling unit on cans or jars or a bottle labelling machine affixing two or more labels to such bottles.
- 2.8 "Leading hand" means an adult employee appointed as such by the employer who, while working under supervision, gives instructions to and/or is responsible for work done by other employees.
- 2.9 "Open or closed pan cooker" means an employee responsible for the cooking of jams, sauces of all descriptions, cordials, toppings, pickles, soups and other similar classes of formulated products.
- 2.10 "Quality checker" means an employee performing duties that do not come within those of any classification either under this award or under any other award who is engaged in testing of raw

- materials, products in process or containers on line or in an area adjacent thereto in accordance with pre-determined routine procedures and the recording of such results.
- 2.11 "Pedestrian fork lift operator" means an employee operating (from a standing position) a self powered fork lift appliance designed to lift, elevate, move and stack pallets. This definition specifically excludes stillage trucks or other appliances designed to lift and move a pallet or pallets within 30 cm of floor level.
- 2.12 "Season" means in respect of work directly associated with or forming part of the preparation of the initial, continuous processing of seasonally grown items covered by this award -
- 2.12.1 peas: October 1 to the following April 30;
- 2.12.2 citrus fruits (concentrated juice): June 1 to the following January 31;
- 2.12.3 asparagus: September 1 to the following March 31;
- 2.12.4 beans: from November 1 to the following May 31;
- 2.12.5 tomatoes: December 1 to May 31;
- 2.12.6 Items other than those specified above - 1 December to the following 30 April, provided that as to the processing of apples and beetroot the season shall be extended to 31 August in New South Wales; provided further that any seasonally grown item, other than apples and pears, which is stored by any means whatsoever and is not prepared or processed continuous with the harvesting season shall not be included.
- 2.13 "Winter season" means the period from May 1 to the following July 31 in respect of the processing of the following items: Sprouts, broccoli, cauliflower, celery, sweet corn, carrots, swedes, white turnips, silver beet, cabbage, parsnips and potatoes, whether such items are processed in a deep-frozen, canned or dehydrated form: Provided that this definition shall not prevent any such items being processed as seasonal vegetables under definition 2.12.6.
- 2.14 "Storeperson and packer" means an employee in a store or in any place where goods are handled for the purpose of being received, stored or despatched, who is engaged in -
- 2.14.1 packing, assembling, collecting, recording or checking goods or materials in course of receipt or dispatch, or
- 2.14.2 packing from dockets for dispatch;
- For the purpose of this award -
- (A) A storeperson and packer shall be so classified Subject to that the employee may be under the orders of a superior who does not devote the whole of their time to supervising storing and packing work.
- (B) "Storeperson and packer" does not include an employee who in the course of manufacture merely encloses goods in the uniform containers in which such goods are ordinarily sold by the manufacturer, nor a packer who nails, uses staples or seals such containers, nor an employee who merely loads or unloads goods already packed into or from trucks, wagons or bulk containers, or on or from pallets.
- 2.15 "Syrup maker of multi-strength syrups" means an employee who is ordinarily required to make more than one strength of syrup during the course of a day or shift and who achieves the required final strength of the solution to be used.

- 2.16 "Syrup maker (other) or brine maker" means an employee who -
- 2.16.1 is ordinarily required to make a uniform-strength syrup and who achieves the required final strength of such syrup; or
 - 2.16.2 makes brine and achieves the required final strength thereof.
- 2.17 "Union" means the Automotive, Food, Manufacturing, Engineering and Printing Kindred Industries Union, New South Wales Branch - Confectionery and Food Division.
- 2.18 "Weighbridge attendant" means an employee engaged in the operation of a weighbridge on the receiving, checking, weighing (gross and net weights), recording and tabulating of quantities of various types of raw and processed material delivered to the factory for subsequent processing: Provided that such definition shall not include an employee engaged in the abovementioned operations merely involving deliveries associated with transfer between different factories and/or stores of the one employer.

3. Wages and Classifications

- 3.1 Adults -
- 3.1.1 Subject to the exceptions and exemptions prescribed in this clause an adult employee in a classification or class of work specified in the table set out in 3.1.2 shall be paid at the respective award wage rate per week assigned to that classification or class of work set out in Table 1, of Part B under the heading " Weekly rate of pay ".
 - 3.1.2 Composition of Groupings - Adult employees shall be classified in groupings as provided in Table 1 of Part B and such classified groupings shall consist of the following designated classifications of labour -
- 3.2 Group 1 -
- 1. Evaporator operator (tomato paste).
 - 2. Retort or autoclave operator.
 - 3. Storeperson and packer in charge of a place in which the employee is the only adult storeperson and packer engaged therein and who is responsible for stock and the execution of orders.
 - 4. Spaghetti maker.
 - 5. Deep fry cooker.
- 3.3 Group 2 -
- 1. Assistant vinegar brewer.
 - 2. Ingredients mixer operator using silent cutter.
 - 3. Preserver of cherries, citrus peel and/or vegetable by syruing or brining (including the making of such syrup or brine when such is performed directly in association with the operation).
 - 4. Cereal filling and packing line operator.
 - 5. Potato mash dryer operator.
 - 6. Hydrostatic steriliser operator.

7. Controller of crystallisation operation (not including cherry and/or mixed peel preparation).
8. Open or closed pan cooker (as defined).
9. Cereal cooker.
10. Storeperson and packer (as defined).
11. Employee in charge of prunes or tree fruits.
12. Employee in charge of dehydrators.
13. Dehydration tunnel operator.
14. Dough or paste maker by machine other than for pie products.
15. Rotary coil operator (tomatoes).
16. Quality checker (as defined).

3.4 Group 3 -

1. Inspector of fruit or vegetable for acceptance or rejection.
2. Filling and closing machine operator, i.e., employee operating automatic polythene or cellophane pack type unit and hesser filling and closing machine.
3. Assembler and weigher of ingredients for cooked products (other than jam).
4. Weighbridge attendant (as defined).
5. Labelling machine operator.
6. Potato mash cooking and preparation line operator.
7. Evaporator operator (other than tomato paste).
8. Trimmer by hand of uncooked meat.
9. Syrup maker of multi-strength syrups (as defined).
10. Bulk fruit bin maker and/or repairer.
11. Filling and closing machine operator, i.e., employee operating automatic polythene pack type unit for frozen products.
12. Pedestrian forklift driver (as defined).

3.5 Group 4 -

1. Flour sifter operator.
2. Weigher and recorder of asparagus, peas from viner or bulk dehydrates product from drying bins.
3. Blancher operator.
4. Meat ball forming machine operator.

5. Pulping machine operator (tomato products).
 6. Lye peeler operator.
 7. Automatic consumer carton forming and glue sealer machine operator.
 8. Syrup maker (other) or brine maker (as defined).
 9. Continuous flow freezing tunnel operator.
 10. Preparer of cherries for syruping.
 11. Quality grader and receiver of asparagus, pears and/or peaches.
 12. Centrifuge operator.
 13. Steam injector operator on continuous flow cooking.
 14. Filling and closing machine operator responsible for packaging products in cans, jars, bottles or single unit serves.
 15. Feeding into and/or taking away from retorts.
 16. Automatic carton forming, casing and sealing machine operator.
 17. Inspector of frozen processed products immediately prior to packaging.
 18. Sachet filling and closing machine operator.
 19. Controller of battering and/or crumbing of meat and/or fish products.
 20. Filling and closing machine operator, i.e., employee operating automatic cardboard pack type unit for frozen goods.
 21. Trimmer by hand of cooked meat.
- 3.6 Group 5 -
1. Driver of factory electric truck or factory mechanical sweeper.
 2. General hand assisting in cooking of hot preparation.
 3. Weighbridge attendant other than as defined.
 4. Steriliser by open pan or tank.
 5. Dehydration preparation line operator (root vegetables).
 6. Sweeper and/or boxperson in pea-vining station.
 7. Pea washer operator.
 8. Plate freezer operator.
 9. Meat receiver recorder in meat canning factory.
 10. Loader by hand of frozen goods in refrigerated vehicle.
 11. Mixing and/or blending machine operator.

12. Steam peeler operator.
13. Oven cooker and serviceperson on dim sim preparation line.
14. Cleaner of machinery, equipment, vats and the like (not applicable to cleaning factory floor, warehouse or store cleaning).
15. Employee unloading and handling potatoes in bulk store.
16. Meat cutter operator by hand saw and/or guillotine.
17. Carton former operator.
18. General hand assisting on continuous flow rotary fruit cooker.
19. General hand engaged in loading, unloading, tipping, storing or preparing of citrus peel or vegetables in acidic brine
20. Knife or circular blade sharpener.
21. Pea forker by hand or grab.
22. Shaker and/or rumbler operator in pea vining.
23. Assistant spaghetti maker.
24. Box or case repairer and/or maker (as defined).
25. Weigher or recorder of meat or vegetables in raw or processed form (other than asparagus, peas or bulk dehydrated products from drying bins)
26. Unloader by hand of frozen goods from bulk bins.
27. Unloader by hand of citrus peel or cherries from syruping vats.
28. Unloader of meat in meat preparation area.
29. Supplier of cooked meat and/or poultry to trimmers.
30. Closer operator on canned products other than in can making.
31. Meat slicer or mincer operator.
32. Size grader operator.
33. Assistant syrup maker (as defined).
34. Feeder of stillages to slitting machine in can making.
35. Employee engaged in the juice making section working on or about a fruit press in processes associated with the extraction of fruit juices
36. Feeder of meat or fish product to forming machine.
37. Frozen meat or fish disintegrator or emulsifier operator.
38. Gas pack operator on dehydrated products.
39. Potato piler operator in bulk store.

40. Busse loader operator.
 41. Shrink wrap packaging operator.
 42. Rotary cooler operator on jam and/or spread making.
 43. Closer operator (jars or bottles).
 44. Packer of clear mixed pickles into glass jars.
 45. Unloader or weigher of bulk-frozen product for dehydration.
- 3.7 Group 6 -
- 3.7.1 Sub-Group A -
1. Controller of flow of fruit, vegetables or containers to preparation, syruing and/or filling lines.
 2. Corn sieving machine operator.
 3. Pre-heater operator in fruit canning.
 4. Filler operator (cans, jars or bottles).
 5. Dicer, cutter or fruit stoning machine operator on fruit or vegetables.
 6. Bottle, jar or equipment washing machine operator.
 7. Shaker and/or rumbler operator other, i.e., operator of automatic root vegetable peeler or grape declusterer.
 8. Wooden bulk bin tipping and/or bulk bin filling machine operator.
 9. Carton sealing machine operator.
 - 9A. Carton sealing machine operator other than sealing with self-adhesive tape.
 10. Remover of lids from compounding machine, press, machine and/or drying oven in can making
 11. Pedestrian electric truck operator.
 12. Busse unloader operator.
 13. Can opener by machine (A 10 type can only).
 14. Palletising or depalletising machine operator.
 15. Hoist operator.
 16. Sealing machine operator on 4.5 to 18.2 litre cans.
 17. Casing machine operator.
 18. Towveyor attendant.
 19. Employee engaged in cutting or pulping lemons, pineapples, oranges or grapefruit by hand.
 20. Pourer out or filler or stirrer of jam, soup, chutney, pickles, pulp or other hot preparations by hand.

21. Loader of dehydration trays to trucks.
22. Feeding peach pitting, apple or pear preparing or apricot slitting machine piecemeal by hand.
23. Can or jar tapper.
24. Trimmer and/or inspector of onions and/or horseradish or feeder of onion peeling machine piecemeal by hand
25. Dicer and/or shredder operator.
26. Pastry roller machine operator.
27. Operator of automatic cellotape type carton sealing machine.
28. Bag sewing machine operator.
29. Feeding on to a moving belt tins of preserved products weighing collectively over 2.7 kg.

3.7.2 Sub-Group B - Subject to the operation of State laws relating to safety, junior employees may be employed upon the following classifications -

1. Wheeler of loaded stillages into and out of freezing chamber.
2. Unloader of processed material from dehydration trays.
3. Loader or unloader of goods in warehousing not elsewhere classified.
4. Stacker on pallets of filled cartons and/or 2.3 to 18.2 litres filled containers.
5. Tank attendant (tomato evaporator or bean blancher).
6. Bulk dumper by hand.
7. Waste disposal unit attendant.
8. Hand truck wheeler.
9. Filler by hand of 18.2 litre container of hot preparations.
10. Recorder of pallets of processed goods, empty wooden bulk bins and lug boxes or raw material to production line.
11. Hand solderer other than in can making.
12. Unloader of lambs' tongues from salt brine solution.
13. Assistant to plate freezer operator.
14. Loader of dehydration trays on filling lines.
15. Dump rig employee in freezing chamber.
16. Unloader by hand from conveyor or machine not elsewhere classified.
17. Material washer operator (other than pea cleaning).
18. Remover by hand of pallets from depalletiser other than in can making.

- 19 Supplier of fruit to pieceworkers.
- 20 Clutchperson on peach preparation machine.
- 21 Filler and/or unloader of retort baskets by hand.
- 22 Filler and/or unloader of retort baskets by hand - A10 cans or larger.
- 23 Unloader of empty jars or bottles from containers and/or washing machines.
- 24 Employee engaged in peeling melons.
- 25 Feeder by hand of raw or processed material to preparation and/or filling machine (not elsewhere classified).
- 26 Check weigher.
- 27 Raker or forker of filled cans to pallets.
- 28 Feeder of machine, piecemeal by hand other than elsewhere specified.
- 29 Washer of movable hoppers.
- 30 Carton sealer by hand.
- 31 Can or jar tapper.
- 32 Size grader machine attendant.
- 33 Supplier of product to hand fillers of consumer packs.
- 34 Lumper other than in a storage and dispatch area.
- 35 Market attendant on asparagus canning line.
- 36 Label inspector immediately after labelling.
- 37 Strapper of palletised cartons.
- 38 Assistant to controller of flow fruit, vegetables or container to preparation, syruping and/or filling lines.
- 39 Trimmer or cutter of fruit or vegetables by hand.
- 40 Wiper of 4.5 to 18.2 litre cans after filling.
- 41 Sampler of peas for testing by tenderometer or maturometer.
- 42 Dump rig employee other than in freezing chamber.
- 43 Sample card distributor on fruit receiver.
- 44 Carrier of trays by hand of filled material.
- 45 Feeder by hand of unformed cartons to automatic carton forming and casing machine, pallets to depalletiser and empty cans to races and/or fillers.
- 46 Remover of waste material.

- 47 Can, bag or carton stenciller.
- 48 Bulk bin filler in freezing chamber.
- 49 Pre-heater attendant in fruit canning.
- 50 Washer of empty raw material containers.
- 51 Consumer pack filler by hand.
- 52 Packer by hand of filled and processed product in cartons.
- 53 Cartons assembler by hand (as defined).
- 54 Cleaner of factory floors, warehouse or stores.
- 55 Inspector of filled cans before closing.
- 56 Dry spaghetti packer by hand.
- 57 Feeder of potatoes to forming machine piecemeal by hand.
- 58 Inspector of empty cans, jars or bottles immediately before filling.
- 59 Bulk filler by hand of potato crisp type, mixed peel or crystallised cherry products
- 60 Can opener by hand.
- 61 Raker or forker of cans to pallets and/or races.
- 62 Filler and/or unloader of retort baskets by hand other than A10 cans or larger.
- 63 Spreader of product material on dehydration trays.
- 64 Loader by hand of trays of filled material or prepared product.
- 65 Feeding into and/or taking away piecemeal by hand from labelling machine if not in immediate charge of machine operation.
- 66 Trimmer, sorter, inspector, grader, dicer, and/or cutter by hand of fruit or vegetables in preparation other than elsewhere classified.
- 67 Closer by hand of jars or bottles.
- 68 Filler of consumer packs by hand (including spaghetti filling) other than elsewhere classified or packer by hand of filled and processed product in cartons
- 69 Carton assembler by hand (as defined).
- 70 Dough breaker.
- 71 Filler by hand, folder by hand and/or automatic scale inspector of frozen bulk pack.
- 72 Cap feeder attendant.
- 73 Feeder of consumer packs to filling machine or heat-sealing machine piecemeal by hand.
- 74 Weigher of glazed and/or crystallised products for consumer pack filling.

- 75 Feeder of empty containers to races and/or conveyors other than by raking or forking where such containers are subsequently washed, inspected, preheated and/or filled (including unloader of jars from continuous sterilising tunnel).
- 76 Washer of pulp tins, cans and/or glass containers.
- 77 Labeller and/or repairer by hand of cartons and/or containers on line.
- 78 Consumer pack carton assembler (hand).
- 79 Filler by hand of cold preparations (2.3 to 18.2 litre containers).
- 80 Feeder by hand of raw materials to preparation machine.
- 81 Unloader by hand of product material from machine and/or conveyor.
- 82 Feeder of formed cartons to casing machine operator and/or packer by hand of jars or bottles.
- 83 Pastry former.
- 84 Employees engaged on dim sim forming line.
- 85 Employee coding, wiping, glueing, sealing and/or stencilling of cartons and/or consumer packs by hand.
- 86 Feeder of unformed consumer packs to automatic carton forming machine (piecemeal by hand).
- 87 Feeder of sachet packets to automatic filling machine (piecemeal by hand).
- 88 Feeder of consumer packs to automatic cellophane wrapping machine.
- 89 Inspector of berry punnets.
- 90 General hand, i.e., adult employee engaged on work not elsewhere classified for adults.
- 3.8 Type of Forklift - rates of pay as set out in Table 1, of Part B.
- 3.9 Juniors - The weekly rate for the purposes of clause 8, Junior Employees, of this award, shall be the appropriate percentage of the Base Rate prescribed in this clause for the classification specified.

4. Rates of Pay

- 4.1 Adult employees shall be paid in accordance with the rates prescribed in Table 1 - Wages, and Table 2 - Other Rates and Allowances, of Part B, Monetary Rates. Junior employees shall be paid an amount in accordance with clause 8, Junior Employees, and Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, of this award.
- 4.2 Leading Hands - In addition to the appropriate weekly wage prescribed in this clause for the highest classified employee directly under their control and for whom they are responsible, an adult employee employed as a leading hand (as defined) shall be paid the further amounts set out in Item 1 of the said Table 2, such rates to be payable for all purposes of the award. The amounts as set out in Item 1 of Table 2 shall be added to the rates set out in the said Table 1.

5. Contracts of Employment

- 5.1 Types of Employment - An employer may employ persons covered by this award under one of the following types of contracts of employment.

- 5.1.1 Permanent Employees - employed on a permanent basis in which employment shall be terminated by one week's notice on either side given at any time during the week or by the payment or forfeiture, as the case may be, of one week's ordinary wages except as provided by 5.3 and 5.6.
- 5.1.2 Seasonal Employees - employed on a two-day basis only during the season (as defined), including the winter season (as defined), in which case employment shall be terminated by two days' notice on either side, given at any time during the day, or by the payment or forfeiture, as the case may be, of two days' ordinary wages except as prescribed by 5.5 and 5.7.
- 5.1.3 Short Term Employees - employed for a limited period of less than 12 months duration. On engagement the employer shall notify the employee of the estimated duration of the employment period.
- 5.1.4 Casual Employees - employed on a casual basis only during the season (as defined), excluding the winter season (as defined), in which case employment shall be terminated by one hour's notice on either side given at any time or by the payment or forfeiture, as the case may be, of one hour's ordinary pay at the casual rate then applying. The rate of pay for a casual employee shall be as prescribed by 5.10.
- Subject to the provisions of 5.4.1, the employment of a casual outside any season can be:
- (a) by agreement between the employer and casual employee concerned: or
 - (b) at the request of an employer to the union for agreement (where such agreement is requested, the union shall not unreasonably withhold its consent).
- 5.1.5 Sick Leave and Annual Leave Entitlement - Permanent, seasonal and short term employees shall be entitled to annual leave and sick leave in accordance with the provisions of clause 20, Annual Leave and clause 21, Sick Leave.
- 5.2 Statement of Class of Employment - Upon commencing any engagement for an employer, the employee shall be given a statement in writing by the employer notifying which class of engagement the employee is being employed on and containing the appropriate terms of such engagement as provided for in this clause.
- 5.3 Termination of Employment During the First Week - Employment may be terminated by one hour's notice on either side at any time during the first week of employment or the payment or forfeiture, as the case may be, of one hour's ordinary pay at the rate then applying. Provided that where the employer terminates the employment during the first week of engagement and such termination is for a reason other than those prescribed in 5.4.1, the employee shall be paid casual rates for all work done by the employee.
- 5.4 Termination of Employment Without Notice -
- 5.4.1 Subject to the respective notices of termination specified in 5.1 and 5.3, an employer shall have the right to instantly dismiss any employee without notice for gross misconduct, in any of which cases, wages shall be due only up to the time of dismissal at the rate then applying.
 - 5.4.2 In the event of an employee being summarily dismissed, such employee shall be given a written statement of the reason for such dismissal on the day of such termination or it shall be forwarded to the employee by post on the next ordinary working day.
 - 5.4.3 At the request, made within 28 days of the termination of employment, by an employee, other than a casual employee, whose services are terminated by the employer for any reason other than those mentioned in 5.4.1 the employer shall give a statement in writing that the termination was not made for any of those reasons.

- 5.5 Work to Continue During Period of Notice - An employee who has given or been given the required notice of termination of employment under this clause shall continue at work until the expiration of such notice, unless absent with reasonable cause (proof of which shall be upon the employee), failing which the employee shall be deemed to have abandoned the employment from the commencement of such absence and shall not be entitled to payment for work done during the period of the required notice.
- 5.6 Termination - Sick Leave, Annual Leave and Bereavement Leave - No employee shall give or be given notice whilst the employee is absent from work on account of paid sick leave in accordance with clause 21, Sick Leave, on account of annual leave in accordance with clause 20, Annual Leave, and on account of bereavement leave in accordance with clause 24, Bereavement Leave, of this award.
- 5.7 Termination by Mutual Agreement - Nothing in this clause shall prevent a mutual agreement being reached between an employee and the employer for the required notice of termination of employment to be waived or reduced.
- 5.8 Deduction of Wages - An employer may deduct wages for any day on which the employee has not commenced work and on which the employee cannot be usefully employed because of any strike by any other employees who are members of the Union and further employees not attending for duty shall, except as provided by clauses 18, Holidays, and 21, Sick Leave, lose their pay for the actual time of non-attendance.
- 5.9 Terms of Transfer of Employees -
- 5.9.1 At the end of the season, an employer may transfer a seasonal employee to employment as a permanent employee.
- 5.9.2 When the season commences, an employer may transfer a permanent employee with less than one month's continuous service to employment as a seasonal employee to process peas, asparagus, citrus fruits (concentrated juice) or apples.
- 5.9.3 Any transfer made under the provisions of this subclause shall not terminate the employment or break the continuity of employment of the employee so transferred, and the employee shall be then given a statement by the employer of the terms of the employee's new class of engagement as provided in 5.2.
- 5.10 Casual Rates of Pay -
- 5.10.1 Ordinary Hours - For work performed during ordinary hours casual employees on day work shall be paid at a rate 20 per cent more per hour than the equivalent of the weekly rates prescribed for work of the class performed by them.
- 5.10.2 Shift Rates - Casual employees on shift work shall be paid for ordinary hours at the appropriate rates prescribed in 5.10.1, plus 15 per cent thereof for afternoon shift work, plus 30 per cent thereof for night shift.
- 5.10.3 Saturdays, Sundays and Holidays - Overtime - The rates of pay for casual employees for overtime or for work on Saturdays, Sundays and holidays shall be time and a half or double time, double time and a half, or treble time, as appropriate, in accordance with clauses 12, Overtime - Rates and Conditions, and 19, Sunday and Holiday Rates, calculated as to casual day workers or day-shift workers on 1/38th of the appropriate weekly rate for the work; for such work by a casual employee on afternoon or night shift the rates ascertained for day workers or day shift workers shall have added to them in the case of afternoon shift 15 per cent or in the case of night shift 30 per cent.
- 5.10.4 Minimum Payment - Subject to 5.7, and unless instantly dismissed earlier for a reason mentioned in 5.4, a casual employee for any ordinary working day or shift upon which the employee is notified to work shall be entitled to a minimum payment as for two hours' work. Where work is required on a Saturday or Sunday or holidays by a casual employee, the employee shall be

entitled to the same minimum periods of payment as are provided for permanent or seasonal employees in the same circumstances.

- 5.11 Notice to Work - A casual employee shall be notified at the end of the day's work or shift whether their services will be required for work on the following day or shift.

5A. Secure Employment

(a) 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*.

(b) 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.

- (c) 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. Prohibition of Outdoor and/Or Contract Work

- 6.1 No employer shall give out work or permit work to be performed by an employee at any place other than a registered factory; and no employee shall perform work for any employer at any place other than a registered factory.
- 6.2 An employee shall not perform work by contracting, sub-contracting, sub-letting or other similar systems.

7. Special Rates

- 7.1 In addition to the rates of pay prescribed elsewhere in this award for any class of employee, the following extra rates shall be paid for the time an employee is working in the circumstances specified hereunder:
- 7.2 Wet Places - An employee (other than a cleaner of machinery, equipment, vats and the like) working in any place where the employee's clothing or footwear becomes wet shall be paid an amount as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, such extra rate to continue for all time that the employee is required to work in wet clothing or footwear; provided that such extra rate shall not be payable to an employee who is provided by the employer with suitable and effective protective clothing and/or footwear. All protective footwear supplied to an employee under this subclause shall, if previously worn by another person, be properly sterilised before being issued to that employee.
- 7.3 Dirty Work - Cleaning Railway Trucks - An employee shall not be required to load or stack goods into a railway van which is in a dirty or offensive condition. An employee may be required to clean out a railway truck or railway van which is in such a condition, and whilst so employed shall be paid an amount as set out in Item 3 of Table 2, with a minimum payment therefore on any day as also set out in Item 3.
- 7.4 Heavy Weights - An employee required to lift, carry or stack by hand crates, cases, tubs or other containers of goods or commodities of any description weighing over 40.8 kg for more than half an hour continuously - an amount as set out in Item 4 of Table 2.
- 7.5 Carton Stacking - An employee required to work singly packing-off from one or more labelling lines when the weight of each carton is 22.7 kg or more - an amount as set out in Item 5 of Table 2.
- 7.6 Cold Temperatures - Any employee required to work in cold temperatures shall be paid extra rates as follows, whilst in temperatures -
- 7.6.1 between 7 degrees and minus 1 degree Celsius (inclusive) - an amount as set out in Item 6 of Table 2;
- 7.6.2 between minus 2 and minus 18 degrees Celsius (inclusive) - an amount as set out in Item 7 of Table 2;
- 7.6.3 below minus 18 degrees Celsius - an amount as set out in Item 8 of Table 2.
- 7.7 The appropriate extra hourly rate shall be paid for any hour or part of an hour during which the employee is working in the temperature ranges prescribed above: Provided that if during any hour the employee works in more than one temperature range, the employee shall be entitled for that hour only to the rate applicable for the lower or lowest temperature range in which the employee has worked.
- 7.8 Pea-vining Stations -
- 7.8.1 An employee at a pea-vining station who is required to live away from home in the course of that employment shall be paid, in addition to the wage rates prescribed by this award, such allowance as will be sufficient to meet the cost of reasonable board and lodging.

- 7.8.2 An employee engaged on or about a pea-vining machine or station (not including a mobile pea-viner) which is located away from the processing factory shall receive an additional amount as set out in Item 9 of Table 2.
- 7.9 Rates Not Subject to Penalty Additions - The extra hourly rates herein prescribed shall be paid irrespective of the times at which the work is performed and shall not be subject to any premium or penalty additions.
- 7.10 Fumigation Gas - An employee using methyl bromide gas in fumigation work shall be paid a special rate as set out in Item 10 of Table 2.

8. Junior Employees

- 8.1 Junior employees employed on any classification other than as prescribed in sub-group B of Group 6 of 3.7.2 of clause 3, Wages and Classifications, shall be paid the appropriate adult rate of pay for such classification.
- 8.2 The minimum rates of wages for a junior employee employed on a classification prescribed in sub-group B of Group 6 of 3.7.2 of clause 3, Wages and Classifications, shall be 75 per cent of the weekly wage of such group.
- 8.3 The calculation of rates and wages pertaining to the above percentage shall be made in multiples of 5 cents, amounts of 2 cents or less shall be taken to the lower multiple and amounts in excess of 2 cents shall be taken to the higher multiple.

9. Mixed Functions

- 9.1 The employer may require an employee to temporarily perform work other than that for which the employee was engaged or on which the employee is usually employed under this award: Provided that such an employee shall not suffer any reduction in the rate of pay for the work or classification upon which the employee is usually employed unless or until the terms and conditions of employment of the employee are altered by the same notice given by the employer as is required in this award in cases of termination of employment.
- 9.2 Where an employee is required under 9.1 to temporarily perform other work and that work is classified by this award at a higher rate of pay or (in respect of any classification not provided in this award) is classified at a higher rate of pay under any other award, binding upon the employer in respect of that work, the employee shall be paid for the whole of the time employed on such work at the rate of pay prescribed for such higher classification; Provided that such employee shall be paid at the rate of such higher classification for the whole of the day if such work is performed for over two ordinary hours on any day and for the whole of the week if such work is performed for over twenty ordinary hours in any week.
- 9.3 An employee temporarily placed on other work under 9.1 shall, if such work is classified under this award at a higher rate of pay, be entitled to the conditions of employment applicable to such higher classification; but if the employee is temporarily placed on work other than that mentioned in this subclause, the conditions of employment under this award applicable to the employee's usual classification or class of work shall continue to apply.
- 9.4 Where any employee is placed on other work under 9.1, and such work is performed continuously over a period in excess of four weeks or where such employee is relieving for a period of annual leave, whichever is the longer, such employee shall not suffer a reduction in the rate pursuant to this clause except by the same notice given as required in the award in cases of termination of employment.

10. Hours of Work

- 10.1 The ordinary hours of work shall be 38 per week.

- 10.2 Except for shift workers, the ordinary hours of work shall be worked in five days of not more than eight hours continuously except for breaks for meals between 6.00 a.m. and 6.00 p.m. on Mondays to Fridays inclusive. Provided that where as a result of the introduction of 6.00 am - 6.00 p.m. as ordinary hours of work an existing employee (as at 28 August 2002) may lose regular or usual overtime, that change with respect to that employee shall be preceded by consultation with the employee (and where the employee is a member, consultation with the union) and if the consultation fails to resolve the matter it shall be settled in accordance with the settlement of disputes procedure.
- 10.3 The daily starting and finishing times for day work shall be fixed by the employer within the spread of hours prescribed by 10.2 hereof and shall not be altered except on one week's notice, or during the season, two days' notice, given to the employee.
- 10.4 An employee on day work or day shift may be transferred to an afternoon or night shift on at least 48 hours notice by the employer. Where an employee is so transferred without at least 48 hours notice, the shift or part thereof worked by the employee without that notice shall, for the purpose of this clause be deemed to be part of the employee's ordinary 38 hours of work. Such work shall be paid for at an extra half rate for the first three hours and an extra full rate thereafter on a daily basis in addition to the employee's ordinary rate of pay and appropriate shift penalties. Provided that this subclause shall not apply where with the consent of the employer, an employee agrees with another employee independently to exchange a rostered shift to suit the mutual convenience of the employees concerned.
- 10.5 Rostered days off falling on a public holiday
- 10.5.1 An employee who work continuous work and who by the circumstances of the arrangement of the employee's ordinary hours of work is entitled to a rostered day off which falls on a public holiday prescribed by this clause shall, at the discretion of the employer, be paid for that day 7.6 hours at ordinary rates or have an additional day added to the employee's annual leave. This provision shall not apply when the public holiday on which the employee is rostered off falls on a Saturday or Sunday.
- 10.5.2 In the case of an employee whose ordinary hours of work are arranged in accordance with 10A.2.2 or 10A.2.4, the week day to be taken off shall not coincide with a public holiday fixed in accordance with clause 18, Holidays. Provided that, the event that a public holiday is prescribed after an employee is given notice of the employee's week day off and the public holiday falls on the week day the employee is to take off, the employer shall allow the employee to take the day off on an alternate week day.

10A. Implementation of 38 Hour Week

- 10A.1 Ordinary hours of work shall be an average of 38 per week as provided in clauses 10, Hours of Work, and 11, Shift Work.
- 10A.2 Except as provided by 10A.4 and 10A.5 hereof, the method of implementation of the 38 hour week may be any of the following:
- 10A.2.1 by employees working less than eight ordinary hours each day; or
- 10A.2.2 by employees working less than eight ordinary hours on one or more days each week; or
- 10A.2.3 by fixing one weekday on which all employees will be off during a particular work cycle;
or
- 10A.2.4 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 the cycle.
- 10A.3 In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

10A.4 Subject to 10.4, the employer and the majority of employees in the plant or sections or sections concerned may agree that the hours of work are to exceed eight on any day, thus enabling a weekday off to be taken more frequently than would otherwise apply.

10A.5 Circumstances may arise where different methods of implementation of the 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.

10A.6 Notice of days off

Except as provided in 10A.7 and 10A.8 hereof, in cases where, by virtue of the arrangement of employee's ordinary working hours, an employee, in accordance with 10A.2.3 and 10A.2.4 hereof, is entitled to a day off during the employee's work cycle, such employee shall be advised by the employer at least four weeks in advance of the weekday the employee is to take off. Provided that lesser period of notice may be agreed by the employer and majority of employees or section or sections concerned.

10A.7 Substitute days

10A.7.1 An employer, with the agreement of the majority of employees concerned may substitute the day an employee is to take off in accordance with 10A.2.3 and 10A.2.4 hereof 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.

10A.7.2 An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.

10A.8 Flexibility in relation to rostered days off

10A.8.1 Notwithstanding any other provision of this clause, where the ordinary hours of work of an establishment, plant or section are organised in accordance with 10A.2.3 and 10A.2.4 hereof an employer, the union and the majority of employees in the establishment, plant, section or sections concerned may agree to accrue up to a maximum of five rostered days off in special circumstances such as where there are regular and substantial fluctuations in production requirements in any year.

10A.8.2 Where such agreement has been reached the accrued rostered days off must be taken within twelve months on which they fall due.

10A.8.3 It is understood between the parties that the involvement of the union would be necessary in cases where it has members in the plants concerned and not in non-union establishments.

11. Shift Work

11.1 Definitions of Shift Work

"Day Shift" shall not commence before 6.00 a.m.

"Afternoon Shift" means any shift commencing after 6.00 p.m. and at or before midnight.

"Night Shift" means any shift finishing after midnight and at or before 8.00 a.m.

11.2 Requirements to Work Shift Work

Subject to 11.1, 11.6 and 11.7 hereof and clause 10A, Implementation of 38 Hour Week, an employer may require any employee to perform a week's work on shift work of five shifts of 8 hours each. Such shifts shall be worked between 11.00 p.m. on a Sunday and 8.00 a.m. on the following Saturday.

11.3 Shift Rates

Except where a higher rate of pay is provided under clause 19, Sunday and Holiday Rates, for work on a Sunday or holiday, payment for any afternoon shift shall be at ordinary time plus 15 per cent, and for any night shift shall be at ordinary time plus 30 per cent. Provided that as to casual employees on shift work, subclause 5.10.2 of clause 5, Contracts of Employment, shall apply.

11.4 Meal Breaks on Shift Work

A meal break of 30 minutes shall be allowed to shift workers on all shifts, other than day shift, to be taken as nearly as possible in the middle of the shift. Where three shifts (day, afternoon and night) are worked, the time of such meal break will be counted and paid for as time worked.

11.5 Restrictions

No employees under the age of 18 years shall be employed on night shift.

11.6 Alteration - Times of Duties

The commencing and finishing times of shift work shall be fixed by the employer and shall not be altered except on one week's notice or, during the season, two days' notice, given to the employee.

11.7 Shift Transfers

An employee on afternoon or night shift may be transferred to day work, day shift or another shift on at least 48 hours' notice by the employer. Where an employee is so transferred without at least 48 hours' notice, any day or shift or part thereof worked by the employee shall be deemed to be part of the employee's 38 hours of employment. Such work shall be paid for at an extra half-rate for the first 3 hours and an extra full rate thereafter on a daily basis in addition to the employee's ordinary rate of pay and shift penalties, if applicable. Provided that this subclause shall not apply where, with the consent of the employer, an employee agrees with another employee independently to exchange a rostered shift to suit the mutual convenience of the employees concerned.

12. Overtime

12.1 Subject to the other provisions of this clause and subject further to clause 19, Sunday and Holiday Rates, overtime shall be paid to employees (other than casual employees) at the following rates:

12.1.1 Day Workers Monday to Friday Inclusive

For all time worked before 6.00a.m. or after 6.00p.m. or before the fixed starting time or after the fixed finishing time on any day, Monday to Friday inclusive, or in excess of 8 ordinary hours on any such day - time and one-half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work.

12.1.2 Saturday

For all time worked on a Saturday until noon - time and a half for the first three hours and double time thereafter, and after noon - double time.

Dayworkers on Piecework - The foregoing provisions for day workers shall apply to pieceworkers on day work on the basis of one and one-half and double piecework rates being respectively payable in place of time and one-half and double time.

12.1.3 Shift Workers

- (a) For all time worked before the fixed starting time of any shift or after the fixed finishing time of any shift or in excess of 8 hours on any shift, or in excess of 38 ordinary hours on shift in any week - time and one-half for the first three hours and double time thereafter,

plus, for all such overtime, 15 per cent of ordinary time if on afternoon shift or 30 per cent of ordinary time if on night shift. Such entitlements shall continue until the completion of overtime work.

- (b) Where work commences on a Saturday, until noon - time and one-half for the first three hours and double time thereafter up to noon, plus for all such work 15 per cent of ordinary time if on afternoon shift; and after noon - double time, plus 15 per cent of ordinary time if on afternoon shift or 30 per cent of ordinary time if on night shift.

12.2 Day's Work - to Stand Alone - Except as otherwise provided in 12.1 and 12.3, in calculating overtime each day's work shall stand alone.

12.3 Eight Hours' Break After Overtime -

12.3.1 When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least eight consecutive hours off duty between the work of successive days.

12.3.2 An employee (other than a casual employee) who works so much overtime between the termination of their ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least eight consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until the employee has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

12.3.3 If, on the instructions of the employer, such an employee resumes or continues work without having had such eight consecutive hours off duty, the employee shall be paid at double rates until the employee is released from duty for such period, and the employee shall then 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.

12.4 Minimum Payment on Saturday - In the case of an employee on day work being notified to work overtime on a Saturday or being notified to work overtime on a Saturday and on reporting for duty is advised that their services are not required, the employee shall be paid as for a minimum of two and one-half hours' work calculated at the rate of time and one-half until 12 noon and at double time thereafter, subject to the rate of double time applying when an employee is notified to report for work at 12 noon or later.

The provisions of the foregoing paragraph shall also apply to an employee on shift work, except that the minimum payment for afternoon or night shift employees shall be as for two and one-half hours' work at double time plus 15 or 30 percent, respectively, of ordinary time.

12.5 Call Back -

An employee recalled to work overtime after leaving their employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time the employee is so recalled, provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside their ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purpose of 12.3 of when the actual time worked is less than three hours on such recall or on each of such recalls.

12.6 Requirement to Work Reasonable Overtime -

An employer may require any employee to work reasonable overtime, including work on Saturdays and Sundays, at overtime rates, and such employee shall work overtime in accordance with such requirement: Provided that no junior employee under the age of 18 years shall be required or permitted to work for more than 12 hours (exclusive of meal-breaks) after commencing work on any day.

Provided further that during the season weekend work shall be arranged by the employer to allow, whenever possible, an average of one Saturday or Sunday free of duty in every two weekends.

13. Meal Break and Allowances

- 13.1 Subject to the provisions of this clause, no day work or day shift employee shall work for more than five and a half hours without a break for a meal, which break shall be 30 minutes except where the employer and the majority of employees covered by this award agree to a break of not more than one hour nor less than 30 minutes.

Provided that, where a system of 12-hour days or shifts is worked, no employee shall work for more than six hours without a break for a meal.

13.2

13.2.1 The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer with 24 hours notice if it is necessary to do so in order to meet a requirement for continuity of operations.

13.2.2 An employer may stagger the time of taking a meal break and rest break to meet operational requirements.

- 13.3 No additional tea or meal break shall apply where a day work or day shift employee finishes work for the day not later than 1.5 hours after the end of the employee's ordinary hours on any ordinary day or at that time on a Saturday, Sunday or holiday.

- 13.4 No midday meal break shall apply where a day work or day shift employee finishes work for the day at or before 12.30 p.m. on a Saturday, Sunday or holiday.

- 13.5 In the case of shift workers, when working overtime including a Saturday, Sunday or holiday shift, a further meal break of 30 minutes shall be allowed at the end of such shift where more than 1.5 hours' further work is to be performed. Such further meal break shall be paid for as time worked.

13.6

13.6.1 For work performed by a day worker or day shift worker during the employee's recognised midday meal break on any ordinary day, time and a half rate shall apply until a meal break is allowed or until cessation of ordinary hours on the day, whichever is the earlier. Provided that the employer shall not be obliged to pay such overtime rates to an employee working through the employee's recognised meal break when that employer grants to the said employee an earlier meal break commencing not more than 30 minutes before the employee's recognised meal break.

13.6.2 Where a day worker or day shift worker is required to work on a Saturday, Sunday or holiday, the employee shall be notified by the employer on the preceding actual working day of the time that the midday meal break will be taken.

13.6.3 For work performed by a day worker or a day shift worker on a Saturday, Sunday or holiday during such notified midday meal break, the rate of pay then being received by the employee shall be increased by one-half until a meal break is allowed or until work ceases for the day, whichever if the earlier.

13.6.4 Provided that the employer shall not be obliged to pay such additional rate to an employee working through the employee's notified meal break where that employer grants to the said employee an earlier meal break commencing not more than 30 minutes before the employee's notified meal break.

13.7

13.7.1 Where a day-work or day-shift employee is required and does in fact work for more than 9.5 hours on any day, such employee shall either be supplied by the employer with a meal consisting of two courses, one of which shall be a hot meat (or fish) and vegetables or be paid an amount as set out in Item 11 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

13.7.2 Should such an employee refuse to work a minimum of two hours' overtime or additional overtime (as the case may be), if so required by the employer, the employee shall forfeit any right to payment of a meal allowance.

13.7.3 Payment of such meal allowance shall not apply in the case of an employee living within a walking distance of not more than half a mile from the place of employment, if one hour is allowed as time for a meal.

13.8 Meal or Meal Allowances - Shift Workers - The provisions of 13.7.1 and 13.7.2 shall also apply to a shift worker other than a day-shift worker, if the employee is required to and does in fact work for more than nine and a half hours on any day or if such employee performs an additional four hours of work after the nine and a half hours as aforesaid.

14. First-Aid Attendant

14.1 Every employer shall appoint at least one competent person to be in charge of first-aid on each day or shift.

14.2 If any such person so appointed in accordance with 14.1 is employed under the terms of this award, the employer shall pay to the employee's a minimum amount as set out in Item 12 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to all other payments due to the employee under this award.

14.3 The name of each person or persons in charge of first-aid on each shift shall be clearly displayed on the notice board in the establishment.

14.4 It shall be a defence to a prosecution for breach of 14.1 if the employer can show that the employee has taken all reasonable steps to obtain a competent person in first-aid, including regular advertising for such person and approaching their existing employees to train as first-aid attendants.

NOTE: Relevant requirements of the applicable Occupational Health and Safety legislation and regulations, as amended from time to time should be considered.

15. State Wage Case Adjustments

The rates of pay in this Award include the adjustments payable under the State Wage Case 2007. 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.

16. Morning and Afternoon Tea

Employees shall be allowed morning and afternoon tea at such times and in such manner as shall not interfere with the continuous running of the factory.

17. Free Tea, Coffee, Milk and Sugar

Tea and coffee, which may be instant coffee, together with milk and sugar shall be supplied free of charge by the employer to all employees during meal breaks and morning and afternoon tea breaks.

18. Holidays

- 18.1 The following days shall be holidays for the purposes of this award: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Labour Day, Queen's Birthday, August Bank Holiday, Christmas Day, Boxing Day, Union Picnic day (to be observed during the period from June 1 to November 15, and the union to notify the employer (in writing) of the date to be observed throughout the State or such other day as is generally observed as such holiday), and any other day proclaimed as a holiday to be observed throughout the State or such other day as is generally observed in the locality as a substitute for any of the aforesaid days, respectively, other than Union Picnic Day.
- 18.2 Payment for holidays:
- 18.2.1 Subject to the other provisions of this clause, employees (other than casuals) who are not required to work on any of such holidays during all or some of the hours which on any other day would have been their ordinary hours, shall be paid for such ordinary hours not worked (or not paid for under clause 19, Sunday and Holiday Rates) at ordinary time plus (where appropriate) the shift allowance of 15 or 30 per cent thereof prescribed for afternoon and night shift workers, as the case may be.
- 18.2.2 This subclause shall not apply to holidays observed on days which would otherwise have been ordinary working days.
- 18.2.3 An employee in receipt of workers' compensation in respect of any day observed as a holiday shall not be entitled to payment under this clause for time not worked on that day.
- 18.3 Absence Before or After Holiday - An employee who is not required to work on any holiday shall not be entitled to payment under 18.2 if the employee is absent from work on the actual working day immediately before or after the holiday, unless the employer consented to such absence or the employee is absent through circumstances beyond the employee's control: Provided that where payment for more than one holiday not worked could be involved through such absence, the employee shall be disentitled to payment only for one holiday, unless the employee is absent on the actual working days both immediately before and immediately after such holidays.
- 18.4 Notification to work on a holiday:
- 18.4.1 An employee (other than a casual) shall be notified by the employer at least seven days prior to a holiday that such employee is required to work on that holiday: Provided that an employee whose employment commences less than seven days before any holiday shall be notified of such a requirement upon engagement.
- 18.4.2 Notification of any requirement to work on a holiday shall be given to the employee personally or by posting a notice to all employees concerned in a prominent position in the employer's establishment or the relevant section or sections thereof.
- 18.5 Failure to Work on a Holiday After Agreement or Requirement - An employee who fails to attend for duty on a holiday after being required or agreeing to work thereon in accordance with 18.4 shall not be entitled to payment under 18.2 for a holiday not worked, except where the employee's absence is due to circumstances beyond the employee's control, proof of which may be required by the employer: Provided that, where in cases of absence mentioned above, payment for more than one holiday not worked may be involved, the employee shall be disentitled to payment only for one holiday, unless the employee is absent on the actual working days both immediately preceding and succeeding the holidays.

- 18.6 Payment for Holidays - Special Circumstances - An employee, other than a casual, whose employment is terminated (other than by instant dismissal in accordance with clause 5, Contracts of Employment - of this award) less than seven days before any holiday, and who is re-engaged less than 14 days after the holiday, shall be paid on re-engagement one additional day's pay at the rate specified in 18.2 if the holiday was observed on what otherwise would have been an ordinary working day. In the case of such a termination before Good Friday or Christmas Day and re-engagement less than 14 days after the following Easter Monday or New Year's Day, as the case may be, the employee shall be paid one day's pay at the rate specified in respect of each of the intervening holidays other than Easter Saturday.
- 18.7 Definition of Christmas Day - For the purpose of payment prescribed by this clause for work on Christmas Day and in a year where Christmas Day falls on a Saturday or a Sunday and the legislation of the State or the Government of the State in which the employee is employed proclaims or declares another day in substitution for Christmas Day or a holiday additional to Christmas Day, the rate of treble time shall be paid for work done on 25 December in any such year and for work upon the said substituted day or additional holiday, as the case may be, shall be paid at the rate of double time and one-half.

19. Sundays and Holiday Rates

- 19.1 Day Workers Other than Pieceworkers - All work by day workers (other than piecework) performed on Christmas Day and Good Friday shall be paid for at the rate of treble time, on other holidays at the rate of double time and one-half, and on Sundays at the rate of double time. The minimum payment shall be as for four hours' work at treble time, double time and one-half or double time, as the case may be. Such treble time, double time and one-half or double time shall continue until the completion of the work commenced on the Sunday or holiday.
- 19.2 Day Workers - Piecework - All piecework performed by day workers on Christmas Day and Good Friday shall be paid for at treble rates, on other holidays at the rate of double and one half rates, and on Sundays at double rates, such treble or double and one half rates or double rates to continue until the completion of the work commenced on the Sunday or the holiday.
- The minimum payments to pieceworkers on day work on Sundays and holidays shall be as for four hours' work at double time, double time and one half or treble time rates, as the case may be.
- 19.3 Shift Workers - Subject to 19.4 and 19.5, shift workers for all time worked on a Sunday or holiday shall be paid in accordance with 19.1 or 19.2 of this clause (as appropriate) plus 15 or 30 per cent of ordinary time, or ordinary piece rates (as appropriate) according to their shift.
- 19.4 Definitions - Where shifts fall partly on a holiday, that shift the major portion of which falls on the holiday shall be regarded as the holiday shift and be payable at the appropriate rates under 19.1 or 19.2: Provided that, by agreement between the employer and the union, the shift which commenced during the holiday may be observed as the holiday shift, in which case holiday rates shall not be payable for any part of the preceding shift worked during such holiday.
- 19.5 Work Performed Between 11 p.m. and Midnight Sundays - Where shifts commence between 11 p.m. and midnight on a Sunday, the times so worked before midnight shall not entitle the employee to the Sunday rate of pay, but to the rate payable for the following day.
- 19.6 Reporting for Duty and Not Required to Work - In the case of an employee (including a pieceworker) working on a Sunday or holiday or being notified to work on a Sunday or holiday, and on reporting for duty is advised that their services are not required, the employee shall be paid -
- 19.6.1 in the case of a Sunday, as for a minimum of two and a half hours' work at the rate of double time if a day worker, and at double time plus 15 per cent or 30 per cent of ordinary time (as appropriate) if a shift worker;
- 19.6.2 in the case of Christmas Day and Good Friday, as for a minimum of two and a half hours' work at the rate of treble time for a day worker and at treble time plus 15 per cent of ordinary time (as appropriate) if a shift worker;

19.6.3 in the case of any other holiday prescribed by 18.1, as for a minimum of two and a half hours' work at double time and one-half if a day worker, or double time and a half plus 15 per cent or 30 per cent of ordinary time (as appropriate) if a shift worker.

20. Annual Leave

20.1 Period of Leave - Except as hereinafter provided, a period of 28 consecutive days' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee (other than a casual employee) by their employer after a period of twelve months' continuous service (less the period of annual leave) with such employer.

20.2 Leave exclusive of Public Holidays -

20.2.1 If any holiday mentioned in clause 18, Holidays, of this award, 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, there shall be added to that period one working day for each such holiday observed as aforesaid.

20.2.2 Subject to anything hereinbefore contained an employee shall not be entitled to payment for any holiday which falls within the employee's period of annual leave and is observed on a day which in the case of such employee would otherwise have been an ordinary working day if, except for reasonable cause (proof whereof shall be upon the employee) the employee fails to resume work at their ordinary starting time on the working day immediately following the period comprising their period of leave (extended by any such intervening holiday or holidays) and to remain at work thereafter for the number of days equivalent to the number of such holidays.

20.3 Time of Leave Taking - Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than one month's notice to the employee:

Provided that a shorter period of notice may be given by mutual agreement between the employer and the employee and with the concurrence of the branch secretary of the union:

Provided further that the said period of six months may be extended by a further period not exceeding six months by mutual agreement in writing between the employer and the employee and with the concurrence of the branch secretary of the union.

20.4 Leave to be Taken - The annual leave provided for by this clause shall be allowed and shall be taken, and except as provided in 20.6 and 20.7 of payment shall not be made or accepted in lieu of annual leave.

20.5 Payment for Period of Annual Leave - Each employee before going on leave shall be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave during the relevant period.

Subject to 20.6 each employee shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable:

20.5.1 Timeworkers (other than Pieceworkers) -

- (a) The rate applicable to the employee as prescribed by clauses 3, Wages and Classifications; 8, Junior Employees; 14, First-Aid Attendant; and
- (b) Subject to 20.6.2 the rate prescribed for work in ordinary time by clause 11, Shift Work, of the award, according to the employee's roster or projected roster;
- (c) The rate payable pursuant to clause 10, Hours of Work, of this award, calculated on a daily basis which the employee would have received for ordinary time during the relevant period whether on a shift roster or otherwise.

- (d) Any other rate to which the employee is entitled in accordance with their contract of employment for ordinary hours of work: provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed by clause 7, Special Rates; clause 12, Overtime; and 28.2 of this award, nor any payment which might have become payable to the employee as reimbursement for expenses incurred.

20.6 Loading on Annual Leave - During a period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by 20.5.1.

The loading shall be as follows:

20.6.1 Day Workers - an employee who would have worked on day work only had the employee not been on leave - a loading of 17.5 per cent.

20.6.2 Shift Workers - an employee who would have worked on shift work had the employee not been on leave - a loading of 17.5 per cent.

Provided that where the employee would have received shift loadings prescribed by clause 11, Shift Work, had the employee not been on leave during the relevant period and such loadings would have entitled him to a greater amount than the loading of 17.5 per cent, then the shift loadings shall be added to the rate of wage prescribed by 20.5.1 in lieu of the 17.5 per cent loading:

Provided further, that if the shift loadings 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 rate of wage prescribed by 20.5.1 in lieu of the shift loadings.

The loading prescribed by this subclause shall not apply to proportionate leave on termination except when the employment of a seasonal employee is terminated by the employer for reasons other than misconduct.

20.7 Leave Allowed Before Due Date -

20.7.1 An employer may allow an employee to take annual leave either wholly or partly in advance before the right thereto has accrued due. 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 before it accrued.

20.7.2 Where annual leave or part thereof has been granted pursuant to 20.7.1, before the right thereto has accrued due, 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 to the employee under 20.8, the employer shall not be liable to make any payment to the employee under 20.8, and shall be entitled to deduct the amount of excess from any remuneration payable to the employee upon the termination of employment.

20.8 Proportionate Leave on Termination - If an employee other than a casual employee, who after one week's continuous service in the employee's first qualifying twelve monthly period with an employer, leaves the employment of the employer or the employee's employment is terminated by the employer the employee shall be paid at the appropriate rate of wage prescribed by 20.5 for 3.08 hours for each five ordinary working days worked and in respect of which leave has not been granted under this clause.

20.9 Calculation of Continuous Service -

20.9.1 Service shall be deemed to be continuous subject to:

- (a) Any interruption or determination of the employment by the employer if such interruption or determination has been made with the intention of avoiding obligations hereunder in respect of annual leave;
- (b) Any absence from work on account of personal illness or injury, or on account of leave granted by the employer;
- (c) Any other absence from ordinary hours of employment due to reasonable cause (proof whereof shall be on the employer);
- (d) Any break in employment with one employer during the season (as defined): provided that only the aggregate of actual service given within the season shall be taken into account for the purpose of the payment prescribed in 20.6.

Provided that in cases of personal illness or injury or absence with reasonable cause the employee to be entitled to the benefit of this subclause shall, if practicable, inform the employer in writing within twenty-four hours after the commencement of such absence of the employee's inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of the employee's absence.

20.9.2 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 the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

20.9.3 In cases of individual absenteeism, such notice shall be given in writing to the employee concerned, but in cases of concerted or collective absenteeism notice may be given to employees by the posting up of a notification in the plant, in the manner in which general notifications to employees are usually made in that plant and by posting to the union a copy of such notice not later than the day it is posted up in the plant.

20.9.4 A notice to an individual employee may be given by delivering it to the employee personally or by posting it to the employee's last recorded address, in which case it shall be deemed to have reached the employee in due course by post.

20.9.5 In calculating the period of twelve months' continuous service, absences not exceeding twenty-five working days shall be counted as time worked if such absences arise from anyone of the following:

- (a) personal illness or injury certified by a medical practitioner as requiring absence from work;
- (b) bereavement leave in accordance with clause 24, Bereavement Leave, of this award.

Other absences from work shall not be taken into account.

20.10 Service Before Date of Award - Service before the date of this award shall be taken into consideration for the purpose of calculating annual leave, but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or payment in lieu thereof has been allowed.

20.11 Calculation of Month - 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 date which in the latest month in question has the same date number as that which the commencing day had in its month, and if there be no such day in such subsequent month.

20.12 Employer - Successorship of Business, etc. - 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 employee 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 have been in the service of the employer.

20.13 Annual Close Down - Where an employer closes down their plant, or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the plant, or section or sections concerned, the following provisions shall apply:

20.13.1 The employee may by giving not less than four weeks' notice of the intention so to stand off for the duration of the close- down 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 for twelve months' continuous service pursuant to 20.1 paid leave on a proportionate basis at the appropriate rate of wage as prescribed by 20.5 and 20.6 for 3.08 hours for each five ordinary working days worked.

20.13.2 An employee who has then qualified for a full entitlement to annual leave for twelve months' continuous service pursuant to 20.1, and has also completed a further week or more of continuous service shall be allowed the employee's leave, and shall subject to 20.10 hereof also be paid at the appropriate rate of wage as prescribed by 20.5 and 20.6 for 3.08 hours for each five ordinary working days worked since the close of their last twelve-monthly qualifying period.

20.13.3 The next twelve-monthly qualifying period for each employee affected by such close-down shall commence from the day on which the plant, or section or sections concerned is re- opened for work. Provided that all time during which an employee is stood off without pay for the purposes of this subclause shall be deemed to be time of service in the next twelve-monthly qualifying period.

20.13.4 If in the first year of the employee's service with an employer an employee is allowed proportionate annual leave under 20.13.1 and subsequently within such year leaves the employee's employment or their employment is terminated by the employer through no fault of the employee, the employee shall be entitled to the benefit of 20.8 subject to adjustment for any proportionate leave which the employee may have been allowed as aforesaid.

20.13.5 An employer may close down their plant for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down the plant in two separate periods one of those periods shall be for a period of at least 21 consecutive days. Provided that where the majority of the employees in the plant or section or sections concerned agree the employer may close down the plant in accordance with this subclause in two separate periods neither of which is of a least 21 consecutive days, or in three separate periods. In such cases the employer shall advise the employees concerned of the proposed dates of each close-down before asking them for their agreement.

20.14 Part Close-Down and Part Rostered Leave -

20.14.1 An employer may close down the plant or a section or sections thereof for a period of at least twenty-one consecutive days and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.

20.14.2 An employer may close down the plant, or a section or sections thereof, for a period of less than twenty-one consecutive days and allow the balance of the annual leave due to an employee in one or two continuous periods either of which may be in accordance with a roster. In such a case the granting and taking of annual leave shall be subject to the agreement of the employer and the majority of employees in the plant, or a section or sections thereof respectively and before asking the employees concerned for their agreement the employer shall advise them of the proposed date of the close- down and the details of the annual leave roster.

- 20.15 Notification to Union - If a vote by employees is required pursuant to 20.13 and 20.14, the employer shall notify the office of the union not less than twenty-four hours before such vote is to be taken.
- 20.16 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 21 consecutive days. Provided that if the employer and an employee so agree then the employee's annual leave entitlement may be given and taken in two separate periods neither of which is at least 21 consecutive days, or in three separate periods.

Provided further that an employee may, with the consent of the employee's employer, take short-term annual leave, not exceeding four days in the calendar year, at a time or times separate from any of the periods determined in accordance with this subclause.

21. Sick Leave

- 21.1 Except as otherwise provided, an employee (other than a casual) who is absent from work during ordinary hours on account of personal illness, injury, elective surgery, or dental work other than routine dental maintenance, shall in the case of a day worker, be entitled to leave of absence at the ordinary time rate of pay of the appropriate classification and in the case of a shift worker at the ordinary time rate of pay of the appropriate classification plus the employee's relevant shift allowance, of 38 hours of paid sick leave during the employee's first year of employment with the employer and to 61 hours of paid sick leave during each subsequent year of continuous employment, subject to the following conditions and limitations:

21.1.1 The employee shall not be entitled to such leave unless the employee has been continuously in the service of the employer concerned for at least one month immediately before any such absence.

21.1.2 The employee shall not be entitled to such leave for any period in respect of which the employee is entitled to workers' compensation.

21.1.3 The employee shall, within 24 hours (excluding a Saturday, Sunday or holiday) of the commencement of such absence unless the employer is satisfied this was not reasonably practicable, inform the employer of the employee's inability to attend for work and, so far as practicable, shall then state the nature of the illness or injury and the estimated duration of the absence.

NOTE: In order to assist in the planning of work for the following day an employee who is absent should arrange to notify the employer of the employee's absence as soon as possible after the commencement of the absence.

21.1.4 An employee absent on paid sick leave for a period not exceeding three consecutive days shall, if required by their employer, produce evidence of their illness by a statutory declaration. An employer shall not be required to pay sick leave for any absence exceeding three consecutive days unless the employee produces a certificate signed by a duly qualified medical or dental practitioner, whichever is appropriate, certifying that the employee is, in the opinion of that practitioner, unable to attend for work due to personal illness or injury, elective surgery or dental work other than routine dental maintenance.

To become entitled to paid sick leave, such certificate shall indicate that the illness or injury is consistent with the duration of the absence.

21.1.5 In the case of an employee who has had more than one period of employment with the one employer in any period of twelve months, the sick leave year for the second or subsequent period of employment shall commence on the previous July 1 and the employer may deduct from the sick leave credit of 40 hours any sick leave paid to the employee since that date by the employee or another respondent to this award.

21.1.6 Sick leave shall accumulate from year to year of continuous employment with one employer so that any balance of the period or payment specified in 21.1.5 which has in any year not been allowed to an employee by the employer as paid sick leave may be claimed by the employee and, subject to the conditions hereinbefore prescribed, shall be allowed by that employer in a subsequent year without diminution of, and before drawing upon, the sick leave prescribed in respect of that year:

Provided that sick leave which accumulates pursuant to this subclause shall be available to the employee for a period of seven years, but no longer, from the end of the year in which it accrues.

- 21.2 For the purpose of administering 21.1.5, an employer may, within two weeks of the employee entering their employment, require an employee to make a sworn declaration or other written statement as to what paid sick leave the employee has had from another respondent employer since the previous July 1 and upon such statement the employer shall be entitled to rely and act.
- 21.3 A pieceworker shall be paid sick leave under this clause at the time work rate appropriate to the work and shift at which the employee would, except for the illness or injury causing absence, have been employed.

22. Personal/Carer's Leave

22.1 Use of Sick Leave

22.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 22.1.3(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 clause 21, 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.

22.1.2 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.

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

- (a) the employee being responsible for the care of the person concerned; and
- (b) 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.

22.1.4 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 39, Avoidance of Industrial Disputes, should be followed.

22.2 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 22.1.3(b) above who is ill or who requires care due to an unexpected emergency.

22.3 Annual Leave

22.3.1 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.

22.3.2 Access to annual leave, as prescribed in 22.3.1, shall be exclusive of any shutdown period provided for elsewhere under this award.

22.3.3 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.

22.3.4 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.

22.4 Time Off in Lieu of Payment for Overtime

22.4.1 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.

22.4.2 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.

22.4.3 If, having elected to take time as leave in accordance with 22.4.1, 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.

22.4.4 Where no election is made in accordance with 22.4.1, the employee shall be paid overtime rates in accordance with the award.

22.5 Make-up Time

22.5.1 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.

22.5.2 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.

22.6 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 22.1.2 and 22.1.4 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 22.1.3(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.

23. 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).

24. Bereavement Leave

24.1 An employee, other than a casual employee, shall be entitled to three days bereavement leave without deduction of pay, up to and including the day after the funeral, on each occasion of the death of a person as prescribed in 24.3.

Provided that, if the employee claims payment for such leave in excess of two ordinary days, the employee shall furnish, if required, proof satisfactory to the employer that the employee attended the funeral.

24.2 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.

24.3 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 22.1.3 (b) of clause 22 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.

24.4 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 Bereavement leave may be taken in conjunction with other leave available under 22.2, 22.3, 22.4 and 22.5. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 24.6 Bereavement entitlements for casual employees
- 24.6.1 Subject to the evidentiary and notice requirements in 24.2 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 22.1.3(b) of clause 22, Personal / Carer's Leave.
- 24.6.2 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.
- 24.6.3 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.

25. Implements, Materials, Protective Clothing and Uniforms

- 25.1 Implements - Materials - The employer shall provide all brushes, spoons, knives and all necessary implements and all materials requisite for the work of employees.
- 25.2 Gloves - The employer shall provide gloves to employees as may reasonably be required for the performance of their work.
- 25.3 Washable Outer Garments - State Laws - Where an employee is required to the work in which the employee is engaged to wear a washable outer garment, such garment shall be provided and kept laundered by the employer.
- 25.4 Caps, Uniforms, etc. - Where the employer requires, or the provisions of any State law require, an employee to wear a cap, overalls or uniform of any description, such items shall be supplied by the employer and be kept laundered by the employer.

Provided, however, that where the employer cannot reasonably be expected to arrange for an industrial or other laundry service, nothing in this subclause shall prohibit that employer from reaching agreement in writing with the union for the laundering of overalls or uniforms by the employees concerned:

Provided further that an individual employee may, through the union, make an agreement in writing with the employer to launder the employee's own overalls or uniform.

Caps are not part of the overalls or uniforms.

Any cap required to be worn by employees shall be of a net type or otherwise to allow suitable head ventilation.

- 25.5 Protective Clothing - Dirty Work - Where reasonably required for any dirty work, washable aprons or other suitable protective clothing shall be provided for employees. This subclause shall operate to the extent that 25.3 and 25.4 do not otherwise apply to protective clothing items.

(NOTE: See also 7.2 of clause 7, Special Rates, as to wet work.)

- 25.6 Return of Implements and Clothing - All items provided by the employer under the foregoing provisions of this clause shall be supplied without cost to the employee, provided that any used items requiring replacement shall be returned to the employer before any replacement without charge is made. Any item issued shall, if not returned on request by the employer, be paid for at a reasonable rate by the employee concerned.

- 25.7 Barrier Cream, etc. - Barrier cream or other protective ointment shall be available without charge for employees engaged in handling fruits, vegetables, pastes, gums, lacquer and like preparations.
- 25.8 Cool Stores -
- 25.8.1 Employees required to work in cool stores or chambers in temperatures below 7 degrees Celsius, shall be provided with suitable headgear and protective clothing, including protective footwear:
- Provided that all protective footwear issued in accordance with this provision shall be properly sterilised before such issue if such footwear has been previously worn by another person.
- 25.8.2 Employees required to work in temperatures of minus 18 degrees Celsius or below shall be issued with an overall blanket-type suit, either one-piece or two-piece, a balaclava or similar-type helmet and suitable gloves in addition to other necessary outer clothing and freezer boots.
- 25.8.3 Where employees such as fork-lift drivers are required to enter cool stores or freezing chambers only for short periods, the protective clothing to be supplied by the employer shall be such as may be mutually agreed upon.
- 25.8.4 Items supplied under this subclause shall remain the property of the employer.
- (NOTE: See 7.6 as to special rates for working in cold temperatures.)
- 25.9 Request to Wear Protective Clothing - Where an employee is required to wear protective clothing supplied by their employer for -
- 25.9.1 safety reasons; or
- 25.9.2 in the interests of hygiene; or
- 25.9.3 in accordance with Federal law or the law of the State in which the employee works,
- the employee shall wear such clothing.
- 25.10 Safety Footwear - When the employer requires an employee to wear safety boots or safety shoes, the employer shall supply them free of charge to the employee: Provided that the employee shall wear such safety boots or safety shoes in accordance with the requirements of the employer, and such safety boots or safety shoes shall remain the property of the employer.

26. Damage to Clothing

Where satisfactory evidence is produced by an employee to the employer, reasonable compensation shall be made by the employer where, as a result of the employment, an employee's clothing is damaged or destroyed: Provided that where such damage or destruction occurs and an employee was not wearing protective clothing in accordance with the requirements of 25.9 then no compensation shall be payable.

27. Floor Covering

See applicable Occupational Health and Safety legislation and regulations, as amended from time to time.

28. Transport of Employees (11 P.M. to 7 A.M.)

- 28.1 Where an employee finishes work, whether overtime or ordinary time, at any time between 11 p.m. and 7 a.m. the following day, the employer shall transport the employee from the factory to the employee's place of residence at no cost to the employee, where reasonable public transport is not available.

For the purposes of this paragraph reasonable public transport means bus or train available within 500 metres from the main gate of the factory, and such transport shall depart not more than 30 minutes after the cessation of work; provided that the employee does not have to walk more than 1 kilometre from the

main gate of the factory to the employees residence; provided further that the transport specifically arranged by the employer in the terms as specified in this clause shall be free.

This subclause shall not apply to an employee residing within a walking distance of 1 kilometre from their place of employment nor to any employee to whom private transport is reasonably available at time of finishing work.

- 28.2 An employee sent temporarily, other than at the employee's own request, from the employee's usual place of employment to another shall be paid at ordinary rates of pay for any excess travelling time incurred beyond that ordinarily incurred in travelling to and from the usual place of employment.
- 28.3 An employee required by their employer to travel from the employee's usual place of work shall be provided with transportation by their employer. In the case of rail travel, such transportation shall be by first class where available, and in the event of an employee using their own vehicle with the consent of their employer they shall be paid 11 cents per kilometre travelled.

29. Payment of Wages

- 29.1 The employer may determine the method of payment of wages which shall be paid weekly, during working hours, by one of the following ways:
- (a) Cash;
 - (b) Cheque; or
 - (c) Electronic funds transfer (EFT) into the employees' nominated financial institution account, without cost to the employee.
- 29.2 Payment of cash or cheque wages - if cash or cheque wages are to be paid, such cash or cheque wages shall be paid without delay prior to the employee ceasing work on the nominated pay day. Employees who are kept waiting for their cash or cheque wages for more than ten minutes after the usual time for ceasing work shall be paid overtime rates for all waiting time. This subclause shall not apply if cash or cheque wages cannot be paid within working time due to circumstances beyond the employer's control.
- 29.3 Payment of wages by EFT - where wages are paid by the employer into an employee's nominated bank account, wages shall be available on the nominated pay day. If the wages are not available on the designated pay day, the employee shall contact the employer, who shall contact the relevant financial institution for the wages to be made available.

If, by the day following the designated pay day, the wages are still not available, employees who are kept waiting for wages to be credited into their nominated bank account for more than ten minutes after the usual time for ceasing work on pay day shall be paid overtime rates for all waiting time. This subclause shall not apply if wages cannot be paid within working time due to circumstances beyond the employer's control.

- 29.4 Payment on termination - upon termination of employment, in the case of cash payment of wages or payment of wages by electronic funds transfer, all wages due to an employee (including a casual) shall be paid to an employee on the day of termination. In the case of payment of wages by cheque, such wages shall be forwarded to the employee by post on the next ordinary working day.

30. Aged, Slow and Infirm Workers

See *Industrial Relations Act 1996*.

31. Limitation of Employer's Liability

Where an employer bound by this award has made a payment to an employee bound by this award, which payment purports to be a payment of the wages payable to the employee for any period, such employer shall not be liable to pay to the employee any further sums prescribed by this award in respect to any services

rendered to such employer during such period unless within twelve calendar months after the last day of such period a demand in writing of such further sum claimed has been given to the employer by the employee or some person on the employee's behalf or by the local representative of the union.

32. Notice Board and Posting of Award

- 32.1 The employer shall permit a notice board of reasonable dimensions to be erected in a prominent position in the establishment, upon which accredited union representatives shall be permitted to post formal union notices, signed or countersigned by the representative posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by the employer.
- 32.2 The Award shall be posted in an accessible position in the factory.

33. Shop Stewards

An employee appointed shop steward in the shop or department in which the employee is employed shall, upon notification thereof to their employer, be recognised as the accredited representative of the union to which the employee belongs, and shall be allowed the necessary time during working hours to interview the employer or their representative on matters affecting employees whom they represent.

34. Right of Entry

See *Industrial Relations Act 1996*.

35. Jury Service

An employee, other than a casual employee required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the employee's 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 subject to the following conditions:

- 35.1 The employee shall advise the employer as soon as practicable that the employee has to attend for jury service, and if required by the employer, produce their notice to attend.
- 35.2 An employee who has been given more than seven days' notice to attend for jury service shall give the employer at least seven days' notice and if the employee fails to give such notice, without reasonable excuse, the employee shall forfeit the entitlement to payment by the employer.
- 35.3 An employee on day shift or day work who is not required for jury service after 1.00 p.m. on any day shall contact the employer by telephone to ask whether the employer requires the employee to report for the balance of the day and, if so required, the employee shall so report.
- 35.4 An employee on afternoon shift or night shift who is discharged or excused from jury service upon the day upon which the employee is first called or on any subsequent day on which the employee has been required to take part in court proceedings shall report for work;
- (a) in the case of afternoon shift the employee, if possible at the employee's normal starting time or as soon thereafter as possible after being discharged or excused from jury service; and
 - (b) in the case of a night shift employee, at the employee's normal starting time.

Provided that an employee on afternoon shift or night shift who is on continuing jury service and who has been required to take part in court proceedings for more than half the day shall not be required to report for work until the expiration of their jury service and if the jury service has lasted for more than two days until the shift next following the completion of their jury service.

- 35.5 The employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

36. Accommodation

Any employee who is required by the employer to remain away from their usual place of residence or, in the case of a seasonal worker, their abode for the season shall be provided with reasonable meals and accommodation which shall, if accommodation is available in the locality include ensuite facilities if available and the cost of such meals and accommodation shall be borne by the employer.

37. Accident Pay

37.1 Definitions - For the purpose of this clause and subject to the terms of this clause, the words hereunder shall bear the respective definitions set out herein:

37.1.1 "Accident Pay" -

- (a) Total Incapacity - In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the Workers' Compensation Act and arising from an injury covered by this clause, "accident pay" means a weekly payment of an amount representing the difference between the total amount of compensation paid under the relevant sections of the Act as the case may be for the week in question and the total 38-hour weekly award rate and weekly over-award payment for a day worker which would have been payable under this award, for the employee's normal classification of work for the week in question if the employee had been performing the employee's normal duties: Provided that such latter rate shall exclude additional remuneration by way of attendance bonus payments, shift premiums, overtime payments, special rates or other similar payments.
- (b) Partial Incapacity - In the case of an employee who is or is deemed to be partially incapacitated within the meaning of the Act and arising from an injury covered by this clause, "accident pay" means a weekly payment of an amount representing the difference between the total amount of compensation paid under the relevant sections of the Act in New South Wales, for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business and the total 38-hour weekly award rate and weekly over-award payment for a day worker which would have been payable under this award, for the employee's normal classification of work for the week in question if the employee had been performing their normal duties: Provided that such latter rate shall exclude additional remuneration by way of attendance bonus payments, shift premiums, overtime payments, special rates or other similar payments.

Provided that where, in respect of any claim for compensation brought by an employee in the Workers' Compensation Commission pursuant to the relevant sections of the *Workers' Compensation Act* awards to the employee an amount of weekly compensation or agreement is reached that the employee should receive a weekly amount of compensation less than the difference referred to in the relevant sections of the Act, such an award or agreement shall not operate to increase any liability of the employer to pay any higher amount of accident pay by reason of the employee receiving less than the said difference referred to in the relevant section of the *Workers' Compensation Act* and for the purpose of this calculation the employee in such event shall be deemed to have recovered the full amount of the difference referred to in the relevant section of the Act.

- (c) Production Incentive Earnings Scheme - For the purposes of the calculation of the total 38-hour weekly award rate and weekly over-award payment in 37.1.1(a) and 37.1.1(b) of this clause, payments made to an employee arising from a production incentive earnings scheme (whether arising from a payment by results, task or bonus scheme or however entitled) shall not be taken into account: Provided that where an employee is not in receipt of any form of weekly over-award payment, production incentive bonus payments shall be taken into account and the form and amount of such payments shall be determined between the employer and the employees concerned and/or the union.

- (d) Payment for Part of a Week - Where accident pay is payable for part of a week, the amount shall bear the same ratio to accident pay for a full week that ordinary working time during such part bears to the worker's full ordinary week.

37.1.2 "Injury" shall be given the same meaning and application as applying under the *Workers' Compensation Act* and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

37.1.3 "Union" means the Automotive, Food, Manufacturing, Engineering and Printing Kindred Industries Union, New South Wales Branch - Confectionery and Food Division.

37.1.4 "*Workers' Compensation Act*" or "Act" means the *Workers' Compensation Act 1987*.

37.2 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 Act, be paid accident pay by the employer who is liable to pay compensation under the Act, which liability by the employer for accident pay may be discharged by another person on their behalf:

Provided that:

37.2.1 Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom the employee was employed at the time of the incapacity and then only for such period as the employee receives a weekly payment under the Act: Provided that if an employee on partial incapacity cannot obtain employment from their employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable and the employee shall be on leave of absence from their employer.

Provided further that an employer shall not terminate the employment of an employee who is incapacitated and receiving accident pay except in those cases where:

- (a) the termination is due to serious and/or wilful misconduct on the part of the employee; or
- (b) the termination arises from a declaration of liquidation of the company in which case the employee's entitlement shall be considered a debt due and owing by their employer to the employee; or
- (c) the period specified in 37.2.3 has expired.

37.2.2 As to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as provided in the relevant section of the Act) such injuries or diseases shall not be subject to accident pay unless the employee has been employed by the employer at the time of the incapacity for a minimum period of one month.

37.2.3 An employee on engagement may be required to declare all workers' compensation claims made in the previous 5 years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit the employee's entitlement to accident pay under this clause.

37.2.4 Subject to the provisions of 37.2.1 of this subclause, an employer may terminate, at the conclusion of the appropriate season as defined by 2.12 and 2.13.

- (a) an employee who, during the 12 months preceding the date of the incapacity, was not employed (either in the food preserving industry or in other employment) for more than 26 weeks:
- (b) a person who is, apart from the seasonal employment, a student undergoing a course of full-time study.

Proof of employment for more than 26 weeks, within the terms of 37.2.4(a) shall lie on the employee.

- 37.3 Maximum Period of Payment - Accident pay under this clause shall be payable for a maximum period or aggregate of periods in no case exceeding a total of 39 weeks in respect of incapacity arising from any one injury as defined in 37.1.2.
- 37.4 Absences on other Paid Leave - An employee shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence. (NOTE: An employee receiving workers' compensation is not entitled to be paid ordinary pay for a public holiday not worked but is entitled to workers' compensation for that day).
- 37.5 Notice of Injury - An employee upon receiving injury for which they claim to be entitled to receive accident pay shall give notice in writing of the injury to their employer as soon as reasonably practicable after the occurrence of the injury: Provided that such notice may be given by a representative of the employee.
- 37.6 Medical Examination - In order to receive entitlements to accident pay an employee shall conform to the requirements of the Act as to medical examination.

Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and their 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 or continue the work, accident pay shall cease from the date of such refusal or failure.

- 37.7 Redemption of Weekly Payments - Where there is redemption of weekly compensation payments under the Act, the employer's liability to pay accident pay shall cease as from the date of such redemption.
- 37.8 Civil Damages Claim -
- 37.8.1 An employee receiving or who has received accident pay shall advise the employer of any action they may institute or any claim they may make for damages. Further, the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any verdict or settlement on that injury.
- 37.8.2 Where an employee obtains a verdict for damages in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict: provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to their employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.
- 37.8.3 Where an employee obtains a verdict for damages against a person other than the employer in respect of an injury for which the employee has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict: provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to their employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.
- 37.9 Insurance against Liability - Nothing in this clause shall require an employer to insure against their liability for accident pay.
- 37.10 Variations in Compensation Rates - Any change in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.
- 37.11 Death of Employee - All rights to accident pay shall cease on the death of an employee.

37.12 In the event of any dispute arising as to the entitlement of an employee to accident pay in accordance with the provisions of this clause, the matter shall, if any party to this clause so requires, be referred to the Industrial Relations Commission of New South Wales.

37.13 Casual Employees - The obligation of an employer to apply the provisions of this clause to an employee engaged as a casual employee in accordance with 37.7 shall be discharged by the payment to the employee of 2 cents per hour in addition to all other payments to which the employee is entitled under the award. Such additional 2 cents per hour shall be payable as a flat rate for all hours worked.

38. Preservation of Existing Rights

No employee shall suffer any reduction in rate of pay or any reduction or withdrawal of existing conditions of employment relating to matters dealt with in this award as the result of the making of this award.

39. Avoidance of Industrial Disputes

39.1 A procedure for the avoidance of industrial disputes shall apply in establishments covered by this award.

The objectives of the procedure shall be to promote the resolution of disputes by measures based on confrontation, co-operation and discussions; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of production and wages.

It is acknowledged that in some companies or sectors of the industry, disputes avoidance/settlement procedures are either now in place or in the process of being negotiated and it may be the desire of the immediate parties concerned to pursue those mutually agreed procedures. In other cases, the following principles shall apply:

39.1.1 Depending on the issues involved, the size and function of the plant or enterprise and the union membership of the employees concerned, a procedure involving up to four stages of discussion shall apply. These are:

- (a) discussions between the employee(s) concerned and at their request that appropriate union shop steward/delegates, and the immediate supervisors;
- (b) discussions involving the employee(s), the shop steward/s and more senior management;
- (c) discussions involving representatives from the State Branch of the union(s) concerned and the employer organisation branch representatives;
- (d) there shall be an opportunity for any party to raise the issue to a higher stage.

39.1.2 There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

39.1.3 Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.

39.1.4 Sensible time limits shall be allowed for the completion of the various stages of all discussions. At least seven days should be allowed for all stages of the discussions to be finalised.

39.1.5 Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Industrial Relations Commission of New South Wales for determination, and such decision subject to the parties' right of appeal shall be accepted.

39.1.6 In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lockouts or any other bans or limitations on the performance of work while the procedures of negotiations and conciliation are being followed.

39.1.7 The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practice at the workplace.

39.2

39.2.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote deskilling.

39.2.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

39.2.3 Any direction issued by an employer pursuant to 39.1 and this subclause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

40. Supported Wage

40.1 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:

40.1.1 "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.

40.1.2 "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.

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

40.1.4 "Assessment Instrument" means the form provided under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

40.2 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 test for 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 employment. This clause also 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 section 10 or section 12A of the Act or, if a part only has received recognition, that part.

40.3 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:

Assessed Capacity - 40.4	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 be not less than \$66.00 per week.)

*Where a person's assessed capacity is 10 per cent they shall receive a high degree of assistance and support.

40.4 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:

40.4.1 the employer and a union party to the award, in consultation with the employee or, if desired, by any of these;

40.4.2 the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

40.5 Lodgement of Assessment Instrument -

40.5.1 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.

40.5.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is a 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 shall take effect, unless an objection is notified to the Registrar within ten working days.

40.6 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.

40.7 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 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.

40.8 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 area.

40.9 Trial Period -

40.9.1 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.

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

40.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$66.00 per week.

40.9.4 Work trials should include induction or training as appropriate to the job being trialed.

40.9.5 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 40.4.

41. Structural Efficiency

- 41.1 The parties bound by this award are committed to co-operating positively to increase efficiency, productivity and to enhance the career opportunities and job security of employees in the industry.
- 41.2 At each plant or enterprise, the employer, its employees and the union shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise.
- 41.3 Any measure raised through 41.2 above, designed to increase flexibility at the plant or enterprise and sought by any party and by agreement of the parties involved shall be implemented subject to the following requirements:
- 41.4 Any disputes arising in relation to the implementation of 41.2 and 41.3 herein shall be subject to the provisions of the clause 39, Avoidance of Industrial Disputes.

42. Redundancy

42.1 Application

42.1.1 This clause shall apply in respect of full-time and part-time persons employed in the classifications specified.

42.1.2 In respect to employers who employ 15 employees or more immediately prior to the termination of employment of employees, in the terms of 42.4, Termination of Employment.

42.1.3 Subject to 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.

42.1.4 Subject to 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.

42.2 Introduction of Change

42.2.1 Employer's duty to notify

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

42.2.2 Employer's duty to discuss change

- (a) The employer shall discuss with the employees affected and the union to which they belong, the introduction of the changes referred to in 42.2.1, 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 42.2.1.
- (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.

42.3 Redundancy

42.3.1 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 42.2, 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 is practicable after the employer has made a definite decision which will invoke the provision of 42.3.1(a) and shall cover, 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 purposes of the discussion the employer shall, as soon as practicable, provided 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, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, 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.

42.4 Termination of Employment

42.4.1 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 42.2:

- (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.

42.4.2 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 42.2:

- (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.

42.4.3 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.

42.4.4 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 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.

42.4.5 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.

42.4.6 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.

42.4.7 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 the Centrelink.

42.4.8 Transfer to lower paid duties - Where an employee is transferred to lower paid duties for reasons set out in 42.2, 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.

42.5 Severance Pay

42.5.1 Where an employee is to be terminated pursuant to 42.4, 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 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

- (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, overaward payments, shift penalties and allowances paid in accordance with Table 1 - Wages, of Part B, Monetary Rates, as varied.

42.5.2 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 42.5.1. 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 42.5.1 will have on the employer.

42.5.3 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 42.5.1 if the employer obtains acceptable alternative employment for an employee.

43. Superannuation

- 43.1 The subject of superannuation 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*, the *Superannuation (Resolution of Complaints) Act 1993* and s.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.
- 43.2 Provided further that any seasonal or casual employee who has worked at least 152 hours with the employer in each twelve-month period, shall be paid, in addition to other payments under this award, a superannuation contribution of 3% of ordinary time earnings into an approved fund.

43.3 Approved fund shall mean -

- (a) Food Industry Superannuation Trust (FIST), or
- (b) Australian Superannuation Savings Employment Trust (ASSET), or
- (c) any existing fund as applies

43.4 Nothing in this clause shall affect any arrangement for the payment of 3% occupational superannuation (emanating from the State Wage Case Decision of 1986 and subsequent decisions) into an approved fund which commenced prior to 28 February 1992.

44. Leave Reserved

Leave is reserved to apply in relation to any variation to the Food Preservers' Award, 1973, an award of the Australian Conciliation and Arbitration Commission or any award replacing the said award.

45. Anti-Discrimination

45.1 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.

45.2 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 this award, which, by its terms or operation, has a direct or indirect discriminatory effect.

45.3 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.

45.4 Nothing in this clause is to be taken to affect:

- (a) any conduct or act which is specially 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.

45.5 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. Training Wage

The parties to this award agree to observe the terms and conditions of the National Training Wage Award 2000 as amended from time to time. That is to permit the employment under this award of employees undertaking traineeships (including skill based and part-time traineeships) as approved by the relevant New South Wales Training Authority and the payment of persons so employed in accordance with the said Federal award.

47. Area, Incidence and Duration

47.1 This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Food Preservers (State) Award published on 16 November 2001 (329 I.G. 489) and all variations thereof.

47.2 Subject to the exceptions, limitations and further provisions contained in this clause, this award shall apply to the employment of all persons employed in or in connection with -

- (1) the manufacture, preparation or putting up of fruit and vegetables preparing and/or canning, candied-peel making, fruit crystallising, fruit mince and fruit or vegetable spreads and fruit-butter making in factories;
- (2) the manufacture, preparation or putting up and/or canning or bottling of jams, marmalades, jellies, fruits and vegetables, vinegar, pickles, sauces, soups, chutney and wet condiments in factories.
- (3) fruit juice or vegetable juice processing and/or concentrating and cordial making, including bottling and/or canning in factories.
- (4) dehydrating, processing and/or packing of dried fruit infactories, provided that "factories" will be deemed to exclude fruit-packing houses;
- (5) potato processing, not including preparing, cooking, manufacturing and/or packing of potato chips, crisps, flakes and like products;
- (6) canning and/or preparation of prepared spaghetti products or puddings, processing of cereal foods and making of pastry;
- (7) preparation and processing of prepared meals in preserved or frozen form in factories;
- (8) washing and/or grading asparagus at canneries;

The foregoing paragraphs of this subclause shall not be read or construed separately in respect of employment or work which may be comprised within more than one paragraph thereof.

47.3 This award shall also apply to the employment of all persons employed at canneries on all work associated with the removal of pea-vines from vehicles at a pea-viner, feeding into a pea-viner and taking off peas from a viner.

47.4 This award shall not apply to -

- (1) employment in any factory or plant at a location where an employer is also bound by the undermentioned award as varied:

Starch Manufacturers &c. (State) Award

Provided that the operation of this award shall only be excluded by this provision to the extent to which such employer, at 27 May 1975, applied to employees concerned the provisions of any award mentioned above the work covered thereby.

- (2) gate persons, watchpersons or caretakers, goods lift attendance;

- (3) clerical work except where such clerical work is embraced or incidental to the work of any classification in this award other than general hand;
 - (4) employment in the driving of vehicles (other than fork lifts or other power-driven factory vehicles used for transporting goods or materials principally within a factory or plant). This provision shall apply subject to the work of a driver of a vehicle so excluded may include the loading, unloading or maintenance of vehicles;
 - (5) a qualified tradespersons cooper employed as such;
 - (6) an employee engaged solely cleaning administrative offices;
 - (7) employees engaged solely on the canteen staff;
 - (8) maintenance alterations or repair of factory or plant buildings, machines and equipment, except that cleaning of factory or plant buildings and greasing and cleaning of machinery and equipment shall be covered by this award;
 - (9) storepersons and packers employed at bulk stores, warehouses or other distributing centres located away from the area of the premises at which goods are processed or manufactured under this award;
 - (10) employment in cool stores or freezing chambers or stores located away from the area of the premises at which goods are processed or manufactured under this award;
 - (11) employees working in laboratories performing tasks of a technical or professional nature that are not expressly classified in this award. For the purpose of this provision, general hands shall not be deemed to be expressly classified;
 - (12) first-aid or ambulance-room staff not also engaged in other duties in or about a factory or store.
- 47.5 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 7 March 2008.
- 47.6 The award published 9 August 1978 and reprinted 24 January 1992 took effect from the first pay period to commence on or after 28 April 1978.
- 47.7 This 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

Adult Classification	Former Rate of Pay \$	SWC June 2007 \$	Weekly Rate of Pay \$
Group 1	533.90	20.00	553.90
Group 2	529.10	20.00	549.10
Group 3	525.50	20.00	545.50
Group 4	521.80	20.00	541.80
Group 5	517.60	20.00	537.60
Group 6	515.00	20.00	535.00

Forklift with lifting capacity up to and including 4.5 tonnes	533.90	20.00	553.90
Lifting capacity over 4.5 tonnes	540.20	20.00	560.20

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	4.2	Number of employees - less than 3 employees	12.48 per week
		3 to 10 employees	19.29 per week
		11 to 20 employees	29.59 per week
		21 or more employees	42.07 per week
2	7.2	Wet Places	0.66 per hour extra
3	7.3	Dirty Work	1.01 per hour extra (1.81 minimum)
4	7.4	Heavy Weights	0.47 per hour or part thereof
5.	7.5	Carton Stacking	0.38 extra per hour or part thereof
6	7.6.1	Cold Temperatures (between minus 1° and minus 7° Celsius)	0.66 per hour
7	7.6.2	Cold Temperatures (between minus 8° and minus 18° Celsius)	1.01 per hour
8	7.6.3	Cold Temperatures (below minus 18° Celsius)	1.64 per hour
9.	7.8.2	Pea-vining	6.60 per week
10.	7.10	Fumigation Gas	8.40
11.	13.7.1	Meal Allowance	15.61
12.	14.2	First-aid	3.17 extra per day

E. A. R. BISHOP, Commissioner.

 Printed by the authority of the Industrial Registrar.

PAINT AND VARNISH MAKERS, &c. (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1550 of 2007)

Before Commissioner Bishop

5 February 2008

REVIEWED AWARD**PART A****1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Classifications
4.	Wages
5.	Additional Payments
6.	Laboratory Employees
7.	Junior Employees
8.	First-aid Allowance
9.	Mixed Functions
10.	Tea Breaks and Meal Periods
11.	Crib Break
12.	Call Back
13.	Sunday and Holiday Work--Day Workers
14.	Washing Time
15.	Payment of Wages
16.	Time and Wages Book
17.	Meal Allowance
18.	Contract of Engagement
19.	Casuals
19A.	Secure Employment Provisions
20.	Hours of Work (Day Workers)
21.	Shift Work
22.	Overtime (Day Workers)
23.	Public Holidays
24.	Annual Leave
25.	Annual Leave Loading
26.	Sick Leave
27.	Personal/Carer's Leave.
28.	Attendance at Repatriation Centres
29.	Accident Pay
30.	Fire Protection
31.	Special Leave
32.	Bereavement Leave
33.	Industrial Clothing
34.	Amenities
35.	Right of Entry of Union Officials
36.	Inspections
37.	Disputes Resolution
38.	Industry Meetings

39. Travelling and Fares
40. Trade Union Training
41. Job Delegates
42. Redundancy
43. Parental Leave
44. Anti-Discrimination
45. Superannuation
46. Basis of Award and Leave Reserved to Apply
47. Union Dues
48. Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Wage Rates

Table 2 - Wage Rates - Laboratory Employees

Table 3 - Allowances

2. Definitions

"Commission" means the Industrial Relations Commission of New South Wales.

"Laboratory Assistant" shall mean an employee, other than a professional employee, trainee professional employee or paint technician, who is currently studying for a chemistry certificate, or a certificate course appropriate to the work in which he or she is engaged, or achieved an equivalent standard of skill or knowledge, and is engaged in a laboratory in assisting in the preparation of new formulations and in the application of routine tests in connection with a section or department whose principal function is the development of and research into new products or improved formulations, or is performing duties deemed by the employer to be equivalent thereto; or is engaged in a laboratory performing production-investigational work associated with existing products and formulation, or is performing duties deemed by the employer to be equivalent thereto.

"Laboratory Attendant" means an employee, other than a professional employee, trainee professional employee, paint technician, laboratory assistant, trainee laboratory assistant or laboratory assistant or laboratory tester who is engaged in a laboratory or test department, and whose duties are principally those of cleaning laboratory equipment and may include the replenishment of laboratory raw materials.

"Laboratory Tester" shall mean an employee other than a professional employee or trainee professional employee, paint technician or laboratory assistant, who is engaged in a production or other laboratory in the performance of routine tests by established methods.

"Paint Technician" shall mean an employee other than a professional employee who is required to perform duties of a technical nature in an analytical, production-investigational, developmental, experimental or research laboratory, and who has been engaged for at least four years as a laboratory assistant and has completed the necessary period of training in order to gain a certificate and who has received a certificate appropriate to his or her duties from the appropriate education department in the State such as chemistry certificate or qualification deemed by the employer to be equivalent or who has sufficient practical experience deemed by the employer to be equivalent thereto; or who has passed two years of a full-time course or the first three years of a part-time course for a degree or equivalent professional qualification or who has sufficient practical experience deemed by the employer to be equivalent thereto.

"Ordinary Rate" means the appropriate rate prescribed herein for forty hours of ordinary time.

"Site" means any premises of an employer used for or in connection with the manufacture, treatment, processing, handling, storage or distribution of materials or products used in or in connection with decorative or protective surface coatings, or coverings and associated products.

"Trainee" shall mean a laboratory employee who is undergoing and proves to the satisfaction of the employer when requested, that he or she is continuing a certificate course or a course leading to a degree or diploma appropriate to his or her work prescribed by the appropriate Education Department in the State or any course at least equivalent thereto.

"Union" means Liquor Hospitality and Miscellaneous Union, New South Wales Branch.

"Year" means calendar year unless the context provides otherwise.

3. Classifications

The following shall be the classification grades of employees subject to this award:

(a) Paint Workers -

- (i) Paint Worker Grade 1 (Trainee) - This classification shall be the entry point into the paint manufacturing industry, where a person has no comparable experience in manufacturing industry. A person in this classification shall perform various routine duties, including the provision of assistance to other employees, whilst working under direct supervision.

A Grade 1 Paint Worker shall undertake basic training in the industry, including induction training. Illustrative tasks which fall within this grade include hand filling, hand labelling, cleaning and general hands work. It is anticipated that progression from this grade to a higher grade shall be achievable by all weekly employees.

- (ii) Paint Worker Grade 2 - This classification encompasses the various semi-skilled jobs in the industry. A person in this classification shall have undertaken basic training in the paint industry or a comparable industry, will work under general supervision and have completed or be involved in training so as to enable the person to perform work within the scope of this grade.

A Grade 2 Paint Worker shall perform work falling within the lower grade and be proficient in duties for which they have been trained within a site's functional stream(s). The duties include work of the following nature:

- (a) basic repetitive work on automated or single purpose machines or equipment, e.g., automatic filling;
- (b) simple machine tinting;
- (c) basic receipt, dispatch and inventory work;
- (d) security work;
- (e) routine maintenance work;
- (f) laboratory aide;
- (g) order picking;
- (h) filter press operation;
- (i) non-licensed electric fork operation.

- (iii) Paint Worker Grade 3 - This classification encompasses the more skilled specialised jobs in the industry. A person in this classification shall work under general routine supervision, be responsible for their own work and have completed or be involved in training so as to enable the person to perform work within the scope of this grade.

A Grade 3 Paint Worker shall perform work falling within the lower grades and be proficient in duties for which they have been trained within a site's functional stream(s). The duties include work of the following nature:

- A. mill operation;
- B. dispersion operation;
- C. raw materials preparation;
- D. powder coating operations;
- E. resin manufacturing under supervision;

- F. operation of all materials handling equipment;
 - G. tinting under supervision;
 - H. routine production testing;
 - I. elementary research and development work involving no formal training;
 - J. make up operation;
 - K. fully integrated automated filling systems (i.e., Taubmans Pty Ltd, Villawood).
- (iv) Paint Worker Grade 4 - This classification encompasses the various skilled jobs in the industry. A person in this classification shall be generally responsible for their own work, have completed training so as to enable the person to perform work within the scope of this grade and be able to perform work from complex instructions and procedures.
- A Grade 4 Paint Worker shall perform work falling within the lower grades for which they have been trained within a site's functional stream(s) and be proficient in duties of the following nature:
- A. bulk paint tinting;
 - B. resin manufacturing.
- (v) Team Leader - Grade 5 - A person appointed by the employer to this position shall be responsible as follows:
- A. performance appraisal;
 - B. quality control;
 - C. production control;
 - D. training of other employees;
 - E. safety management;
 - F. accountability for manufacturing process.
- (b) Laboratory Employees - Classifications -
- (i) Paint Laboratory Worker Grade 1 (equivalent to Paint Worker Grade 1) - Trainee with no laboratory or manufacturing experience, undergoing industry induction training.
- (ii) Paint Laboratory Worker Grade 1A (equivalent to Paint Worker Grade 2) - Employee with industry experience, working as Laboratory Aide, undertaking basic in-house training. Works under general supervision. Meets the required standards of reading and writing and shall be trained to be proficient in the following areas:
- A. storage and retrieval of batch samples;
 - B. basic routine testing under supervision;
 - C. elementary communication with laboratory and factory personnel;
 - D. maintenance and cleaning of laboratory equipment;
 - E. keeping accurate records.
- (iii) Paint Laboratory Worker Grade 2A (equivalent to Paint Worker Grade 3) - Employee with industry experience, working as a routine production tester or at elementary research and development work requiring no formal training. A person in this classification shall work under general supervision, be responsible for their own work and have completed or be involved in training so as to enable them to perform work within the scope of this grade. A Paint Laboratory Worker Grade 2A shall perform work falling within lower laboratory grades and be proficient in duties for which they have been trained. The duties include work of the following nature:
- A. training new Paint Laboratory Workers Grade 1A if required;
 - B. carrying out, firstly with supervision and then without, routine production testing;
 - C. performing simple batch adjustments without supervision;
 - D. testing of laboratory samples.

- (iv) Paint Laboratory Worker Grade 2B - On commencement and continuation of study of Year 1 of Associate Diploma in Chemistry/Chemical Technology or on commencement of study for the Advanced Certificate in Chemical Technology, a Paint Laboratory Worker Grade 2B shall perform duties equivalent to those of a Paint Laboratory Worker Grade 2A and, in addition, shall make laboratory samples; provided that progression from Paint Laboratory Worker Grade 2A to Paint Laboratory Worker Grade 2B shall be at the invitation of the employer.
- (v) Paint Laboratory Worker Grade 2C - Having completed and passed Stage 1 of the Chemistry Certificate course, or on successful completion and passing of Year 1 of the Advanced Certificate in Chemical Technology (or the equivalent of Year 1 studies) and be studying for Year 2, a Paint Laboratory Worker Grade 2C shall work under minimum supervision, be responsible for their own work and be involved in training so as to enable them to perform work within the scope of this grade. A person in this classification shall perform work falling within lower laboratory grades for which they have been trained and use judgment and problem solving skills to perform a range of routine and non-routine tests. The duties include work of the following nature:
- A. performance of advanced batch adjustments/corrections;
 - B. ability to make up and test all types of paints to provide formulae;
 - C. training of lower grade laboratory workers.

- (vi) Paint Laboratory Worker Grade 3 - On successful completion and passing of Year 1 of the Associate Diploma in Chemistry/Chemical Technology (or the equivalent of Year 1 studies) and be studying for Year 2; or having completed and passed Stage 2 of the Chemistry Certificate course; or on successful completion and passing of Year 2 of the Advanced Certificate in Chemical Technology (or the equivalent of Year 2 studies) and be studying for Year 3; or not less than five years experience, and having duties and responsibilities of an employee who has completed and passed Year 1 of the Associate Diploma or Stage 2 of the Chemistry Certificate.

A Paint Laboratory Worker Grade 3 shall work under minimum supervision, be responsible for their own work and have completed or be involved in training so as to enable the person to perform work within the scope of this grade.

A person in this classification shall perform work falling within lower laboratory grades for which they have been trained and use judgment and problem solving skills to perform the full range of routine and non-routine tests. The duties include work of the following nature:

- A. modifications to existing formulae when deficiencies within the product are found;
 - B. solving of quality control problems that may arise;
 - C. training of lower grade laboratory workers.
- (vii) Paint Laboratory Worker Grade 4 - On successful completion and passing of Year 2 of the Associate Diploma in Chemistry/Chemical Technology (or the equivalent of Year 2 studies) and be studying for year 3; or hold the Associate Diploma in Chemistry/Chemical Technology and have no relevant industry experience; or having completed and passed Stage 3 of the Chemistry Certificate course; or having completed and passed the Advanced Certificate in Chemical Technology and having been employed as a PLW Grade 3; or not less than 10 years' experience, and having duties and responsibilities of an employee who has completed and passed Year 2 of the Associate Diploma or Stage 3 of the Chemistry Certificate.

A Paint Laboratory Worker Grade 4 shall work under limited supervision, be responsible for their own work and have completed or be involved in training so as to enable the person to perform work within the scope of this grade. A person in this classification shall perform work falling within lower laboratory grades for which they have been trained and apply specialised technical skills, in addition to the full range of laboratory skills, to specific projects. A PLW 4 shall also be involved in training of other laboratory workers and be able to provide guidance and assistance as part of a work team.

A Paint Laboratory Worker Grade 4 understands the equipment and principles being used. The duties include work of the following nature:

- A. preparing reports as directed;
- B. being involved as part of a team in high level trouble shooting;
- C. providing on-the-job training;
- D. assisting in the analysis of production problems;
- E. application of skills to non-routine testing.

- (viii) Paint Laboratory Worker Grade 5 - On successful completion and passing of Year 3 of the Associate Diploma in Chemistry/Chemical Technology (or the equivalent of Year 3 studies) and be studying for Year 4; or successfully completed and passed the Chemistry Certificate course; or having successfully completed and passed both the Advanced Certificate in Chemical Technology and the Surface Coatings Technology Post-Technician Certificate course.

A Paint Laboratory Worker Grade 5 shall be responsible for their own work, perform work falling within the lower laboratory grades for which they have been trained and be able to work unsupervised. The duties include work of the following nature:

- A. the making of recommendations regarding improvement to testing and/or instruments;
- B. setting up and/or operation of test equipment involving computer operating and programming skills;
- C. provides technical guidance;
- D. applies industrial and academic experience in coatings and chemicals to solve problems or develop new products and processes;
- E. assist in the design and conduct of tests to NATA and other regulatory requirements and develop procedures and methods from standards.

- (ix) Paint Laboratory Worker Grade 6 - Successfully completed and passed the Associate Diploma course in Chemistry/Chemical Technology; or successfully completed and passed the Chemistry Certificate course and the Surface Coatings Technology Post-Technician Certificate course.

A Paint Laboratory Worker Grade 6 is required to perform work requiring mature technical knowledge involving a higher degree of autonomy, originality and independent judgment. The duties include work of the following nature:

- A. responsibility for the co-ordination of employees' work;
- B. plan and implement those programmes necessary to achieve company objectives;
- C. apply knowledge and/or provide technical guidance.

A person in this classification shall, in addition to the skills required by a Paint Laboratory Worker Grade 5, have the ability to operate within broad statements of objectives, without requiring detailed instructions, provide specialised technical guidance to other employees performing work within the same technical field and perform work falling within the lower laboratory grades for which they have been trained.

A Paint Laboratory Worker Grade 6 may be responsible for supervising a group of employees.

- (x) Paint Laboratory Worker Grade 7 - Successfully completed and passed the Associate Diploma course in Chemistry/Chemical Technology and successfully completed and passed the Surface Coatings Technology Post-Technician Certificate course.

A Paint Laboratory Worker Grade 7 shall have no less a responsibility than that of a PLW Grade 6.

- (c) Course Attendance -

- (i) An employee who attends in any one year not less than 80% of the maximum possible attendances at the approved course at the training institution at which such employee is pursuing

his or her course of study and passes the annual examination in that year or, if there is no examination, receives a satisfactory report, shall be reimbursed by his or her employer all fees paid by such employee for that course during that year.

In the case of an employee who complies with the foregoing requirements for attendances and who passes and receives a satisfactory report in a proportion of the subjects taken by him or her in any year, the employer shall reimburse a like proportion of fees. The employer shall not, however, be required to reimburse fees or a proportion thereof for more than one year in excess of the period prescribed by the training institution for the approved course. Provided that where an employer and employee agree in writing, an employee may undertake a course of study other than an approved course and such course shall be reimbursed in the manner described in the aforementioned two paragraphs. Where a trainee is in the employ of more than one employer in any school year, then such employer shall be liable only for the payment of fees pro rata to the period of employment with the employer.

- (ii) An employee shall be allowed reasonable time without loss of pay (not exceeding an average of eight hours per week during a semester) for the purpose of attending classes in connection with the appropriate certificate course.

In the event of a disagreement between the employer and an employee regarding the course of study for any year, the recommendation of the Industrial Consultative and Accreditation Committee as provided for in paragraph (iii) of subclause (d) of this clause shall be accepted. The employer shall endeavour to see that any employee shall not be obliged to work overtime when it interferes with such employee's studies. No employee shall be employed upon shift work which may interfere with his or her studies or examination preparation.

- (iii) An employee shall be allowed reasonable leave of absence, without loss of pay, for the purpose of sitting for examinations on any subject(s) being studied for the year.

(d) Implementation of New Structure

- (i) An employer shall notify each laboratory employee of the appropriate classification of that employee.
- (ii) The parties shall co-operate in the transition from the old structure to the new structure in an orderly manner without creating false expectation or disputation.
- (iii) There shall be an Industry Consultative and Accreditation Committee made up of representatives of the employers and the unions. The committee shall assist in the resolution of disputes arising from the application and operation of the classification structure, co-ordinate the accreditation of training courses and will act as a mechanism of appeal for employees dissatisfied with their grading.
- (iv) Should the committee be unable to resolve any disputes arising from the application and operation of the new classification structure, any party may refer the matter to the Industrial Relations Commission of New South Wales.

(e) Incidental Duties

Employees are to perform work which is incidental or peripheral to their main tasks or functions, being the work the duties of which are within the limits of the employee's skill, competence and training.

4. Wages

The minimum rates of pay for weekly employees shall be as set out in Table 1 and Table 2 of Part B Monetary Rates.

The rates of pay in this award include the adjustments payable under the State Wage Case 2007. 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.

5. Additional Payments

- (i) **Leading Hand** - An employee appointed as a leading hand by the employer shall, for each week worked, receive the following amounts:
 - (a) In charge of not less than one and not more than 10 employees or a laboratory leader in charge of laboratory assistants - an amount per week as set out in Item 1 of Table 3 - Allowances, of Part B, Monetary Rates.
 - (b) In charge of 11 or more employees or a laboratory leader in charge of paint technicians - an amount as set out in Item 2 of the said Table 3.
- (ii) **Storeperson Working Singly** - A store person who has control of a store when no direct supervision is exercised and is responsible for the receipt, issuing and stock checking of goods and/or materials and the notation of necessary documents shall receive the sum per week as set out in Item 3 of Table 3 for all purposes of the award in addition to his/her classification rate, with the provision that any employee whose work is defined elsewhere in this clause shall suffer no reduction in wages.

6. Laboratory Employees

- (i) **Terms and Conditions:** The following terms and conditions shall apply, notwithstanding anything else contained in this award dealing with the same specific subject matters, to employees engaged in laboratories and classified as Laboratory Trainee, Laboratory Assistant or Paint Technician:
 - (a) **Period of Hire:** Period of hire may be weekly, fortnightly or monthly as offered by the employer.
 - (b) **Notification of Classification to Employees:** Any employee shall on the date of commencing employment be advised in writing of the classification which is effective, i.e., "laboratory assistant studying for first stage of a chemistry certificate course or equivalent or having achieved equivalent standard of skill or knowledge." Subsequently upon any promotion above that appointment the employee will be advised of his or her new classification.
 - (c) **Provision of a Certificate of Service:** Upon termination of employment that employer when requested by the employee shall provide a certificate of service stating length of service, duties performed and classification.
 - (d) **Method of Payment:** Method of payment of salary may be by cash, cheque or cheque paid to an employee's nominated bank account as agreed between the employer and the employees.
 - (e) **Award Conditions:** In all other respects the conditions of this award shall apply to such employees.
- (ii) **Trainees**
 - (1) Trainees shall receive the following as minimum rates of pay expressed as a percentage of the total rate of pay prescribed for the classification of "Laboratory Assistant" - studying for first stage of a chemistry certificate course or equivalent or having achieved equivalent standard of skill or knowledge:

Percentage

At 16 years of age	70
At 17 years of age	85
At 18 years of age	100

At 19 years of age or over - the appropriate total rate of pay for the classification of "Laboratory Assistant" or "Paint Technician" in accordance with the qualification or experience gained.

- (2) The proportion of trainees under the age of 18 years of age who may be employed by any employer shall not exceed one such junior trainee to every two or fraction of two adults in that area in which the trainee is employed. This proportion shall not be varied without prior consultation and agreement with the Union.
- (3) A trainee who attends in any one year not less than 80 per cent of the maximum possible attendances of the approved course at the training institution at which such employee is pursuing his/her course of study and passes the annual examination in that year or, if there is no examination, receives a satisfactory report, shall be reimbursed by his/her employer all fees paid by such employee for that course during that year. In the case of a trainee who complies with the foregoing requirement for attendances and who passes or receives a satisfactory report in a proportion of the subjects taken by him/her in any year the employer shall reimburse a like proportion of fees. The employer shall not, however, be required to reimburse fees or a proportion thereof for more than one year in excess of the period prescribed by the training institution for the approved course. Provided that where a trainee is in the employ of more than one employer in any school year then such employer shall be liable only for the payment of fees pro rata to the period of employment with that employer.
- (4) Trainees shall be allowed reasonable time without loss of pay (not exceeding an average of eight hours per week during a school term) for the purpose of attending classes in connection with the appropriate certificate course.

In the event of disagreement between the employer and trainee regarding the course of study for any year, the recommendation of the educational institution shall be accepted. The employer shall endeavour to see that any trainee shall not be obliged to work overtime when it interferes with such trainee's studies. No trainee shall be employed upon shift work which may interfere with his/her studies or examination preparation. Any trainee shall be allowed reasonable leave of absence without loss of pay for the purpose of sitting for examinations on any subject being studied for the year.

(iii) Safe Working Conditions and Safety Equipment

- (a) Fume Cupboards and Safety Equipment - Every laboratory shall be equipped with adequate fume cupboards where necessary, fire fighting equipment and any special equipment or rooms essential to the safe handling of any chemical or process.
- (b) Work in Abnormal Conditions - Where an employee is required to work in abnormal conditions, the employer shall take all reasonable precautions to ensure that the employee will work under conditions of the maximum possible safety and comfort.
- (c) Damaged Clothing or Equipment - Where an employee as a result of performing any duty required by the employer, and as a result of negligence of the employer, suffers any damage to or soiling of clothing or other personal equipment, including spectacles and hearing aids, the employer shall be liable for the replacement, repair or cleaning of such clothing or personal equipment including spectacles and hearing aids.

7. Junior Employees

- (i) Junior employees under 18 years of age shall be properly supervised at all times.

- (ii) A junior employee shall be paid the following percentage of the ordinary rate prescribed by this award for the appropriate adult classification:

	Percentage
At 16 years of age	70
At 17 years of age	85
At 18 years of age	100

8. First-Aid Allowance

- (i) An employer shall endeavour to have at least one employee trained to render first-aid in attendance when work is performed at an establishment.
- (ii) 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 Ambulance or similar body shall be paid a weekly allowance of an amount as set out in Item 4 of Table 3 - Allowance of part B - Monetary Rates if appointed by the employer to perform first-aid duty.
- (iii) The employer will reimburse travelling and text book expenses actually incurred when an employee carries out first-aid training at the request of the employer.

9. Mixed Functions

- (i) If by direction of the employer an employee is engaged for more than one hour in any day or shift on duty carrying a higher rate than his or her ordinary classification such employee shall be paid the higher rate for such day or shift.
- (ii) Where an employee is called upon to perform duties for which a lower rate is fixed the employee shall suffer no deduction in pay for the balance of the current pay week.

10. Tea Breaks and Meal Periods

- (i) Each day shift employee shall be permitted a ten minute break in the first half of each day and a ten minute break in the second half of each day at times to be nominated by the employer for tea breaks. Such breaks shall be without deduction of pay if taken at the work place or other place nominated by the employer.
- (ii) Meal periods shall be not less than thirty minutes and not more than forty-five minutes and shall be taken at times nominated by the employer.
- (iii) No employee shall be required to work for more than five hours without a meal period or crib break.

11. Crib Break

- (i) Where the period of overtime is to exceed 1.5 hours an employee prior to starting such overtime after working ordinary hours shall be allowed a crib break of 20 minutes which shall be paid for at ordinary rates.
- (ii) An employee working overtime after working ordinary hours shall be allowed a crib break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee continues work after such crib break.
- (iii) An employer and employee may agree to any variation of this clause to meet the circumstances of the work in hand provided that the employer shall not be required to make any payment in respect of any time allowed in excess of 20 minutes.

12. Call Back

An employee recalled on any day to work overtime after leaving the employer's establishment shall be paid a minimum of four hours' work at the appropriate hourly rate for each time such employee is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours as the case may be if the job he or she was recalled to perform is completed within a shorter period. This clause shall not apply in cases where it is customary for an employee to return to an employer's site to perform a specific job outside his or her ordinary working hours or where the overtime is continuous with the completion or commencement of ordinary working time.

13. Sunday and Holiday Work - Day Workers

- (i) An employee required to work on a Sunday shall be paid at the rate of two and one-half times the ordinary rate with a minimum payment of four hours.
- (ii) An employee required to work on a public holiday save where a day's leave has been substituted shall be paid for all time worked at the rate of two and one-half times the ordinary rate with a minimum payment of four hours.

14. Washing Time

All employees shall be allowed five minutes prior to meal times and ten minutes prior to the ordinary ceasing time for the purposes of cleaning themselves: Provided that employees working in dry lead and/or dry colour manufacturing shall, in lieu of ten minutes, be allowed fifteen minutes prior to ceasing time.

15. Payment of Wages

- (i) Unless otherwise agreed between an employer and the employees wages shall be paid to each employee weekly no later than Thursday and prior to work ceasing.
- (ii) An employee who is kept-waiting for payment of wages after work has ceased shall be paid at overtime rates unless the employer can establish legitimate cause outside of the employer's control for late payment.
- (iii) Wages and other entitlements may be paid by cheque or in cash or by agreement between the employer and employee concerned. Further, by agreement between the union and the employer, wages and other entitlements may be paid by electronic bank transfer in accordance with agreed practice at individual establishments.
- (iv) Unless otherwise agreed between an employer and the employee where a pay day falls on a public holiday or a public holiday follows immediately after the usual pay day for that week, wages shall be paid on the ordinary working day preceding the usual pay day.
- (v) Each employee shall at request be given details of his or her total weekly pay.

16. Time and Wages Book

- (i) 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, and the wages and entitlements paid each day period.
- (ii) 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.
- (iii) The time and wages record shall be open for inspection to a duly accredited union official during the usual office hours at the employer's office: Provided that an inspection shall not be demanded unless the branch secretary of the union or the 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.

- (iv) The official making such inspection shall be entitled to take a copy of entries in a time and wages record relating to a suspected breach of this award.

17. Meal Allowance

Any employee required to work and who so works overtime for more than one hour after working ordinary hours shall either be supplied with an adequate meal or paid an amount as set out in Item 5 of Table 3 - Allowances, of Part B, Monetary Rates, for each meal. The meal allowance shall be paid to the employee weekly, at the time when normal pay is made, or by such other arrangement as may be mutually acceptable.

For the purpose of this clause, crib break, if applicable, shall not be regarded as overtime worked.

18. Contract of Engagement

- (i) Any employee not specifically engaged as a casual shall be deemed to be employed by the week.
- (ii) A weekly hired employee shall be terminated by one week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be- provided this shall not affect the right of an employer to dismiss any employee summarily without notice for neglect of duty or misconduct, and in such case wages shall be paid up to the time of dismissal only. An employee who has given or been given notice to terminate employment shall continue in employment until the date of expiration of such notice.
- (iii) An employee who, having been given or has given notice and without reasonable cause is absent from work during the period of notice, shall be deemed to have abandoned his or her employment and shall not be entitled to payment for work done within that period. By arrangement with the employer an employee working out a period of notice may be granted one day's leave without pay to seek alternative employment.

19. Casuals

A casual employee is one engaged and paid as such. A casual employee for working ordinary time shall be paid per hour one-fortieth of the ordinary rate prescribed by this award for the work performed plus 25 per cent.

19A. 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.

20. Hours of Work (Day Workers)

Ordinary hours of work shall be forty per week to be worked in five days, Monday to Friday inclusive, of eight hours each continuously except for meal breaks at the discretion of the employer, between 7.00 a.m. and 5.30 p.m.; provided that the spread of hours or daily hours prescribed may be altered as to all or a section of the employees by mutual agreement between the employer and the union provided further that day work shall not in any event commence before 6.00 a.m. or finish after 6.00 p.m.

Provided further that work done outside the spread of hours fixed in accordance with this clause for which overtime rates are otherwise payable shall be deemed to be part of the ordinary hours of work where for reasons other than for proven illness or by leave of the employer the ordinary hours worked within the prescribed spread of hours in any week are less than forty.

21. Shift Work

- (i) Definitions - For the purpose of this clause:

"Afternoon Shift" - means any shift finishing after 6p.m. and at or before midnight.

"Continuous Work" - means any work carried on with consecutive shifts of employees throughout the 24 hours of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

"Early Morning Shift"--means any shift commencing after midnight and before 6.00 a.m.

"Day Shift" - shall mean a shift commencing after 7 a.m. and finishing at or before 6 p.m.

"Night Shift" - means any shift finishing after midnight and at or before 8 a.m.

"Rostered Shift" - means a shift of which the employee concerned has had at least 48 hours' notice.

- (ii) Hours - Continuous Work Shifts - This subclause shall apply to shift workers on continuous work as hereinbefore defined.

The ordinary hours of such shift workers shall not exceed:

8 in any one day;
48 in any one week;
88 in 14 consecutive days; or
160 in 28 consecutive days.

Subject to the following conditions such shift workers shall work at such times as the employer may require:

A shift shall consist of not more than 8 hours inclusive of crib time.

Except at the regular changeover of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

Twenty minutes shall be allowed to shift workers each shift for crib which shall be counted as time worked.

- (iii) Hours - Other Than Continuous Shift Work - This subclause shall apply to shift workers not upon continuous work as hereinbefore defined.

The ordinary hours of such shift workers shall not exceed - 40 in any week to be worked in five shifts of eight hours on Monday to Friday inclusive or five shifts of not more than eight hours, and one shift (Saturday) of not more than four hours; or 80 in 14 consecutive days in which case an employee shall not without payment for overtime be required to work more than eight consecutive hours on any shift or more than six shifts in any week.

Such ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than five hours without a break for a meal

Except at the regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

- (iv) Rosters - Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.
- (v) Variation by Agreement - The method of working shifts may in any case be varied by agreement between the employer and the accredited representative of the union to suit the circumstances of the establishment.

The time of commencing and finishing shifts, once having been determined may be varied by agreement between the employer and the employees concerned to suit the circumstances of the establishment or, in the absence of agreement, by seven days' notice of alteration given by the employer to the employees.

Prior to establishing any new shift or ceasing any established shift an employer shall give the union not less than one week's notice of the employer's intention and shall discuss with the union manning levels and implementation.

- (vi) Afternoon or Night Shift Allowances - A shift worker on continuous work whilst on afternoon shift shall be paid 17.5 per cent or whilst on night shift 20 per cent more than the ordinary rate for such shift.

A shift worker on other than continuous work whilst on afternoon shift shall be paid 17.5 per cent or whilst on night shift 20 per cent more than the ordinary rate for such shifts. A shift worker who works on any afternoon or night shift which does not continue for at least five successive afternoons or nights at a five-day work site or for at least six successive afternoons or nights at a six-day work site shall be paid at the rate of time and one-half.

An employee who: during a period of engagement on shift works night shift only; or remains on night shift for a longer period than four consecutive weeks; or works on a night shift, which does not rotate or alternate with another shift or with day work so as to give at least one-third of the working time off night shift in each shift cycle; shall during such engagement, period or cycle, be paid 30 per cent more than the ordinary rate for all time worked during ordinary working hours on such night shifts.

- (vii) Except as provided in subclause (viii), of this clause, no shift premium shall be paid for early morning or day shifts.
- (viii) The minimum rate to be paid to any shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and one-half. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in the first and second paragraphs of subclause (vi), of this clause.
- (ix) Overtime -

- (a) A shift worker required to work overtime on a Saturday, Sunday or public holiday shall be afforded at least four hours work or paid for four hours at the appropriate rate, except where such overtime is continuous with overtime commenced on the previous day or in relation to regular change of shift.

- (b) A shift worker for all time worked in excess of eight hours or outside the ordinary working hours prescribed or on a shift other than a rostered shift shall -

if employed on continuous work be paid at the rate of double time; or

if employed on other shift work be paid at the rate of time and one-half for the first two hours and double time thereafter; except in each case where the time is worked - by arrangement between the employees themselves; for the purpose of effecting the customary rotation of shifts; or

is due to the fact that the relief employee does not come on duty at the proper time.

Provided that when not less than eight hours' notice has been given to the employer by the relief that he or she will be absent from work and the employee who should be relieved is not relieved, the unrelieved employee shall be paid at the rate of time and one-half for the first four hours on duty after having finished his or her ordinary shift and a rate of double time thereafter, provided that where the employee is required to continue to work on his or her rostered day off the rate shall be double time.

In all such calculations shift premiums shall be excluded.

- (c) In calculating overtime each shift shall stand alone.

Provided that where the adoption of any particular roster results in the regular working of a shift at overtime rates, the overtime in question may be regarded as having accrued in equal amount during the weeks of the shift cycle, and, if requested by a majority of the shift workers concerned, be paid accordingly instead of being paid in the pay week in which it is worked.

- (x) Sundays and Holidays - A shift worker on continuous shift for work done on a rostered shift, the major portion of which is performed on a Sunday, shall be paid at the rate of double time. A shift worker on continuous shift for work done on a rostered shift the major portion of which is performed on a holiday, shall be paid at the rate of double time with a minimum of four hours. A shift worker on other than continuous work for all time worked on a Sunday or holiday shall be paid double time and one-half. Where shifts commence between 11.00 p.m. and midnight on a Sunday or holiday the time worked before midnight shall not entitle the employee to the Sunday or holiday rate: Provided that the time worked by an employee 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 time worked on such Sunday or holiday.
- (xi)
- (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 the purposes of subclause (b) 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.
- (xii) Daylight Saving - Notwithstanding anything contained elsewhere in this award, where by reason of the legislation of the State Government, summer time is prescribed as being an advance of the standard time of the State the length of any shift:
- (a) commencing before the time prescribed by the relevant legislation for the commencement of summer time period: and
- (b) commencing on or before the time prescribed by such legislation for the termination of a summer time period,
- shall be deemed to be the number of hours represented by the difference between the time recorded by the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the State legislation.
- In this subclause the expression "standard time" and "summer time" shall bear the same meaning as are prescribed in the legislation.
- (xiii)
- (a) 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) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of his or her work on the next day that the employee has not had at least 10 consecutive hours off duty between those times, shall, subject to subclause (b), be released after completion of the overtime until the employee has had 10

consecutive hours off duty without loss of pay for ordinary working time occurring during that time off duty.

- (b) If on the instructions of his or her employer such an employee resumes or continues work without having had 10 consecutive hours off duty the employee shall be paid at the rate of double time for all time so worked until the employee is released from duty and the employee shall then be entitled to be absent from work without loss of pay for ordinary working time until the employee has had 10 consecutive hours off duty.
- (c) The provisions of subclause (b) shall apply in the case of shift workers who change from one shift to another as if eight hours were substituted for ten hours when overtime is worked for the purposes of changing shift rosters, or where a shift worker does not report for duty, or where a shift is worked by arrangement between employees for their own personal benefit.

22. Overtime (Day Workers)

- (i) Notwithstanding anything elsewhere contained in this award, all overtime on any day other than a Sunday or a public holiday shall be paid for at the rate of one and one-half times the ordinary rate for the first two hours and two times the ordinary rate thereafter.
- (ii) In calculating overtime each day shall stand alone.
- (iii)
 - (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 the purposes of subclause (b) 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.
- (iv) An employee required to work overtime on a Saturday, Sunday or public holiday shall be afforded at least four hours' work or paid for four hours at the appropriate rate except where such overtime is continuous with overtime commenced on the previous day.
- (v) 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) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of his or her work on the next day that the employee has not had at least 10 consecutive hours off duty between those times, shall, subject to subclause (vi), be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during that time off duty.
- (vi) If on the instruction of his or her employer such an employee resumes or continues work without having had 10 consecutive hours off duty the employee shall be paid at the rate of double time for all time so worked until the employee is released from duty and the employee shall then be entitled to be absent

from work without loss of pay for ordinary working time until the employee has had 10 consecutive hours off duty.

Time Off in Lieu of Overtime

- (vii) Time off in lieu of overtime may be taken by mutual agreement between the employer and employee. Such time off in lieu shall be calculated at the appropriate overtime rate payable for the overtime worked.
- (viii) Time off in lieu may be taken in either of the following ways:
 - (a) By the full overtime rate being accrued as time off in lieu.
 - (b) By overtime worked being paid at the employee's ordinary rate of pay with the penalty component of the overtime worked being taken as time off in lieu.
- (ix) Any accumulated time off in lieu must be paid out upon termination at the employee's appropriate rate of pay on the date of termination.
- (x) Accumulation of time off in lieu shall be to a maximum 1 day per fortnight.
- (xi) This clause shall not be used to discriminate against particular employees with respect to the allocation of overtime to those employees at a particular enterprise or within a section of an enterprise.

23. Public Holidays

- (i) An employee on weekly hiring shall be entitled without loss of pay, to public holidays as follows: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight-Hour Day or Labour Day, Christmas Day, Boxing Day, or such other day as is generally observed in a locality in addition to, or as a substitute for, any of the said days respectively.
- (ii) In addition to the public holidays prescribed in subclause (i) of this clause, one additional public holiday shall apply to an employee on weekly hire on a date to be determined from year to year by agreement between an employer and the employees, or individual employee, of the employer.
- (iii) Where Anzac Day falls on a Saturday or Sunday it shall be observed on the following Monday.
 - (a) Where Christmas Day falls on a Saturday or on a Sunday, the following Monday and Tuesday shall be observed as Christmas Day and Boxing Day respectively.
 - (b) Where Boxing Day falls on a Saturday, the following Monday shall be observed as Boxing Day.
 - (c) Where New Year's Day falls on a Saturday or on a Sunday, the following Monday shall be observed as New Year's Day; and the said Saturday and/or Sunday shall be deemed not to be holidays.
- (iv) By agreement between any employer and the employees, other days may be substituted for the said days or any of them as to such employer's undertaking.
- (v) In addition, employees on weekly hire shall be entitled to a day agreed between the union and the employees as union picnic day without the loss of pay.
- (vi) Where a public holiday prescribed by this clause is observed on the rostered day off of a continuous shift worker (as defined), the employee shall be paid for eight hours at the ordinary time rate or, by agreement between the employer and the employee, be granted a day off in lieu or have an additional day added to the annual leave in respect of such holiday.

24. Annual Leave

- (i) All full-time weekly hired employees shall on completion of 48 weeks of work of forty hours each with the employer, be entitled to four weeks' leave paid for at the ordinary time rate of pay as prescribed by this award for the employee's classification.
- (ii) Subject to subclause (iii), of this clause, annual leave shall be given and taken at such time and in such periods as are required by the employer provided that other than by mutual consent annual leave shall be given in one continuous period of four weeks or not more than two periods one of which shall be not less than two weeks in duration.
- (iii) Where the employer intends temporarily to close (or reduce to a nucleus) the establishment or a section thereof for the purposes (inter alia) of allowing annual leave to the employees concerned or a majority of them the employer may give in writing to such employees one month's notice (or in the case of any employees engaged after giving such notice, notice on the date of the employee's engagement) that the employer elects to apply the provisions of this subclause, and thereupon:
 - (a) any such employee who at the date of closing is entitled to annual leave shall be given such annual leave commencing on and from the date of closing and, in addition, shall be paid holiday pay and proportionate annual leave loading for any period of employment after the accrual of his or her right to the annual leave and up to but excluding the date of closing;
 - (b) any such employee who at the date of closing is not entitled to annual leave shall be given leave without pay as on and from the date of closing and shall be paid holiday pay and proportionate annual leave loading for that period of employment since the date of commencement thereof or the accrual of his or her last annual holiday (whichever is the later) and up to but excluding the date of closing, together with pay for any public holiday during such leave for which the employee is entitled to payment; and
 - (c) the next annual leave qualifying period of employment for every such employee shall commence as on and from the date of closing.
- (iv) In subclause (iii), of this clause, "date of closing" in relation to each employee means the first day of annual leave or unpaid leave pursuant to subclause (iii).
- (v) Annual leave shall be in addition to public holidays provided for in this award.
- (vi) An employee whose services are terminated shall be entitled to all accrued leave or payment in lieu thereof. In respect of the time worked since the employee's last leave entitlement date leave shall be calculated in the proportion which that period bears to a calendar year.
- (vii) A shift worker permanently engaged on continuous rostered shifts or engaged on permanent night shifts for the whole of the year in respect of which leave is granted shall be entitled to five weeks' leave in lieu of four as provided in subclause (i), of this clause, and pro-rata for any period less than one year.

25. Annual Leave Loading

A weekly hired employee who is entitled to annual leave or payment in lieu thereof, in accordance with the provisions of this award shall, at the time of taking such annual leave, be entitled to an additional payment in respect of the period of employment to which the annual leave is referable calculated on the basis of three and one-third hours' ordinary pay for each month of service. This clause shall not apply to payment made in lieu of annual leave accrued due to summary dismissal of an employee.

26. Sick Leave

- (i) A proportionate deduction shall be made from a weekly hired employee's wages for all time lost through absence from work without leave of the employer excepting on account of illness or accident.

- (ii)
 - (a) When a weekly hired employee is absent from work owing to illness or accident the employer may require the employee to produce a doctor's certificate or other satisfactory proof of illness.
 - (b) A statutory declaration by the employee containing sufficient detail to enable the employer to assess whether a claim for payment under this clause is established shall be regarded as prima facie satisfactory proof in cases of up to two days' absence.
 - (c) An employee shall notify the employer as to his or her inability to attend for work on account of illness or injury. This notification shall, whenever practicable, be within twenty-four hours of the commencement of the absence.
- (iii) The employer shall not be liable to pay a weekly hired employee for absence due to illness unless such employee has been employed continuously for three calendar months: Provided that once an employee has completed three continuous months of service he or she shall be entitled, subject to this clause, to sick leave not exceeding two and one-half days occurring during such three months' period.
- (iv) Save for accumulated sick leave and subject to this clause the employer shall not be liable to pay a weekly hired employee for absence due to illness for more than eight days in each year.

Provided that:

- (a) A weekly hired employee in the employ of the employer as at 25 February 1980 shall, subject to the provisions contained in (iii), of this clause, be entitled to two additional days leave without loss of pay, during his or her current sick leave year.
- (b) A weekly hired employee who commences employment with the employer after 25 February 1980 shall during the first year of employment and subject to the provisions contained in subclause (iii), of this clause, be entitled to be paid for absence due to illness at the rate of 6.66 hours for each completed month of service.
- (c) Thereafter a weekly hired employee shall be entitled to be paid for absence due to illness for 10 days in each year.
- (d) A weekly hired employee who has been employed continuously by the same employer may accumulate any unclaimed sick leave credits.
- (v) The employer shall not be liable for sick pay to any employee whose illness is due to an injury covered by workers' compensation legislation.
- (vi) "Year" in this clause means the year of anniversary of service of the employee.
- (vii) Payment of sick leave shall be at the employee's appropriate hourly rate.
- (viii) Where as a result of an injury received in the course of employment, an employee is required to attend at a hospital, medical clinic, industrial nurse, or physiotherapist and such attendance is not during any period to which workers' compensation payments or accident pay applies the employee shall be paid for such period of absence at the appropriate hourly rate with a maximum of four hours.

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 26, 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 37, 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 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 employer's 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 22, Overtime, relating to Time Off in Lieu of 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 -
- (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.

28. Attendance at Repatriation Centres

Employees being ex-servicemen or ex-servicewomen shall be allowed as time worked, lost time incurred whilst attending repatriation centres for medical examination and/or treatment providing that:

- (a) Such lost time does not exceed eight hours on any one occasion.
- (b) Payment shall be limited to the difference between the appropriate hourly rate for the period and any payment received from any other source in respect of such attendance.
- (c) The employee produces satisfactory evidence of the requirement to attend and proof of attendance.

29. Accident Pay

- (i) An employer shall subject to this clause pay or cause to be paid and an employee shall be entitled to receive accident pay in accordance with the provisions of this award when totally or partially incapacitated whether permanently or temporarily by injury. "Injury" and "incapacity" shall have the same meaning as in the *Workers' Compensation Act 1987*.
- (ii) Accident pay shall not be payable in respect of accident or injury occurring within the first five working days of an employee's service nor subject to 29 (iv) hereof for the first five working days following the occurrence of an accident or injury to the employee. The period of accident pay for any one injury shall be limited to a total of thirty-nine weeks' payment in respect of any one accident or injury.
- (iii) The weekly amount of accident pay to which an employee shall be entitled shall be not more than the difference between the employee's ordinary rate (excluding shift premiums) and the total of any sums paid to him or her under the *Workers' Compensation Act 1987*, and any sums earned by him or her in the same employment or otherwise or that he or she is able to earn from suitable employment during such period.
- (iv) Where as the result of an injury to which this clause applies an employee is absent for more than ten working days, the employee shall be entitled to accident pay at the appropriate rate for the first five working days of such absence but shall not be entitled to a total of more than thirty-nine weeks' payment.

- (v) Accident pay will not be payable in respect of any period of paid annual leave, long service leave, sick leave or for any paid public holiday.
- (vi) On an injury occurring the employee shall give notice thereof in writing together with all necessary details to the employer.
- (vii) Nothing herein contained shall restrict or remove the employer's right to require the employee to submit to medical examinations pursuant to the *Workers' Compensation Act 1987*, and failure to so submit to examination shall entitle the employer to cancel or suspend payments of accident pay as if such payments were payments under such Act.
- (viii) Where a medical Referee or Board within the meaning of the *Workers' Compensation Act 1987*, certifies that the employee is fit for his or her employment or for specified employment which is made available to or is available to the employee and the employee refuses or fails to resume or perform such employment then all payments of accident pay shall immediately cease and determine from the date of such refusal or failure.
- (ix) Where accident pay is payable for part of a week only such payments shall be pro rata to a full week's entitlement.
- (x) When there is a redemption of weekly payments by the payment under the *Workers' Compensation Act 1987*, of a lump sum, there shall be no further liability for Accident Pay under this clause in respect of an injury (for which weekly payments have been recovered) from the date of the said redemption.
- (xi) Notwithstanding subclause 29 (xii) hereof, any employee who is receiving or who has received Accident Pay in respect of an injury shall furnish all relevant information to the employer concerning any action he or she may institute or any claim he or she may make for damages in respect of that injury and shall if required authorize such employer to obtain information as to the progress of such action or claim from the employee's solicitors and shall if required provide an irrevocable authority to the employer entitling the said employer to a charge upon any money or moneys payable pursuant to any subsequent verdict or settlement.
- (xii) Where the employee obtains a verdict for damages against the employer or is paid an amount in settlement of any claim for damages that he or she has made against the employer in respect of any injury for which he or she has received compensation under the *Workers' Compensation Act 1987*, and accident pay, such employee shall not be entitled to any further accident pay within the meaning of this clause and shall be immediately liable upon payment to him or her or his or her agent of such verdict for damages or amount in settlement of a claim therefore to repay to the employer the amount of accident pay which the employer has paid in respect of the employee's injury under this clause and hereby irrevocably authorises the employer to retain from such verdict or amounts in settlement such accident pay and apply it the employee's own use.
- (xiii) Where the injury for which accident pay is paid was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof and the employee obtains a verdict for damages or is paid an amount of money in settlement of any claim for damages made against that other person, such employee shall immediately upon payment of such verdict or amount of money to him or her or his or her agent, repay to the employer the amount of accident pay which the employer has paid in respect of the employee's injury and the employee shall not be entitled to any further accident pay and shall upon institution of any such claim deliver to the employer an irrevocable authority addressed to such other person, to pay to the employer out of such verdict or settlement the amount of accident pay.
- (xiv) 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 his or her behalf authorise the employer to obtain any information required by such employer concerning such injury or compensation payable in respect thereof from the insurance company that is liable to pay compensation to such employee pursuant to the *Workers' Compensation Act 1987*.

- (xv) Nothing in this clause shall require the employer to insure against their liability for accident pay nor shall it affect the right of the employer to terminate the employment of an employee.
- (xvi) An employee upon being dismissed by the employer whilst absent on workers' compensation, shall continue to receive accident pay as prescribed herein up to a maximum of fifty-two weeks, provided that the employee continues to receive compensation payments as prescribed by the *Workers' Compensation Act 1987*.
- (xvii) In the event of the rate of compensation payable pursuant to the *Workers' Compensation Act 1987*, being varied at any time after the date hereof, such variation shall not operate so as to increase the amount of accident pay payable hereunder above the amount that would have been payable if such rates of compensation had not been varied.
- (xviii) If the compensation payable to an employee pursuant to the *Workers' Compensation Act 1987*, is reduced by any amount by reasons of the fact that such employee is entitled to receive accident pay or is in receipt of accident pay then in calculating the amount of accident pay payable to such employee the compensation payable to such employee shall be deemed to be the compensation that would have been received if there had been no such reduction in compensation payments.
- (xix) The right to be paid accident pay shall terminate on the death of an employee entitled thereto and no sum shall be payable to the legal personal representative, next-of-kin, assignee or dependant of the deceased employee, with the exception of accident pay up to the time of death.

30. Fire Protection

- (i) Fire Squad - Wherever it is practicable to do so, a Fire Fighting Squad shall be formed at each factory site.
- (ii) Site Safety - No employee shall smoke or have in his or her possession, custody or control, matches, lighters or igniters in any area of the employer's premises not designated a safe area by the employer.

31. Special Leave

- (i) Jury Service:
 - (a) A weekly hired employee required to attend for jury service during ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount of wage that he or she would have received in respect of the ordinary time which the employee would have worked had he or she not been on jury service.
 - (b) An employee shall notify the employer as soon as possible of the date upon which he or she 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.
 - (c) An employee called up and subsequently not required for jury service shall report for work as soon as practicable after being informed that he or she is not so required.
- (ii) Attendance at Blood Bank - An employee shall not suffer any deduction in pay where during normal working hours he or she attends the blood bank and donates blood. It shall be the responsibility of the employee to arrange a mutually convenient time with the employer.

32. 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 prescribed in (iii) below.

- (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 for the purposes of Clause 27, Personal/Carer's Leave of this award 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 Clause 27, Personal/Carer's leave of this Award. In determining such a request the employer will consider 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 32(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.

33. Industrial Clothing

- (i) The employer shall provide for the use of employees on site the following:
 - (a) Clean overalls weekly to each employee or more frequently if necessary.
 - (b) As from the date of this award, one pair of safety boots or shoes, upon request, to each employee whose work necessitates their use. Such boots or shoes will only be replaced once every twelve months unless in the opinion of the employer they have worn out by usage on site.
 - (c) Gloves, rubber boots and protective aprons, respirators and protective goggles upon request to each employee whose work necessitates their use.
 - (d) Wet weather clothing for yardmen when working in the rain.
 - (e) A cap for employees regularly working with dry pigments.
- (ii) All industrial clothing so provided shall remain the property of the employer.
- (iii) Prescription Safety Glasses - The employer shall provide prescription safety glasses where the employee is required to carry out any function or work in any area where the wearing of safety glasses is a standard practice; and where such an employee normally wears spectacles prescribed by a medical practitioner or other qualified person.

34. Amenities

Employers shall provide for -

- (a) Hot and cold showers and hand basins to be made available for all employees.

- (b) Nail brushes, towels and soap shall be supplied weekly to all employees by the employer.
- (c) Suitable lavatory and changing room facilities.
- (d) Lockers for protection of clothing.
- (e) Lunch rooms.
- (f) sufficient supply of boiling water.
- (g) Suitable first-aid kits.
- (h) A notice board in the lunch room.

35. Right of Entry of Union Officials

- (i) For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter an employer's premises during normal working hours at a mutually convenient prearranged time on the following conditions:
 - (a) That the representative produces his or her authority to the manager of such premises or such other person as may be appointed by the employer operating such premises.
 - (b) That the representative interviews employees only at a place nominated by the employer.
 - (c) That the representative informs the employer of the nature of the business to be discussed.
 - (d) That if an employer alleges that a representative is unduly interfering with the operation of the premises or is creating dissatisfaction amongst the employees or is offensive in his or her methods or is committing a breach of any of the previous conditions, such employer may refuse the right of entry but the representative shall have the right to bring such refusal before the Commission.
- (ii) A union representative shall be a duly accredited representative of the union if such representative be the holder for the time being of a certificate signed by the branch secretary of that organisation and bearing the seal of that organisation.

36. Inspections

Subject to prior consent having been given, an employer shall have the right to inspect the contents of bags, containers, materials or vehicles being brought on to or about to be taken off a site.

37. Disputes Resolution

- (i) Where an employer or the union is faced with a dispute or a situation likely to lead to a dispute, he/she or it (as the case may be) shall, without prejudice to his/her or its rights and duties under the Act, immediately advise the union or the employer, as the case may be, and the parties shall forthwith confer.
- (ii) All disputes (other than a dispute on a genuine safety issue) shall be resolved without interruption to normal work.
- (iii) Disputes shall be dealt with in the following manner as swiftly as circumstances permit:
 - (a) Discussions shall firstly be between the union delegate and the nominated company representative.
 - (b) If unresolved, discussions shall then be between the State Branch of the union and the company concerned.

- (c) If unresolved, discussions shall then be between the Federal Office of the union and the employer organisation representing the company.
- (d) If still then unresolved, any party may refer the matter to the Industrial Commission of New South Wales.
- (iv) Where a dispute arises due to a summary termination, then, provided there is no ban or work stoppage at the site, the employer concerned may arrest the summary termination and place the employee involved under suspension while the circumstances are discussed between the employer and the union. An employee so suspended shall not attend the work site but shall be entitled to his/her ordinary rate of pay for up to 10 working days or such earlier date as the employer and the union reach agreement on the matter.
- (v) Notwithstanding the above, an employer and employees may agree, at the level of enterprise, to deal with grievances in an alternative manner (in whole or in part).

38. Industry Meetings

- (i) Meetings of Employees - Where the union calls a meeting of all employees in the industry to discuss a change of significance to this award and such meeting is to be during ordinary working hours, then employees attending the Meeting shall do so without loss of ordinary pay subject to the following:
 - (a) The time and date of the meeting shall be discussed between the union and the employer.
 - (b) The meeting shall be held between Monday and Friday, inclusive.
 - (c) Where such a meeting is held in the forenoon employees shall resume normal work immediately after the meeting and not later than normal resumption time after the midday meal period.
 - (d) An employer shall not be liable to pay an employee for more than two such meetings in any one year, nor for more than three hours ordinary time in respect of each meeting.
 - (e) An employee shall establish to the satisfaction of the employer that he or she attended the meeting. For the purposes of this subclause an attendance sheet or record with the employee's name clearly printed and signed by the employee and stamped and dated by the union will be satisfactory compliance.
- (ii) Delegates' Meetings - The delegate representing members of the union at the site of an employer shall be entitled to the benefit of subclause (i), of this clause, subject to the same provisos, save that such delegate's entitlement shall be in respect of four meetings per year in lieu of two as set out in subclause (i) (d), of this clause.
- (iii) Commission Dispute Hearings - Where a dispute under this award has been referred to the Commission and the employer concerned agrees it will assist in obtaining a resolution that the site delegate attend proceedings at the Commission, then such delegate will not incur loss in ordinary time pay in respect of such attendance.

39. Travelling and Fares

- (i) An employee temporarily transferred to a work site located away from the normal work site, which involves the employee having to pay a higher fare in proceeding to and from his or her home, shall be reimbursed such excess fare. Provided that where, by agreement between an employer and an employee so transferred, the employee use his or her own vehicle, such employee shall in lieu of excess fares be entitled to an amount per kilometre as set out in Item 6 of Table 3 - Allowances, of Part B, Monetary Rates, in respect of each kilometre necessarily travelled in excess of the distance to and from his or her home and the normal work site.
- (ii) An employee required to travel from the normal work site to another work site shall be reimbursed fares, or where, by agreement, the employee uses his or her own vehicle, such employee shall be entitled to an

amount as set out in Item 7 of Table 3 for each kilometre necessarily travelled to and from that other site.

40. Trade Union Training

Employees nominated by the union to attend during ordinary working hours the recognised trade union training centre do so without loss of ordinary pay subject to the following:

- (a) That the employer concerned receive written notice of nomination from the union, setting out the times, dates, content and venue of the course.
- (b) That not more than one person at a time from any one site shall be nominated and not more than 15 days shall be approved by a company.
- (c) Attendance at an approved course or number of courses shall be for periods agreed between the union and the employer provided that attendance at such approved course or courses does not exceed 15 days in the aggregate per year.
- (d) That the employer is satisfied that the course is of such a nature as to be calculated to assist in reducing labour disputes and in advancing industrial relations in the industry.

41. Job Delegates

- (i) An employee appointed job delegate in the shop or department in which he or she is employed shall upon notification thereof to the employer, be recognised as the accredited representative to the employer, of the union to which he or she belongs. An accredited job delegate shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees whom he or she represents.
- (ii) Subject to the prior approval of the employer, an accredited job delegate shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited union official of the union to which he or she belongs on legitimate union business.

42. Redundancy

- (i) Application
 - (a) This clause shall apply in respect of full-time and part-time employees 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.
 - (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 step 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) Employer's Duty to Notify

- (1) 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.
- (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 alternation 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 alternation 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) 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.
- (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 to be done by anyone pursuant to paragraph (a) of subclause (ii), 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.
- (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 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 termination, 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 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 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 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:

(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 purpose 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 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 subparagraph (1) of paragraph (a) of subclause (ii), 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 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 of New South Wales, 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 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

- (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) 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 (a) will have on the employer.
- (c) 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.
 - (a) if the employer obtains acceptable alternative employment for an employee.
- (vi) Procedures Relating to Grievances - Grievances relating to individual employees will be dealt with in accordance with clause 37, Disputes Resolution.

43. 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).

44. 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.
- (vi) NOTES
- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation. Section 56(d) of the *Anti-Discrimination Act 1977* provides:

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

45. Superannuation

- (i) Definitions: "P.M.I.S.S." means Paint Manufacturing Industry Superannuation Scheme.
- (ii) Eligibility of Employees: An employee shall be eligible for membership of P.M.I.S.S. on the first day of the month following the completion of one calendar month's employment.
- (iii) Eligibility of Employers: Employers bound by this award shall become parties to P.M.I.S.S. upon the acceptance by the Trustees of P.M.I.S.S. of a Deed of Adherence to that Scheme, duly signed by the employer and the Trustee. It is a condition of this clause that the terms of P.M.I.S.S. be in accordance with the Commonwealth's Operational Standards for Occupational Superannuation Funds.
- (iv) Contributions:
- (a) On behalf of each full-time employee member of P.M.I.S.S. each participating employer shall pay to the Trustee of the respective Scheme contributions at the rate of \$15.50 per week, and on behalf of each part time employee member of P.M.I.S.S. each participating employer shall pay to the Trustee of the Scheme contributions at the rate of \$3.10 per day employed or part thereof.
- (b) Contributions shall be made in respect of each completed week of service for which an employee is a member of P.M.I.S.S.
- (c) Upon an employee being admitted as a member of P.M.I.S.S. the employer shall pay to the Trustee of the scheme appropriate contributions for the previous calendar month.
- (d) A pro rata deduction shall be made from the weekly contribution for each complete day an employee is absent from work without authorisation.

46. Basis of Award and Leave Reserved to Apply

In order to maintain uniformity in the industry, this award is based on the Australian Paint Industry Award 2000.

Leave is reserved to the parties to apply at any time for a variation of this award in order to make the rates and conditions of work uniform with the said award of the Industrial Relations Commission so that the uniformity in the industry dealt with by this award may be maintained.

47. 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 percent 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:
 - (i) 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 3 December 2003;
 - (ii) In the case of employers who do not fall with sub-paragraph (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 3 March 2004;
 - (iii) For all other employers, from the beginning of the first pay period to commence on or after 3 June 2004.

48. Area, Incidence and Duration

This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Paint and Varnish Makers, &c. (State) Award published 2nd November 2001 (329 I.G. 131), 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 5th February 2008.

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

It shall apply to all classes of persons provided for herein within the jurisdiction of the Paint Industry (State) Industrial Committee.

Paint, Varnish Makers, &c. (State) Industrial Committee Industries and Callings

Makers of paint, varnish, lacquer and lacquer thinners, dry colours, white lead, red lead, and zinc white, and colour card and slat makers employed in connection therewith, lead corrodors, mill hand and assistants and laboratory attendants, laboratory assistants and laboratory testers employed in connection with the manufacture of paint and varnish in the State excluding the County of Yancowinna;

Excepting -

Carters, grooms, stablepersons, yard persons, and drivers of motor and other power-propelled vehicles; Engine drivers and firepersons, greasers, trimmers, cleaners, and pumpers engaged in or about the driving of engines, electrical and oil-driven cranes (including mobile cranes), winch and motor drivers; Storemen and Packers;

Excepting also employees of -

The Council of the City of Sydney;

And excepting further -

All employees within the Jurisdiction of the Wire Netting Makers, &c.

(Lysaghts) Conciliation Committee.

PART B

MONETARY RATES

Table 1 - Wage Rates

Classification Grade	Former rate of pay per week \$	SWC - 2007 \$	Total rate per week \$
1	554.20	20.00	574.20
2	566.20	20.00	586.20
3	577.70	20.00	597.70
4	598.60	20.00	618.60
5	626.30	20.00	646.30

Table 2 - Wage Rates - Laboratory Employees

Classification Grade	Former rate of pay per week \$	SWC - 2007 \$	Total rate per week \$
1	554.20	20.00	574.20
1A	566.20	20.00	586.20
2A	577.70	20.00	597.70
2B	639.90	20.00	659.90
2C	658.80	20.00	678.80
3	679.60	20.00	699.60
4	700.50	20.00	720.50
5	742.20	20.00	762.20
6	783.90	20.00	803.90
7	804.80	20.00	824.80

Table 3 - Allowances

Item No.	Clause No.	Brief Description	Amount (\$)
1	5(i)(a)	Leading Hand: 1-10 employees	30.60
2	5(i)(b)	Leading Hand: 11 or more employees	43.42
3	5(ii)	Storeperson Working Singly	16.38
4	8(ii)	First Aid Allowance	15.67
5	17	Meal Allowance	12.53
6	39(i)	Excess fares - transfer	0.63 km
7	39(ii)	Excess fares normal work site	0.63 km

E. A. R. BISHOP, Commissioner

Printed by the authority of the Industrial Registrar.

PLUMBERS AND GASFITTERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The New South Wales Plumbers and Gasfitters Employees' Union, Industrial Organisation of Employees.

(No. IRC 367 of 2008)

Before Commissioner Ritchie

2 April 2008

VARIATION

1. Delete paragraph (e) of subclause 6.2 of clause 6, Wages, of the award published 25 February 2000 (313 I.G. 709) and insert in lieu thereof the following:

The rates of pay in this award include the adjustments payable under the State Wage Case of June 2007. 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.
2. Delete Part B, Monetary Rates, and insert in lieu thereof the following:

PART B**MONETARY RATES****Table 1 - Rates of Pay**

- (i) Wages - effective first full pay period on or after 25 March 2008

Item No.	Clause No.	Classification	Amount \$
1	6.2.(a)(i)	Journeyperson Plumber Base Weekly Rate	369.10
	6.2.(a)(iii)	Arbitrated Safety Net Adjustments Hourly Rate	199.00 p/w 18.91 p/h
2	6.2(c)(i)	Ships Plumber Base Weekly Rate	369.10
	6.2(c)(iii)	Arbitrated Safety Net Adjustments Hourly Rate	199.00 18.60

- (ii) Wages Apprentices

Indentured Apprentices - For apprentices employed by employers bound by this award, other than those employed ship's plumbing, the following wage rates shall apply:

Years of Service	Former Rate per week \$	Industry Allowance \$	Special Allowance \$	SWC 2007 \$	Total per week \$
Building Industry					
1st Year	202.60	23.40	17.10	8.11	251.01
2nd Year	296.10	23.40	25.30	11.86	356.66
3rd Year	390.00	23.40	32.50	15.60	461.50
4th Year	458.70	23.40	38.70	18.30	539.10

All Other Apprentices					
1st Year	202.60			8.11	210.71
2nd Year	296.10			11.86	307.96
3rd Year	390.00			15.60	405.60
4th Year	458.70			18.30	477.00

Trainee Apprentices

Years of Service	Former Rate per week \$	Industry Allowance \$	Special Allowance \$	SWC 2007 \$	Total per week \$
Building Industry					
1st Year	228.80	23.40	18.40	9.15	279.75
2nd Year	332.80	23.40	27.90	13.31	397.41
3rd Year	430.50	23.40	35.30	17.22	506.42
4th Year	484.30	23.40	43.10	19.37	570.17
All Other Apprentices					
1st Year	228.80			9.15	237.95
2nd Year	332.80			13.31	346.11
3rd Year	430.50			17.22	447.72
4th Year	484.30			19.37	503.67

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Current Amount	SWC 2007 Adjustment effective from FFPP 2/4/2008
1	6(2)(a)(i), (ii),(iii) 6(2)(b)	Journeyman Plumber (Other than Ship's Plumber) - Industry Allowance Tool Allowance Supplementary Payment Special Allowance Registration Allowance Amount deducted from hourly rate of journeyman plumber for Drainer	22.50 per week 22.50 per week 52.10 per week 7.70 per week 0.60 per hour 0.05	23.40 per week 23.40 per week 52.10 per week 7.70 per week 0.62 per hour 0.05
2	6(2)(c)(i),(ii), (iii),(iv) 6(2)(d)(iii)(a)	Ship's Plumber - Industry Allowance Tool Allowance Supplementary Payment Special Allowance Registration Allowance Ships Plumbers Apprentice	11.90 per week 22.50 per week 52.10 per week 7.70 per week 0.60 per hour 4.98 per week	12.38 per week 23.40 per week 52.10 per week 7.70 per week 0.62 per hour 5.18 per week
3	7(i)(a)	Plumber's Licence	0.77 per hour	0.80 per hour
4	7(i)(b)	Gasfitter's Licence	0.77 per hour	0.80 per hour
5	7(i)(c)	Drainer's Licence	0.67 per hour	0.70 per hour
6	7(i)(d)	Plumber's and Gasfitter's Licence	1.04 per hour	1.08 per hour
7	7(i)(e)	Plumber's and Drainer's Licence	1.04 per hour	1.08 per hour
8	7(i)(f)	Gasfitter's and drainer's Licence	1.04 per hour	1.08 per hour
9	7(i)(g)	Plumber's gasfitter's and Drainer's Licence	1.43 per hour	1.49 per hour
10	7(ii)	Licensed Drainer	0.67 per hour	0.70 per hour
11	7(iii)(a)	Lead Burner	0.68 per hour	0.71 per hour
12	7(iii)(b)	Lead Burner in Chemical Works	0.94 per hour	0.98 per hour
13	7(iii)(c)(1)	Oxyacetylene or Electric Welding Certificate Minimum Payment	0.48 per hour 3.37 per day	0.50 per hour 3.50 per day

14	7(iii)(c)(2)	Certificate Holder performing welding to AS4041-1998 Minimum Minimum Payment	0.70 per hour 5.36 per day	0.73 per hour 5.57 per day
15	7(iii)(d)	Computing quantities or make-up estimates	0.51 per hour	0.53 per hour
17	9	Leading Hands - In charge of up to two employees In charge of three to five employees In charge of six to ten employees In charge of ten or more employees	0.70 per hour 0.83 per hour 1.08 per hour 1.37 per hour	0.73 per hour 0.86 per hour 1.12 per hour 1.42 per hour
18	10	Employed on any chokage or oil chokage etc.	5.77 per day	6.00 per day
19	11(i)	Wet Work	0.51 per hour	0.53 per hour
20	11(ii)	Insulation material	0.63 per hour	0.66 per hour
21	11(iii)	Cold Work	0.51 per hour	0.53 per hour
22	11(iv)	Work on WC,s, urinals, soil or waste pipes where used principally by venereal patients	0.63 per hour	0.66 per hour
23	11(v)	Hot Work between 46 and 54 degrees Celsius exceeding 54 degrees Celsius	0.49 per hour 0.63 per hour	0.51 per hour 0.66 per hour
24	11(vi)	Work with second-hand materials of an unusually dirty or offensive nature	0.51 per hour	0.53 per day
25	11(vii)	Employed inside buildings where chlorine gas and/or hydrogen sulphide gas re-manufactured	0.64 per day	0.67 per day
26	11(viii)	Engaged on electric welding applicable to plumbing	0.12 per hour	0.13 per hour
27	11(ix)	Operator of explosive powered tools	1.21 per day	1.26 per day
28	11(x)(a)	Work in maximum security	1.30 per hour	1.35 per hour
29	11(x)(b)	Work in a geriatric hospital	0.35 per hour	0.36 per hour
30	11(xi)	Roof Repairs Minimum Payment	0.72 per hour 0.72	0.75 per hour 0.75
31	11(xiii)	Employed in mental institutions	0.43 per hour	0.45 per hour
32	11(xiv)	Engaged in tunnel and sewer work and in underground shafts exceeding 3 metres in depth	0.52 per hour	0.54 per hour
33	11(xv)	Engaged on alterations or repairs to boilers, flues, furnaces, retorts and kilns	1.36 per hour	1.41 per hour
34	11(xvi)	Engaged on the construction of chimneys and air shafts where construction exceeded 15 metres in height Additional amount for work above each further 15 metres	0.51 per hour 0.51 per hour	0.53 per hour 0.53 per hour
35	11(xvii)	Employees required to work in a bosun's chair or on a swinging scaffold - First 4 hours For each hour thereafter	3.69 0.76per hour	3.84 0.79 per hour
36	11(xviii)	Work on any structure at a height of more than 12.2 metres	0.51 per hour	0.53 per hour
37	11(xix)	Employees in sanitary works	5.67 per day	5.90 per day
38	11(xx)	Employees in slaughtering yards	0.34 per hour	0.35 per hour
39	11(xxii)(a)	Employees working west and north of and excluding State Highway No 17 etc., up to the Western Division	0.83 per day	0.86 per day
40	11(xxii)(b)	Employees working in the Western Division	1.36 per day	1.41 per day

41	11(xxii)(c)	Employees working in the southern districts	1.36 per day	1.41 per day
42	11(xxiii)	Engaged in cramped position or without sufficient ventilation	0.63 per hour	0.66 per hour
43	11(xxiv)	Employees required to use materials containing asbestos or to work near asbestos	0.63 per hour	0.66 per hour
44	11(xxv)	Towers Allowance Exceeding 15 metres - for all work above metres For work above each further 15 metres	0.51 per hour 0.51 per hour	0.53 per hour 0.53 per hour
45	11(xxvi)(c)	Toxic Substances Employees using Employees working in close proximity	0.63 per hour 0.51 per hour	0.66 per hour 0.53 per hour
46	11(xxvi)(d)	Engaged in asbestos eradication	1.71 per hour	1.78 per hour
47	12(i)	Employees working in ballast tanks, oil tanks and side tanks	0.63 per hour	0.66 per hour
48	12(ii)	Employees working in ship's bilges or under engine room or boiler room flooring	0.46 per hour	0.48 per hour
49	12(iii)	Employees working in and around diesel engines	0.46 per hour	0.48 per hour
50	12(iv)	Employees working in a confined space	0.67 per hour	0.70 per hour
51	12(v)(1)	Employees working inside a hull	0.80 per hour	0.83 per hour
52	12(v)(2)	Employees working in torpedo tube compartments, ballast tanks, oil tanks, below floor plates	1.45 per hour	1.51 per hour
53	12(vi)	Plumber in pipe laundry	1.03 per hour	1.07 per hour
54	13(iii)	Multi-story Allowance - From commencement to 15th floor from 16th to 30th floor from 31st to 45th floor from 46th to 60th floor From 61st floor onwards	0.41 per hour 0.49 per hour 0.76 per hour 0.98 per hour 1.22 per hour	0.43 per hour 0.51 per hour 0.79 per hour 1.02 per hour 1.27 per hour
73	43(ii)	First-aid Allowance	2.17 per day	2.26

3. This variation shall take effect from the first full pay period on or after 2 April 2008.

D. W. RITCHIE, Commissioner.

Printed by the authority of the Industrial Registrar.

POTTERY INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1554 of 2007)

Before Commissioner Bishop

14 March 2008

REVIEWED AWARD

PART A - AWARD

SECTION 1 - APPLICATION AND OPERATION OF AWARD

1.1. Title

This award shall be known as the Pottery Industry (State) Award.

1.2. Arrangement

- 1.1 Title
- 1.2 Arrangement
- 1.3 Anti-discrimination
- 1.4 Area, incidence and duration
 - 1.4.1 Brickmakers, &c. (State) conciliation committee industries and callings
- 1.5 Definitions
 - 1.5.1 Laboratory assistant
 - 1.5.2 Trainee laboratory assistant
 - 1.5.3 Laboratory tester
 - 1.5.4 Laboratory attendant
 - 1.5.5 Large sanitary ware
- 1.6 Section 19 review

SECTION 2 - AWARD FLEXIBILITY

- 2.1 Flexibility of work

SECTION 3 - COMMUNICATION, CONSULTATION, AND DISPUTE RESOLUTION

- 3.1 Consultation
- 3.2 Industrial disputes and grievance procedure

SECTION 4 - EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

- 4.1 Contract of employment
 - 4.1.1 Probationary and full-time employment
 - 4.1.2 Stand-down of employees
 - 4.1.3 Junior employees
- 4.2 Part-time employment
- 4.3 Redundancy
 - 4.3.1 Application
 - 4.3.2 Introduction of change
 - 4.3.3 Redundancy

- 4.3.4 Termination of employment
- 4.3.5 Severance pay
- 4.3.6 Savings clause
- 4.4 Termination of employment
 - 4.4.1 Abandonment of Employment
 - 4.4.2 Misconduct
 - 4.4.3 Termination caused by mechanisation and/or technological change
- 4.5 Re-engagement
- 4.6 Secure Employment
- 4.7 Casual Employment

SECTION 5 - WAGES AND RELATED MATTERS

- 5.1 Classifications
- 5.2 Leading Hand
- 5.3 Wages
- 5.4 Payment of wages
- 5.5 Allowances
 - 5.5.1 Industry allowance
 - 5.5.2 Shift allowances
 - 5.5.3 Dirt money
 - 5.5.4 First aid allowance
- 5.6 Piecework
- 5.7 Penalty rates - weekends and public holidays - shift workers
- 5.8 Mixed functions

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

- 6.1 Hours of duty
 - 6.1.1 Day workers
 - 6.1.2 Shift workers
- 6.2 Overtime & public holiday payments
 - 6.2.1 Overtime rates for employees (other than seven day shift workers)
 - 6.2.2 Overtime rates for seven day shift workers
 - 6.2.3 Overtime meal allowance
 - 6.2.4 Crib time
 - 6.2.5 Rest period after overtime
 - 6.2.6 Recall
 - 6.2.7 Minimum payment
- 6.3 Rest period

SECTION 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

- 7.1 Annual leave
 - 7.1.1 Entitlement to annual leave
 - 7.1.2 Additional annual leave entitlements
 - 7.1.3 Annual leave rates for shift workers
 - 7.1.4 Annual Leave loading
 - 7.1.5 Days added to annual leave
- 7.2 Sick leave
- 7.3 Long service leave
- 7.4 Parental leave
- 7.5 Public holidays
 - 7.5.1 Entitlement to public holidays
 - 7.5.2 Financial Members day
 - 7.5.3 Eligibility for public holidays

- 7.5.4 Shift workers - public holidays
- 7.5.5 Payment of public holidays on termination of employment
- 7.6 Bereavement leave
- 7.7 Personal/Carer's leave
 - 7.7.1 Use of sick leave
 - 7.7.2 Unpaid leave for family purpose
 - 7.7.3 Annual leave
 - 7.7.4 Time off in lieu of payment for overtime
 - 7.7.5 Make-up time
 - 7.7.6 Rostered days off
- 7.8 Jury service

SECTION 8 - OH&S, EQUIPMENT, TOOLS AND AMENITIES

- 8.1 First aid
- 8.2 Attendance at repatriation centres
- 8.3 Protective clothing

SECTION 9 - UNION RELATED MATTERS

- 9.1 Union business
- 9.2 Notice board

PART B - MONETARY RATES AND ALLOWANCES

Table One - Wage Rates

Table Two - Other Rates and Allowances

1.3. Anti-Discrimination

- 1.3.1 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.
- 1.3.2 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.
- 1.3.3 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.
- 1.3.4 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.
- 1.3.5 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."

1.4. Area, Incidence and Duration

It shall apply to all persons in or in connection with the manufacture of pottery, tiles (other than roofing tiles), chinaware and bristolware in the State, excluding the County of Yancowinna, within the jurisdiction of the Brickmakers, &c. (State) Conciliation Committee (section 3).

This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Pottery Industry (State) Award published 1 June 2001 (325 I.G. 87), 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 14 March 2008.

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

1.4.1 Brickmakers, &C. (State) Conciliation Committee Industries and Callings

Section 3. - Tile, other than roofing tile, pottery and chinaware makers and their assistants in the State, excluding the County of Yancowinna; except, in all sections, employees engaged in or about coal mines north of Sydney, in or about coal mines in the South Coast district and at South Maitland Railways Limited; and employees of the Broken Hill Proprietary Company Limited at Newcastle, Australian Wire Industries Pty Ltd at its Newcastle Wiremill and the Council of the City of Sydney.

1.5. Definitions

- 1.5.1 "Laboratory Assistant" means an employee, other than a professional employee or trainee professional employee who is engaged in a laboratory in the performance of work of a routine nature who -
 - (a) holds a Laboratory Assistant's Certificate or Chemistry Certificate issued by a TAFE or other registered training organisation; or
 - (b) is qualified by having passed the final examination as a prerequisite to holding any of the certificates as set out in subclause (a) of this clause; or
 - (c) has passed at least the first two years of a full - time course or the first three years of a part - time course for a degree, professional diploma or other recognised professional qualification.
- 1.5.2 "Trainee Laboratory Assistant" means an employee, other than a trainee professional employee, who is satisfactorily pursuing a course of studies leading to a Laboratory Assistant's qualifications as defined.
- 1.5.3 "Laboratory Tester" means an employee, other than a professional employee, trainee professional employee, laboratory assistant or trainee laboratory assistant, who is engaged in a laboratory in the performance of routine tests by established methods.
- 1.5.4 "Laboratory Attendant" means an employee, other than a professional employee or trainee professional employee, laboratory assistant, trainee laboratory assistant, or laboratory tester, who is engaged in a laboratory and who is not covered by any other industrial agreement or award.
- 1.5.5 "Large Sanitary Ware and articles of similar size" means all ware in excess of 8 kg.

1.6. Section 19 Review

The parties to this award have reviewed the award in accordance with the requirements of s.19 of the *Industrial Relations Act 1996* (NSW). Subject to the requirements of that Act, the next review should occur three years from the date of effect of the award in Clause 1.4.

SECTION TWO - AWARD FLEXIBILITY

2.1. Flexibility of Work

- 2.1.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award, provided that such duties are not designed to promote de-skilling.
- 2.1.2 An employer may direct an employee to carry out such duties and use such equipment as may be required, provided that the employee has been properly trained.
- 2.1.3 Any direction issued by the employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- 2.1.4 If an employer requires any employee to undertake part of the functions of another employee who is not employed under the terms of this award, this shall be permitted at site level following agreement with the employees and unions concerned.

SECTION 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1. Consultation

Each employer shall establish a consultative mechanism and procedures appropriate to its size, structure and needs for consultation and negotiation on matters affecting its efficiency and productivity.

3.2. Industrial Disputes and Grievance Procedure

3.2.1 Disputes Procedure:

- (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 the union for the purpose of each procedure.
- (e) Where the parties fail to resolve the dispute, it is agreed that a dispute notification shall be made to the Industrial Relations Commission of New South Wales, pursuant to section s.130 of the *Industrial Relations Act 1996*, for the express purpose of ensuring that all avenues of conciliation and mediation are fully explored.

3.2.2 Grievance procedure:

- (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) 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 the union.

SECTION 4 - EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

4.1. Contract of Employment

4.1.1 Probationary and full time employment.

Employment during the first three months shall be probationary with either party able to terminate on one day's notice. Thereafter employment will be weekly, provided that an employee who has previously served with the employer for a continuous period of three months and is re-employed within twelve months by that Company shall be engaged by the week.

4.1.2 Stand down of employees

- (a) An employer shall not be required to pay for any time an employee cannot be employed usefully because of any strike or through any breakdown in machinery or stoppage of work through any cause for which the employer reasonably cannot be held responsible.
- (b) An employer before standing down an employee in accordance with this subclause must notify the union and state the reasons for standing down the employees concerned.

4.1.3 Junior employees -

- (a) Under 18 years of age -

The minimum weekly rates of pay to be paid to junior employees, under the age of 18 years of age, shall be the following percentage of the weekly rate of pay for an adult General Hand as provided in PART B, TABLE 1, Monetary Payments, of this award.

At 16 years of age and under - 70 per cent

At 17 years of age - 80 per cent

Such weekly rate shall be calculated to the nearest 10 cents, any part of 10 cents in the result not exceeding 5 cents shall be disregarded.

- (b) Eighteen years of age and over -

Junior employees at 18 years of age and over shall be paid the appropriate adult rate for the work to be performed.

- (c) An employer shall have the right to employ junior labour in any class of work, unless it is unreasonable on the grounds that the said work is injurious to the junior or upon some other good ground. Where the employer and the union disagree on the employment of any junior, the dispute shall be referred to the conciliation committee for decision.

- (d) Should a junior be required to do work usually performed by an adult in the industry, the employee shall be paid the full adult rate of pay for the time employed on such work.

4.2. Part Time Employment

- 4.2.1 An employee may be engaged by the week to work on a part-time basis for a constant minimum number of hours each week which shall not be less than nineteen hours.
- 4.2.2 The spread of hours shall be the same as those prescribed in clause 6.1, Hours of Duty, of this award.
- 4.2.3 Any hours worked in excess of forty per week shall be paid at overtime rates.
- 4.2.4 An employee so engaged shall be paid one-fortieth of the weekly rate for the hours worked except as provided for in paragraph 4.2.3 of this clause.
- 4.2.5 All other entitlements such as sick leave, annual leave and long service leave etc, shall be provided on a pro rata basis.

4.3. Redundancy

4.3.1 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.

4.3.2 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.

4.3.3 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 4.3.2 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.

4.3.4 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 4.3.2(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 4.3.2(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 as amended or replaced, the *Annual Holidays Act* 1944, as amended or replaced 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 4.3.2(a)(1) 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.

4.3.5 Severance Pay

(a) Where an employee is to be terminated pursuant to subclause 4.3.4 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 4.3.5(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 4.3.5(a) 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 4.3.5(a) above if the employer obtains acceptable alternative employment for an employee.

4.3.6 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.

4.4. Termination of Employment

4.4.1 Abandonment of employment

- (a) The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer shall be prima facie evidence that the employee has abandoned employment.
- (b) Provided that the employee shall have seven days from the commencement of the unauthorised absence in which to establish that the employee was absent with reasonable cause to the satisfaction of the employer.
- (c) Failure to do so will result in dismissal on the grounds of abandonment with effect from the commencement of the unauthorised absence.

4.4.2 Misconduct

An employer may dismiss any employee without notice for serious misconduct, and in such cases wages shall be paid up to the time of dismissal only.

4.5. Re - Engagement

If through slackness of work employees are dismissed such employees shall, as far as practicable, be given first preference for employment when persons are being re-engaged.

4.6. Secure Employment

4.6.1 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.

4.6.2 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 4.6.2(a), upon receiving notice under paragraph 4.6.2(b) 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 4.6.2(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph 4.6.2(c), discuss and agree upon:
 - (i) whether the employee will convert to full-time or part-time employment; and
 - (ii) 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 (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.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

4.6.3 Occupational Health and Safety

- (a) For the purposes of this subclause, the following definitions shall apply:
 - (i) 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.

- (ii) 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):
 - (i) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
 - (ii) 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;
 - (iii) 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
 - (iv) 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 (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*.

4.6.4 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.

- 4.6.5 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.

4.7. Casual Employment

- 4.7.1 An employer may engage an employee on a casual basis. A casual employee shall be engaged and paid by the hour.
- 4.7.2 For each hour of work, casual employees must be paid at the rate of one thirty-eighth of the weekly wage rate for the classification in which the employee is engaged, plus a loading of twenty-five per cent.
- 4.7.3 The casual loading represents compensation for all incidents of this Award and for annual leave. To avoid doubt, the loading is inclusive of annual holiday payments.

PART 5 - WAGES AND RELATED MATTERS

5.1. Classifications

GROUP ONE

Factory cleaner
 General hand
 Boxer or wrapper
 Hand decorator ornamentor, flower pot maker
 Cistern assembly

Grinder, raw materials, pump or filter press attendant
Glazer (b)
Finisher, tow wheel operator, sandpapering not caster

GROUP TWO

Clay mixer
Glaze mixer
Extruder operator
Grinder or cutter
Glazer (a)
Spray gun operator (b)
Kiln setting
Caster (b)

GROUP THREE

Ceramic drill operator
Caster (a)
Mould maker
Surface grinder
Split tile extruder section
Spray gun operator (a)
Examiner or packer (a) & (b)
Lab tester

GROUP FOUR

Kiln operator
Forklift driver

GROUP FIVE

Block and/or case maker
Front end loader driver (a)
Lab Assistant

GROUP SIX

Front end loader driver (b)
Maintenance operator
Modeller group 2

GROUP SEVEN

Modeller group 1

5.2. Leading Hands

- 5.2.1 A leading hand shall mean an employee who is requested by the employer to assume responsibility for operations of other employees in the department or departments in which they are employed.
- 5.2.2 In addition to the rate prescribed in PART B, Monetary Payments, Table 1, of this award, for the grade of work in which the employee is engaged, a leading hand shall receive the appropriate amount specified in PART B, Table 2 - Other Rates and Allowances, of this award.

5.3. Wages

- 5.3.1 The amounts as set out in Table 1 - Wage Rates, of Part B, Monetary Rates, shall be paid to adult employees for the applicable classifications.
- 5.3.2 State Wage Case Adjustments

The rates of pay in this award include the adjustment payable under the State Wage Case of June 2007. These increases 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.

State Wage Case	Increase \$	Allowances %
May 2000	15.00	3.1
May 2001	13.00	3.0
May 2002	18.00	3.5
May 2003	17.00	3.2
June 2004	19.00	3.5
June 2005	17.00	3.0
June 2006	20.00	4.0
June 2007	20.00	4.0

5.4. Payment of Wages

- 5.4.1 Wages will be paid weekly.
- 5.4.2 Payment will be made by cash, cheque or electronic funds transfer.
- 5.4.3 When an employee's services are terminated the employee will be paid all wages due to the employee at the conclusion of their employment within 6 hours.

5.5. Allowances

5.5.1 Industry Allowance

- (a) In addition to the wage rates prescribed in PART B, Monetary Payments, Table 1 - Wage Rates, an employee shall be paid an industry allowance as shown in PART B, Table 2 - Other Rates and Allowances, of this award, to compensate for all disabilities associated with the manufacture of pottery, tiles (other than roofing tiles), chinaware and Bristolware. This allowance shall form part of the employee's ordinary wage rate for all purposes of the award.
- (b) For the purpose of computing overtime, etc, this allowance shall form part of the employee's ordinary wage rate for the work performed.

5.5.2 Shift allowances

- (a) Shift workers on a rotating day-afternoon, day-night or day-afternoon-night shift system, shall be paid, in addition to their wages, an allowance as shown in PART B, Table 2 - Other Rates and Allowances, of this award.
- (b) Shift workers on a rotating afternoon-night shift system, (i.e., one in which day shift is not worked at least one week in three) or on a permanent afternoon shift shall be paid, in addition to their wages, an allowance as shown in PART B, Table 2 - Other Rates and Allowances, of this award.
- (c) Shift workers on a permanent night shift shall be paid, in addition to their wages, an allowance as shown in PART B, Table 2 - Other Rates and Allowances, of this award.
- (d) The excess payments over ordinary rates prescribed by clause 6.2, Overtime, and clause 5.7, Penalty Rates, of this award, shall be payable in lieu of the shift allowances prescribed by this clause.

5.5.3 Dirt money

- (a) Where an employee covered by this award works on unusually dirty work in direct association with an employee covered by another award, Federal or State, who receives protective clothing and/or payment of "dirt money" in respect of such work the employee shall receive from their employer similar payment and/or clothing in the same manner as is prescribed by the award governing the employment of the employee with whom the employee works.
- (b) Leave is reserved to the parties to refer any claim for dirt money allowance dispute arising under this clause to the conciliation committee for determination.

5.5.4 First aid allowance

Where an employee is appointed to perform first-aid duty such employee shall be paid an allowance as shown in PART B, Table 2 - Other Rates and Allowances, of this award, in addition to his/her ordinary rates.

5.6. Piecework

- 5.6.1 Where piecework is done, the rate to be paid for such work shall be fixed so as to enable the average competent employee to earn not less than 10 per cent above the rates prescribed in PART B, Monetary Payments, Table 1 - Wage Rates, of this award.
- 5.6.2 Piecework shall not be done outside the ordinary hours specified in clause 6.1, Hours of Duty, of this award, except by request of the employer and shall be paid for at the rate of price and a half for the first two hours and double price thereafter.
- 5.6.3 For the purposes of ascertaining the payments proper to be made under this award to pieceworkers in respect of Financial Members' Day or the holidays specified in clause 7.5, Public Holidays, of this award, or for annual leave the appropriate rate of wages provided in PART B, Monetary Payments, Table 1, of this award, without any addition in respect of piecework, shall be taken.

5.7. Penalty Rates - Weekends and Public Holidays - Shift Workers

5.7.1 Shift Workers (other than five-day Shift Workers) -

- (a) Rostered six-day or seven-day shift workers working an ordinary shift of eight hours terminating on a Saturday shall be paid at the rate of time and one-half.
- (b) Rostered six-day or seven-day shift workers working an ordinary shift of eight hours terminating on a Sunday shall be paid at the rate of double time.
- (c) Rostered six-day or seven-day shift workers working an ordinary shift of eight hours terminating on the Financial Members' Day or any of the other holidays specified in clause 7.5, Public Holidays, of this award, shall be paid at the rate of double time and one-half.

5.7.2 Five-day shift workers

Shift workers working on a five-day shift system Monday to Friday, inclusive, working an ordinary shift of eight hours terminating on any of the holidays as specified in clause 7.5, Public Holidays, of this award, shall be paid at the rate of double time and a half.

5.8. Mixed Functions

On any day or shift an employee required to perform work of a higher grade shall be paid the wages attached to such higher grade for the whole of that day or shift, but any employee required to perform the work of any lower grade to that in which the employee is classified shall not suffer any reduction of pay by reason only of the employee working temporarily out of their grade. Such work shall not be considered temporary if it continues for more than one week.

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

6.1. Hours of Duty

6.1.1 Hours of duty - day workers:

- (a) The ordinary working hours of day workers shall be forty per week, to be worked between the hours of 6.00 a.m. and 6.00 p.m., Monday to Friday, inclusive; provided the spread of hours may be altered where the Company and the majority of employees in the plant or section agree.
- (b) The daily ordinary hours shall be up to 12 per day provided that in excess of 8 ordinary hours may be worked only where the company and the majority of employees in the plant or section agree.
- (c) An unpaid break of thirty minutes can be taken no earlier than four hours after commencing work and should be concluded no later than six and one - half hours after commencing work. The actual commencement time of the break shall be arranged by the employer bearing in mind the production needs from time to time. For the purposes of this clause, the ten minute morning rest period shall be deemed to be time worked.
- (d) Each employer shall be entitled to fix the starting and finishing times and meal break times for each plant or section within the spread of hours in paragraph (a) of this clause and alter them, from time to time, either by mutual consent or by giving the employees one week's notice of the change.

6.1.2 Hours of duty - shift workers

- (a) The ordinary working hours of shift workers shall be forty per week and shall not exceed 12 during any consecutive twenty four hours.
- (b) A shift worker's shift shall consist of eight hours inclusive of one paid crib break of thirty minutes taken in accordance with paragraph (c) of subclause 6.1.1, Day Workers, of this clause or some other arrangement which is agreed between the company and the majority of employees affected. Shifts of between eight and twelve hours may be worked where the Company and the majority of employees in the plant or section agree.
- (c) The employer can move an employee to another shift roster by agreement between the employer and the employee or after giving forty eight hours' notice.
- (d) The employer shall be entitled to fix the start and finish times of shift workers and alter them by agreement with the majority of employees in the plant or section or after giving one week's notice, posted up in a convenient place in the plant.
- (e) All the employees are engaged on the basis that they may be required to do shift work either permanently or on a relief basis.
- (f) Any employee required to work beyond the conclusion of their normal shift shall be paid at overtime rates for any additional time.
- (g) An employee who is employed for less than five continuous shifts in any week shall be paid in accordance with PART B, Monetary Payments, Table 1, and clause 6.2, Overtime and Public Holiday Payments, of this award, provided also that where less than a full week is worked due to the action of the employee, the rates payable for the actual time worked shall be ordinary shift rates.

6.2. Overtime & Public Holiday Payments

6.2.1 Overtime rates for employees (other than seven-day shift workers)

- (a) All time worked outside the limitations of ordinary time prescribed by clause 6.1, Hours of Duty, of this award, or in excess of the daily weekly hours of labour, Monday to Friday inclusive, shall be paid for at the rate of time and one-half for the first two hours and double time thereafter.
- (b) All time worked on a Sunday shall be paid for at the rate of double time.
- (c) All time worked on any of the holidays as prescribed in clause 7.5, Public Holidays of this award, shall be paid at the rate of double time and a half.

6.2.2 Overtime rates for seven-day shift workers

The following rates shall be payable to a rostered seven-day shift worker working on any day which normally would be the employee's rostered day off or working in excess of an ordinary rostered shift:

- (a) Monday to Friday - time and one-half for the first two hours and double time thereafter;
- (b) Saturday or Sunday - double time;
- (c) Financial Members' Day or any of the holidays specified in clause 7.5 - double time and one half.
- (d) Overtime is not payable for the purpose of effecting the customary rotation of shifts or where a shift is worked by arrangement between the employees themselves.

6.2.3 Overtime meal allowance

An employee who is required to work overtime in excess of two hours after the employee's usual ceasing time on any day shall, if the employee has not been notified on or before the previous day that the employee will be so required to work, be paid an allowance as shown in PART B, Table 2 - Other Rates and Allowances, for each meal, unless suitable meals are provided by the employer.

6.2.4 Crib Time

Before commencing such overtime or when ordinary hours extend beyond ten for any reason, then an additional paid break of twenty minutes shall be provided, should the overtime extend beyond five hours each employee shall be allowed, at the end of five hours, a further crib time of twenty minutes which shall be counted as time worked.

6.2.5 Rest period after overtime

- (a) When overtime work is necessary, it shall, wherever practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.
- (b) An employee who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee 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 the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instructions of the employer, such an employee resumes or continues work without having had such ten hours off duty the employee shall be paid at double time rates until the employee is released from duty for such period and the employee then shall be entitled to be absent until the employee has had ten consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence.

- (d) The provisions of this subclause shall apply as if eight hours were substituted for ten hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shift worker does not report for duty; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

6.2.6 Recall

- (a) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time the employee is so recalled; provided that excepting the case of unforeseen circumstances arising the employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period.
- (b) This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside the employee ordinary working hours, or where the overtime is continuous (subject to reasonable meal break) with the completion or commencement of ordinary working time. Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause 6.2.5 of this clause, where the actual time worked is less than four hours on such recall or on each of such recalls.

6.2.7 Minimum Payment for weekend and public holiday work

An employee who works overtime on a Saturday, Sunday or Public Holiday shall be afforded at least four hours' work or paid for four hours at the appropriate rate of pay. The employee shall also receive a paid crib break of twenty minutes after each five hours' overtime worked.

6.3. Rest Period

All employees shall be granted a rest period of ten minutes at a time convenient to each employer and such period shall be counted as time worked.

SECTION 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1. Annual Leave

7.1.1 Entitlement to annual leave

Annual leave shall be allowed to all employees as provided for by the *Annual Holidays Act 1944* as amended or replaced, except as otherwise provided for in this clause.

7.1.2 Additional annual leave entitlements

In addition to the benefits provided for by section 3 of the *Annual Holidays Act 1944* as amended or replaced, an employee who, during the year of the employee's employment with the employer with respect to which the employee becomes entitled to the said annual holiday, gives service to the employer as a seven-day shift worker under this award, shall be entitled to the additional leave as below specified:

- (a) If during the year of the employee's employment the employee has served the employer continuously as such seven-day shift worker, the additional leave with respect to that year shall be one week of five working days.
- (b) Subject to 7.1.2 (d), if during the year of the employee's 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.

- (c) Subject to 7.1.2 (d), the employee shall be paid for additional leave at the ordinary rate of wages to which the employee is entitled under the clauses 5.3, Wages and 5.2, Leading Hands, 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 annual leave had such employee not been on such additional leave.
- (d) Where the additional leave calculated under this subclause 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.
- (e) In this clause, reference to one week and one day includes holidays and non-working days.
- (f) Where the employment of an employee has been terminated and the employee thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, as amended or replaced, 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 3 1/3 hours at such ordinary rate of wages with respect to each twenty-one shifts of service as a continuous shift worker (round the clock seven days per week) which the employee has rendered during such period of employment.
- (g) Notwithstanding anything elsewhere contained in this clause, kiln operators employed as continuous shift workers (round the clock seven days per week) who have been temporarily transferred to other classes of employment during the qualifying period owing to no kiln being available for burning shall be entitled to the additional leave of one week. The provisions shall also apply to continuous shift workers (round the clock seven days per week) on other classes of work who have during the qualifying period been temporarily transferred to day work or to Monday to Saturday shift work.

7.1.3 Annual leave rates for shift workers

A shift worker shall be paid whilst on annual leave their ordinary pay plus shift allowances and weekend penalties relating to ordinary time the shift worker would have worked if they had not been on annual leave. Provided that the shift allowances and weekend penalties shall not apply to public holidays which occur during a period of annual leave or for days which have been added to annual leave in accordance with the provisions of subclause 7.5.4, Public Holidays, of this award.

7.1.4 Annual leave loading

- (a) This clause applies to annual holidays to which employees become entitled.
- (b) The employer shall pay its employees a loading determined in accordance with this clause for each period of annual leave which is given and taken.
- (c) The loading is payable in addition to the ordinary rate of pay for the period of the holiday which is given and taken.
- (d) The loading is payable at the rate of 17 1/2 per cent of the appropriate ordinary weekly rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing the employee's annual holidays together with the additional sums prescribed by clause 5.2, Leading Hands, of this award, but shall not include any other allowances, penalty rates, shift allowances, overtime rates or any other payments prescribed by this award.
- (e) 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 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 subparagraph 7.1.4(d) of this clause applying the award rates of wages payable on that day.

- (f) Where the employer or part of it is temporarily closed down for the purpose of giving an annual holiday to its employees:
 - (i) An employee with an entitlement to annual leave shall be paid the loading in accordance with this clause.
 - (ii) An employee without an entitlement to an annual holiday but who is given and takes an annual holiday without pay shall be paid a proportion of the loading on a pro rata basis for the number of weeks actually employed by the employer.
- (g)
 - (i) When the employment of an employee is terminated by the employer for any 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 holiday to which the employee became entitled the employee shall be paid a loading calculated in accordance with sub-paragraph 7.1.4(d) of this clause for the period not taken.
 - (ii) Except as provided by subparagraph (i) of paragraph (g) of this subclause no loading is payable on the termination of an employee's employment.
- (h) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if the employee 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.

7.1.5 Days added to annual leave

- (a) Subject to the provisions of paragraph 7.5.3 - Public Holidays, of this award, in the case of an employee who was, at the commencement of the employee's annual leave employed as a seven-day shift worker under clause 6.1, Hours of Duty, of this award, one day shall be added to their annual leave period in respect of any holiday prescribed by this award which falls within the period of annual leave to which the employee is entitled under this award.
- (b) Any day or days added shall be paid for at the ordinary rate of pay to which the employee is entitled as in PART B, Monetary Payments, Table 1 - Wage Rates, and PART B, Table 2 - Other Rates and Allowances, of this award.
- (c) Any day or days added in accordance with 7.1.5(a) or (b), shall be the working day or days immediately following the period of annual to which the employee is entitled under clause 7.1, Annual Leave, of this award.
- (d) For the purpose of subclause 7.1.5(c) of this clause, working days shall be:
 - (i) in the case of an employee who, at the commencement of the employee's period of annual leave was employed as a day-worker - any day in the week other than a Saturday, Sunday or holiday prescribed by this award.
 - (ii) in the case of an employee who, at the commencement of the employee's period of annual leave was employed as a Monday to Saturday shift-worker - any day of the week other than a Sunday or holiday prescribed by this award including a day on which the employee concerned would have been rostered off duty if the employee were not on annual leave.
 - (iii) in the case of an employee who, at the commencement of the employee's period of annual leave, was employed as a seven-day shift worker - any day of the week including a day on

which the employee concerned would have been rostered off duty if the employee were not on annual leave.

- (iv) Where the employment of an employee has been terminated and the employee thereby becomes entitled under section 4 of the *Annual Holidays Act 1944*, as amended or replaced, to payment in lieu of an annual holiday with respect to a period of employment, the employee shall also be entitled to an additional payment for each day accrued to the employee under 7.1.2(a) at the ordinary rate of pay to which the employee is entitled under the said clauses 5.3, Wages, and 5.2, Leading Hands, of this award.

7.2. Sick Leave

- 7.2.1 Employees in their first year of service with an employer are entitled to 40 hours paid sick leave.
- 7.2.2 Employees with more than one year of service with an employer are entitled to 64 hours sick leave per year.
- 7.2.3 Any unused portion of paid sick leave entitlement shall accumulate from year to year.
- 7.2.4 Entitlements to sick leave shall accrue on the anniversary of the employee's service with an employer.
- 7.2.5 Payment for absences on sick leave during an employee's first three months with an employer, may be withheld by the employer until the employee completes such three months service, at which time the payment shall be made.
- 7.2.6 The employee shall, wherever possible before the commencement of absence or in any case within 8 hours of the commencement of such absence, inform the employer of the employee's inability to attend for work and, as far as possible, state the nature of the illness or incapacity and the estimated duration of the absence.
- 7.2.7 Subject to paragraph 7.2.8 of this clause, employees must supply a doctors' certificate stating that in the medical practitioner's opinion the employee was unfit for duty because of illness or incapacity before being entitled to paid sick leave. Certificates not issued during the period of illness or incapacity are unacceptable.
- 7.2.8 Employees are allowed three single day absences on paid sick leave per year without a doctor's certificate. This entitlement does not accumulate from year to year.

7.3. Long Service Leave

See *Long Service Leave Act 1955*, as amended or replaced.

7.4. 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).

7.5. Public Holidays

7.5.1 Entitlement to public holidays

(a) Employees are entitled to holidays on the following days;

- (i) New Year's Day,
- (ii) Australia Day,
- (iii) Good Friday,
- (iv) Easter Saturday,
- (v) Easter Monday,
- (vi) Anzac Day,
- (vii) Queen's Birthday,
- (viii) Labour Day,
- (ix) Christmas Day,
- (x) Boxing Day,

together with all proclaimed or gazetted holidays throughout the State and the Financial Members' Day of the Federated Brick, Tile and Pottery Industrial Union of Australia, New South Wales Branch, which shall be held on the first Monday in December of each year (or such other arrangement as is agreed upon between the employer, employees and the union).

(b) Subject to the provisions of paragraphs 7.5.2, 7.5.3, and 7.5.4 of this clause, all employees covered by this award shall be entitled to the above mentioned holidays and shall receive payment for the said holidays at their ordinary rates of pay; provided that any such holiday falls on an ordinary working day or shift within the meaning of clause 6.1, Hours of Duty, of this award.

(c) Employees not required to work on holidays shall be paid at ordinary rates of pay for the holiday and at a bonus rate calculated in accordance with paragraph 7.5.4 of this subclause.

7.5.2 Financial Members' Day

Payment for the said Financial Members' Day shall be made only to financial members of the Federated Brick, Tile and Pottery Industrial Union of Australia, New South Wales Branch, and the onus of proof of financial membership shall rest with the accredited representative of the union who shall advise the employer on the Friday preceding Financial Members' Day.

7.5.3 Eligibility for public holidays

(a) Payment shall be made for the said holidays subject to the condition that employees shall have presented themselves for work on the working days immediately preceding and succeeding the holidays specified herein and shall have worked during normal working hours as required by the employer; provided that any absence from duty on either or both of the days preceding or succeeding the holidays owing to illness or injury covered by a certificate of a medical practitioner, or by consent of the employer, shall not render an employee ineligible for payment for the holidays.

(b) Where a group of holidays as defined in paragraph 7.5.5(b), of this clause occurs, and an employee is found to be not eligible for payment for same because of the employee's non-compliance with any or all of the conditions set forth in paragraph 7.5.3(a) of this subclause, the employee shall forfeit payment for only one day of such group of holidays.

7.5.4 Shift workers - public holidays

Notwithstanding anything elsewhere contained in this clause, employees engaged as other than five-day shift workers on rostered shift work and who are rostered off duty on any of the holidays specified herein shall be entitled, in respect of such holidays, to payment of an additional day's pay for the pay

period in which such holiday occurs or, by mutual agreement, an additional day's leave may be added to that employee's period of annual leave.

7.5.5 Payment of public holidays on termination of employment

- (a) Notwithstanding anything elsewhere contained in this clause where, within a period of seven days prior to any holiday or the commencement of any group of holidays, an employer terminates, for reasons other than wilful misconduct, the employment of an employee who has been employed for a period of at least one month prior to the termination of the employee's employment or where such employee is stood off, the employee shall be paid for that holiday or group of holidays, such as the case may be.
- (b) Where two or more of the holidays provided for in sub-paragraph 7.5.1(a) of this clause occur within one week such holidays shall, for the purpose of this award, be deemed to be a group of holidays.

7.6. Bereavement Leave

- 7.6.1 An 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 7.6.3 below.
- 7.6.2 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.
- 7.6.3 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 7.7.1(c)(ii) provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 7.6.4 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.
- 7.6.5 Bereavement leave may be taken in conjunction with other leave available under Personal/Carer's Leave 7.7.2, 7.7.3, 7.7.4, 7.7.5 and 7.7.6. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirement of the business.
- 7.6.6 Bereavement entitlements for casual employees

7.6.6.1 Subject to the evidentiary and notice requirements in 7.6.2 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 7.7.1(c)(ii) of clause 7.7, Personal/Carer's Leave.

7.6.6.2 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.

7.6.6.3 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.

7.7. Personal/Carer's Leave

7.7.1 Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 7.7.1(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 7.2, 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:
 - (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.
- (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 3.2, Industrial Disputes and Grievance Procedure, should be followed.

7.7.2 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 7.7.1(c)(ii) above who is ill or who requires care due to an unexpected emergency.

7.7.3 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 7.7.3(a), 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.

7.7.4 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 time or times agreed with the employer within 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 7.7.4(a), 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 7.7.4(a), the employee shall be paid overtime rates in accordance with the award.

7.7.5 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 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.
- (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.

7.7.6 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 the union if it has members employed at the particular enterprise to its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

7.7.7 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 7.7.1(b) and 7.7.1(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 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.
- (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.

7.8. Jury Service

7.8.1 An employee required to attend for jury service during the employee's ordinary working hours shall be reimbursed by the employer 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 wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.

7.8.2 An employee shall notify their employer as soon as possible of the date upon which the employee is required to attend for jury service. Further, the employee shall give their employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

SECTION 8 - OHS, EQUIPMENT, TOOLS AND AMENITIES

8.1. First Aid

See relevant Occupational Health and Safety Legislation and Regulations, as amended from time to time.

8.2. Attendance at Repatriation Centres

Employees being ex-service personnel shall be allowed, as time worked, lost time incurred whilst attending repatriation centres for medical examination and/or treatment; provided that:

- (a) such lost time does not exceed four hours on each occasion.
- (b) payment shall be limited to the difference between ordinary wage rates for time lost and any payment received from the Department of Veteran's Affairs as a result of each visit.
- (c) the provisions of this clause will apply to a maximum of four such attendances in any year of service with the employer.
- (d) the employee produces evidence satisfactory to the employer that the employee is required to and subsequently does attend a repatriation centre.

8.3. Protective Clothing

8.3.1

- (a) Where an employee is required to work in any place where the employee's boots are liable to become saturated, suitable footwear shall be made available by the employer.
- (b) Where an employee is required to work out of doors and the employee's clothing is liable to become saturated by rain, suitable protective clothing shall be made available by the employer.

8.3.2 Suitable mica or other goggles shall be provided by the employer for each employee exposed to abnormal dusty conditions.

8.3.3 The employer shall provide and shall maintain suitable respirators where necessary for all employees exposed to abnormally dusty conditions and all employees shall wear suitable respirators when exposed to such conditions.

8.3.4 The protective clothing and/or equipment provided in accordance with this clause shall remain the property of the employer and shall be returned to it upon termination of employment in a condition commensurate with normal wear and tear. An employee may be required by its employer to sign a receipt for such clothing upon it being issued to the employee.

SECTION 9 - UNION RELATED MATTERS

9.1. Union Business

9.1.1 Union Delegate;

- (a) An employee appointed as union delegate in the yard or factory, shall, upon notification thereof to the employer by the branch or sub-branch secretary of the union, or other accredited union official be recognised as the accredited representative of the union.
- (b) Any matter arising in the yard or factory affecting members of the union may be investigated by the delegate and discussed with the employer or its representative. The delegate shall, at the delegate's request be allowed a reasonable opportunity to carry out such duties at a time reasonably convenient to the delegate and the employer.
- (c) 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.

9.1.2 Notice Board:

The employer shall supply a notice board of reasonable dimensions to be erected or to be placed in a prominent position at each yard upon which accredited representatives of the union shall be permitted to post formal notices authorised by the secretary of the union.

PART B

MONETARY RATES AND ALLOWANCES

Table 1 - Wage Rates

Classification	Previous Rate \$	SWC 2007 Adjustment \$	New Rate \$
Group One	507.10	24.30	531.40
Group Two	511.60	20.00	531.60
Group Three	517.40	20.00	537.40

Group Four	524.10	20.00	544.10
Group Five	530.70	20.00	550.70
Group Six	542.60	20.00	562.60
Group Seven	557.60	20.00	577.60

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount
			\$
1	5.5.1	Industry Allowance	21.14 per week
2	5.2.2	Leading Hand (1-7 emp)	22.61 week
		Leading Hand (over 7 emp)	30.23 per week
3	6.2.3	Meal Allowance	8.60 for each meal
4	5.5.2 (a)	Shift allowance - rotating day-afternoon, day - night, day-afternoon-night shift	7.95 per shift
5	5.5.2 (b)	Shift allowance - rotating afternoon-night shift	11.85 per shift
6	5.5.2 (c)	Shift allowance - permanent night shift	23.31 per shift
7	5.5.4	First Aid Allowance	2.00 per day

E. A. R. BISHOP, Commissioner

 Printed by the authority of the Industrial Registrar.

PRINTING INDUSTRIES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1635 of 2007)

Before Commissioner Macdonald

16 January 2008

REVIEWED AWARD

1. Insert in numerical order in the Arrangement of the award published 9 November 2001 (329 I.G. 391), the following new clause number and subject matter:

8A. Secure Employment

2. Insert after clause 8 Casual Employees, the following new clause.

8A. 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 subclause 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.

3. Delete the words "contact" in paragraph (v) of subclause (l) Apprenticeships of clause 10 Payment of Wages and Pay Day, and insert in lieu thereof the following:

"contract"

4. Delete the words "wok" in paragraph (xi) of subclause (l) of the said clause 10, and insert in lieu thereof the following:

"work"

5. Delete the words "Rising" in subparagraph (1) of paragraph (ii) of subclause (d) of clause 32 Piece Work, and insert in lieu thereof the following:

"Riding"

6. Delete the words "Printing Industry Association" in paragraph (iv) of subclause (g) Artist and/or Designer (including Commercial Artist), in clause 34, Limitation of Employment of Juniors, and insert in lieu thereof the following:

"Printing Industries Association of Australia"

7. Delete the words "See *Factories, Shops and Industries Act 1962* and regulations made thereunder" in paragraph (i) of subclause (a) First Aid Chest, in clause 38 First Aid, and insert in lieu thereof the following:

"See *Occupational Health and Safety Act 2000, Occupational Health and Safety Regulation 2001*"

8. Delete the words "the *Factories, Shops and Industries Act 1962*, and regulations made thereunder" in paragraph (v) of subclause (b) of the said clause 38, and insert in lieu thereof the following:

"the *Occupational Health & Safety Act 2000, Occupational Health and Safety Regulation*"

9. Delete the words "Employers First" in clause 45 Exemption, and insert in lieu thereof the following:

"Australian Federation of Employers and Industries"

10. Delete the 7th and 9th paragraph in clause 49, Area, Incidence and Duration, and insert in lieu thereof respectively the following:

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 16 January 2008.

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

A. MACDONALD, Commissioner

Printed by the authority of the Industrial Registrar.

REFRACTORY INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1555 of 2007)

Before Commissioner Bishop

14 March 2008

REVIEWED AWARD**1. Arrangement**

Clause No.	Subject Matter
1.	Arrangement
21.	Annual Leave
22.	Annual Leave Loading
38.	Anti-Discrimination
2.	Area Incidence and Duration
28.	Attendance at Repatriation Centres
26.	Bereavement Leave
10.	Burners and Tunnel Kiln Operators
14A	Casual Employment
3.	Consultative Mechanism
6.	Contract of Employment
8.	Counselling and Disciplinary Procedure
23.	Days Added to Annual Leave
34.	Dirty Work
41.	Enterprise Arrangements
37.	First Aid
13.	Hours of Duty
40.	Industrial Disputes and Grievance Procedure
27.	Jury Service
11.	Leading Hands
42.	Leave Reserved
29.	Long Service Leave
16.	Overtime
30.	Parental Leave
14.	Part Time Employment
4.	Payment of Wages
17.	Penalty Rates
25.	Personal/Carer's Leave
20.	Public Holidays
35.	Redundancy
36.	Re-engagement
15.	Rest Periods
19.	Rostered Days Off
7A	Secure Employment
18.	Shift Allowances
24.	Sick Leave
5.	State Wage Case Adjustments
31.	Telephone
7.	Termination of Employment
32.	Tools
12.	Transfers and Mixed Functions

- 39. Union Business
- 9. Wages
- 33. Wet Weather

PART B

Table 1 - Wages

Table 2 - Other Rates and Allowances

2. Area, Incidence and Duration

- 2.1 This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Refractory Industry (State) Award published 5 October 2001 (328 I.G.383) and all variations thereof.
- 2.2 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 14 March 2008.
- 2.3 This award remains in force until varied or rescinded for the period for which it was made already having expired.
- 2.4 It shall apply to makers of refractory materials and their assistants, of the classifications herein specified, in the State, excluding the County of Yancowinna, within the jurisdiction of the Refractory Materials Makers (State) Industrial Committee and being employees in the industries and callings assigned to the said committee, excepting employees engaged:
 - (a) in or about coal mines north of Sydney;
 - (b) in or about coal mines in the South Coast district; and
 - (c) the Council of the City of Sydney.

3. Consultative Mechanism

Each company shall establish a consultative mechanism and procedures appropriate to its size, structure and needs for consultation and negotiation on matters affecting its efficiency and productivity.

4. Payment of Wages

- 4.1 All wages and earnings shall be paid weekly in cash (unless an exemption is otherwise agreed upon) on each Thursday or Friday up to the end of the preceding Tuesday or Wednesday, respectively, and shall be made available for collection by employees not later than the usual finishing time on the pay day: Provided that, in the case of a shift worker rostered off duty between the hours of 7.00 a.m. and 4.30 p.m. on any pay day, wages shall be made available not later than the termination of the last shift worked by the employee immediately preceding pay day. A shift worker not so paid presenting themselves for wages on pay day shall be entitled to payment for an additional four hours at their ordinary-time rate of pay.
 - (a) Should an employee be discharged from their employment or be stood down on any day during the week in accordance with clause 6, Contract of Employment, the employee shall be paid
 - (i) if discharged, all moneys due to the employee up to the time of dismissal;
 - (ii) if stood down only, all wages due to the employee for the current pay period at the time of being stood down.

- (b) In lieu of the payment as prescribed in paragraph (a) of this subclause, an employee not so paid, presenting themselves for their wages on pay day at the usual place of payment, shall be entitled to an additional four hours' pay at their ordinary-time rate of pay.

4.2 In the event of pay day falling on a Public Holiday, as defined in clause 20, Public Holidays, all wages and earnings shall be made available for collection by employees not later than the usual finishing time on the day immediately preceding pay day.

5. State Wage Case Adjustments

The rates of pay in this award include the adjustment payable under the State Wage Case 2007. This increase 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.

State Wage Case	Increase \$	Allowances %
May 2000	15.00	3.1
May 2001	13.00	3.0
May 2002	18.00	3.5
May 2003	17.00	3.2
June 2004	19.00	3.5
June 2005	17.00	3.0
June 2006	20.00	4.0
June 2007	20.00	4.0

6. Contract of Employment

- 6.1 Employment during the first three months shall be probationary, with either party able to terminate on one day's notice. Thereafter employment will be weekly; provided that an employee who has previously served with the company for a continuous period of three months and is re-employed within 12 months by that company shall be engaged by the week.
- 6.2 An employer shall not be required to pay for any time an employee cannot be employed usefully on Financial Members' Day or because of any strike or through any breakdown in machinery or stoppage of work through any cause for which the employer reasonably cannot be held responsible.
- 6.3 Employees will participate in all training as required by the company from time to time.
- 6.4 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 deskilling.
- 6.5 An employer may direct an employee to carry out such duties and use such equipment as may be required, provided that the employee has been properly trained.
- 6.6 Any direction issued by the employer pursuant to subclauses 6.4 and 6.5 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

7. Termination of Employment

7.1 Notice of Termination by an Employer

- (a) In order to terminate the employment of an employee the employer must give to the employee a minimum of one weeks notice:

- (i) Payment in lieu of notice 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) In calculating any payment in lieu of notice the wages to be used must be those an employee would have received in respect of the ordinary time that would have been worked during the period of notice had the employment not been terminated.
- (iii) The period of notice in this clause will not apply to cases of dismissals pursuant to 7.3.

7.2 Notice of Termination By The Employee

- (a) The notice of termination required to be given by an employee is the same as that required of an employer, and if the required notice is not given then up to one week's pay will be forfeited.
- (b) Where an employer and employee agree, the employee may be released prior to the expiry of the notice period with payment of wages to the date of termination only.

7.3 Dismissal For Misconduct

An employer may dismiss any employee without notice for misconduct and, in such cases, the employee shall be paid up to the time of dismissal only.

7.4 Abandonment of Employment

- (a) The absence of an employee from work for a continuous period exceeding three working days without the consent of the company and without notification to the company shall be prima facie evidence that the employee has abandoned employment.
- (b) Provided that the employee shall have seven days from the commencement of the unauthorised absence in which to establish that the employee was absent with reasonable cause to the satisfaction of the company.
- (c) Failure to do so will result in dismissal on the grounds of abandonment, with effect from the commencement of the unauthorised absence.

7A. Secure Employment

7A.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.

7A.2 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 7A.2(a), upon receiving notice under paragraph 7A.2(b) 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 7A.2(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph 7A.2(c), discuss and agree upon:
 - (i) whether the employee will convert to full-time or part-time employment; and
 - (ii) 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 (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.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

7A.3 Occupational Health and Safety

- (a) For the purposes of this subclause, the following definitions shall apply:
 - (i) 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.
 - (ii) 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):
- (i) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
 - (ii) 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;
 - (iii) 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
 - (iv) 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 (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*.

7A.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.

7A.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.

8. Counselling and Disciplinary Procedure

- 8.1 Agreements setting out procedures for counselling and disciplining employees should be adapted to suit the requirements of each company. Unless prior to the implementation of this clause an agreed counselling and discipline procedure was in place at a site the following will apply. This procedure does not apply in cases of serious misconduct:
- (a) No employee will receive a formal written warning unless the employee has been previously counselled on the matter in question.
 - (b) A record of the counselling will be kept by the employer and the employee will be informed that the counselling is a formal counselling.
 - (c) Written warnings, when given, will detail the reason for the warning, future actions expected of the employee and a space for the employee to record a response.
 - (d) No employee will be terminated prior to receiving at least one counselling and two written warnings unless the employee is being terminated for misconduct.
 - (e) An employee is entitled to have a union delegate or other representative nominated by the employee at each stage of the Counselling and Disciplinary procedure.
 - (f) Nothing in this clause shall prevent an employer and their employees (or the Union as the case maybe) from agreeing to any counselling and disciplinary procedure that the parties deem to be

appropriate to the needs of the business. A copy of any such agreement must be provided to all employees covered by this Award. The agreed procedure must be included any subsequent Enterprise Agreement.

9. Wages

9.1 The minimum rates for employees shall be as set out in Table 1 - Wages, of Part B, Monetary Rates, for the following classifications:

9.2 Definitions of Classifications

- (a) Refractory Employee - Basic Entry - Minimum probationary period of three months.
- (b) Refractory Employee - Level 1 - Capable of undertaking manual tasks and simple operations involving equipment. As part of undertaking these activities, a Level 1 employee will: undertake basic quality control procedures to ensure quality of own work; undertake inventory and store control procedures and maintain simple records; use basic keyboards for entry and extraction of information and control of production.
- (c) Refractory Employee - Level 2 - Capable of operating process, testing, mobile and material handling (including robotic) equipment on a regular rotating basis. As part of undertaking these activities, a Level 2 employee will: apply basic process and statistical control procedures; undertake quality control/assurance procedures; understand concepts of team work and participate in process improvement; possess keyboard skills for simple manipulation of data; record production and quality data; possess Level 1 skills and knowledge.
- (d) Refractory Employee - Level 3 - A specialist with understanding and responsibility for inspection, testing, recording, measuring and documenting process or product quality; or capable of operating complex integrated processing systems. As part of undertaking these activities, a Level 3 employee will: apply process and statistical control techniques; be responsible for maintaining and improving process and quality systems; ensure the quality of work of others; possess good written communication skills; possess keyboard skills for statistical analyses and spread sheeting; possess Level 2 skills and knowledge.
- (e) Refractory Employee - Level 4 - An employee at this level would possess a relevant formal qualification or have equivalent in-house training; and understands and is responsible for total process quality; operates complex testing equipment and makes detailed analyses; or is an employee appointed as such in recognition of a higher level of proficiency in operating and understanding the systems. As part of undertaking these duties, a Level 4 employee will: be responsible for developing process and quality systems; exercise discretion in relation to process quality; undertake basic production planning; be able to operate as a team leader; possess good oral communication skills; possess advanced keyboard skills; possess Level 3 skills.

9.3 Industry Allowance

In addition to the wage rates prescribed in Table 1 - Wages, of Part B, Monetary Rates, an employee shall be paid an industry allowance as shown in Item 1 of Table 2 - Other Rates and Allowances, of the said Part B, to compensate for all disabilities associated with the manufacture of refractory materials and maintenance of manufacturing plant machinery, and includes:

- (a) All cleaning work, including cleaning in pits.
- (b) Dusty or dirty work.
- (c) Hot work.
- (d) Wet conditions due to inclement weather.

(NOTE: For the purpose of computing overtime, etc., this allowance shall form part of the employee's ordinary wage rate for the work performed.)

10. Burners and Tunnel Kiln Operators

Tunnel Kiln Operator - Not less than four employees shall be employed on each tunnel kiln, one on each shift on each tunnel kiln. They shall only be required to attend to one tunnel kiln and shall not be required to do any other work.

11. Leading Hands

- 11.1 A leading hand is an employee appointed by a company to undertake additional responsibilities over and above their normal duties, including but not limited to, the following:
- (a) Undertake duties as delegated by the Supervisor.
 - (b) Be in charge of the work of other employees.
 - (c) Make decisions and direct employees on the job.
 - (d) Assist in day-to-day planning, supervising, organising and controlling the use of resources in the most effective way.
 - (e) Undertake structured training.
 - (f) Responsible for maintaining procedures.
 - (g) Communicate information to other employees which is relevant to the effective utilisation of resources and the efficient operation of the company.
- 11.2 In recognition of these additional duties, a leading hand shall be paid an allowance as shown in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

12. Transfers and Mixed Functions

- 12.1 On any day or shift any employee required to perform work of a higher grade shall be paid the wages attached to such higher grade for the whole of that day or shift, but any employee required to perform the work of any lower grade to that in which the employee is classed shall not suffer any reduction of pay by reason only of their working temporarily out of their grade. Such work shall not be considered temporary if it continues for more than one week.
- 12.2 This clause shall not apply when an employee performs work carrying a higher rate only while relieving another employee absent on crib or meal break. In such circumstances, the employee is to be paid at the higher rate for the actual time so worked on the relieving day.
- 12.3 If a company requires any employee to undertake part of the functions of another employee who is not employed under the terms of this award, this shall be permitted at site level, following agreement with the employees and unions concerned.

13. Hours of Duty

- 13.1 Day Workers -
- (a) The ordinary working hours of day workers shall average 40 per week, to be worked between the hours of 6.00 a.m. and 6.00 p.m., Monday to Friday, inclusive; provided the spread of hours may be altered where the company and the majority of employees in the plant or section agree.
 - (b) The daily ordinary hours shall be eight, except that up to 12 hours per day may be worked where the majority of employees in the plant or section agree.

- (c) A break of 30 minutes can be taken no earlier than four hours after commencing work and should be concluded no later than six and one-half hours after commencing work. The actual commencement time of the break shall be arranged by the company, bearing in mind the production needs from time to time. For the purposes of this clause, the ten- minute morning rest period shall be deemed to be time worked.
- (d) Each company shall be entitled to fix the starting and finishing hours for each plant or section within the spread of hours in paragraph (a) of this subclause and alter them, from time to time, either by mutual consent or by posting up, in a convenient place in the plant, one week's notice of the change.

13.2 Shift Workers -

- (a) The ordinary working hours of shift workers shall average 40 per week as defined in clause 4, Payment of Wages, and shall not exceed 12 during any consecutive 24 hours.
- (b) A shift worker's shift shall consist of eight hours, inclusive of one paid crib break of 30 minutes taken in accordance with paragraph 13.1(c), Day Workers, of this clause. Shifts of between eight and 12 hours may be worked where the company and the majority of employees in the plant or section agree.
- (c) The company can move an employee to another shift roster by agreement between the company and the employee or after giving 48 hours' notice.
- (d) The company shall be entitled to fix the starting and finishing times of shift workers and alter them by agreement with the majority of employees in the plant or section or after giving one week's notice, posted up in a convenient place in the plant.
- (e) All the employees are engaged on the basis that they may be required to do shift work either permanently or on a relief basis.
- (f) Any employee required to work beyond the conclusion of their normal shift shall be paid at overtime rates for any additional time.
- (g) An employee who is employed for less than five continuous shifts in any week shall be paid in accordance with Table 1 - Wages, of Part B, Monetary Rates, and clause 16, Overtime; provided also that where less than a full week is worked due to the action of the employee, the rates payable for the actual time worked shall be ordinary shift rates.

- 13.3 Where a day worker is transferred to shift work or vice versa, or is reverting to their usual working time and the need arises from the absence of the rostered employee or from other circumstances beyond the control of the employer, then the employee shall be given 48 hours' notice of the change and be paid overtime rates for any work performed within such 48 hours and which does not fall within the ordinary hours the employee was working when the notice was given.

14. Part-Time Employment

- 14.1 An employee may be engaged by the week to work on a part-time basis for a constant minimum number of hours each week, which shall not be less than 19.
- 14.2 The spread of hours shall be the same as those prescribed in clause 13, Hours of Duty.
- 14.3 Any hours worked in excess of 40 per week shall be paid at overtime rates.
- 14.4 An employee so engaged shall be paid one fortieth of the weekly rate for the hours worked, except as provided for in subclause 14.3.
- 14.5 All other entitlements such as sick leave, annual leave and long service leave, etc., shall be provided on a pro rata basis.

14A. Casual Employment

- (a) An employer may engage an employee on a casual basis. A casual employee shall be engaged and paid by the hour.
- (b) For each hour of work, casual employees must be paid at the rate of one thirty-eighth of the weekly wage rate for the classification in which the employee is engaged, plus a loading of twenty-five per cent.
- (c) The casual loading represents compensation for all incidents of this Award and for annual leave. To avoid doubt, the loading is inclusive of annual holiday payments."

15. Rest Periods

All employees shall be granted a rest period of ten minutes at a time convenient to each employer and such period shall be counted as time worked.

16. Overtime

16.1 When calculating overtime each day shall stand-alone.

16.2 Employees Other Than Seven-Day Shift Workers -

- (a) All time worked outside the limitations of ordinary time prescribed by clause 13, Hours of Duty, or in excess of the daily weekly hours of labour, Monday to Friday inclusive, shall be paid for at the rate of time and one-half for the first two hours and double time thereafter.
- (b) All time worked on a Sunday shall be paid for at the rate of double time.
- (c) All time worked on any of the holidays as prescribed in clause 20, Public Holidays, shall be paid at the rate of double time and a half.

16.3 Seven-Day Shift Workers

- (a) The following rates shall be payable to a rostered seven-day shift worker working on any day which normally would be their rostered day off or working in excess of an ordinary rostered shift:
 - (i) Monday to Friday - time and one-half for the first two hours and double time thereafter.
 - (ii) Saturday or Sunday - double time.
 - (iii) Financial Members' Day or any of the holidays specified in the said clause 20 - double time and one-half.

16.4 Overtime Meal Allowance

- (a) An employee who is required to work overtime in excess of two hours after their usual ceasing time on any day shall, if the employee has not been notified on or before the previous day that the employee will be so required to work, be paid an allowance as shown in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- (b) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime or is required to work less than the amount advised, the employee shall be paid as prescribed in Item 3 of Table 2 for meals which the employee has provided but which are surplus.
- (c) Before commencing such overtime each employee shall be allowed a crib time of 20 minutes, which shall be counted as time worked.

- (d) Should the overtime extend beyond five hours each employee shall be allowed, at the end of five hours, a further crib time of 20 minutes, which shall be counted as time, worked. Where the crib breaks are not able to be taken the employee may be paid in lieu for the time worked at the appropriate overtime rate.

16.5 Time Off Between Shifts

- (a) When overtime work is necessary, it shall, wherever practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.
- (b) An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee 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 the employee has had ten consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence.
- (c) If, on the instructions of their employer, such an employee resumes or continues work without having had such ten hours off duty, the employee shall be paid at double time rates until the employee is released from duty for such period and the employee then shall be entitled to be absent until the employee has had ten consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence.
- (d) The provisions of this subclause shall apply as if eight hours were substituted for ten hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shift worker does not report for duty; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

16.6 Recall To Duty

- (a) An employee recalled to work overtime after leaving their employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time the employee is so recalled.
- (b) Except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period.
- (c) This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside their ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- (d) Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause 16.5 of this clause, where the actual time worked is less than four hours on such recall or on each of such recalls.

16.7 Overtime on Weekends And Public Holidays

Where an employee works overtime on a Saturday, Sunday or public holiday, the employee shall be paid for a minimum of four hours' work. The employee shall also receive a paid crib break of 20 minutes after each five hours' overtime so worked.

17. Penalty Rates

17.1 Shift Workers (Other Than Five-Day Shift Workers) -

- (a) A six-day or seven-day shift worker whose ordinary hours of work terminate on a:
 - (i) Saturday shall be paid at the rate of time and one-half for the ordinary hours worked on that shift.
 - (ii) Sunday shall be paid at the rate of double time for the ordinary hours worked on that shift.
 - (iii) on the Financial Members' Day or any of the, Public Holidays as defined by clause 20, shall be paid at the rate of double time and one-half half for the ordinary hours worked on that shift..

17.2 Five-Day Shift Workers

Shift workers working on a five-day shift system Monday to Friday, inclusive, working an ordinary shift of eight hours terminating on any of the holidays as specified in the said clause 20 shall be paid at the rate of double time and a half.

18. Shift Allowances

18.1

- (a) Shift workers on a rotating day-afternoon, day-night or day-afternoon-night shift system, shall be paid, in addition to their wages, an allowance as shown in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- (b) Shift workers on a rotating afternoon-night shift system (i.e., one in which day shift is not worked at least one week in three) or on a permanent afternoon shift shall be paid, in addition to their wages, an allowance as shown in Item 5 of the said Table 2.
- (c) Shift workers on a permanent night shift shall be paid, in addition to their wages, an allowance as shown in Item 6 of Table 2.

18.2 The excess payments over ordinary rates prescribed by clause 16, Overtime, and clause 17, Penalty Rates, shall be payable in lieu of the shift allowances prescribed by this clause.

19. Rostered Days Off

Where Rostered Days Off fall on a Public Holiday, as specified in clause 20, the day may be taken at another time mutually agreed upon between the company and the employee.

20. Public Holidays

20.1

- (a) The days on which the following holidays are observed shall be holidays for the purposes of this Award: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, any other day proclaimed or gazetted as a Public Holiday throughout the State and the Financial Members' Day of the Union which shall be held on the second Monday in November of each year (or such other arrangement as is agreed upon between the employer, employees and the union).
- (b) Subject to the provisions of subclauses 20.2, 20.3 and 20.4 of this clause, all employees covered by this award shall be entitled to the abovementioned holidays and shall receive payment for the said holidays at their ordinary rates of pay: Provided that any such holiday falls on an ordinary working day or shift within the meaning of clause 13, Hours of Duty.

- (c) Employees not required to work on holidays shall be paid at ordinary rates of pay for number of hours the employee would have been required to work if that day was not a holiday.
- 20.2 Payment for the said Financial Members' Day shall be made only to financial members of the Union, and the onus of proof of financial membership shall rest with the accredited representative of the union, who shall advise the employer on the Friday preceding Financial Members' Day.
- (a) Payment shall be made for the said holidays, subject to the condition that employees shall have presented themselves for work on the working days immediately preceding and succeeding the holidays specified herein and shall have worked the normal working hours as required by the employer.
 - (b) Any absence from duty on either or both of the days preceding or succeeding the holidays owing to illness or injury covered by a certificate of a medical practitioner, or by consent of the employer, shall not render an employee ineligible for payment for the holidays.
 - (c) Where a group of holidays as defined in paragraph 20.6 occurs, and an employee is found to be not eligible for payment because of their non-compliance with any or all of the conditions in this subclause, the employee shall forfeit payment for only one day of the group of holidays.
- 20.3 Notwithstanding anything elsewhere contained in this clause, employees engaged as other than five-day shift workers on rostered shift work and who are rostered off duty on any of the holidays specified herein shall be entitled, in respect of such holidays, to payment of an additional day's pay for the pay period in which such holiday occurs or, by mutual agreement, an additional day's leave may be added to that employee's period of annual leave.
- 20.4 If within a period of seven days prior to any holiday or the commencement of any group of holidays, an employer terminates, for reasons other than wilful misconduct, the employment of an employee who has been employed for a period of at least one month prior to the termination of their employment or where such employee is stood off, the employee shall be paid for that holiday or group of holidays, such as the case may be.
- 20.5 Where two or more of the holidays provided for in subclause 20.1 occur within one week such holidays shall, for the purpose of this award, be deemed to be a group of holidays.

21. Annual Holidays

- 21.1 Annual Holidays shall be allowed to all employees as provided for by the *Annual Holidays Act 1944*, except as otherwise provided for in this clause.
- 21.2 A seven day shift worker, in addition to the Annual Holidays provided for by subclause 21.1, shall be entitled to:
- (a) additional Annual Holidays of one day for every 36 ordinary shifts worked as a seven-day shift worker if during the year of their employment the employee has served for only portion of the year as such seven-day shift worker; or
 - (b) one week's additional Annual Holidays if the employee has served the entire year as a seven day shift worker.
- 21.3 Where the additional Annual Holidays calculated under this subclause includes a fraction of a day, the fraction shall not be taken as Annual Holidays period and shall be discharged by payment only.
- 21.4 Where the employment of an employee is terminated, then in addition to the Annual Holidays payable under section 4 of the *Annual Holidays Act*, the employee also shall be entitled to an additional payment of three and one-third hours at the ordinary hourly rate for each 21 ordinary shifts of service as a seven-day shift worker since the employees last Annual Holidays entitlement.

- 21.5 Regular burners or kiln operators on seven-day shift work who have been transferred to other classes of employment during the qualifying period owing to no kiln being available for burning, shall be entitled to the additional Holidays as provided in this clause.
- 21.6 A shift worker shall be paid while on annual leave their ordinary pay plus shift allowances and weekend penalties relating to ordinary time the shift worker would have worked if they had not been on annual leave. Provided that the shift allowances and weekend penalties should not apply to public holidays which occur during a period of annual leave or for days which have been added to annual leave in accordance with the provisions of subclause 20.4.

22. Annual Holiday Loading

- 22.1 This Clause Applies to Annual Holidays to which Employees Become Entitled.
- 22.2 The loading is payable in addition to the ordinary rate of pay for the period of the Annual Holidays.
- 22.3 The loading is payable at the rate of 17 1/2 per cent of the appropriate ordinary weekly rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing their annual Holidays, including Leading Hand Allowance, but shall not include any other allowances, penalty rates, shift allowances, overtime rates or any other payments prescribed by this award.
- 22.4 No loading is payable to an employee who takes an Annual Holidays 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 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 22.3 of this clause upon the award rates of wages payable on that day.
- 22.5 Where the employer, or part of it, is temporarily closed down for the purpose of giving an annual holiday to its employees:
- (a) An employee with an entitlement to annual leave shall be paid the loading in accordance with this clause.
 - (b) An employee without an entitlement to an annual holiday but who is given and takes an annual holiday without pay shall be paid a proportion of the loading on a pro rata basis for the number of weeks actually employed.
- 22.6
- (a) When the employment of an employee is terminated by their employer for any 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 holiday to which the employee became entitled, the employee shall be paid a loading calculated in accordance with subclause 22.3 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.
- 22.7 A shift worker who takes annual Holidays shall be paid 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 if that amount exceeds the loading calculated in accordance with this clause.

23. Days Added to Annual Holidays

- 23.1 In the event that a Public Holiday(s), as defined by clause 20 occurs during an employee's period of Annual Holidays, the number of Public Holidays that occur during that period shall be added to the end of the employee's period of Annual Holidays. 23.2 No loading shall be paid on any days added to a

period of Annual Holidays pursuant to clause 23.1 23.3 In the case of a five day shift worker this clause shall not apply to a Public Holiday that falls on a Saturday or Sunday.

24. Sick Leave

- 24.1 An employee who is absent from work by reason of personal illness or injury (not being illness or injury arising out of the employee's misconduct or default 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:
- (a) Day workers shall, whenever practicable, within eight hours of the commencement of absence, inform the employer of their incapacity to attend for duty, and as far as practicable, state the nature of the illness or injury, and the estimated duration of the absence. In the case of shift workers, notification must be prior to the normal commencement time. Notification must be provided to a nominated supervisor or company delegate.
 - (b) An employee who is absent for more than three single days or two or more consecutive working days must provide a medical certificate stating the period for which the employee was unfit for work and the reason. Certificates must be provided for all sick leave taken in conjunction with a public holiday.
 - (c) Sick Leave Entitlement
 - (i) In the first year with an employer, the employee shall be entitled to sick leave of 40 hours of ordinary working time.
 - (ii) During the second and subsequent years with an employer, the employee shall accrue sick leave of 64 hours of ordinary working time each year.
 - (iii) Periods of leave without pay shall not accrue entitlements to sick leave.
 - (d) The employee shall not be entitled to payment in respect of any time lost on an ordinary working day on which, had the employee attended for duty, the employee would not have been required to work.
 - (e) The employee shall be paid at the ordinary rate of pay for the sick day (or days).
 - (f) The payment for any absence on sick leave in accordance with this clause during the first three months of continuous service in the industry may be withheld by the employer until the employee completes such three months, at which time the payment shall be made.
- 24.2 The rights under this clause shall accumulate from year to year so that any paid sick leave, which has not been taken in any year, may be claimed by the employee in a subsequent year.
- 24.3 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); provided that any time so lost shall not be taken into account in computing the qualifying period of three months specified in paragraph 24.1(f).
- 24.4 For the purpose of this clause, "year" shall mean the period of 12 months measured from the date of employment and subsequent anniversaries.

25. Personal/Carer's Leave

25.1 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(d) 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 the employee being responsible for the care and support of the person concerned; and
- (d) 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:
 - (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.
- (e) 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 first 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 40, Industrial Disputes and Grievance Procedure, should be followed.

25.2 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 25.1(d) above who is ill or who requires care due to an unexpected emergency.

25.3 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 25.3(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.

25.4 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.

25.5 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 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.
- (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."

25.6 Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 25.1(b) and 25.1(e) 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(d) 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.

26. Bereavement Leave

- 26.1 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 within Australia as prescribed in subclause 26.3.
- 26.2 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.
- 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 (d) of subclause 25.1 of clause 25, 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.
- 26.4 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.
- 26.5 Bereavement Leave may be taken in conjunction with other leave available under clause 25, 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.
- 26.6 Bereavement entitlements for casual employees
- 26.6.1 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 25.1(d) of clause 25, Personal/Carer's Leave.
- 26.6.2 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.
- 26.6.3 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.

27. Jury Service

- 27.1 An 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 wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.
- 27.2 An employee shall notify their employer as soon as possible of the date upon which the employee is required to attend for jury service. Further, the employee shall give their employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

28. Attendance at Repatriation Centres

- 28.1 Employees being ex-service personnel shall be allowed, as time worked, lost time incurred while attending repatriation centres for medical examination and/or treatment; provided that:

- 28.1.1 Such lost time does not exceed four hours on each occasion.
- 28.1.2 Payment shall be limited to the difference between ordinary wage rates for time lost and any payment received from the Repatriation Department as a result of each visit.
- 28.1.3 The provisions of this clause will apply to a maximum of four such attendances in any year of service with the employer.
- 28.1.4 The employee produces evidence satisfactory to the employer that the employee is required to and subsequently does attend a repatriation centre.

29. Long Service Leave

See *Long Service Leave Act 1955*.

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. Telephone

A telephone shall be made available, where practicable, to all workers on shift in case of sickness, injury or other emergency.

32. Tools

All tools required by employees at their respective work shall be provided by the employer but, in instances where such goods are lost or destroyed by the absolute fault of the employee, the employee shall be liable, if called upon, to restore or pay for same.

33. Wet Weather

If a question arises whether it is too wet to work it shall be decided by three persons, one representing the employer, one of those working under cover and one of those working not under cover, whose decision, whether unanimous or not, shall be final.

34. Dirty Work

Where an employee covered by this award works on unusually dirty work in direct association with an employee covered by another award, federal or State, who receives protective clothing and/or payment of "dirt money" in respect of such work, the employee shall receive from their employer similar payment and/or clothing in the same manner as is prescribed by the award governing the employment of the employee with whom the employee works.

35. Redundancy

35.1 Application

- (a) This clause shall apply in respect to full time and part time persons employed in the classifications specified by Clause 9, Wages.
- (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.

35.2 Introduction of Change

(a) Employer's Duty To Notify

- (i) 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.
- (ii) "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.

(b) Employer's Duty To Discuss Change

- (i) 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 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.
- (ii) 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 paragraph 35.2(a).
- (iii) 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.

35.3 Redundancy

(a) Discussions Before Terminations

- (i) 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 35.2(a)(i), 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.
- (ii) 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 35.2(a)(i) 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.

- (iii) 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.

35.4 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, program, organisation or structure, in accordance with subparagraph 35.2(a)(i).

- (i) 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

- (ii) 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.
- (iii) 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.
- (iv) Unless and until the employer has complied with the requirements of subclause 35.2, Introduction of Change, and Clause 35.3, Redundancy, the status quo will be maintained; that is, the employer will not implement the redundancy or redundancies which is or are the subject of the dispute, and the employees will not take industrial action.

(b) 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 subparagraph 35.2(a)(i).

- (i) In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.
- (ii) 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.
- (iii) 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

- (i) 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.
- (ii) 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 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.

(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 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 35.2(a), 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.

35.5 Severance Pay

- (a) Where an employee is to be terminated pursuant to subclause 35.4 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.
- (b) The employer shall pay in accordance with the following scale:

Years of service	Employee Under 45years of age	Employee Over 45 years of age
Less than 1 year	Nil	Nil
1 year and less than 2 years	4 weeks	6 weeks
2 years and less than 3 years	7 weeks	8.75 weeks

3 years and less than 4 years	10 weeks	12.5 weeks
4 years and less than 5 years	12 weeks	15 weeks
5 years and less than 6 years	14 weeks	17.5 weeks
6 years and over	16 weeks	20 weeks

"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 pursuant to this award.

35.6 Incapacity to Pay

- (a) 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 35.5(a) above.
- (b) 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 paragraph 35.5(a) of this Clause will have on the employer.

35.7 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 35.5(a) above if the employer obtains acceptable alternative employment for an employee.

36. Re-Engagement

If, through slackness of work, employees are dismissed, such employees shall, as far as practicable, be given first preference for employment when employees are being re-engaged.

37. First-Aid

- 37.1 Where an employee is appointed to perform first-aid duty, such employee shall be paid an allowance as shown in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to their ordinary rates.
- 37.2 The Occupational Health and Safety Regulation 2001, as amended from time to time, shall apply in respect of the requirements for first-aid facilities.

38. Anti-Discrimination

- 38.1 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.
- 38.2 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 effect. 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.
- 38.3 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.
- 38.4 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.

38.5 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.

38.6 NOTES

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

39.1 Union Delegate -

- (a) An employee appointed as union delegate in the yard or factory, shall, upon notification thereof to the employer by the branch or sub-branch Secretary of the union, or other accredited union official, be recognised as the accredited representative of the union.
- (b) Any matter arising in the yard or factory-affecting members of the union may be investigated by the delegate and discussed with the employer or their representative. The delegate shall, at their request, be allowed a reasonable opportunity to carry out such duties at a time reasonably convenient to the employee and the employer.
- (c) 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.

39.2 Notice Board -

The employer shall supply a notice board of reasonable dimensions to be erected or to be placed in a prominent position at each yard upon which accredited representatives of the union shall be permitted to post formal notices authorised by the Secretary of the union.

39.3 Where required, elected union delegates shall undergo training in the areas of industrial relations and award interpretation. Training will be a maximum of two days paid leave per year per factory.

40. Industrial Disputes and Grievance Procedure

40.1 Disputes Procedure -

- (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 the union for the purpose of each procedure.

40.2 Grievance Procedure -

- (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 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 the union.
- (g) Where the parties fail to resolve the dispute or grievance, it is agreed that a dispute notification shall be made to the Industrial Relations Commission of New South Wales, pursuant to section 130 of the *Industrial Relations Act* 1996, for the express purpose of ensuring that all avenues of conciliation and mediation are fully explored.

41. Enterprise Arrangements

- 41.1 The provisions of this clause apply in addition to the Enterprise Arrangements Principle of the Wage Fixing Principles.
- 41.2 The terms of any proposed genuine agreement 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 Wage Fixing Principles. Before any arrangement requiring variation to the award is signed and processed, in accordance with this subclause, details of such arrangement shall be forwarded in writing to the union and the employer association of which the employer is a member.
- 41.3 All employees will be provided with current prescriptions (e.g. award, industrial agreement or enterprise agreement) that apply at the place of work.
- 41.4 No existing employee shall suffer a reduction in entitlement to earnings, award or over-award, for working ordinary hours of work as a result of any award changes made as part of the implementation of the arrangement.

PART B

MONETARY RATES

Table 1 - Wage Rates

Classification \$	Award rate per week \$	Safety net adjustment \$	Total per week
Basic Entry Level	504.80	20.00	524.80
Level 1	523.10	20.00	543.10
Level 2	534.30	20.00	554.30

Level 3	546.50	20.00	566.50
Level 4	564.00	20.00	584.00

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	9.3	Industry Allowance	21.20 per week
2	11.2	Leading Hand	36.13 per week
3	16.4	Meal Allowance	8.82 then 7.47 for each subsequent meal.
4	18.1 (a)	Shift allowance - rotating day-afternoon, day-night, day-afternoon-night shift	7.89 per shift
5	18.1 (b)	Shift allowance - rotating afternoon-night shift	11.79 per shift
6	18.1 (c)	Shift allowance - permanent night shift	23.25 per shift
7	37	First Aid Allowance	2.11 per day

E. A. R. BISHOP, Commissioner.

 Printed by the authority of the Industrial Registrar.

SADDLERY, LEATHER, CANVAS AND PLASTIC MATERIAL WORKERS' (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act* 1996.

(No. IRC 1556 of 2007)

Before Commissioner Bishop

19 February 2008

REVIEWED AWARD

PART A

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Contract of Employment
4.	Wage Rates
5.	Consultative Mechanism
6.	Casual Labour
6A.	Secure Employment Provisions
7.	Special Rates
8.	Mixed Functions
9.	Sunday and Holiday Rates
10.	Anti-Discrimination
11.	Hours of Work, Meal Times and Rest Periods
11A.	Implementation of 38-Hour Week
12.	Overtime
13.	Holidays
14.	Payment of Wages
15.	Sick Leave
16.	Personal/Carer's Leave
17.	Accident Pay
18.	Annual Leave
19.	Long Service Leave
20.	Outdoor Work
21.	Certificate of Service
22.	Time and Wages Book
23.	General Conditions
24.	Tools of Trade and Protective Clothing
25.	Shop Delegates
26.	Union Business
27.	Posting Awards and Notices
28.	Payment by Result Schemes
29.	Part-time Employment
30.	Right of Entry of Union Officials
31.	Existing Conditions
32.	Apprentices
33.	Basis of Award and Leave Reserved to Apply
34.	Bereavement Leave
35.	Parental Leave

36. Jury Service
37. Emergency Power Arrangements
38. Grievance and Dispute Procedure
39. Redundancy
40. Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Rates of Pay

Table 2 - Allowances

2. Definitions

- (a) "Double time" shall mean when applicable to ordinary hours of work on a weekday, the ordinary hourly rate payable as part of the weekly wage, and in addition a rate equal to such ordinary hourly rate.
- (b) "Double time and one-half" or rate of double time and one-half shall mean when applicable to hours of work on a holiday, the ordinary hourly rate payable as part of the weekly wage and in addition a rate equal to one and one-half times such ordinary hourly rate.
- (c) "Journeyman" shall mean an employee twenty years of age or over with four years experience in the industry or one who has completed his term of apprenticeship in the industry.
- (d) In this award, unless the contrary appears, words importing the masculine gender shall include females.
- (e) "Designer" shall mean an employee engaged solely on the designing of products and samples.
- (f) "Pattern Cutter" shall mean an employee engaged on cutting patterns and samples but shall not include an employee who modifies patterns under supervision.
- (g) "Sailmaker" means a person who is engaged to and is capable of designing and making sails. He/she must be capable of performing all of the following functions:
 - (i) Laying out and cutting of the sails
 - (ii) Supervise the joining and assembling of the sail, including the positioning of the batten pockets and cuts the flow to luff and leech of sail
 - (iii) Supervise and/or perform the work of "ticking" ropes to surround the sail
 - (iv) Supervise the "hand finishing" of the sail and be responsible for the final cut of the sail and shall modify the sail if necessary.
- (h) "Cutter (Canvas Goods Section)" means an experienced employee who has knowledge of all types and weights of materials made and used in the trade and who is capable of laying out and cutting all types of materials or work and who can mark, prepare and supervise the machining and the finishing of the work concerned.
- (i) "Union" means the Liquor, Hospitality and Miscellaneous Union, New South Wales Branch.
- (j) "Industrial Committee" means the Saddlery, Leather, Canvas and Plastic Material Workers, &c. (State) Industrial Committee.

3. Contract of Employment

- (a) Except as to casual employees, employment shall be terminable on either side by the required notice (as set out in subclause (c) of this clause) given at any time during the week, provided that during the first week of service the employment may be terminated by either party giving one day's notice.

Such day's notice is to take effect at the ordinary ceasing time on the day such notice is given if such notice is given within two hours of the ordinary commencing time that day, or earlier. Where the required notice is not given, the employer shall pay wages in lieu of the required notice or the employee shall forfeit wages in lieu of the required notice, which may be deducted from any moneys due to the employee. At the time of engagement an employee shall be informed as to whether he is engaged either as a weekly or a casual employee.

- (b) This shall not affect the right of the employer to dismiss any employee without notice for malingering, inefficiency, neglect of duty or misconduct, and in such cases wages shall be paid up to the time of dismissal only or to deduct payment for any day or shift any employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

- (c) Termination of Employment -

- (i) Notice of termination by employer

- (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
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

- (2) In addition to the notice in subparagraph (1) of this paragraph, 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 prescribed in subparagraphs (1) and/or (2) of this paragraph 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) In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time he or she would have worked during the period of notice had his or her employment not been terminated shall be used.
- (5) The period of notice in this clause shall not apply in the case of dismissal for 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 specified period of time or for a specific task or tasks.
- (6) For the purposes of this clause, continuity of service shall be calculated in the manner prescribed by subclause (k), Calculation of Service, of clause 18, Annual Leave, of this award.
- (ii) 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 monies due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

- (iii) 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 the times that are convenient to the employee after consultation with the employer.
- (iv) 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 his or her employment and the classification of or the type of work performed by the employee.
- (v) Summary Dismissal - Notwithstanding the provisions of subparagraph (1) of paragraph (i) of this subclause the employer shall have the right to dismiss any employee without notice for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty and in such cases the wages shall be paid up to the time of dismissal only.
- (vi) Unfair Dismissals - Termination of employment by an employer shall not be harsh, unjust or unreasonable. For the purpose 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 grounds 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.

4. Wage Rates

- (a) Adult Employees

The rates of pay for weekly employees shall be as set out in Table 1 - Rates of Pay, of Part B, Monetary Rates.

- (b) The rates of pay in this award include the adjustments payable under the State Wage Case 2007. 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) The following table shall indicate the wage group appropriate to each individual classification:

No.	Classification	Wage Group
Saddlery and Harness Section		
1.	Saddler and/or bridle hand means an experienced employee engaged in the manufacture and/or repair of saddles, harness for horses or similar collars, whips and whip thongs, who has knowledge of all grades and types of leather used in the trade and is capable of making patterns, cutting and preparing the components and manufacturing and/or repairing the final product	C
2.	Saddle and harness assistant includes stitchers and punchers and all other classes of work requiring direct supervision - Employee with less than 6 months' experience	M

	Employee with 6 to 12 months' experience	L
	Employee with more than 12 months' experience	J
Leathergoods, Luggage, Handbags, &c. Section		
3.	Designer as defined	A
3a.	Pattern Cutter as defined	A
4.	Hand cutting and/or clicking leather	E
5.	Hand cutting and/or clicking other material	E
6.	Manufacture and/or repair, including machine cutting, of -	
	(i) Travelgoods, bags, trunks, suit and attache cases, musical instrument and similar cases which are made of leather -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
	(ii) Travelgoods, bags, suit and attache cases, trunks, musical instrument and similar cases as are made of fibre or any material (including plastics) other than leather -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J
	Employee with more than 12 months' experience on such items	G
	(iii) Leather coats, jackets and leggings, rifle and/or gun covers, pouches and belts -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
	(iv) Handbags, shopping bags, brief cases and cosmetic cases made of leather or any other material (including plastic) -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
	(v) Wallets, spectacle cases, pouches of all descriptions and transistor radio cases made of leather, plastic or other material -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H

	Employee with more than 12 months' experience on such items	F
(vi)	Gloves (other than industrial and golf gloves), surgical belts and appliances, bicycle seats made of leather, plastic or any other material -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
(vii)	Playsuits made of leather, plastic or other material -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J
	Employee with more than 12 months' experience on such items	G
(viii)	Braces, straps, belts of all descriptions, purses, razor straps, hat leathers, watch straps, key wallets and similar articles, dog collars, articles made of woollen lamb skins, sheep skins, kangaroo skins or other like materials, and leads and leather. Goods of all descriptions not elsewhere included as are made of leather, plastic or other material -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J
	Employee with more than 12 months' experience on such items	G
(ix)	Slither cans, welders and similar industrial masks and other materials made of fibre or any material (including plastic) other than leather -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J
	Employee with more than 12 months' experience on such items	G
(x)	Car head rests, covers, car seats, car safety harness of all descriptions -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J
	Employee with more than 12 months' experience on such items	G
7.	Employee engaged in trimming gloves, cutting out forcetts and quirks and cutting cotton ends	M
Sporting Goods, &c., Section		
8.	Manufacture and/or repair of sporting goods of all descriptions - Employee with less than 6 months' experience on such items	I

	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
Machine Belting, &c., Section		
9.	Manufacture and/or repair machine belting, gaskets and pump washers or similar articles	I
Ships' Gear Section		
10.	Sail Maker - as defined	B
11.	Manufacture and/or repair of sails and ships' gear (including nets, fenders and rigging) and other articles that require the hand sewing of ropes by use of palm and needle -	
	Employee with less than 6 months' experience on such items	I
	Employee with 6 to 12 months' experience on such items	H
	Employee with more than 12 months' experience on such items	F
12.	Cutter - as defined	D
13.	Manufacture and/or repair of canvas goods of all descriptions covered by this award, including those made of plastic substitute for canvas, and flags of all descriptions and including cutters other than as defined -	
	Employee with less than 6 months' experience on such items	M
	Employee with 6 to 12 months' experience on such items	L
	Employee with more than 12 months' experience on such items	I
Industrial Spindle Polishing Mops Section		
14.	Manufacture and/or repair of industrial spindle polishing mops	J
Industrial and Golf Gloves Section		
15.	(i) Manufacture and/or repair of industrial and golf gloves -	
	Employee with less than 6 months' experience on such items	L
	Employee with 6 to 12 months' experience on such items	K
	Employee with more than 12 months' experience on such items	I
	(ii) Employee engaged in trimming gloves, cutting out forcetts and quirks and cutting cotton ends	M
	(iii) Employee engaged in machine cutting of leather and/or other materials -	
	Employee with less than 6 months' experience on such items	K
	Employee with 6 to 12 months' experience on such items	J

Employee with more than 12 months' experience on such items G

Toys Section

Toys made of woolled lamb skins, sheep skins, kangaroo skins or other furred skins. The rates of pay for employees engaged on this work shall be:

16. Designer - as defined A
17. Pattern cutter - as defined A
18. Die cutter using clicking press -
- Employee with less than 6 months' experience on such items K
- Employee with 6 to 12 months' experience on such items J
- Employee with more than 12 months' experience on such items G
19. Hand cutter and/or clicker E
20. Fillers and/or stuffers K
21. Machinists -
- Employee with less than 6 months' experience on such items K
- Employee with 6 to 12 months' experience on such items J
- Employee with more than 12 months' experience on such items G

General

22. Storeperson K
23. Employee engaged in trimming threads, cleaning, labelling, packing in bags and cartons, attachment of keys, turning out (other than sporting goods), paper filling of finished product, eyeletting (other than canvas goods), press studding (other than canvas goods), marking and/or staining, R.F. Welding, lock fixing (on items less than 50 cm in length), gluing edges, machine gluing, other gluing on items less than 155 sq. cms in area K
- (a) Junior Employees - The weekly rate for junior employees shall be the undermentioned percentages of the rate for classification 6(ii), Manufacture, etc., of travel goods, etc. (other than leather) with more than 12 months' experience in subclause (c) of this clause:

Age	Percentage
16 years of age and under	50
17 years of age.	60
18 years of age	70
19 years of age	80
20 years of age	90

The above percentages shall be calculated to the nearest 5 cents (half or less than half of 5 cents to be disregarded).

Thereafter, the minimum wage prescribed for adults for the class of work which they are doing shall apply, provided, however, that a junior after 4 years' experience in the industry covered by this award shall be paid the full adult rate prescribed in subclause (c) of this clause.

- (i) For the purpose of this clause, "experience" shall mean any form of employment in the industry.
 - (ii) Employers who wilfully employ juniors without taking into account previous experience shall be guilty of a breach of this award.
 - (iii) The proportion of junior workers and apprentices to adult employees shall be one to one. In computing the proportion under this paragraph, the number of such employees employed for the whole of the previous 6 months shall be taken. To be clear, an employee under 21 years of age being paid the adult rate of pay in accordance with Table 1 - Rates of Pay, of Part B, Monetary Rates, shall not be considered as a junior worker for the purposes of this paragraph.
- (b) **Leading Hands** - An employee who is appointed by the management to supervise the work of other employees shall be paid an additional amount as set out in Items 1, 2 and 3 of Table 2 - Allowances, of the said Part B.
 - (c) **First-aid Attendant** - An employee holding a St John Ambulance or equivalent first-aid certificate, appointed by the employer to be a first-aid attendant, shall be paid an amount as set out in Item 4 of Table 2, in addition to his/her usual weekly wage, and shall also be paid for all time spent in attending lectures on first aid during and outside working hours, provided such time is authorised by the employer. An adequate first-aid outfit shall be provided as prescribed by the *Occupational Health and Safety Act 2000* (NSW), and the Regulations made thereunder.

5. 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.

6. Casual Labour

A casual employee is an employee engaged and paid as such. A casual employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly rate prescribed by this award for the work he or she performs plus 20 per cent. The employment of a casual worker may be terminated by the giving of one hour's notice by either side. If a period of engagement exceeds 20 working days continuously, the employer shall notify the union in writing of that fact.

6A. 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
 - (a) 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*.
 - (b) 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.
 - (c) 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.

7. Special Rates

In addition to the rates set out herein the following shall be paid:

- (a) Employees engaged in using offensive animal hair or similar offensive material in the saddlery and harness trade or repairing harnesses or in the manufacture or repair of other leather goods or substitutes thereof of a dirty or offensive nature, shall be paid an amount as set out in Item 5 of Table 2 - Allowances, of Part B, Monetary Rates, where the foreperson and the employee agree that such hair and/or material is of an unusually offensive nature.
- (b) For the repair of canvas goods of all descriptions which the foreperson and journey person shall agree are of an unusually dirty or offensive nature, an amount as set out in Item 6 of the said Table 2 shall be paid.

In the case of disagreement between the foreperson and an employee in relation to subclauses (a) and (b) of this clause, the foreperson and employee shall refer to clause 38, Grievance and Dispute Procedure, and a decision with respect to subclause (a) of that procedure shall be provided within 24 hours.

- (c) Employees engaged in handling any type of chemically treated canvas materials which are unusually offensive to handle shall have any additional rates of pay determined by an Industrial Committee which shall meet at such times and places as the Industrial Registrar may determine, and shall have power to settle disputes arising under this award. In respect of any claim under this subclause, the employer shall be given written notice of such claim by the employee and/or the local Secretary of the union within 21 days of the commencing of the handling of such material in dispute.

8. Mixed Functions

- (a) An employee engaged for more than two hours on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for the whole of such day. He shall in any case be paid the higher rate for the time so worked. If the hours worked by an employee on such higher classification aggregates 10 in the pay week, he shall be paid at the higher rate for the week.
- (b) The employee called upon to operate a forklift or similar vehicle shall be paid an amount per hour extra set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, whilst so engaged.

9. Sunday and Holiday Rates

- (a) All time performed on Sundays shall be paid for at the rate of double time, and on holidays at the rate of double time and a half.
- (b) An employee called upon to work on a Sunday or holiday shall be paid for a minimum of four hours' duty.

10. Anti-Discrimination

- (a) 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.
- (b) 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.
- (c) 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.
- (d) Nothing in this clause is to be taken to affect:
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

- (e) 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.

11. Hours of Work, Meal Times and Rest Periods

(a) Hours

- (i) Subject to clause 11A, Implementation of 38-Hour Week, and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (1) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (2) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (3) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (4) 152 hours within a work cycle not exceeding 28 consecutive days.

- (ii) Subject to subclause (e) of the said clause 11A, not more than 8 hours exclusive of meal breaks (except if paid for at overtime rates) shall be worked in any one day in each week.

- (iii) Day Work - The ordinary hours of day work shall not be earlier than 7.00 a.m. and not later than 5.30 p.m. on 5 days of the week, provided that, where the employer and the majority of employees agree, the spread of hours may be from 6.00 a.m. to 6.00 p.m.

(iv) Shift Work

- (1) Employees may be engaged on shift work.
- (2) Shift work shall be limited to working:
 - (A) Permanent afternoon shift Monday to Friday; or
 - (B) Shifts that rotate between afternoon and day shifts Monday to Friday.
- (3) Employees whilst on afternoon shift shall be paid 20% additional to the ordinary rate of pay.
- (4) Employees working shiftwork shall be given 20 minutes for a paid break, which shall be counted as time worked.
- (5) Afternoon shift shall mean a shift finishing after 6.00 p.m. and at or before midnight Monday to Friday.

(b) Meal Times for Day Workers

- (i) Employees shall be allowed a meal break of 30 minutes. By agreement between the employer and his/her employees it may be extended to a maximum of 60 minutes.
- (ii) The meal period shall be between 11.30 a.m. and 1.30 p.m.
- (iii) Any employee called upon to work during a meal hour shall be paid at the rate of time and one-half. Such rate shall continue until the employee has a meal break.
- (iv) No employee shall be required to work more than 5 hours without a break for a meal. Provided that, with regard to Fridays only, where hours of work are arranged in accordance with paragraph (b)(ii) of the said clause 11A, the employer may, by agreement with the majority of employees, extend the rest period by 10 minutes without pay and thereby be relieved of any obligation under this paragraph only in respect of the particular day on which no more than 6 ordinary hours are worked.

- (c) Rest Period - A rest period of 10 minutes shall be given to all employees between the hours of 9.30 a.m. and 10.30 a.m., or at other such time as mutually agreed by the employer and the employee. The interval shall be counted as time off without deduction of pay. During such period, the employee shall not leave the premises.

11A. Implementation of 38-Hour Week

- (a) The ordinary hours of work shall be an average of 38 per week as provided in clause 11, Hours of Work, Meal Times and Rest Periods.
- (b) Except as provided in subclauses (e) and (f) of this clause, the method of implementation of the 38-hour week may be one of the following:
- (i) By employees working less than 8 ordinary hours each day; or
 - (ii) By employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) By fixing one weekday on which all employees will be off during a particular work cycle; or
 - (iv) By rostering employees off on various days of the week during a particular work cycle so that each employee has one weekday off during that cycle.
- (c) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned.
- (d) In the absence of agreement at plant level, the matter shall be referred:
- (i) To the Secretary of the Union or nominee, at which level a conference of the parties shall be convened without delay.
 - (ii) In the absence of agreement, either party may refer the matter to a tribunal established pursuant to the *Industrial Relations Act 1996*, for resolution.
- (e) Subject to the provisions of the said clause 11, the employer and the majority of employees in the plant or section or sections concerned may agree that the ordinary working hours are to exceed on any day, thus enabling a weekday off to be taken more frequently than would otherwise apply.
- (f) Circumstances may arise where different methods of implementation of a 38-hour week apply to various groups or sections of employees in the plant or establishment concerned.
- (g) Notice of Days Off Except as provided in subclause (h) of this clause, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee, in accordance with paragraphs (b)(iii) and (b)(iv) of this clause, is entitled to a day off during his/her work cycle, such employee shall be advised by the employer at least 4 weeks in advance of the weekday he/she is to take off.
- (h) Substitute Days
- (i) 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 (b)(iii) and (b)(iv) of this clause, 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.
 - (ii) An individual employee, with the agreement of their employer, may substitute the day he/she is to take off for another day.
 - (iii) Banking of Rostered Days Off Where implementation of the 38-hour week is agreed to in accordance with paragraphs (b)(iii) or (b)(iv) of this clause, an employer and the majority of the employees concerned may agree to a banking system of rostered days off, provided that no more

than 5 days may be banked for any employee in any one period. An employee shall therefore work on what would normally have been his/her rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employer and the employee. No penalty payments shall be made to employees working on a day which would otherwise have been a rostered day off and in no circumstances shall the employee lose his/her entitlement to the banked days or, in the event of termination only, payment in lieu thereof.

12. Overtime

- (a) For all work done outside ordinary hours, the rates of pay shall be time and a half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work. For the purposes of this clause ordinary hours shall mean the hours of work fixed in an establishment in accordance with clauses 11, Hours of Work, Meal Times and Rest Periods and 11A, Implementation of 38-Hour Week of this award. The hourly rate when computing overtime shall be determined by dividing the appropriate weekly rate by thirty-eight, even in cases when an employee works more than thirty-eight ordinary hours in a week.
- (b) In computing overtime each day's work shall stand-alone.
- (c) An employee required to work overtime in excess of one and one-half hours without being notified on the previous day or earlier that he/she will be required to work overtime shall be paid an amount as set out in Item 8 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates. If an employee has provided a meal and is not required to work overtime or is required to work less than the amount advised, he/she shall be paid an amount as set out in Item 9 of the said Table 2.
- (d) If the period of overtime exceeds one and one-half hours an employee before starting overtime after working ordinary hours shall be allowed a crib break of twenty minutes which shall be paid for at the ordinary time rate of pay. An 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 payment for any time allowed in excess of twenty minutes.
- (e) An employee recalled to work overtime after leaving his/her employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 3 hours' work at overtime rates for each time he/she is so recalled; provided that, except in unforeseen circumstances arising, the employee shall not be required to work the full 3 hours if the job he/she was recalled to perform is completed within a shorter period. Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclauses (c) and (d) of this clause, where the actual time worked is less than 3 hours on such recall or each of such recalls.
- (f) Any employee shall have completed his/her normal daily hours before overtime payment commence for such day excepting in cases where failure to do so is due to causes outside his/her control or where time off has been with the employer's consent. Any suspected abuse of this subclause shall be referred to the Industrial Committee.
- (g)
 - (i) An employer may require any employee to work reasonable overtime at overtime rates, and such employee shall work overtime in accordance with such requirement.
 - (ii) No employee shall be compelled to work more than a reasonable amount of overtime.

13. Holidays

- (a) All employees shall be entitled to the holidays hereinafter mentioned or any day observed in lieu thereof without deduction of pay:
 - (i) New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day, together with all other days proclaimed as public holidays throughout the State.

- (ii) The first Monday in August shall be an additional award holiday provided that in establishments where the majority of employees are entitled to another day as an additional award holiday then such additional holiday shall be observed in lieu of the abovementioned Monday; provided further that by agreement between any employer and the majority of employees concerned another day may be substituted for this additional holiday in respect of that employer's undertaking.
- (b) Pieceworkers shall be paid for such holidays even though not worked at the ordinary rates payable to employees not on piecework doing the same class of work. The rate shall be one-fifth of the appropriate weekly wage.
- (c) If an employee's engagement is lawfully terminated otherwise than for misconduct within two weeks of any of the holidays abovementioned, he or she shall be paid for such holiday unless he or she commences work with another employer and is paid by such employer for such holiday or holidays.
- (d) Where an employee is absent from his or her employment on the working day before or after a holiday without reasonable excuse or without the employer's consent such employee shall not be entitled to payment for such holiday. The amount to be deducted shall be one-fifth, as the case may be, of the appropriate weekly wage.
- (e) In the case of an employee whose ordinary hours of work are arranged in accordance with paragraphs (b)(iii) or (b)(iv) of clause 11A, Implementation of 38 Hour-Week, the weekday to be taken off shall not coincide with a public holiday fixed in accordance with paragraphs (a)(i) and (ii) of this clause. Provided that, in the event that a public holiday is prescribed after an employee has been given notice of his/her weekday off in accordance with subclause (g) of the said clause 11A and the public holiday falls on the weekday the employee is to take off, the employer shall allow the employee to take the day off on an alternative weekday.

14. Payment of Wages

- (a) Subject to the provisions of subclause (b) of this clause, an employee shall be paid wages on any day, Monday to Thursday, in each week and such wages shall be paid not later than two days after the end of the pay week in respect of which the wages have become due.
- (b) Wages may be paid on Friday only in cases where the local branch or section of the union gives written permission to an employer.
- (c) Employers shall pay all monies due on payday not later than fifteen minutes before knock-off time. Time waiting for payment after such fifteen minutes shall be paid for at overtime rates.
- (d) Where a holiday occurs on a pay day the employee shall be paid on the day preceding the usual pay day, subject to any overtime or incentive payment being carried forward to the next week.
- (e) Any employee who has worked only a portion of a week and who is dismissed by the employer or lawfully leaves the employment shall be paid on ceasing work all monies due.
- (f) On a pay day the employer shall state to each employee in writing the amount of wages to which he is entitled and the amount of overtime paid or the number of hours of overtime, the amount of deductions made there from and the net amount being paid to him and the date to which wages are paid.
- (g) An employee sent to work at a place other than his or her ordinary place of employment, shall be paid all fares and out-of-pocket expenses incurred in going to or from such place of employment, and shall, if the travelling is done outside ordinary hours, be paid at overtime rates for the time spent in travelling with a maximum of eight hours per day.
- (h) Wages shall be paid as follows:
 - (i) In the case of an employee whose ordinary hours of work are arranged in accordance with clause 11A, Implementation of 38-Hour Week, of this award so that he works 38 ordinary hours each

week, wages shall be paid weekly according to the actual ordinary hours worked each week. Employee who works an average of 38 ordinary hours each week -

- (ii) Subject to subclauses (i) and (j) of this clause, in the case of an employee whose ordinary hours of work are arranged in accordance with the said clause 11A, so that the employee works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

Special Note - Explanation of Averaging System -

As provided in this subclause, an employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle is to be paid wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below -

- (a) Paragraphs (b)(iii) and (b)(iv) of the said clause 11A provide that in implementing a 38-hour week the ordinary hours of an employee may be arranged so that the employee is entitled to a day off on a fixed day or rostered day basis during each work cycle. It is in these circumstances that the averaging system would apply.
- (b) If the 38-hour week is to be implemented so as to give an employee a day off in each work cycle this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks), the employee's ordinary hours were arranged on the basis that for three of the four weeks the employee worked 40 ordinary hours each week and in the fourth week the employee worked 32 ordinary hours. That is, he would work for 8 ordinary hours each day Monday to Friday inclusive for three weeks, and 8 ordinary hours on four weekdays only in the fourth week - a total of 19 days during the work cycle.
- (c) In such a case the averaging system applies and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in clause 4, Wage Rates, of this award, and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

In effect, under the averaging system, the employee accrues a credit each day the employee works actual ordinary hours in excess of the daily average, which would otherwise be 7 hours 36 minutes. This credit is carried forward so that in the week of the cycle that the employee works on only four days, the actual pay would be for an average of 38 ordinary hours even though, that week, the employee works a total of 32 ordinary hours.

Consequently, for each day an employee works 8 ordinary hours he accrues a credit of 24 minutes (0.4 hours). The maximum credit the employee may accrue under this system is 0.4 hours on 19 days; that is, a total of 7 hours 36 minutes.

- (d) As provided in subclause (i) of this clause, an employee shall not accrue a credit for each day of absence from duty other than on annual leave, long service leave, public holidays, paid sick leave, personal/carer's leave, workers' compensation, bereavement leave or jury service. When an employee is absent from duty because of annual leave, workers' compensation, bereavement leave or jury service, the entitlement is determined in accordance with the appropriate award provision dealing with such entitlements.
- (i) Absences from duty -
- (i) An employee whose ordinary hours are arranged in accordance with paragraphs (b)(iii) and (b)(iv) of clause 11A, Implementation of 38-Hour Week, and who is paid wages in accordance with paragraph (h)(ii) of this clause and is absent from duty (other than on annual leave or personal/carer's leave, long service leave, public holidays, paid sick leave, workers'

compensation, bereavement leave or jury service) shall, for each day so absent, lose average pay for that day calculated by dividing his/her average weekly wage rate by 5.

An employee who is so absent from duty for part of a day shall lose average pay for each hour of absence by dividing his/her average daily pay rate by 8.

- (ii) Provided that, when such an employee is absent from duty for a whole day the employee shall not accrue a credit because the employee would not have worked ordinary hours that day in excess of 7 hours 36 minutes for which the employee would otherwise have been paid. Consequently, during the week of the work cycle the employee is to work less than 38 ordinary hours the employee shall not be entitled to average pay for that week. In that week, the average pay shall be reduced by the amount of the employee does not accrue for each whole day during the work cycle of absence. The amount by which an employee's average weekly pay shall be reduced when absent from duty (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, bereavement leave or jury service) is to be calculated as follows:

Total of credits not accrued during cycle x average weekly pay
38

Examples:

(An employee's ordinary hours are arranged so that the employee works 8 ordinary hours on five days of each week for 3 weeks and 8 ordinary hours on four days of the fourth week.)

1. Employee takes one day off without authorisation in first week of cycle.

Week of Cycle Payment

1st week = average weekly pay less one day's pay (i.e., less 1/5)

2nd and third weeks = average weekly pay each week

4th week = average pay less credit not accrued on day of absence

= average pay less 0.4 hours
x average weekly pay

38

2. Employee takes each of the 4 days off without authorisation in fourth week.

Week of Cycle Payment

1st, 2nd and 3rd weeks = average pay each week

4th week = average pay less 4/5 of average pay for the four days absent

= less total of credits not accrued that week

= 1/5 average pay less
4 x 0.4 hours (1.6 hours) x
average weekly pay

38

- (j) Alternative Methods of Payment -

- (i) Provided that in the case of an employee who, prior to 5 July 1985, was working less than 40 ordinary hours each week and who was paid by a method different from that provided for in subclauses (h) and (j) hereof, such method may be continued.

- (ii) Provided further that, where the employer and the majority of employees concerned agree, an alternative method of paying wages to that provided in subclauses (h) and (i) hereof may be introduced.
- (k) Day Off Coinciding with Pay Day - In the event that an employee, by virtue of the arrangement of his ordinary working hours, is to take a day off on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding payday.
- (l) Where an employer and employee agree, the employee may be paid wages by cheque or direct transfer into the employee's bank account (or other recognised financial institution). 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 account (or other recognised financial institution), provided that in the case of employees paid by cheque, the employer shall, on pay day, if it is required by the employee, have facilities available during ordinary hours for the encashment of the cheque.

15. Sick Leave

An employee other than a casual employee who is absent from work on account of personal illness or incapacity due to any cause other than his own misconduct shall be entitled to leave of absence without deduction of pay, subject to the following conditions:

- (a) An employee shall not be entitled to paid leave of absence for any period in respect of which he is entitled to workers' compensation.
- (b)
 - (i) An employee shall within 24 hours of the commencement of such absence inform the employer of his inability to attend for duty and as far as practicable state the nature of the illness or incapacity and the estimated duration of the absence.
 - (ii) Where practicable, an employee shall notify the employer of the prospective absence prior to the commencement of the first period of work for which the employee will be absent.
- (c) An employee before becoming entitled to sick pay shall, if required to do so by the employer, produce a doctor's certificate, statutory declaration, or other sufficient evidence of sickness. Any dispute arising from this subclause shall be decided by the Industrial Committee.
- (d) An employee absent through illness or incapacity shall not be entitled in his first year (whether in the employ of one employer or several), except as hereinafter provided, to leave in excess of 5 days and in his second and subsequent years he/she shall not be entitled to leave in excess of 8 days. For this purpose a year shall commence on the 1st day of July.
- (e) An employee employed under any system of payment by results (clause 28 of this award) entitled to paid leave of absence under this clause shall be paid at the time-work rate applicable to his classification.
- (f) An employer in the first 6 months of employment of an employee shall not be liable to pay the employee for more than 3 1/3 hours absence owing to such ill health or incapacity in respect of each completed month of employment with that employer.
- (g) If the full period of leave as prescribed above is not granted in any year with an employer, such portion as is not granted shall be cumulative from year to year with that employer up to a period equivalent to the amount of such leave which could be accumulated over a period of twelve years if no such leave was taken in that period which shall be the maximum amount of leave to which any employee may be entitled in any year without deduction of pay.

- (h) Service before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.

16. 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 16(a)(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 15, 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 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 stepchild, 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.
- (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 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 38, Grievance and Dispute Procedure, should be followed.

(b) 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 16(a)(iii)(2) above who is ill or who requires care due to an unexpected emergency.

(c) 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 (i) 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 5 consecutive annual leave days are taken.
- (iv) 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.

(d) Time Off in Lieu of Payment for Overtime

- (i) 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.

(e) 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.

(f) Rostered Days Off

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part-day amounts.

- (iii) 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.
 - (iv) 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.
- (g) Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 16(a)(ii) and 16(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 16(a)(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.

17. Accident Pay

- (a) An employer shall pay and an employee shall be entitled to receive accident pay in accordance with this clause.
- (b) Definitions - For the purposes of this clause and subject to the terms thereof the words hereunder shall bear the respective definitions set out hereunder:
 - (i) Workers' Compensation Act - For the purposes of this clause Workers' Compensation Act shall mean the *Workers' Compensation Act 1987*, from time to time effective.
 - (ii) Injury - For the purposes of this clause injury shall mean personal injury arising out of or in the course of employment (including, but without limiting the generality of the foregoing, any disease to which the provisions of the Act apply and any injury received during a daily or other periodic journey or any other journey to which the provisions of the Act apply or during any ordinary recess referred to in the Act), resulting in incapacity and for which compensation is being paid.
 - (iii) Accident Pay -
 - (1) In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the said Act, accident pay means a weekly payment of an amount representing the difference between, on the one hand, the total amount of compensation, including other allowances, paid to the employee during incapacity pursuant to the said Act 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 giving rise to the said payment of compensation together with or less as the case may be any variation in award rates which would have been applicable to the classification of such employee for the week in question if he/she had been performing his normal duties, 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.

- (2) Partial Incapacity - In the case of an employee partially incapacitated within the meaning of the said Act, accident pay 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 pursuant to the said Act 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 Workers' Compensation Commission or as agreed between the parties) and on the other hand, the total weekly award rate and weekly over award payment, if any, being paid to such employee at the date of the injury giving rise to the said payments of compensation together with or less as the case may be any variation in award rates which would have been applicable to the classification of such employee for the week in question if he/she had been performing his/her normal duties, 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 said Act 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.

- (3) 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.
- (c) Qualification 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 said Act, be paid accident pay by his/her employer who is liable to pay compensation under the said Act, which said liability by the employer for accident pay may be discharged by another person on his behalf, provided that -
- (i) Accident pay shall only be payable to an employee whilst such employee remains in employment of the employer by whom he/she was employed at the time of the incapacity and then only for such period as he/she receives a weekly payment under the said Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from his/her 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 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 -
- (1) The termination is due to serious and/or wilful misconduct on the part of the employee; or
- (2) arises from a declaration of liquidation of the company in which case the employee's entitlement shall be determined by the appropriate State legislation. In order to qualify for the continuance of accident pay on termination an employee shall, if required, provide evidence to his/her employer of the continuing payment of weekly workers' compensation payments.
- (ii) Accident pay shall not apply to any incapacity occurring during the first four weeks of employment unless such incapacity continues beyond the first four weeks and then subject to paragraph (iii) of this subclause, and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first four weeks.
- (iii) Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity.
- (iv) An employee on engagement may be required to declare all workers' compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit his/her entitlement to accident pay under this award.

- (d) **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 thirty-nine weeks.
- (e) **Absence 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.
- (f) **Notice of Injury** - An employee upon receiving an injury for which he/she claims to be entitled to receive accident pay shall give notice in writing of the said injury to his/her employer and of its manner of happening as soon as practicable after the happening thereof and shall provide in writing all other information as the employer may reasonably require.
- (g) **Furnishing of Evidence** - An employee who has suffered any injury for which he is receiving payment or payments for incapacity, in accordance with the provisions of the said Act, shall furnish evidence to the employer from time to time as required by the employer of such payment and 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 his/her behalf, authorise his/her employer to obtain any information required by such employer concerning such injury or compensation payable in respect thereof from the insurance company that is liable to pay compensation to such employee pursuant to the said Act.
- (h) **Medical Examination** - Nothing in this clause shall in any way be taken as restricting or removing the employer's rights under the said Act to require the employee to submit himself/herself for examination by a legally qualified medical practitioner, provided and paid by the employer, and if he/she refuses to submit himself/herself to such examination or in any way obstructs the same, his/her right to receive or continue to receive accident pay shall be suspended in like manner as his/her right to compensation is suspended pursuant to the said Act until such examination has taken place.

Where in accordance with the said Act a medical referee gives a certificate as to the condition of the employee and his/her 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 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 his/her failure to do so payment of accident pay shall cease.

- (i) **Redemption of Weekly Payments** - Where there is a redemption of weekly compensation payments by the payment under the said Act of a lump sum the employer's liability to pay accident pay shall cease as from the date of such redemption.
- (j) **Civil Damages Claim** -
 - (i) An employee receiving or who has received accident pay shall advise his/her employer of any action he/she may institute or any claim he/she may make for damages. Further the employee shall, if required, authorise such employer to obtain information as to the progress of such action or claim from the employee's solicitors and shall, if required, provide an authority to the employer entitling the employer to a charge upon any monies payable pursuant to any verdict or settlement on that injury.
 - (ii) Where an employee obtains a verdict for damages against his/her employer or is paid an amount of money in settlement of any claim for damages that he/she has made against his/her employer in respect of any injury for which he/she has received accident pay, the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee immediately upon payment of such verdict or amount in settlement shall pay to his/her employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

- (iii) Where an employee obtains a verdict for damages against a person other than the employer or is paid an amount of money in settlement of any claim for damages that he/she has made against such person in respect of any injury for which he/she has received accident pay the employer's liability to pay accident pay shall cease from the date of such verdict; provided that if the verdict for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to his/her employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.
- (k) Insurance Against Liability - Nothing in this clause shall require an employer to insure against his/her liability for accident pay, nor shall it affect the right of an employer to terminate the employment of the employee.
- (l) Variations in Compensation Rates - Any changes in compensation rates under the said Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.
- (m) Death of Employee - All rights to accident pay shall cease on the death of an employee.
- (n) Disputes - In the event of any dispute arising as to the entitlement of an employee to payment of accident pay in accordance with the provisions of this award the matter shall, if any party to this award so requires, be referred to the Industrial Committee.
- (o) Safety Regulations - Without prejudice to the terms of this clause the union shall use its best 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.

18. Annual Leave

- (a) See *Annual Holidays Act 1944*.
- (b) Public Holidays Excluded -
 - (i) A period of annual leave shall not include award holidays, observed on working days, but shall include all other non-working days.
 - (ii) If any award holiday falls within an employee's period of annual leave and is observed on the day, which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day for each holiday observed as aforesaid.
 - (iii) Where an employee without reasonable excuse, proof whereof shall lie upon him/her, is absent from his/her employment on the working day or part of the working day prior to the commencement of his/her annual leave or fails to resume work at his/her ordinary starting time on the working day immediately following the last day of the period of his annual leave, the employee shall not be entitled to payment for the public holidays which fall within his/her period of annual leave.
- (c) Notice of Leave to be Given - At least one month's notice shall be given to an employee as to when he/she is to commence his/her leave, except in cases where by mutual agreement between the employer and the employee a lesser period of notice may be permitted. If at any time notice is withdrawn by an employer the employee, if he/she postpones his/her leave, shall be compensated by the employer for any reasonable out-of-pocket loss occasioned by the withdrawal of the notice. Any dispute under this subclause shall be referred to the Industrial Committee.
- (d) Time when Leave is Granted - 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 not less than one week's notice to the employee.

- (e) Leave to be Given and Taken - The annual leave provided for by this clause shall be allowed and shall be taken and except as provided in subclause (h) of this clause payments shall not be made or accepted in lieu of annual leave.
- (f) The annual leave shall be given and taken in a continuous period, or, if the employee and employer so agree, in two or three separate periods.
- (g) Payment for Period of Annual Leave - An employee before going on leave shall be paid the amount of wages he/she would have received in respect of ordinary time he/she would have worked had he/she not been on leave during the relevant period. Each employee shall have the amount of wages to be received for annual leave calculated as follows:
 - (i) At the rate applicable to him/her as prescribed by clause 4, Wage Rates, and clause 29, Part-time Employment; and
 - (ii) At any additional rate to which the employee is otherwise entitled in accordance with his/her contract of employment for ordinary hours of work; provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid for the same reason as or is paid in lieu of those payments prescribed in clauses 7, Special Rates, and 12, Overtime, of this award, nor any payment which might have become payable to the employee as reimbursement of expenses incurred.
 - (iii) In the case of an employee carrying out work under any scheme of payments by results, whether in accordance with clause 28, Payment by Result Schemes, of this award or otherwise, at the rate which is the weekly average of payments made to the employee under such scheme for the period actually worked by him/her during ordinary hours during the last twelve monthly period in respect of which such payments have been calculated prior to the time of going on leave or termination of employment as the case may be; or if he/she has worked under such scheme for a lesser period immediately prior to going on leave, at the rate which is the weekly average of payments made during such lesser period.
 - (iv) At the rate payable pursuant to clause 8, Mixed Functions, calculated on a daily basis which the employee would have received for ordinary time during the relevant period whether on a shift roster or otherwise.
- (h) Annual Leave Loading - During a period of annual leave an employee shall receive a loading of 17.5 per cent calculated on the rate of wage prescribed by paragraph (i) of subclause (g), of this clause. Provided that such loading shall apply only in respect of each completed year of employment.
- (i) Disputes - Any disputes as to the rights of an employee to or with respect to annual leave shall be dealt with by the Industrial Committee.
- (j) Calculation of Service - Service before the date on which this award comes into force shall be taken into consideration for the purpose of calculating annual leave but 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 any award hereby superseded.

19. Long Service Leave

See *Long Service Leave Act 1955*.

20. Outdoor Work

- (a) Except as to the work in the machine belting trade and in the erecting of marquees and tents, fitting and fixing blinds, awnings, wagon covers, machinery covers and other like operations, all work shall be performed at the shop or factory of the employer and no employer shall give out work to be performed at any other place, or permit work to be performed at any other place; and no employee shall perform work for an employer at any other place.

- (b) No employee (including an apprentice or unapprenticed junior worker) in employment shall make or assist in the production of goods for sale on his/her own account or for any other employer.

21. Certificate of Service

Any junior or inexperienced worker when leaving or being discharged from the employee's employment shall be given by the employer a certificate stating the date when such employment began and the date when such employment terminated.

22. Time and Wages Book

- (a) Each employer shall keep in each factory, workshop or place where work is carried on by the employee, some card or check used in connection with a mechanical clock or a time and wages book showing the name of each employee and his or her occupation, the hours worked each day and the wages and allowances paid each week.
- (b) When a time book is kept it shall be correctly entered up in ink in the English language, and shall be signed each week by the employee verifying the accuracy of the hours worked and the wages and allowances paid each week.
- (c) The time occupied by an employee in filling in any time books 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 at the beginning or end of duty.
- (d) The time and wages book shall be open for inspection to officers of the union duly authorised by the Industrial Registrar pursuant to section 299 of the *Industrial Relations Act* 1996, during the usual office hours at the employer's office or other convenient place; provided that an inspection shall not be demanded unless the Secretary of the union or an organiser of any section suspects that a breach of this award has been or is being committed.
- (e) The official making such inspection shall be entitled to take a copy of entries in a time and wages book relating to the suspected breach of this award.

23. General Conditions

- (a) In every factory or workshop the employer shall make provisions for adequate warmth during the winter period.
- (b) In factories where five or more employees are employed a separate room or portion of the factory or workshop shall be set aside by the employer as a dining room and therein the employer shall provide adequate table and seating accommodation.
- (c) Hot water shall be provided free of charge to be available to employees immediately mealtime commences.
- (d) The employer shall provide the necessary labour to keep such room clean.
- (e) If such dining room is not regularly used by a reasonable number of the employees the employer shall be released from his/her obligations under subclauses (b) and (c), of this clause.
- (f) Any dispute in respect of this clause shall be referred to the Industrial Committee.

24. Tools of Trade and Protective Clothing

- (a) The employer shall provide tools and implements of trade necessarily required by the employee in the performance of his/her duties. The employee who has been provided by the employer with facilities to lock up such tools shall be held responsible for the safe custody of tools issued to him/her, and shall replace or pay for any tools so provided if lost or wilfully or negligently damaged.

- (b) Where work is of an unusually dirty or offensive nature, where excessive soiling or damage may occur to employees' working clothes, or where the nature of the work requires suitable and adequate protective clothing it shall be supplied by the employer. Employees shall take reasonable care of clothing so provided. Any dispute as to this clause shall be referred to the Industrial Committee.

25. Shop Delegates

- (a) Shop delegates in each workshop shall be allowed the necessary time during working hours to interview the employer or his/her representative on matters affecting the employees whom they represent.
- (b) Shop delegates or union representatives shall be granted reasonable facilities for the carrying out of their duties.
- (c) Subject to the prior approval of the employer an accredited shop steward shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited union official of the Union on legitimate union business.

26. Union Business

- (a) Any member of the union or any member of the committee of management of the branch or section thereof, or shop delegates may leave work to attend the business of the union provided that at least reasonable notice has been given to the employer.
- (b) No employer shall compel a member of the union to resign membership of the union through the fact of such member being made a foreman or placed upon the staff.

27. Posting Awards and Notices

- (a) In each factory the employer shall provide a notice board in the workroom of each department and the union shall be permitted to post formal shop and union notices on such board; provided that the notices so posted shall be signed by the Secretary or Shop Delegate of the union.
- (b) Every employer shall post and keep posted a copy of this award and variations thereof in a place accessible to all employees.

28. Payment By Result Schemes

Subject to employees receiving at least the appropriate minimum time rate prescribed by this award and subject to the following provisions of this clause, any employer may remunerate employees under any piecework system, individual or group bonus system or other system of payment by results:

- (a) The employer may fix piecework rates, or other rates based on tasks set (subject to subclause (d), of this clause) by a method of accurate time measurement determined by the employer provided that such rates enable employees who apply average skill and effort and working under normal conditions to earn 12.5 per cent above ordinary time rates; or
- (b) The employer may (subject to subclause (d), of this clause) adopt any form of bonus system including profit sharing or other like systems.
- (c) A Factory Board shall be appointed consisting of two representatives nominated by the employer and one of his employees nominated by employees covered by this award and one by the union who shall be the Secretary of the union or his nominee, not being a person employed by another employer in the industry.
- (d) The rates fixed in accordance with subclause (a), of this clause and the bonus system adopted in accordance with subclause (b), of this clause shall in the event of a dispute be referred to the Factory Board; provided that if the employees of the union fail to appoint representation to such Board or fail to attend a meeting of such Board called by the employer on a date not less than seven days after the

service of notice of a meeting on the employees' representatives and the union, the employer may adopt such rates or adopt such system of payment by results as the employer shall deem reasonable.

- (e) In the event of any disagreement by the Factory Board with the systems adopted or the rates fixed the matter shall be referred to the Industrial Committee who shall decide whether such rates have been properly fixed or whether such systems are fair and reasonable.
- (f) Piecework and similar rates once fixed shall not, subject to other provisions of this clause, be altered except where warranted by change of circumstances, operations, methods or materials or to correct a demonstrable clerical error or by mutual agreement.
- (g) Award variations shall be incorporated into the payment by results system.
- (h) Where any system of payment by results is in operation the basis of such system shall be reduced to writing and, on request by the Secretary of the union, a copy shall be made available to the union on a confidential basis.
- (i) Overtime penalties, shift premiums and other penalty rates prescribed by this award shall be a separate addition on the appropriate time rate basis to any earnings calculated by way of any system of payment by results.
- (j) Employees waiting on the employer's premises, at the employer's request, ready and willing to work shall, for each pay period, receive at least the time rate prescribed for their occupation.
- (k) Employees on piecework teaching learners (not in the employ of the pieceworker) on piecework - 10 per cent of piecework rates extra whilst so employed.

29. Part-Time Employment

Where an employer offers employment for a full working week but employees seeking employment request to work for a lesser period, or where an employee responds to an advertisement for part-time employment, then they may be employed as part-time employees in any branch of the industry covered by the scope of this award and subject to the following terms and conditions:

- (a) They shall be employed for not less than 20 hours in any week.
- (b) They shall be paid for each hour worked one thirty-eighth of the minimum weekly wage prescribed by this award for the class of work performed by them.
- (c) The payment or deduction of payment in lieu of notice of termination of employment shall be two-fifths of the pay of the preceding week of the employee concerned.
- (d) The provisions of this award as regards to annual leave, sick leave and holidays shall apply to such part-time employees but they shall be paid in respect of the period of such annual leave, sick leave and holidays only at the wage rate actually being received by them at such time.
- (e) Save as aforesaid, all the provisions of this award shall apply to such part-time employees.

30. Right of Entry of Union Officials

See Chapter 5, Part 7, *Industrial Relations Act 1996*.

31. Existing Conditions

- (a) Existing conditions not altered by this award shall continue in force.
- (b) Notwithstanding subclause (a), of this clause, no employee shall be prejudiced by the coming into force of this award.

32. Apprentices

All apprentices employed in the industry covered by this award shall be governed by the provisions relating to Apprentices of the award of the Australian Industrial Relations Commission referred to as the Saddlery, Leather and Canvas and Plastic Material Workers' Award, or any award rescinding or replacing such award.

33. Basis of Award and Leave Reserved to Apply

- (a) In order to maintain uniformity in the industry, this award is based on the current award of the Australian Industrial Relations Commission known as the Saddlery, Leather and Canvas & Plastic Material Workers Award.
- (b) Leave is reserved to the parties to apply at any time for a variation of this award in order to make the rates and conditions of work uniform with the said award of the Australian Industrial Relations Commission so that the uniformity in the industry dealt with by this award may be maintained.
- (c) Leave is reserved to the union to apply with regard to an extra week's annual leave and hours of work to be worked each week.

34. Bereavement Leave

- (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 (c) below.
- (b) 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.
- (c) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Clause 16, Personal/Carer's Leave of this award provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) 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.
- (e) Bereavement leave may be taken in conjunction with other leave available under clause 16, 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.
- (f) Bereavement entitlements for casual employees
 - (a) Subject to the evidentiary and notice requirements in 34(b) 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 16(a)(iii)(2) of clause 16, 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.

35. 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).

36. Jury Service

An employee required to attend for jury service during ordinary working hours shall be reimbursed by the employer up to a maximum of six days in the period of two years an amount equal to the difference between the amount paid in respect of attendance for 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.

An employee shall notify the 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 and the amount received in respect of such jury service.

37. Emergency Power Arrangements

- (a) Notwithstanding anything elsewhere contained in this award, the following provisions shall apply in the case of an employer who is subjected to restriction or rationing in the use of electric energy and/or gas and/or the emergency disconnection thereof in accordance with the orders or regulations approved or issued by the appropriate lawful authority in the State covered by this award.
- (i) If by reason of such restriction or rationing or emergency disconnection the employee is unable usefully to employ an employee for the whole or any part of any day the employee may deduct from the wages of that employee payment for any part of the day such employee cannot be usefully employed, provided that -
- (a) if an employer requires the employee to attend for work but is not able to employ the employee usefully, the employee shall be entitled to be paid for two hours' work;
- (b) where an employee commences work, the employee shall be entitled to be paid for a minimum of four hours' work.
- (c) This subclause shall not apply to apprentices.
- (ii) The employer may require any day worker to perform ordinary hours of work (or any of such ordinary hours of work) at any time on any day on the basis of an average of 38 hours per week; provided that in the State of New South Wales a day worker shall not be required to work on a Sunday. The following rates of pay shall apply for such work.
- (a) For work performed on Mondays to Fridays from 7.00 a.m. to 5.30 p.m. and on Saturdays from 7.00 a.m. to noon - ordinary time.
- (b) For work performed at all other times - ordinary rates plus 10 per cent. Provided that when a day worker is required to commence work between the hours of 9.30 p.m. and 6.00 a.m. the amount that the employee shall receive shall not be less than an amount of 50 per cent more than the amount the employee would receive if paid at ordinary day rates.
- (iii) The employer may alter the times at which meal breaks are usually taken and/or the duration of them in order to avoid or mitigate the effects of such restriction or rationing, without being liable to pay penalty rates for work done during the normal meal breaks; provided that the commencing time of any meal break is not made more than one hour earlier or later than usual and that a meal break of at least twenty minutes is allowed. Provided also that the employer shall, whenever it is practicable, consult with the representatives of the union before acting under this paragraph. (b) Notwithstanding anything elsewhere contained in this award, the provisions of this clause shall apply (mutatis mutandis) in the case of an employer who uses auxiliary power plant for the purpose of providing employment for employees whilst such restriction, rationing or emergency disconnection is in force and who -
- (i) is unable to usefully employ an employee for the whole of any day by reason of a breakdown in such plant through no fault of his/he own; or

- (ii) because of the inability of the auxiliary power plant to meet the normal demands of power
 - (a) finds it necessary to require any employee to perform the employee's ordinary hours of work (or any of such ordinary hours of work) outside the hours normally worked by such employee; or
 - (b) finds it necessary to alter the time at which meal breaks are usually taken and/or the duration of them.
 - (c) Leave is reserved to the parties to apply in this matter upon two days' notice in writing.

38. Grievance and Dispute Procedure

Subject to the provisions of the *Industrial Relations Act 1996* any dispute or claim or grievance arising out of the operation of this award, shall be dealt with in the following manner:

- (a) The matter shall be submitted by the union representative to the plant manager or other appropriate officer of the company or by the company officer to the union representative where appropriate.
- (b) If not settled the matter shall be formally submitted by the State Secretary or other appropriate official of the union to the employer concerned, or vice versa.
- (c) If the matter is still not settled it shall be notified to the Industrial Relations Commission of New South Wales for decision and such decision, subject to the parties' right of appeal, shall be accepted.
- (d) Until the matter is determined in accordance with the above procedure, work shall continue normally at the instruction of the employer concerned, unless danger is alleged to be involved, in which case work shall not proceed until the alleged danger is removed or a decision is given on the matter.
- (e) No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

39. Redundancy

- (a) Application
 - (i) This clause shall apply in respect of full-time and part-time employees employed in the classifications specified by 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 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 step as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
 - (iv) 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.

(b) Introduction of Change

(i) Employer's Duty to Notify

- (1) 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.
- (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.

(ii) 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 (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.
- (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 (i) 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.

(c) Redundancy

(i) 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 to be done by anyone pursuant to paragraph (b)(i) 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 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 termination, 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.

(d) Termination of Employment

- (i) 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 paragraph (b)(i) 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 2 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.

- (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 paragraph (b)(i) 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 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.

(iii) 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 5 weeks, for the purpose 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.

- (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 - 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 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 subparagraph (b)(i)(1) 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.

(e) Severance Pay

- (i) Where an employee is to be terminated pursuant to subclause (d) of this clause, 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:

- (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 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, over-award payments, shift penalties and allowances paid in accordance with this award

- (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 paragraph (i) of this subclause if the employer obtains acceptable alternative employment for an employee.
- (f) Procedures relating to Grievances - Grievances relating to individual employees will be dealt with in accordance with clause 38, Grievance and Dispute Procedure.

40. Area, Incidence and Duration

This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Saddlery, Leather, Canvas and Plastic Material Workers' (State) Award published 8 February 2002 (331 I.G. 120), as varied.

It shall apply to all persons within the jurisdiction of the Saddlery, Leather, Canvas and Plastic Material Workers, &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 19 February 2008.

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

PART B

MONETARY RATES

Table 1 - Rates of Pay

Group	Former Rate Per Week \$	SWC 2007 \$	New Rate Per Week \$
A	559.70	20.00	579.70
B	556.00	20.00	576.00
C	553.80	20.00	573.80
D	549.80	20.00	569.80
E	538.80	20.00	558.80
F	533.10	20.00	553.10
G	530.90	20.00	550.90
H	529.80	20.00	549.80
I	527.10	20.00	547.20
J	523.80	20.00	543.80
K	522.10	20.00	542.10
L (all others)	521.00	20.00	541.00
L (glove manufacture with less than 6 months' experience)	515.90	20.00	535.90
M	513.40	20.00	533.40

Table 2 - Allowances

Item No.	Clause No.	Brief Description	Amount (\$)
1	4(e)	Leading Hand: 1-5 employees	24.00 per week
2	4(e)	Leading Hand: 6-10 employees	30.40 per week
3	4(e)	Leading Hand: 11-15 employees	41.70 per week
4	4(f)	First Aid	10.00 per week
5	7(a)	Repairing Harness - Offensive Nature	0.43 per hour
6	7(b)	Repairing Canvas - Offensive Nature	0.42 per hour
7	8(b)	Operating a Forklift	0.48 per hour

8	12(c)	Meal Allowance - more than one & one half hours Overtime	10.80
9	12(c)	Meal Allowance - where employee has provided a meal and not required to work	9.90

Saddlery, Leather, Canvas and Plastic Material Workers, &c. (State) Industrial Committee

Industries and Callings

All persons employed in or in connection with the manufacture or repair of portmanteaux, bags, cases, trunks and travel goods of a similar kind, covered wireless or radio cases, gloves, cosmetics and similar bags, handbags, wallets, purses, sporting goods, and all classes of goods of leather (excepting footwear), pelts, canvas, fibre, vulcanised fibre or materials used in substitution of any of the foregoing or any like materials (including plastics), sails, tents, flags, tarpaulins, canvas and canvas goods of all descriptions, saddles and saddle trees, harness, bridle work and strapping collars for horses and other animals, animal rugs, whips, whip-thongs, machine belting, gaskets, pump washers and similar articles, industrial spindle mops and all leather workers and workers in or in connection with any of the foregoing materials doing work customary in such trades, and also all persons engaged in the work of roping flags or covering carley floats in the State, excluding the County of Yancowinna;

Excepting Employees of -

State Rail Authority of New South Wales;
 Urban Transit Authority of New South Wales;
 South Maitland Railways Pty. Limited;
 Blue Circle Southern Cement Limited;
 The Kandos Cement Company Limited;
 The Council of the City of Sydney;
 The Sydney County Council;
 Shire and municipal councils;
 The Electricity Commission of New South Wales;

Australian Iron and Steel Proprietary Limited within the jurisdiction of the Iron and Steel Works Employees (Australian Iron & Steel Proprietary Limited) Industrial Committee and the Quarries (Australian Iron and Steel Pty. Limited) Industrial Committee;

The Council of the City of Newcastle;
 The Australian Gas Light Company;
 The North Shore Gas Company Limited;
 Excepting also employees -

In or about metalliferous and limestone mines; in or in connection with mining for minerals other than coal or shale; and in or about diamond and gem-bearing mines, mining dredges, ore sluicing processes, ore smelting, refining treatment and reduction works; In or about coal mines north of Sydney, in or about coal mines in the South Coast district, in or about coal and shale mines west of Sydney;

And excepting also employees -

Within the jurisdiction of the Smelting and Fertilizer Manufacturing (Sulphide Corporation Pty. Limited and Greenleaf Fertilizers Limited) Industrial Committee, the Cement Workers, &c. (State) Industrial Committee, the John Lysaght (Australia) Limited Newcastle Industrial Committee and the John Lysaght (Australia) Limited Port Kembla Industrial Committee.

E. A. R. BISHOP, Commissioner.

SMALLGOODS MANUFACTURERS (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1558 of 2007)

Before Commissioner Bishop

19 February 2008

REVIEWED AWARD**PART A****1. Award Title**

This award is entitled the Smallgoods Manufacturers (State) Award.

2. Arrangement**PART A**

Clause No.	Subject Matter
1.	Award Title
2.	Arrangement
3.	Anti Discrimination
4.	Contract of Employment
5.	Hours of Work
6.	Meal Times and Allowances
7.	Wages - Adult
8.	Special Rates
9.	Wages - Junior
10.	Arbitrated Safety Net Adjustment
11.	Proportion of Juvenile Labour
12.	Overtime
13.	Holidays and Sundays
14.	Annual Leave
15.	Sick Leave
15A.	State Personal/Carer's Leave Case
15B.	Bereavement Leave
15C.	Parental Leave
16.	Long Service Leave
17.	Mixed Functions
18.	Termination, Change and Redundancy
19.	Payment of Wages
20.	Protective Clothing
21.	Amenities
22.	First-Aid Outfit
23.	Right of Entry
24.	Notice Boards and Posting Award
25.	Dispute Resolution Procedure
26.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

3. 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. 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 or 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.

4. Contract of Employment

- (i) Except as hereinafter provided employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week. An employee to become entitled to payment on a weekly basis shall perform such work as the employer shall from time to time require on the days and during the hours usually worked by the class of employee affected.
- (ii) Employment, other than casual, shall be terminated only by a week's notice on either side and such notice may be given at any time during the week. In lieu of such thirty eight working hours' notice the employer may pay for thirty eight hours' wages and, vice versa, the employee leaving his or her employment without notice shall forfeit thirty eight hours' wages which may be deducted from any wages due. This shall not affect the right of any employer to dismiss an employee without notice for malingering, inefficiency, neglect of duty or misconduct, in which case wages shall be paid up to the time of dismissal only, or to deduct payment for any day on which an employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work in the meat industry.

5. Hours of Work

- (i) Not more than thirty eight ordinary hours shall constitute a week's work.

- (ii) The ordinary daily hours of work for all employees shall not exceed eight hours each day, Monday to Friday, inclusive, and shall be worked between the hours of 6.00am and 8.00pm.
- (iii) Each daily period of work shall be unbroken except by prescribed Clause 6, Meal Times and Allowances. No such daily period of work shall exceed eight hours in duration, exclusive of prescribed meal intervals.
- (iv) Subject to compliance with the foregoing provisions and those hereinafter contained, the employer shall, for all employees, fix each day's starting and finishing times of ordinary hours of work observed by the employer for the employee concerned.
- (v) The employer shall state such times in advance in a notice which shall be permanently posted in the establishment so as to be at all times accessible and visible to the employee concerned.
- (vi) The employer may from time to time substitute other starting and finishing times if, not less than a week in advance of the substituted times, states such times in a notice posted so as to be visible at all times to the employees concerned, together with the next previous notice concerning such times.
- (vii) Every fixation of starting and finishing times shall be made in respect of a period which shall be not less than a week in length.
- (viii) Notwithstanding anything elsewhere contained in this clause labourers employed as cleaners and car washers may be worked for thirty eight hours per week at the employer's option between the hours of 6.00am and midnight. In no case shall the ordinary daily hours exceed eight hours on Monday to Friday, inclusive.
- (ix) Such labourers shall be paid at the following rates:
 - (a) Where the work commences not later than 10.30am and finishes not later than 8.00pm, at the weekly rate under the classification "all others".
 - (b) Where the work commences after 10.30am and before 12 noon, at the weekly rate under the classification "all others" with the addition of 5 per cent.
 - (c) Where the work commences at 12 noon or later and finishes at or before midnight, at the weekly rate under the classification "all others" with the addition of 10 per cent.

6. Meal Times and Allowances

- (i) Each employee shall be granted a meal break of not less than forty five minutes nor more than one hour, to commence not later than the beginning of the sixth hour of their employment on any day.
- (ii) A break of fifteen minutes each before noon shall be allowed to all employees for smoke-oh. A break of fifteen minutes shall also be allowed each afternoon to employees who are rostered to work after 5.00pm. Such breaks shall be counted and paid for as times worked.
- (iii) Any employee called upon to work during a meal interval shall be paid at overtime rates for the period so employed and such overtime rates shall continue until a meal break is allowed.
- (iv) No employee shall be called upon to work for more than five hours without a break for a meal.

7. Wages - Adult

- (a) Adult - the minimum rates of wages of any classification shall be ascertained by referring to the classification as set out in Table 1 - Wages, of Part B, Monetary Rates.
- (b) "Smallgoodsperson" means an employee who has served a relevant apprenticeship or has had at least four years' general experience in smallgoodsmaking and who is responsible for the making of smallgoods and who may be required to perform all tasks in a smallgoods factory, including that of

mixing machine operator, butcher, boner, salter, and/or pickle pumper, cooker, fillerperson, linker and tablehand.

8. Special Rates

- (a) A casual employee, that is, an employee who is not employed for a full week, shall be paid one-fifth of the weekly wage prescribed in this award for the class of work performed plus 17.5 per cent of such rate for each day or part of a day employed.
- (b) In addition to the rate payable under subclause (a) hereof a casual employee shall be paid all fares reasonably and necessarily incurred.
- (c) Where boning is performed for export purposes under the sanction or authorisation of any Commonwealth Veterinary Office the rates for such boning shall be the rates paid under the Meat Preservers, &c. (State) Consolidated Award covering such work.
- (d) Where an employee is called upon to work in a chilling room in a temperature artificially reduced to below -2 degrees Celsius the employee shall be paid an amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the ordinary rate for every hour or part of an hour for which the aggregate the employee is required to work.
- (e) 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)(i), 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 or 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 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. Wages - Junior

- (i) The minimum rates of pay for junior shall be the following percentages of the rate of pay prescribed for smallgoods makers:

Percentage per week

Under 17 years of age	30
At 17 to 18 years of age	40
At 18 to 19 years of age	50
At 19 to 20 years of age	75
At 20 to 21 years of age	95

Thereafter not less than the minimum rate for adult employees in the section of the trade in which the employee is employed.

- (ii) Junior may be employed on light tasks including work involving the use of a knife in and about all departments of the works as may be agreed upon between the employer and the respective unions.

10. Arbitrated Safety Net Adjustment

The rates of pay in this award include the adjustments payable under the State Wage Case 2007. These adjustments may be offset against:

- (i) any equivalent over-award payments, and/or
- (ii) Award wages increases since 29th May 1991 other than safety net, State Wages Case, and minimum rates adjustments.

11. Proportion of Juvenile Labour

The number of juvenile employees, employed in any one shop or smallgoods factory or shop and factory combined shall not exceed one to every three or fraction of three adult weekly employees. An adult employer actually working in any such place or combination of places for the whole or at least a substantial part of their time shall be treated as an adult employee for the purpose of this clause.

12. Overtime

- (i) All time worked in excess of or outside the ordinary working hours as prescribed in clause 5, Hours of Work, of this award, on any day shall be deemed to be overtime and shall be paid for at the rate of time and one-half for the first three hours and double time thereafter; provided that all time worked on Saturdays shall be paid for at the rate of time and one-half for the first three hours and double time thereafter. A minimum payment for three hours shall be paid for work performed on Saturdays.
- (ii) Any time worked between 8.00pm on Friday and 4.00pm on Saturday shall be paid for at the rate of double time exclusive of payment provided for in subclause (i) hereof.
- (iii) No employee shall be called upon to work overtime in excess of one and one-half hours after their normal ceasing time without a break of one hour and payment as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, as meal money. An employee who is notified that they will be called upon to work overtime and who is not then required to work overtime shall be paid the sum also set in Item 2.
- (iv) Subject to the *Factories, Shops and Industries Act 1962* -
 - (a) Juniors under the age of 19 years shall not be called upon to work more than six hours' overtime in any one week.
 - (b) Juniors over 19 years of age but under 21 years shall not be called upon to work more than eight hours' overtime in any one week.

13. Holidays and Sundays

- (i) The following day or days on which they are observed as such shall be holidays for the purposes of this award: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, the picnic day of the appropriate union and any day proclaimed as a public holiday for the State. In any week in which any of the above named holidays fall the weekly wages shall be paid without deduction.
- (ii) All time worked by employees on a Sunday or holiday shall be paid for at the rate of double time in addition to the weekly rate.
- (iii) Any employee required to work on a Sunday or holiday shall be paid a minimum of four hours at the appropriate rate for each such Sunday or holiday worked.
- (iv) If an employee is dismissed within 14 days before any of the holidays abovementioned and is re-engaged within 14 days after any of the holidays abovementioned, they shall be deemed to have been dismissed for the purpose of evading payment for such holiday and any payment so evaded shall be due and payable to the employee.

14. Annual Leave

See *Annual Holidays Act 1944*.

15. Sick Leave

An employee who, after not less than three months' continuous service in their current employment with the employer, is unable to attend for duty during their ordinary working hours by reason of personal illness or

personal incapacity not due to the their own serious and wilful misconduct, shall be entitled to be paid at ordinary time rate of pay for the time of such non-attendance, subject to the following:

- (i) Except where the employee makes an election pursuant to the provisions of *Workplace Management and Workers' Compensation Act 1998*, 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.
- (ii) The employee shall, within twenty four hours of the commencement of such absence, inform the employer of their 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.
- (iii) For the purpose of ascertaining whether or not an employee is or has been ill and the particulars thereof (including, where applicable), the estimated duration of his absence the employer, through any person appointed by the employer to interview employees for the purpose stated, shall have the right to interview any employee who is or has been absent from duty. Where a person so appointed is a legally qualified medical practitioner the right to interview an employee shall include the right to examine the employee.
- (iv) The employee shall prove to the satisfaction of the employer (or, in the event of a dispute, to the Industrial Relations Commission of New South Wales) that he 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 employee shall not be entitled in respect of any year of continued employment to sick pay for more than thirty eight ordinary working hours. 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 carried forward under this award in or in respect of such year.
- (vi) Sick leave, if not taken during any year, may accumulate from year to year so as to provide for sick leave up to four weeks if an employee remains in the employ of the same employer or his successor, transferee or assignee under the conditions set out in paragraphs (i), (ii), (iii), (iv) and (v) hereof but this clause shall not impose any liability on the original employer once they have ceased to be the employer of the employee whose sick leave has accumulated.
- (vii) Any employee who unreasonably refuses the interview or unreasonably refuses or prevents the examination specified in paragraph (iii) hereof shall not be entitled to payment for the period during which the employee was absent from duty.
- (viii) For the purposes 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); provided that any time so lost shall not be taken into account in computing the qualifying period of three months.
- (ix) Service before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.

15A. State Personal/Carer's Leave Case

- (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 15A(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 15, 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 25, Dispute Resolution 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 15A(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 15A(1)(b) and 15A(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 15A(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.

15B. 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 within Australia as prescribed in 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, 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 for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of Clause 15A, State 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.
- (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 15A. 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 15B(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 15A(c)(ii) of Clause 15A, State Personal/Carer's Leave Case.
- (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.

15C. 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 52(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. Long Service Leave

See *Long Service Leave Act 1955*.

17. Mixed Functions

An employee who is required to perform more than one class of work on any one day shall be paid for the whole of that day at the highest wages prescribed in this award for any of the work which the employee performs.

18. Termination, Change and Redundancy

(i) Application

This clause shall apply in respect of full-time and part time persons employed in the classifications specified by this award.

To employers who employ 15 or more employees immediately prior to the termination of employment of employees.

Where the employer terminates the services of employees as the direct result of seasonal factors affecting the meat industry or shortages of livestock, the employer shall not be required to pay severance pay to the employees so terminated.

The employer is required to notify the union, in writing, of the terminations and, if requested, shall hold discussions with the union about the said terminations.

If the union is not satisfied as a result of these discussions that the terminations are the direct result of genuine seasonal factors or shortages of livestock and no agreement can be reached concerning the matter, then it will be referred to the Industrial Relations Commission of New south Wales for determination.

For the purposes of this award, the terms "seasonal factors" and "shortages of livestock" shall refer to the following industry features:

- (a) climatic features such as droughts, floods and fires and changes in the seasons; and
- (b) animal breeding cycles.

(ii) Introduction of Change

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 this award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

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 18(ii), 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 the said subclause 18(ii).
- (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.

(iii) 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 subclause 18(ii) - 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 paragraph (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 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.

(iv) Termination of Employment

Notice of 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, 18(ii) 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.

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 18(ii):

- (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.

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.

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 as those 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.

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.

Notice to Commonwealth Employment Service

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.

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 such other organisation responsible for unemployment benefits).

Transfer to Lower-paid Duties

Where an employee is transferred to lower-paid duties for reasons set out in subclause 18 (ii), Introduction of Change, the employee shall be entitled to the same period of notice of transfer as that to which the employee would have been entitled 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

Where the employment of an employee is to be terminated pursuant to subclause 18 (iii), Redundancy, 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 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 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 allowance paid.

Incapacity to Pay

- (a) 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 18(v).
- (b) The Industrial Relations Commission of New South Wales 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 clause 18(v) will have on the employer.
- (d) 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.

(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.

Nothing in this award shall be construed so as to limit the obligation of the employer with relation to the introduction of New Technology.

19. Payment of Wages

- (a) Wages shall be paid in cash in the employer's time between the hours of noon and 5.00 pm on the usual pay day of the employer (which shall not be later than Thursday of each week).
- (b) When an employee is dismissed or the employment terminated the employee shall be paid all moneys due to the employee within one hour of ceasing work.
- (c) On each pay day each employee shall receive wages in an envelope or accompanied by a docket showing the total amount of ordinary wages and overtime and all deductions therefrom.
- (d) An employer shall not keep more than two days' pay in hand.
- (e) Wages due to casual employees shall be paid immediately on the termination of work on each day on which they are engaged.
- (f) Notwithstanding the provisions of this clause, wages may be paid by direct payment into the employee's bank account, provided that where wages are paid by direct payment, suitable arrangements will be made by the employer to ensure that the wages due to an employee are paid to the specific account before 12.00 noon on the normal pay day.

20. Protective Clothing

- (a) Each employer shall provide protective clothing including waterproof aprons and boots to employees working under dirty, greasy or wet conditions.
- (b) In all cases where an employee's clothing, lunch bags or receptacles used for lunches are damaged by fire or through the use of any corrosive material compensation shall be granted by the employer.
- (c) In cases where an employer requires any employee to wear any special uniform, coat, dress or clothing the employer shall provide such uniform, coat, dress or clothing.

21. Amenities

Each employer shall provide amenities in accordance with the *Occupational Health and Safety Act 2000*.

22. First-Aid Outfit

- (i) The employer shall provide and continuously maintain an efficient first-aid outfit and appliances.
- (ii) An efficient first-aid outfit and appliances shall be those prescribed by the *Factories, Shops and Industries Act 1962*, and regulations thereunder.
- (iii) Employers shall supply, when required, reasonable transport to any injured employee without cost to the employee.

23. Right of Entry

In accordance with 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* 1966 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).

24. Notice Boards and Posting Award

The employer shall permit notice boards to be erected in the place of employment for the purpose of posting any notices thereon in connection with the meetings or other business of the appropriate union. Such notice boards shall be in a prominent position. All such notices shall be signed by the secretary or organiser of the appropriate unions.

25. Dispute Resolution Procedure

- (i) Procedures relating to grievances of individual employees:

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.

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.

Reasonable time limits must be allowed for discussion at each level of authority.

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.

While a procedure is being followed, normal work must continue.

The employee may be represented by an industrial organisation of employees.

- (ii) Procedures relating to disputes, etc, between employers and their employees:

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.

Reasonable time limits must be allowed for discussion at each level of authority.

While a procedure is being followed, normal work must continue.

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.

In the event that a dispute cannot be settled, either party may notify the Industrial Relations Commission of New South Wales of the existence of the dispute in accordance with the *Industrial Relations Act* 1996.

26. Area, Incidence and Duration

This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Smallgoods Manufacturers (State) Award published 15 February 2002 (331 I.G. 427), 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 19 February 2008.

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

It shall apply to all persons engaged in any of the classifications named in this award within the jurisdiction of the Smallgoods Manufacturers (State) Industrial Committee.

SMALLGOODS MANUFACTURERS (STATE) INDUSTRIAL COMMITTEE

Industries and Callings

Butchers and other persons employed in the manufacture of smallgoods, other than smallgoods for preserving on the premises; and carters, grooms, stablepersons, yardpersons, drivers of motor or other power-propelled vehicles, and labourers employed in connection therewith, in the State, excluding the Country of Yancowinna;

Excepting -

Butchers and other persons employed in bacon factories.

PART B

MONETARY RATES

Table 1 - Wages

Item No	Classification	Column A SWC 2007 eff. 1 Dec 07 Amount per week \$
1	Smallgoods person as defined in subclause (b) of Clause 7	602.10
2	Silent - cutter operator	567.00
3	Filler	552.20
4	Mixing machine other than silent cutter operator	567.00
5	Butcher	602.10
6	Smallgoods seller from vehicle who collects cash - i. Non-refrigerator vehicle ii. Refrigerator vehicle	567.00 567.00
7	Boner	575.00
8	Slicer, cutter-up, guillotine operator and/or derinding machine operator	567.00
9	Salter and/or pickle pumper arterial or stab	552.00
10	Cooker and/or scalding	567.00
11	Packing room hand	532.20
12	Linker	544.85
13	Table hand	544.85
14	All others	544.85

Table 2 - Other Rates and Allowances

Item no	Clause No	Brief Description	SWC Eff 1 Dec 2007 Amount \$
1	8(d)	Employee called upon to work in chilling room with the temperature reduced to:	
		Temperature range Celsius Scale	
		Below 2 but not below 16	0.42
		Below 16 but not below 18	0.73
		Below 18 but not below 21	0.99
		Below 21	1.35

2	12	Meal Money	
		- required to work in excess of 1½ hours	10.06
		- notified of overtime then not required	10.06

E. A. R. BISHOP, Commissioner.

Printed by the authority of the Industrial Registrar.

TENNIS STRINGS AND SUTURES INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Review of Award pursuant to Section 19 of the *Industrial Relations Act 1996*.

(No. IRC 1561 of 2007)

Before Commissioner Bishop

10 March 2008

REVIEWED AWARD**Arrangement**

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Hours
4.	Contract of Employment
5.	Twelve-Hour Engagements
6.	Wages
7.	Supported Wage
8.	Arbitrated Safety Net Adjustment
9.	Flexibility
10.	Enterprise Arrangements
11.	Enterprise Consultative Mechanism
12.	Part-time and Casual Employees
12A.	Secure Employment
13.	Shift Work
14.	Meal Hours
15.	Meal Allowance
16.	Dirty, Dusty Work
17.	First Aid Allowance
18.	Overtime
19.	Sundays
20.	Holidays
21.	Annual Leave
22.	Annual Leave Loading
23.	Sick Leave
24.	State Personal/Carer's Leave
25.	Bereavement Leave
26.	Mixed Functions
27.	Disputes Procedure
28.	Anti-Discrimination
29.	Proportion
30.	General Conditions
31.	Time and Payment of Wages
32.	Termination of Employment
33.	Long Service Leave
34.	Redundancy
34A.	Union Membership Fee Deduction
35.	Right of Entry
36.	Trade Union Training
37.	Union Delegate
38.	Parental Leave
39.	Blood Donor Leave

40. Jury Service
41. Occupational Superannuation
42. Leave Reserved
43. Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

2. Definitions

- (a) "Research Chemist" means and includes an employee classified as such by the employer and who is mainly and principally engaged in the investigation and correction of processes in chemical manufacture and the measurement and adjustment of chemical variables.
- (b) "Analytical or Process Chemist" means and includes an employee classified as such by the employer and who is mainly and principally engaged in routine analysis and/or routine process control and the securing of necessary adjustment under supervision.
- (c) "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. Hours

- (a) The ordinary hours of working, excluding shift workers hereinafter provided for, exclusive of meal hours, shall not exceed 38 per week, to be worked between the hours of 7.00 a.m. and 5.00 p.m., Monday to Friday, inclusive.
- (b) Within the limits prescribed in subclause (a) of this clause each employer shall fix the starting and finishing times for his various employees. Such times shall not be altered except upon seven days' notice. When such times are altered the applicant may apply to the Industrial Commission in this matter with regard hereto.
- (c) The method of implementation of the 38-hour week shall be by agreement between the employer and the employee.

4. Contract of Employment

- (a) In respect of full-time and part-time employment an employee or an employer may terminate the contract of employment with one week's notice or by the payment or forfeiture of one week's pay. Provided that during the first three months of full-time or part-time employment the contract of employment shall be of a probationary nature.
- (b)
 - (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 consistent with the classification structure of this award, Provided that such duties are not designed to promote deskilling.
 - (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained in the use of such tools and equipment.
 - (iii) Any direction issued by an employer pursuant to subclauses (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

5. Twelve-Hour Engagements

Following consultation and agreement in writing with employees and the appropriate union(s), an employer may introduce daily engagements of twelve ordinary hours.

6. Wages

- (a) Adult Employees - The minimum rates to be paid to adult employees shall be as set out in (i) of Table 1 - Wages, of Part B, Monetary Rates.
- (b) Junior Employees - The minimum rates of pay for junior employees shall, subject to the other provisions of this award and the parent award, be the percentages of the weekly rate for the appropriate adult classification as set out in (ii) of the said Table 1. Such minimum rate shall be calculated to the nearest five cents, any broken part of five cents in the result not exceeding 2.5 cents to be disregarded.
- (c) Junior Trainee Chemist - The minimum rate of pay for junior trainee chemists shall be the percentages of the weekly rate for a trainee chemist, first year of adult service, referred to in Item A of (i) of Table 1. Such minimum rate shall be calculated to the nearest five cents, any broken part of five cents in the result not exceeding 2.5 cents to be disregarded.
- (d) Employees appointed as charge hands shall be paid a sum per week, in addition to the appropriate rate of pay for the classification as per Item 1 of Table 2 Other Rates and Allowances, of Part B, Monetary Rates.

7. Supported Wage

- (a) 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, or any successor to that scheme.
 - (iv) "Assessment Document" means the form provided 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.) 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 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 not be less than \$66.00 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 of New South Wales.
 - (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 four 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 \$66.00 per week.
 - (iv) Work trials should include induction or training as appropriate to the job being trialled.

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.

8. Arbitrated Safety Net Adjustment

- (a) The rates of pay in this award include the adjustments payable under the State Wage Case 2007. 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.

9. Flexibility

- (a) An employee shall perform all tasks which are incidental or related to their normal work.
- (b) An employer may develop a classification regime for their enterprise in consultation with the appropriate union covered by this award. A classification regime shall be agreed. The agreement shall be recorded in writing and a copy sent to the Industrial Registrar for registration under s11 of the Industrial Arbitration Act. The parties agree such an agreement shall have the force of the award and the union shall not unreasonably withhold its agreement.

10. Enterprise Arrangements

- (a) The Industrial Relations Commission may approve of enterprise arrangements reached in accordance with this clause and the provisions of the Act. Provided that these arrangements are in accordance with the State Wage Case principles, as varied from time to time.
- (b) Industrial unions of employees and industrial unions of employers, or industrial unions of employees and employers, or employees and employers may negotiate enterprise arrangements which, subject to the following provisions, shall prevail over the provision of any award or order of the Industrial Relations Commission that deals with the same matters in so far as they purport to apply to parties bound the arrangements, provided that where the arrangement is between employees and an employer a majority of employees affected by the arrangement genuinely agree.
- (c) An enterprise arrangement shall be an agreed arrangement for an enterprise, or discrete section of an enterprise, being a business, undertaking or project, involving parties set out in paragraph (b).
- (d) Enterprise arrangements shall be for a fixed term and there shall be no further adjustments of wages or other conditions of employment during this term other than where contained in the arrangement itself. Subject to the terms of the arrangement, however, such arrangement shall continue in force until varied or rescinded in accordance with the Act.

- (e) For the purposes of seeking the approval of the Industrial Relations Commission, and in accordance with the provisions of the Act, a party shall file with the Industrial Registrar an application to the Commission to either:
- (i) vary an award in accordance with the Act; or
 - (ii) make a new award in accordance with the Act.
- (f) On a hearing for the approval of an enterprise arrangement, the Industrial Relations Commission will consider in addition to the industrial merits of the case under the State Wage Case principles:
- (i) ensuring the arrangement does not involve a reduction in ordinary time earnings and does not depart from Commission standards of hours of work, annual leave with pay or long service leave with pay; and
 - (ii) whether the proposed award or variation is consistent with the continuing implementation at enterprise level of structural efficiency considerations.
- (g) The operative date for an enterprise arrangement shall be no earlier than the date of approval by the Industrial Relations Commission, except that the Industrial Relations Commission may approve an earlier operative date to achieve consistency with the operative date of an enterprise arrangement which has earlier been approved by the Australian Industrial Relations Commission.
- (h) Where parties to an enterprise arrangement include employees covered by a federal award, an agreement covering those employees may be submitted to the federal tribunal for approval.
- (i) The Industrial Relations Commission is available to assist the parties to negotiations for an enterprise arrangement by means of conciliation and, in accordance with this clause and the Act, by means of arbitration. If any party to such negotiations seeks arbitration of a matter relating to an enterprise arrangement such arbitration shall be as a last resort.
- (j) Enterprise arrangements entered into directly between employees and employers shall be processed as follows, subject to the Industrial Relations Commission being satisfied in a particular case that departure from these requirements is justified:
- (i) All employees will be provided with the current prescriptions (eg award, industrial agreement or enterprise agreement) that apply at the place of work.
 - (ii) The arrangement shall be committed to writing and signed by the employer, or the employer's duly authorised representative, with whom agreement was reached.
 - (iii) Before any arrangement is signed and processed in accordance with this principle, details of such arrangement 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.
 - (iv) A union or 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 and in such circumstances the parties are to confer in an effort to resolve the issue.
 - (v) Where an arrangement is objected to by a union or employer association and the objection is not resolved, an employer may make application to the Industrial Relations Commission to vary an award or create a new award to give effect to the arrangement.
 - (vi) A union and/or employer association shall not unreasonably withhold consent to the arrangements agreed upon by the parties.
 - (vii) If no party objects to the arrangement, then a consent application shall be made to the Industrial Relations Commission to have the matter approved in accordance with paragraph (e) of this principle.

- (viii) Such arrangement once approved shall be displayed on a notice board at each enterprise affected.

11. Enterprise Consultative Mechanism

At each enterprise there shall be established a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

12. Part-Time and Casual Employees

(a) Part-time Employees -

- (i) Part-time employees may be employed when an employer is unable to employ a suitable employee to work full-time.
- (ii) 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 twenty hours per week.
- (iii) Part-time employees shall be paid at an hourly rate of pay which shall be at the rate of one thirty-eighth of the weekly wage of the appropriate classification in accordance with clause 6, Wages.
- (iv) All other provisions of this award with respect to sick leave, holidays, and conditions shall apply to part-time employees.
- (v) Notwithstanding the provisions of paragraphs (i) to (iv) of this subclause the union and an employer may agree, in writing, to observe other conditions in order to meet special cases.

(b) Casual Employees -

- (i) Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38 plus 17.5 per cent to the nearest half cent with a minimum payment on any one day of four hours.
- (ii) Casual employees shall not be employed as shift workers.
- (iii) Notwithstanding the provisions of paragraphs (i) and (ii) of this subclause the union and an employer may agree in writing to observe other conditions in order to meet special cases.

12A. 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.

13. Shift Work

- (a) Hours - The ordinary hours of shift workers shall not exceed:

- (i) 7.6 hours in any consecutive 24 hours; or
- (ii) 38 hours in any one week; or
- (iii) 76 hours in 14 consecutive days; or
- (iv) 114 hours in 21 consecutive days; or
- (v) 152 hours in 28 consecutive days.

Shift workers shall be allowed 20 minutes on each shift for crib which shall be counted as time worked.

- (b) Overtime - Subject to the provisions of subclause (c), Payment for Saturdays and subclause (d), Payment for Sundays and Holidays, of this clause, shift workers shall for all time worked -
 - (i) in excess or outside the ordinary shift work hours prescribed by this award; or
 - (ii) on more than eleven shifts in twelve consecutive days; or

- (iii) on a rostered shift off; be paid at the rate of time and one-half for the first two hours and double time thereafter.
- (c) Payment for Saturdays - Shift workers shall be paid at the rate of time and one-half for ordinary rostered shifts worked on Saturday. This rate shall be in substitution for, and not cumulative upon, the shift allowance prescribed in subclause (e), Shift Allowance, of this clause.
- (d) Payment for Sundays and Holidays - Shift workers shall be paid at the rate of time and three-quarters for ordinary rostered shifts worked on Sundays and at the rate of double time for work other than on an ordinary rostered shift carried out on Sundays. Shift workers shall be paid at the rate of double time and a half for all work carried out (whether on an ordinary rostered shift or otherwise) on any of the holidays prescribed in clause 20, Holidays, of this award. The rates prescribed in this subclause shall be in substitution for, and not cumulative upon, the shift allowances prescribed in subclause (e), Shift Allowance, of this clause.
- (e) Shift Allowance -
 - (i) Refer to Part B Monetary Rates - Table 2 Other Rates and Allowances.
 - (ii) Shifts as set out hereunder may be worked in the industry -
 - Day shift shall mean a shift worked between the hours of 7.00 a.m. and 6.00 p.m.
 - Morning shift shall mean a shift commencing before 7.00a.m.
 - Afternoon shift shall mean a shift finishing after 6.00 p.m. but not later than midnight.
 - Night shift shall mean a shift finishing after midnight but not later than 7.00 a.m.
 - (iii) Clauses 3, Hours; 14, Meal Hours; 18, Overtime; 19, Sundays; and 20, Holidays, of this award shall not apply to shift workers.
 - (iv) Notwithstanding the provisions of this subclause, Parke Davis and Co., of 32-40 Cawarra Road, Caringbah, is exempted from the said provisions to the extent necessary to allow night shift to finish not later than 8.00 a.m.

14. Meal Hours

- (a) There shall be a meal break for lunch each day, Monday to Friday inclusive, of not less than thirty minutes nor more than one hour as may be determined by each employer for his employees.
- (b) Where overtime exceeding one hour is to be worked a meal break for tea of not less than thirty minutes nor more than one hour shall be allowed between 5.00 p.m. and 7.00 p.m. provided that a majority of employees may arrange with their employer for all employees to continue to work for not more than two hours beyond their usual finishing time without such a meal break.
- (c) An employee called upon to work during his meal break for lunch shall be paid at the rate of time and a half for all time worked during such break and shall be allowed, in the employer's time a crib time of not less than twenty minutes to partake of a meal. The said rate of time and a half shall continue until the commencement of the paid crib break or until the employee ceases work for the day, whichever is the earlier.

15. Meal Allowance

An employee who is required to work overtime for any period in excess of one and one half hours after the fixed finishing shall be paid the amount set out in Item 3 of Table 2 - Other Rates and Allowances Part B Monetary Rates, for a meal, which shall be paid to the employee prior to the meal break.

16. Dirty, Dusty Work

Where an employee is required to perform work of an unusually dirty, dusty and /or offensive nature or to work in temperatures of abnormal heat or cold, the employer shall provide for the use of such employees, showers or baths with hot and cold water. Such employees shall be paid the amount per hour as set out in Item 4 of Table 2 Other Rates and Allowances Part B, of Monetary Rates, and shall be allowed ten minutes off prior to ceasing time for cleansing purposes.

17. First Aid Allowance

An employee who is appointed as first aid attendant shall be paid an additional payment as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

18. Overtime

- (a) An employee shall be paid at the rate of time and a half for the first two hours and double time thereafter for -
- (i) all time worked before the usual commencing time on any day;
 - (ii) all time worked after the usual finishing time on any day;
 - (iii) all time worked in excess of the daily limitation of hours prescribed by clause 4, Hours, of this award;
 - (iv) an employee required to work overtime on a Saturday shall be paid a minimum payment of four hours.
 - (v) In computing overtime any portion of an hour less than thirty minutes shall be reckoned as half an hour and any portion of an hour in excess of thirty minutes shall be reckoned as one hour.
- (b) Where an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available the employer shall provide the employee with a conveyance or pay the cost of such conveyance, to reach a point where reasonable means of transport are available, or, if no such transport is available, to his home.
- (c) An employee recalled to work overtime after leaving the employer's premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time the employee is recalled, provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period.
- (d) Subject to clause 18(d)(i) an employer may require an employee to work reasonable overtime at overtime rates.
- (i) 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.
 - (ii) For the purposes of clause 18(d)(a) 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.

19. Sundays

Work done on any Sunday shall be paid for at the rate of double time with a minimum payment of four hours.

20. Holidays

- (a) The following days or day upon which they are observed shall be 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 for the State.
- (b) In addition to the holidays specified in subclause (a) of this clause one additional holiday shall apply in each calendar year to an employee on weekly hire. Such holiday shall be on the day prescribed in subclause 7.5.1(b)(ii) of clause 7.5, of Public Holidays of the Metal, Engineering and Associated Industries Award 1998 (Federal), as an additional holiday in New South Wales, provided that, in 1976 only, the additional holiday shall be observed on Monday, 6 September, provided further that where any other working day is observed as an additional day by the general body of employees in any establishment then such day shall be substituted for the additional holiday hereinbefore prescribed. By agreement between any employer and the majority of his employees another day may be substituted for the additional holiday prescribed by this subclause in such employer's undertaking.
- (c) All award holidays falling on a usual working day shall be counted as time worked and paid for as such.
- (d) An employee who without reasonable cause absents himself without leave on the working day immediately preceding or the working day immediately following an award holiday shall not be entitled to payment for such holiday.
- (e) Work done on an award holiday or Easter Saturday shall be paid for at the rate of double time and one-half with a minimum payment of four hours.

21. Annual Leave

- (a) Day workers and six-day shift workers: See *Annual Holidays Act, 1944*.
- (b) Seven-day Shift Workers -
- (i) In addition to the leave prescribed by the *Annual Holidays Act, 1944*, a further period of seven consecutive days' leave with forty hours' pay at ordinary rates shall be allowed annually to employees after not less than twelve months' continuous service as seven-day shift workers under this award less the period of annual leave.
- (ii) An employee with twelve months' continuous service who is employed for part of the twelve-monthly period as a seven-day shift worker under this award shall be entitled to have the leave prescribed by the *Annual Holidays Act, 1944*, increased proportionately for each month he is continuously employed as aforesaid.
- (iii) Where the additional leave calculated under this subclause includes a fraction of a day such fraction shall not form part of the leave period and any fraction shall be discharged by payment only.
- (iv) Annual leave under this subclause shall be given and taken within a period not exceeding six months from the date upon which the right to such leave accrued provided that the giving and taking of such annual leave may be postponed for a further period not exceeding three months in cases where circumstances render it impracticable to give or take it within the said period of six months; nothing in this paragraph shall prevent the employer from allowing annual leave to an employee before the right thereto has accrued, but where leave is taken 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 such annual leave had been taken before it accrued.

- (v) After twelve months' continuous service any employee whose employment is terminated by the employer, through no fault of the employee, and/or any employee who leaves the employment in circumstances which did not amount to misconduct after six months' continuous service in the then current qualifying twelve-monthly period shall be paid for the proportionate period of annual leave to which the employee would have been entitled if the employee's employment had not been so terminated.
- (vi) The annual leave provided for by this subclause shall be given and shall be taken and, except as provided in paragraphs (iii) and (v) of this subclause, payment shall not be made or accepted in lieu of annual leave.
- (vii) Service with an employer before the date of coming into force of this award shall count as service for the purpose of the current qualifying twelve-monthly period under this clause.

22. Annual Leave Loading

- (a) In this clause the *Annual Holidays Act, 1944*, is referred to as "the Act".
- (b) Before an employee is given and takes an 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 (f) of this clause.)
- (c) 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.
- (d) 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.
- (e) The loading is the amount payable for the period or the separate periods, as the case may be, stated in subclause (d), 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 the employee's annual holiday, together with, where applicable, the additional loadings prescribed by clause 6, Wages, of this award and any regular weekly overaward payment, but shall not include any other allowances, penalty rates, shift allowances, overtime rates or any other payments prescribed by this award.
- (f) 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 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 (e) of this clause applying the award rates of wages payable on that day.
- (g) 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 subclause (e) of this clause;
 - (ii) 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 the employee under the Act such proportion of the loading that would have been payable to the employee under this clause if the employee had become entitled to an annual holiday prior to the closedown as the qualifying period of employment in completed weeks bears to 52.

- (h)
- (i) 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 an annual holiday to which the employee became entitled, the employee shall be paid a loading calculated in accordance with subclause (e) of this clause for the period not taken.
 - (ii) Except as provided by paragraph (i) of this subclause no loading is payable on the termination of an employee's employment.
- (i) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if the employee 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.

23. Sick Leave

An employee who is unable to attend for duty during the employee's ordinary working hours by reason of personal illness or personal incapacity (including incapacity resulting from injury within the *Workers' Compensation Act, 1987*), not due to the employee's own serious and wilful misconduct, shall be entitled to be paid at ordinary time rate of pay for the time of such non-attendance subject to the following:

- (a) The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to compensation under the *Workers' Compensation Act 1987*.
- (b) The employee should within four hours where practicable, and in any case shall within twenty-four hours, of 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 injury or illness and the estimated duration of the absence.
- (c) The employee shall prove to the satisfaction of the employer, by the production of a medical certificate or other satisfactory evidence, that the employee was unable, on account of illness or injury, to attend for duty on the day or days for which sick leave is claimed.
- (d) Subject to the other provisions of this clause, an employee shall be credited with 76 hours paid sick leave in respect of each year of service which commences on or after 1 March, 1979. Sick leave granted with pay shall be deducted from such credit.
- (e) Sick leave entitlements not claimed in any one year shall accumulate from year to year so long as the employment continues with the employer.
- (f) Service before the coming into force of this award shall be counted as service for the purpose of qualifying thereunder.
- (g) 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. Provided further, an employee shall forfeit any payment for sick leave if the employee terminates the contract of employment within the first three months of employment. Alternatively, if an employer terminates the contract of employment within the first three months, the employer shall pay the employee for any sick leave taken by the employee, to a maximum of seventy-six (76) hours.
- (h) Notwithstanding the provisions of this subclause an employer in consultation and agreement with employees and the appropriate union(s) in writing, observe other provisions in respect of sick leave. Provided that the quantum of sick leave stipulated in subclause (d) hereof, shall not be reduced by such agreement(s).

24. State 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 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.
- (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 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 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
 - (b) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (c) 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.

- (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) 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 Entitlements for casual employees
- (a) Subject to the evidentiary and notice requirements in paragraphs (b) and (d) of subclause (1) above 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 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.

25. Bereavement Leave

- (a) 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 prescribed in (c) below.
- (b) 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.
- (c) 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(1)(c)(ii), provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (d) 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.
- (e) Bereavement leave may be taken in conjunction with other leave available under 24(1), (2), (3), (4), (5) and (6) [as appearing] of this clause. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operation requirement of the business.
- (f) Bereavement Leave entitlements for casual employees
 - (i) Subject to the evidentiary and notice requirements in paragraphs (b) and (d) of subclause (1) of clause 24 State 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 24 State 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.

26. Mixed Functions

An employee called upon to do work of a higher classification than that in which he is working shall, if so employed for at least one-half hour and less than two hours, be paid at the rate for such higher classification for the time so employed. If so employed for two hours or more he shall be paid the rate for the higher classification for the whole day.

27. Disputes Procedure

The procedure for the resolution of grievances and industrial disputation concerning matters arising or relating to the terms of 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) 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 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.

28. 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.

NOTE

- (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.

29. Proportion

- (a) The proportion of juniors to adults shall be not more than two juniors to each three adults; provided that one such junior may be employed in a factory in any case.
- (b) For the purpose of this clause an employee shall be deemed to be an adult if paid an adult rate of wage.

30. General Conditions

- (a) Where an employee is required by the employer to wear a uniform, cap, coat, overall, or other uniform dress, it shall be provided, maintained and laundered at the employer's expense. Where an employee is required by the employer to wear stockings during the course of work such stockings shall be supplied and paid for by the employer.
- (b) Where the nature of the work performed by employees necessitates suitable industrial clothing, including waterproof clothing and/or aprons, rubber boots or clogs, work boots work shoes, gloves, goggles, etc., they shall be supplied and paid for by the employer and shall remain the property of the employer.
- (c) Not less than five minutes before ceasing time shall be allowed to employees for washing purposes.
- (d) Employees shall be allowed a rest pause of ten minutes in the first half and in the second half of each day or shift at a time to be mutually arranged. The employer shall provide hot water during such rest pauses for the purpose of making tea or coffee.
- (e) Employees shall not be required to scrub floors, or to clean lunch rooms, dressing rooms, and/or lavatories or engage in any other cleaning work of a major nature.
- (f) An employee performing work of a dirty and dusty nature shall receive an allowance in accordance with Part B Monetary Rates Table 2 - Other Rates and Allowances.
- (g) Where an employee is required to stand on concrete, brick or stone floors the employer shall provide a suitable mat or floor coverings as agreed upon between the employer and the union.
- (h) Laboratory assistants and trainee chemists, who, as part of their training attend technical college classes in approved subjects, shall be allowed to attend such classes on one-half day each week during ordinary working hours without loss of pay.
- (i) Separate well ventilated rest rooms with suitable equipment shall be provided by the employer for the use by female and male employees.
- (j) A separate dining room, sufficient to accommodate the staff, shall be provided by the employer. Such dining room shall contain sufficient table and seating accommodation. Hot water shall be provided, without cost, for the employees and reasonable provision shall be made for the care of employees' luncheons.
- (k) Compensation to the extent of the damage sustained shall be made where, in the course of work, clothing and/or optical glasses are damaged or destroyed by, or through the use of corrosive, explosive, inflammable or poisonous substances.

- (l)
- (i) Where an employee is required to work at a place other than his usual place of work he shall be paid all fares reasonably incurred in excess of those he would normally incur attending his usual place of work and returning home and shall be paid for half of all travelling time in excess of that taken to reach his usual place of work and returning home.
 - (ii) Travelling time shall be paid for at ordinary rates of pay.
 - (iii) The foregoing subclause shall apply only to an employee temporarily transferred from his usual place of work. A temporary transfer shall mean periods of employment at places other than the usual place of work up to a maximum of three consecutive weeks.
 - (iv) An employee transferred from working place to working place during ordinary working hours shall be paid for the time spent in travelling as for time worked and shall receive reimbursement of fares incurred in such transfer.
 - (v) Where the transfer involves an employee being absent from his normal place of abode he shall be reimbursed for reasonable expenses incurred for accommodation together with first class rail fares to and from the place of transfer.
- (m) An employer shall permit a notice which has been duly authorised by the union secretary to be posted on the notice board.
- (n) No deductions shall be made from any leave due or from ordinary weekly wages due for time off required by employees to sit for examinations relevant to their employment.

31. Time and Payment of Wages

- (a) Wages shall be paid at or before the finishing time on the usual pay day which shall be not later than Thursday in each week: Provided that, by mutual agreement between an employer and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales, or the Shop, Distributive and Allied Employees' Association, New South Wales, wages may be paid on Fridays or wages may be paid by electronic funds transfer.
- (b) Where it has been the practice for an employer to keep wages in hand such practice may be continued; provided that the amount, in no case, shall exceed one day's pay.

32. Termination of Employment

- (a) Except in the case of misconduct the employment of any employee may be terminated by one week's notice on either side or by the payment or forfeiture (as the case may be) of one week's wages in lieu of such notice.
- (b) In the event of a stoppage of work through any cause outside the employer's control, the contract of employment may be continued, in which case the employer's liability for payment shall be suspended for the duration of the stoppage of work, provided that two working days' notice shall be given to employees prior to such suspension.
- (c) An employee whose employment is terminated by the employer on the working day immediately preceding a holiday or holidays, otherwise than for misconduct shall be paid for such holiday or holidays.
- (d) Any employee, with more than three months' service on leaving or being discharged, shall, if the employee so requests, be given a note by his employer stating the length and nature of the employment.
- (e) Such note shall be the property of the employee and shall be returned to the employee unmarked by any subsequent employer within seven days from the commencement of the employee's service.

33. Long Service Leave

See *Long Service Leave Act*, 1955.

34. Redundancy

A. Application

- (i) This clause shall apply in respect of full-time and part-time persons employed in the classifications specified by Table 1 - Wages, of Part B, Monetary Rates, of this award.
- (ii) In respect to employers who employ 15 employees or more immediately prior to the termination of employment of employees, in the terms of subclause (d) 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.

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 the award specified in subclause (i) of subclause (a), 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 subclause (i) 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.

C. 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 to be done by anyone pursuant to paragraph (a) of subclause (i) of subclause (B), 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 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 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.

D. 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 subclause (B), 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 subclause (b).
 - (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 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 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.
- (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.

E. Severance Pay

- (i) Where an employee is to be terminated pursuant to subclause clause (D), 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	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	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

- (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, overaward payments, shift penalties and allowances paid in accordance with this award.
- (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 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.
- (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 subclause (i) if the employer obtains acceptable alternative employment for an employee.

34A. Union Membership Fee Deduction

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
- the employee has authorised the employer to make such deductions in accordance with subclause (ii) herein;
 - 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;
 - 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
 - there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- (ii) The employer'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 or monthly 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 21 March 2003;
 - (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 21 June 2003;
 - (c) For all other employers, from the beginning of the first pay period to commence on or after 21 September 2003.

35. Right of Entry

See Chapter 5, Part 7 of the *Industrial Relations Act* 1996.

36. Trade Union Training

Authorised delegates of any of the unions party to this award who are nominated by the Secretary of their union to attend a training course or programme conducted under the auspices of the Authority established under the *Trade Union Training Authority Act, 1975* or sponsored by the Australian Council of Trade Unions, the State Branch of the Australian Council of Trade Unions or by a union party to this award shall be granted leave of absence while attending such course or courses provided that:

- (i) At least two weeks prior to attendance at the course or courses the employer receives written notice of the nomination from the union Secretary setting out the times, dates content and venue of the course;
- (ii) Nominations shall not involve absences from work of more than two delegates from each union per establishment (for a maximum of three days for each nominee) in each calendar year and, for the purpose of this subclause, a calendar year shall mean the period from 1 January to 31 December inclusive;
- (iii) Leave of absence granted shall be counted as time worked for the purposes of annual leave, sick leave and long service leave.

Delegates attending shall receive their normal rate of pay whilst on such prescribed by this award shall not be payable. The rate of pay for such leave shall be shared equally between the employer and the union concerned

37. Union Delegate

An employee appointed union delegate in the shop or department in which he is employed shall upon notification thereof to his employer, be recognised as the accredited representative of the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern New South Wales and/or the Shop, Distributive and Allied Employees' Association, New South Wales.

38. 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).

39. Blood Donor Leave

Where blood donation facilities are made available at an employer's establishment covered by this award, or at some other nearby place, an employee, who donates blood at such facility during his ordinary working hours shall be entitled to one hour's paid leave on such occasion for that purpose provided that, before making payment for such leave, the employer may require satisfactory proof of the employee's blood donation.

Production of the relevant Blood Bank card or certificate, properly completed, shall constitute such satisfactory proof.

40. Jury Service

An 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 requirements as soon as practicable after receiving notification to attend for jury service.

41. Occupational Superannuation

- (i)
 - (a) For all employees of Cyanamid Australia Pty Ltd working under this award, the employer shall pay three per cent of ordinary time earnings in the form of superannuation.

- (b) Each employee may choose one of the following electives:
- (1) Remain/become a member of the improved Category A (non- contributory) section of the company's pension fund.
 - (2) Become a member of the improved Category B (contributory) section of the company's pension fund.
 - (3) Remain/become a member of the unimproved Category A (non- contributory) section of the company's pension fund and have the three per cent of ordinary time earnings paid to their union's fund.
 - (4) Become a member of the unimproved Category B (contributory) section of the company's pension fund and have the three per cent of ordinary time earnings paid to their union's fund.

This category will only be available if a minimum of 25 existing employees elect this option.
 - (5) Remain a non-member of the company's pension fund and have the three per cent of ordinary time earnings paid to their union's fund.
- (c) The operative date of the payment to be 1 March 1987.
- (d) The company will provide payroll deduction facilities for an employee who elects to contribute to their Union superannuation/pension fund.
- (ii) All other employees covered by this award shall be entitled to receive a payment for superannuation of three per cent of ordinary time earnings which shall be paid into a scheme agreed to between the employer and the unions. This subclause shall apply to all employees of employers named in this subclause.

42. Leave Reserved

Leave is reserved to any union party to this award to apply as it may be advised during the currency of the award in respect of -

Medical examinations; part-time employees; Reserve Forces leave; charge hands and rate of pay.

43. Area, Incidence and Duration

This Award is made following a review under section 19 of the *Industrial Relations Act* 1996.

This Award rescinds and replaces the Tennis Strings and Sutures Industry (State) Award published 3 August 2001 (326 I.G. 684) and all variations thereof and the Tennis Strings and Sutures Industry Redundancy (State) Award published 6 October 1995. It shall apply to all employees engaged in or in connection with manufacture of tennis strings (when manufactured from catgut), sutures and/or catgut preparation within the State, excluding the County of Yancowinna, within the jurisdiction of the Drug Employees (State) Industrial Committee.

This Award was reviewed on 10 March 2008 pursuant to the Award Review pursuant to s.19(6) of the *Industrial Relations Act* 1996 and Principal 26 of the Principals for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) The changes take effect on and from 10 March 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 1 - Wages

Item No	Brief Description	Total Rate Per Week \$
A	Chemist -	
	Research Chemist	635.75
	Analytical and/or Chemist	596.05
	Trainee Chemist -	
	1st year of adult experience	549.60
	2nd year of adult experience	571.55
	3rd year of adult experience	587.40
B	Manufacturers of all Catgut Products -	
	Employees engaged in the following -	
	Splitting and/or harvesting raw material	555.60
	Preparing and/or washing and/or processing raw material	555.60
	Grading	555.60
	Stripping	555.60
	Making and/or measuring and/or looping	555.60
	Employees engaged in spinning strings, responsible for final products	559.65
	Employees engaged in spinning strings, not required to use discretion as to the final product	555.60
	Employees engaged as a spinning and/or drying room attendant	555.60
	Housekeeper	541.55
C	Surgical Catgut Finishing Operations -	
	Employees engaged in the following -	
	Cutting down	555.60
	Taking down	555.60
	Sanding, polishing and grinding	555.60
	Grading	555.60
	Machine Gauging	555.60
	Manual Gauging	555.60
	Counting	555.60
	Tying and packing	555.60
	Housekeeping	541.55
D	Tennis and Other Non-surgical Catgut Finishing Operations	
	Employees engaged in the following -	
	Taking down	540.90
	Sanding, polishing or grinding	540.90
	Coating and/or lacquering	540.90
	Cutting down	540.90
	Coiling	540.90
	Grading and/or inspecting finished strings	540.90
	Tying	540.90
	Gauging	540.90
	Branding and/or packaging	540.90

E	Suture Preparation -	
	Employees engaged in the following -	
	Drying and/or sterilising sutures	540.90
	Filing and/or sealing sutures	540.90
	Inspection of packaged sutures	540.90
	Ampoule making	540.90
	Winding sutures	540.90
F	Quality Control -	
	Group Leader - Quality Control Attendant	557.65
	Quality Control Attendant	546.55

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	6(d)	In charge of 1 to 5 employees	21.60
		In charge of 6 to 10 employees	25.30
		In charge of more than 10 employees	30.30
2	13(e)(i)	Morning or afternoon shift allowance	16.00 per shift
	13(e)(ii)	Night shift allowance	21.54 per shift
3	15	Meal Allowance	11.60
4	16	Dusty, Dirty Work, etc	0.50
5	17	First-aid allowance	2.78

DRUG EMPLOYEES' (STATE) INDUSTRIAL COMMITTEE**Industries and callings**

Employees in drug warehouses and/or drug factories, engaged in or in connection with the making, preparation, handling, putting up, reception, sale or delivery of drugs, galenicals, pharmaceutical goods, and medicinal or household chemicals, and all employees engaged in or in connection with the making, preparing, handling, putting up, reception, sale or delivery of cosmetics, perfumes, and toilet preparations and all employees other than in hospitals engaged in or in connection with the making, sale or delivery of surgical, medical and/or hygienic dressings and in the preparing and putting up of catgut the making of catgut preparations within the State excluding the County of Yancowinna.

Excepting:

- Storemen and packers;
- Watchmen, caretakers, cleaners, lift attendants and porters;
- Clerks;
- Carters, grooms, stablemen, yardmen and drivers of motor and other power-propelled vehicles;

And excepting also:

Employees of The Sydney County Council and The Council of the city of Newcastle;
Employees engaged in the manufacture of tartaric acid, cream of tartar, or any by-product thereof;
Employees engaged in and about the grinding of drugs;
Employees within the jurisdiction of the following Industrial Committees:

Pharmacists (State)
Retail Employees (State)
Textile Workers (State)

E. A. R. BISHOP, Commissioner

Printed by the authority of the Industrial Registrar.

ENTERPRISE AGREEMENTS APPROVED BY THE INDUSTRIAL RELATIONS COMMISSION

(Published pursuant to s.45(2) of the *Industrial Relations Act 1996*)

EA08/12 - Energy Australia Agreement 2006

Made Between: Energy Australia -&- the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Construction, Forestry, Mining and Energy Union (New South Wales Branch), Electrical Trades Union of Australia, New South Wales Branch, New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union, Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch), The Australian Workers' Union, New South Wales.

New/Variation: New.

Approval and Commencement Date: Approved 28 March 2008 and commenced 19 December 2006.

Description of Employees: The agreement applies to all employees employed by Energy Australia, who are engaged in the classifications set out in Appendices 3, 4, 5 and 6 of this agreement and who fall within the coverage of the Energy Australia Award 2004.

Nominal Term: 24 Months.

EA08/13 - St Vincent's Private Hospital Lismore and Health Services Union Enterprise Agreement 2007

Made Between: The Trustees of the Roman Catholic Church of the Diocese of Lismore t/as St. Vincent's Private Hospital, Lismore -&- the Health Services Union.

New/Variation: New.

Approval and Commencement Date: Approved and commenced 22 May 2008.

Description of Employees: The agreement applies to all private sector non nursing staff employed by St Vincent's Private Hospital, Lismore, who are engaged in the classifications of work contained in this agreement and who fall within the coverage of the Private Hospital Employees (State) Award 2006 and the Private Hospital Professional Employees (State) Award 2006. This agreement does not cover employees engaged by the employer in the St Joseph's Aged Care Facility.

Nominal Term: 36 Months.

INDUSTRIAL GAZETTE**VOLUME 365****INDEX****Key to Abbreviations Used:**

<i>(ACC)</i>	—	<i>Award of Conciliation Commissioner/Committee.</i>
<i>(AIC)</i>	—	<i>Award of Industrial Commission.</i>
<i>(AIRC)</i>	—	<i>Award of Industrial Relations Commission.</i>
<i>(AR)</i>	—	<i>Award Reprint (Consolidation).</i>
<i>(ART)</i>	—	<i>Award of Retail Trade Industrial Tribunal.</i>
<i>(CD)</i>	—	<i>Contract Determination.</i>
<i>(CORR)</i>	—	<i>Correction..</i>
<i>(ERR)</i>	—	<i>Erratum.</i>
<i>(OCC)</i>	—	<i>Order of Conciliation Commissioner.</i>
<i>(OIC)</i>	—	<i>Order of Industrial Commission.</i>
<i>(OIRC)</i>	—	<i>Order of Industrial Relations Commission.</i>
<i>(OIR)</i>	—	<i>Order of Industrial Registrar.</i>
<i>(RIRC)</i>	—	<i>Reviewed Award.</i>
<i>(RVIRC)</i>	—	<i>Variation - Reviewed Award.</i>
<i>(VCC)</i>	—	<i>Variation by Conciliation Commissioner/Committee.</i>
<i>(VCD)</i>	—	<i>Variation of Contract Determination.</i>
<i>(VIC)</i>	—	<i>Variation by Industrial Commission.</i>
<i>(VIR)</i>	—	<i>Variation by Industrial Registrar.</i>
<i>(VIRC)</i>	—	<i>Variation by Industrial Relations Commission.</i>
<i>(VRT)</i>	—	<i>Variation by Retail Trade Industrial Tribunal.</i>
<i>(VSW)</i>	—	<i>Variation following State Wage Case.</i>

Index

	Page
Awards and Determinations	
Awards Made or Varied	
Advertising Sales Representatives (State) Award	RVIRC 670
Aerated Waters, &c. (State) Award	RIRC 1595
Animal Food Makers, &c. (State) Award	RVIRC 1
Armidale Women's Shelter (Remuneration For On-call) Award 1996	RVIRC 1619
Asphalt and Bitumen Industry (State) Award	RIRC 671
Bacon Factory Employees (Cumberland) Consolidated Award	RIRC 701
Biscuit and Cake Makers (State) Award	RIRC 723
Bootmakers and Heel Bar Operatives, &c. (State) Award	VIRC 751
Bootmakers and Heel Bar Operatives, &c. (State) Award	RIRC 433
Bowling and Golf Clubs Employees (State) Award	RVIRC 1229
Breweries (State) Award	RVIRC 752
Building Industry - Contract Floor Layer Minimum Rate Order Award	RVIRC 1233
Catholic Schools Long Service Leave Portability (State) Award	RVIRC 3
CEVA Logistics (Australia) Pty Ltd (NSW Vehicle Logistics Local Fleet) Contract Determination	CD 1620
Chemical Workers (State) Award	VSW 755
Chemical Workers (State) Award	RIRC 757
Clothing Trades (State) Award	RIRC 1236
Club Industry (Variety Artists) (State) Award 2001	RVIRC 785
Coachmakers, &c., Road and Perambulator Manufacturers (State) Award	VIRC 1625
Coal Superintending Samplers (State) Award	RVIRC 6
Coal Superintending Samplers (State) Award	VSW 9
Coleambally Irrigation Consent Award 2007	RIRC 11
Commercial Travellers, &c. (State) Award	RVIRC 46
Community Pharmacy (State) Award 2001	VIRC 786
Confectioners (State) Award	VIRC 787
Confectioners (State) Training Wage Award	VSW 788
Confectioners (State) Training Wage Award	VSW 791
Confectioners (State) Training Wage Award	VSW 794
Confectioners (State) Training Wage Award	VSW 797
Confectioners (State) Training Wage Award	RIRC 800
Crown Employees (Aboriginal Housing Office) Award 2007	RIRC 48
Crown Employees (Department of Environment and Climate Change - Royal Botanic Gardens, Building and Mechanical Trades Staff) Award	VIRC 817
Crown Employees (Heritage Office 2003) Award	ROIRC 1628
Crown Employees (Home Care Service of New South Wales - Administrative Staff) Award 2007	RIRC 1629
Crown Employees (Home Care Service of New South Wales - Administrative Staff - Training Wage) Award 2007	RIRC 1325
Crown Employees (Household Staff - Department of Education and Training) Wages and Conditions Award	RIRC 54
Crown Employees (Jenolan Caves Reserve Trust Division) Salaries Award	RIRC 1654
Crown Employees (Museum of Applied Arts and Sciences Electrical Preparators) Award 2007	RIRC 75
Crown Employees (New South Wales Department of Ageing, Disability and Home Care) Residential Centre Support Services Staff Award	RIRC 1678
Crown Employees (NSW Department of Lands - Graphic Service Operators) Award	RIRC 819

Crown Employees (NSW Department Of Primary Industries) Technical Staff Award	RIRC	81
Crown Employees (Parks and Gardens - Horticulture and Rangers Staff) Consent Award 2007	RIRC	1695
Crown Employees (Parliament House Conditions of Employment) Award 2007	RIRC	1337
Crown Employees (Planning Officers) Award 2008	RIRC	1708
Crown Employees (Police Officers - 2005) Award	VIRC	88
Crown Employees (Roads and Traffic Authority of New South Wales - Salaried Staff) Award	RIRC	1395
Crown Employees (Roads and Traffic Authority of New South Wales - Toll Plaza Officers) Award	RIRC	851
Crown Employees (Security and General Services) Award 2007	RIRC	93
Crown Employees (Sheriff's Officers) Award 2007	RIRC	116
Crown Employees (State Library Security Staff) Award 2007	CORR	865
Crown Employees (State Library Security Staff) Award 2007	RIRC	121
Crown Employees (Tipstaves to Justices) Award 2007	RIRC	127
Crown Employees (Trades Assistants) Award	RIRC	155
Crown Employees Nurses' (State) Award	VIRC	866
Dental Assistants and Secretaries (State) Award	VSW	465
Draughting Employees, Planners, Technical Employees, &c. (State) Award	RIRC	1457
Drug Factories (State) Award	VIRC	867
Electrical, Electronic and Communications Contracting Industry (State) Award	CORR	180
Electricians, &c. (State) Award	RIRC	181
Food Preservers (State) Award	VIRC	1723
Food Preservers (State) Award	RIRC	1726
Footwear Manufacturing Industry (State) Award	RIRC	1523
Friction Materials, &c., Manufacture (State) Award	RIRC	467
Gelatine and Glue Industry (State) Award	RIRC	241
Government Railways (Building Trades Construction Staff) Award	RIRC	868
Government Railways (Building Trades Maintenance Staff) Award	RIRC	890
Grocery Products Manufacturing (State) Award	RIRC	910
Health Employees' Technical (State) Award	VIRC	274
Health Professional and Medical Salaries (State) Award	VIRC	277
Horticultural Industry (State) Consolidated Award	CORR	301
Hotel Employees (State) Award	RVIRC	302
Ice Cream Makers (State) Award	RIRC	945
Ice Cream Makers (State) Award	VIRC	973
Mannequins and Models (State) Award	VIRC	974
Margarine Makers (State) Award	RIRC	490
Margarine Makers (State) Award	VSW	303
Metalliferous Mining Industry (State) Award 1995	VSW	975
Milk Treatment, &c., and Distribution (State) Award	RIRC	515
Miscellaneous Workers' - Kindergartens and Child Care Centres, &c. (State) Award	CORR	305
Motor Vehicle Salesperson (State) Award	VIRC	977
Musicians' (Live Performance) (State) Consolidated Award	RVIRC	978
Musicians' (Multi Media) (State) Consolidated Award	RVIRC	979
NSW Health Service Health Professionals (State) Award	AIRC	312
Nurses' (Private Sector) Training Wage (State) Award	VSW	328
Nut Food Makers (State) Award	VSW	980
Nut Food Makers (State) Award	RIRC	982
Nut Food Makers (State) Award	CORR	538
Nut Food Makers (State) Award	CORR	539
Paint and Varnish Makers, &c. (State) Award	RIRC	1778
Pastrycooks (Specified Wholesalers) Award	RVIRC	330
Pharmacy Assistants (State) Award	VIRC	1008

Plastic Moulding, &c. (State) Award	RIRC	1009
Plumbers and Gasfitters (State) Award	VSW	1817
Potato Crisp Makers (State) Award	RIRC	540
Pottery Industry (State) Award	RIRC	1821
Printing Industries (State) Award	RVIRC	1851
Professional Surveyors (Private Industry) (State) Award	VSW	332
Public Health Service Employees Skilled Trades (State) Award (Incorporating the Ambulance Service of NSW Skilled Trades)	RIRC	569
Public Hospital (Physiotherapists, Occupational Therapists and Speech Pathologists) (State) Award	OIRC	334
Public Hospital Social Workers (State) Award	OIRC	335
Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award	VIRC	336
Race Clubs Employees (State) Award	RVIRC	1058
Race Clubs Employees (State) Award	VSW	340
Real Estate Industry (State) Award 2003, The	VSW	1061
Recorded Music and Visual Entertainment Reproduction (State) Award	RVIRC	622
Refractory Industry (State) Award	RIRC	1855
Restaurant, &c., Employees' Retail Shops (State) Award	VIRC	1062
Retail Industry (State) Superannuation Award	RVIRC	623
Retail Services Employees (State) Award	VIRC	1063
Retail Services Employees (State) Award	RVIRC	1064
Rock and Ore Milling and Refining (State) Award	RVIRC	342
Royal Flying Doctor Service of Australia (South Eastern Section) Nursing Staff (State) Award	RVIRC	624
Rubber Workers (State) Award	RVIRC	345
Rural Lands Protection Boards Salaries and Conditions Award 2007	VIRC	1065
Saddlery, Leather, Canvas and Plastic Material Workers' (State) Award	RIRC	1882
Saddlery, Leather, Canvas and Plastic Material Workers' (State) Award	VSW	1593
School Support Staff (Catholic Schools) (State) Training Wage Award 2001	RVIRC	1074
Scientific Officers (Public Hospital Dietitians) State Award	OIRC	349
Shop Employees (Catholic Personal/Carer's Leave) (State) Award	RVIRC	625
Shop Employees (State) Award	VIRC	1077
Shop Employees (State) Award	RVIRC	626
Smallgoods Manufacturers (State) Award	RIRC	1920
Soap and Candle Makers (State) Consolidated Award	VSW	1078
Social and Community Services Employees (State) Award	VSW	627
Storemen and Packers, Wholesale Paint, Varnish and Colour Stores (State) Award	RVIRC	350
Superannuation Administration Corporation (Salaries and Conditions) Award 2007	RIRC	352
TAFE NSW Sydney Institute (Graphic Arts Section) Wages and Conditions Award	RIRC	407
Tennis Strings and Sutures Industry (State) Award	RIRC	1940
Tennis Strings and Sutures Industry (State) Award	VIRC	1081
Textile Industry (State) Award	RIRC	1082
Theatrical Employees (Training Wage) (State) Award	RVIRC	630
Theatrical Employees' Redundancy (State) Award	RVIRC	631
Transport Industry - General Carriers Contract Determination	VCD	1195
Transport Industry - Tourist and Service Coach Drivers (State) Award	RVIRC	419
Transport Industry - Wholesale Butchers (State) Award	RIRC	1201
Transport Industry (State) Superannuation Award (No. 2)	RVIRC	420
University Unions (State) Award	VIRC	1221
Van Sales Employees' (State) Award	VIRC	1222
Van Sales Employees' (State) Award	RVIRC	632
Vehicle Industry - Repair Services and Retail (State) Award	VIRC	1223
Warehouse Employees' - General (State) Award	VIRC	1224
Warehouse Employees Drug (State) Award	VIRC	1225

Wholesale Fruit and Vegetable Employees' (State) Award	VIRC	1226
Zoological Parks Board of New South Wales Salaried Employees Award	RIRC	633
State Wage Case 2007		421
Industrial Committees -		
Butchers, Retail (State) Industrial Committee		664
Butchers, Wholesale (Country) Industrial Committee		663
Clerical and Administrative Employees Legal Industry (State) Industrial Committee		657
Cold Storage, &c., Employees (State) Industrial Committee		662
Meat Preservers, &c. (State) Industrial Committee		661
Metalliferous Mining (State) Industrial Committee		658
Poulterers (State) Industrial Committee		660
Public Hospital Nurses (State) Industrial Committee		665
Smallgoods Manufacturers (State) Industrial Committee		659
Trained Nurses, &c., Other Than In Hospitals, &c. (State) Industrial Committee		666
Enterprise Agreements Approved by the Industrial Relations Commission		431 668 1227 1971
Contract Agreements Approved by the Industrial Relations Commission		669