



FAMILY DAY CARE SERVICES AWARD 1999

Level 3, 222 Pitt Street Sydney NSW 2000

PO Box A2178 Sydney South NSW 1235

Telephone: 02 8267 4365

Fax: 02 8267 4225

2. CONTENTS

SECTION	TITLE
Part 1	Preliminary
1	Title
2	Contents
3	Scope and Application
4	Relationship to National Training Wage Award 2000
5	Date of Operation
6	Access to award Copy
Part 2	Terms and Conditions Of Employment
7	Contract of Employment
8	Duties within Skills, Competency and Training
9	Probationary Employment
10	Weekly/Full-time Employment
11	Part-time Employment
12	Casual Employment
13	Fixed Term Employment
14	Savings
15	Dispute Resolution Procedure
16	Termination of Employment
17	Redundancy
18	Payment of Wages
19	Superannuation
20	Higher Duties
Part 3	Wages and Allowances
21	Wages
22	Salary Benefits
23	Progression within classification levels
24	Work related expenses
25	Supported Wage Arrangement
26	Allowances

SECTION	TITLE
Part 4	Hours of Work
27	Hours of Work
28	Method of working the 38 Hour Week
29	Meal Breaks
30	Overtime
Part 5	Leave and Statutory Holidays
31	Personal Leave
32	Annual Leave
33	Public Holidays
34	Special Leave
35	Long Service Leave
36	Jury Service
37	Calculation of Continuous Service
38	Parental Leave
39	Anti-Discrimination
40	Enterprise Flexibility Provisions
41	Vaccination Health Costs
42	First-Aid
Appendix A	Transitional Provisions
Schedule A	List of Respondents

PART 1 PRELIMINARY

1. TITLE

This award shall be known as the Family Day Care Services Award 1999.

3. SCOPE AND APPLICATION

3.1 This award shall apply to:

3.1.1 The Australian Municipal, Administrative, Clerical and Services Union (the Australian Services Union or ASU); and

3.1.2 The employers listed in Schedule A – List of respondents of this award;

- (a) who provide a service which is a family day care scheme being a network of individuals providing child care and developmental activities in their own home for other people's children, organised and supported by a central co-ordination unit. The unit supports, recruits and trains carers, arranges the placement of children according to the needs of the families and carers, monitors the care provided and undertakes the necessary administrative responsibilities. It is a flexible type of service providing childcare according to family needs.
- (b) in respect of persons eligible to join the ASU (whether members or not) engaged in the provision of family day care services and related support services including those funded by the Federal Government's family day care program or any program(s) which directly replaces it.

3.2 This award shall not apply to persons employed in the industries or industrial pursuits of cleaners, security officers, clerical workers, caretakers, gardeners, laundry workers and/or domestic work/domestic workers, provided that "domestic work/domestic workers" shall not include (to the extent that it might otherwise include) persons primarily engaged in welfare work as distinct from manual work.

3.3 The conditions of this award, except Part 4 – Hours of Work, shall apply to employees classified at Category 5, provided that the overall terms and conditions of employment for such employees are no less favourable than the provisions of this award as a whole.

3.4 Nothing in this award shall in itself operate to reduce the conditions of employment of an employee, which were in existence immediately prior to, or at the commencement of, this award in respect of allowable matters.

4. RELATIONSHIP TO NATIONAL TRAINING WAGE AWARD 2000

- 4.1 A party to this award shall comply with the terms of the National Training Wage Award 2000, as varied, as though bound by clause 5 of that award.
- 4.2 The terms of the National Training Wage Award 2000, as varied, shall apply to the employment under this award in the manner specified in clause 6 of that award, for employers bound by that award.
- 4.3 For the purpose of clause 11 of the National Training Wage Award 2000 the industry/skill level of any approved Traineeship under this award shall be that of Industry/Skill Level C (Office Clerical).

5. DATE OF OPERATION

This Award shall operate from the first pay period commencing on or after 9 July 1999 and shall continue in force for a period of twelve months.

6. ACCESS TO AWARD COPY

A copy of this award shall be kept in a convenient place for the perusal of all employees

PART 2 TERMS AND CONDITIONS OF EMPLOYMENT

7. CONTRACT OF EMPLOYMENT

- 7.1 Upon engagement, an employer shall provide each new employee (except a casual employee) with a written contract of employment which specifies:
 - 7.1.1 An outline of the main duties of the position;
 - 7.1.2 The employee's regular hours of work and the employee's normal span of hours for ordinary duty;
 - 7.1.3 The employee's classification and rate of pay pursuant to this award;
 - 7.1.4 The nature and detail of engagement in accordance with clause 7.2.

7.2 An employee shall be engaged on one of the following basis:

7.2.1 Weekly/full-time;

7.2.2 Part-time;

7.2.3 Casual; and

7.2.4 Fixed term.

7.3 Subject to clauses 9 – Probationary Employment, 13 – Fixed Term Employment, 16 – Termination of Employment and 17 - Redundancy all employees employed pursuant to this award other than casual and fixed term employees shall be deemed to be weekly employees.

8. DUTIES WITHIN SKILLS, COMPETENCY AND TRAINING

Within the framework of the classification structure of this award, the parties recognise the employer's right to direct an employee to carry out such duties as are within the limit of the employee's skill, competence and training and the scope of their award classification.

9. PROBATIONARY EMPLOYMENT

9.1 An employee (other than a casual employee) may be engaged as a probationary employee during an initial probationary period of up to three months, but nothing in this Award shall be construed as making probationary employment mandatory.

9.2 The probationary period shall be specified in the employment contract.

10. WEEKLY/FULL-TIME EMPLOYMENT

An employee not specifically engaged on a part-time or casual basis shall be a weekly/full-time employee entitled to weekly benefits. Wherever a permanent employee is referred to in this award it shall mean weekly employee/employment where appropriate.

11. PART-TIME EMPLOYMENT

11.1 A part-time employee means an employee other than a casual, who is engaged to work regularly for less than an average of 38 ordinary hours per week.

11.2 The ordinary hours for part-time employees shall be within the ordinary span of hours defined in clause 27 – Hours of Work with a three-hour minimum start on any day of employment.

- 11.3 A part-time employee shall generally work the hours prescribed in their contract of employment provided that by mutual agreement between the employer and employee, a part-time employee's hours of ordinary duty may be temporarily varied up to a maximum of 38 hours per week provided that the hours worked fall within the definition of ordinary hours defined in clause 27 – Hours of Work. If the employee consistently works in excess of their nominated hours, a review should be conducted with a view to extending the nominated hours.
- 11.4 Any additional hours temporarily worked by a part-time employee shall not affect their status as a part-time employee.
- 11.5 Any permanent increase in the number of hours worked or arrangement of those hours shall only be made by mutual agreement of the employer and employee.
- 11.6 For ordinary working hours, a part-time employee shall be paid at a rate equal to one-thirty-eighth of the appropriate weekly rate prescribed in clause 21 - Wages with an entitlement to weekly employment entitlement on a pro-rata basis. Part-time employees are entitled to allowances on a pro-rata basis.
- 11.7 Where a part-time employee's hours are temporarily increased to the hours of a weekly employee, such employee shall receive all benefits prescribed in this award for a weekly employee for the period so worked.

12. CASUAL EMPLOYMENT

- 12.1 A casual employee means an employee who is engaged intermittently for work of an irregular, unexpected or casual nature.
- 12.2 An employee engaged as a casual employee shall be engaged for a minimum period of two consecutive hours for each period of engagement.
- 12.3 The ordinary hours for a casual employee shall be within the ordinary span of hours specified in Clause 27 – Hours of Work. A casual employee shall be paid for such hours worked at a rate equal to one-thirty-eighth of the appropriate weekly rate prescribed in Clause 21 - Wages plus a loading of twenty five percent in lieu of paid absences for all form of leave, excepting long service leave. Casual employees are entitled to allowances on a pro-rata basis.

13. FIXED TERM EMPLOYMENT

- 13.1 A fixed term employee may be engaged to work on either a weekly or part-time basis for a period not exceeding twelve months:

- 13.1.1 For the completion of a specified task(s) or project; or
 - 13.1.2 To relieve in a vacant position arising from an employee taking leave in accordance with this award; or
 - 13.1.3 For the temporary provision of specialist skills that are not available within the organization for a specified period of time; or
 - 13.1.4 To fill short-term vacancies resulting from the resignation of a permanent employee during the recruitment and selection process.
- 13.2 When offering employment on a fixed term basis, the employer shall advise the employee in writing of the temporary nature of the employment, the actual or expected duration of employment, and that employment beyond the period is not expected.
- 13.3 If a fixed term employee is subsequently appointed to a permanent position with the employer, any period of the fixed term contract completed immediately prior to the commencement of the permanent position shall be recognised as service with the employer for calculating leave entitlements, provided that the employee has not taken or received payment in lieu of those leave entitlements.

14. SAVINGS

Nothing in this Award shall in itself operate to reduce the conditions of employment of an employee, which were in existence immediately prior to, or at the commencement of, this Award in respect of allowable matters.

15. DISPUTE RESOLUTION PROCEDURE

- 15.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:
- 15.1.1 the employee and their supervisor meeting and conferring on the matter; and
 - 15.1.2 if the matter is not resolved at such meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 15.2 If the matter cannot be resolved it may be referred to the Australian Industrial relations Commission.
- 15.3 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

16. TERMINATION OF EMPLOYMENT

16.1 Notice of Termination by Employer

16.1.1 In order to terminate the employment of a weekly or part-time employee as defined in Clauses 10 – Weekly/Full Time Employment or 11 – Part-time Employment, the employer shall give to employees at Categories 1 to 5, the following notice:

Period of continuous service with employer	Period of Notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

16.1.2 For employees employed at Category 5, at least four weeks notice should be given.

16.1.3 In addition to the notice prescribed in 16.1.1 and 16.1.2 hereof, 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 weeks notice.

16.1.4 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required notice period and by the employer making payment for the remainder of the notice period.

16.1.5 In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.

16.1.6 The period of notice in this clause shall not apply in the case of conduct, which justifies instant dismissal, including malingering, inefficiency or neglect of duty or in the case of casual employees, or employees engaged for a specific period of time or for a specific task or tasks.

16.1.7 For the purpose of this clause, continuity of service shall be calculated in the manner prescribed by this award.

16.3 Notice of Termination by Employee

16.3.1 The maximum notice of termination required to be given by an employee will be two weeks other than category 5 who will be required to give four weeks notice.

16.3.2 If any employee fails to give notice, the employer shall have the right to withhold moneys due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

17. REDUNDANCY

17.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone, and this is not due to the ordinary and customary turnover of labour.

17.2 Transfer to Lower Paid Duties

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

17.3 Severance Pay

In addition to the period of notice prescribed for ordinary termination in Clause 16 – termination of Employment and subject to further order of the Australian Industrial Relations Commission, an employee whose employment is terminated, shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of Continuous Service	Severance Pay
Less than one year	Nil
1 year and up to the completion of 2 years	4 weeks pay
2 years and up to the completion of 3 years	6 weeks pay
3 years and up to the completion of 4 years	7 weeks pay
4 years and over	8 weeks pay

17.3.1 “**Weeks pay**” means the employee's current ordinary time hourly rate of pay multiplied by the average weekly hours (excluding overtime) worked over the past 52 weeks.

17.3.2 Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

17.4 Employee Leaving during Notice

An employee whose employment is terminated, may terminate their employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had they 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 the remainder of the period of notice.

17.5 Alternative Employment

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

17.6 Time Off During Notice Period

17.6.1 Where a decision has been made to terminate an employee, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

17.6.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

17.7 Employees Exempted

This clause shall also not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, or in the case of casual employees, or employees engaged for a specific period of time or for a specified task or tasks.

17.8 Incapacity to Pay

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

18. PAYMENT OF WAGES

- 18.1 All wages shall be paid weekly or fortnightly by cash or by cheque or electronic transfer by agreement between the employer and employee.
- 18.2 Notwithstanding the above, wages can be paid monthly by agreement between the employer and any individual employee.
- 18.3 Wages shall be paid during working hours on a weekday mutually agreed by the employer and employees in each service, being not more than five days following the end of the pay period. The pay day selected, once agreed, must not be changed without mutual agreement between the employer and a majority of employees.
- 18.4 Upon termination of employment wages due to an employee shall be paid on the date of such termination or forwarded by post or electronic transfer on the next working day.

19. SUPERANNUATION

- 19.1 The employer shall comply with all obligations relating to payment of occupational superannuation as provided for under the means of the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993 and associated Regulations pertaining thereto, and as amended from time to time.
- 19.2 The applicable rate of contribution to a Fund for any employee who earns \$450 gross per month or more shall be in accordance with the Superannuation Guarantee Charge Act 1992.
- 19.3 **“Ordinary time earnings”** means:
 - Award classification rate;
 - Over-award payment;
 - Casual loading in respect of casual employees.
- 19.4 Ordinary time earnings does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance.
- 19.5 The Superannuation Fund shall mean any approved Fund, which meets the requirements of the Superannuation Industry (Supervision) Act 1993 as a complying Fund for occupational superannuation, which an individual employer chooses in consultation with its employees.

19.6 Absence from Work

19.6.1 Paid Leave

Subject to the Trust Deed of the fund of which the employee is a member, absences from work will be treated in the following manner.

- (a) Contributions shall continue whilst a member of the fund is absent on paid leave such as annual leave, long service leave, public holidays, jury service, sick leave and bereavement leave.

19.6.2 Unpaid Leave

Contributions shall not be required to be made in respect of any absence from work without pay.

19.6.3 Work related injury and sickness

In the event of an eligible employee's absence from work due to work related injury or sickness, contributions will continue for the period of the absence (subject to a maximum of 52 weeks' total absence for each injury or sickness) provided that the member of the fund (employee) is receiving payments pursuant to the Work Cover Queensland Act 1996.

20. HIGHER DUTIES

An employee who is directed by the employer to perform duties of a substantive position which entitle the employee to a higher rate of pay under this Award, for four consecutive working days or more or an accumulated period of seven days or more within one calendar month, shall be paid for the period for which such duties are assumed at a rate not less than the minimum rate prescribed for the higher classification.

PART 3 WAGES AND ALLOWANCES

21. WAGES

- 21.1 Subject to this award, the following shall be the minimum salary rates paid to employees in respect of their category/grade and from the applicable operative dates in attached wage schedules:

21.2 Definitions of the Categories.

21.2.1 Category 1

An employee engaged under this category will undertake work that:

- (a) will initially require completion of standard work routines, have clearly defined objectives/performance outcomes or undertake tasks of an assisting or supportive nature. Such employees will receive instruction/supervision from another employee as to the performance of their duties. Position will require good communication, numeric and written skills and may require equipment skills (eg. Keyboard, switchboard etc). May include preparation for and involvement/assisting in Child Care provider/Caregiver training, support, social and /or learning activities. (eg. Equipment maintenance, monitoring and basic cataloguing).
- (b) develops knowledge and skills, through experience about the organization's procedures.

21.2.2 Category 2

An employee engaged under this category, in addition to Category 1 responsibilities:

- (a) shall be expected to operate with a degree of autonomy and may receive instruction from another employee as to the performance of their duties.
- (b) may be responsible for particular functions with an agency, which may include assisting in the administration and co-ordination of a unit of an agency.
- (c) may require knowledge of child development, health, hygiene, welfare and safety issues relevant to their position (eg. May select and order library equipment, maintain and distribute education (equipment) and materials and undertake cataloguing).

21.2.3 Category 3

An employee engaged under this category, in addition to Category 2 responsibilities

- (a) shall be engaged in:

- (i) service delivery this may include; regular fieldwork, monitoring standards of child care, support and development of childcare provider/caregivers, the recruitment, selection and training of childcare providers/caregivers, liaison with parents, placement of children, liaison with government departments; and/or
- (ii) providing administrative support of a complex nature; this may include preparation of grant applications and/or preparation of budgets and/or the development and administration of records management and/or applications of computer program knowledge or skills;
- (b) where required shall have knowledge of child development, an understanding of child care, community development and welfare issues where appropriate, and a high level of interpersonal communications skills
- (c) an employee engaged under this category would be expected to operate with a higher degree of autonomy than a Category 2 employee and may operate under minimal supervision;
- (d) may have involvement in service planning, policy development and implementation, responsibility for service delivery and ensuring statutory requirements are met;
- (e) may be responsible for the overall administration and/or co-ordination of a unit/program of a service;
- (f) may have involvement in more than one discipline within a service; including planning for recruitment, assessment, training and development and support of child care providers, early childhood education programming and health, hygiene, welfare and safety policy setting;
- (g) may undertake projects requiring the use of analytical skills (eg. Basis research, collection of data) and subsequent preparation of reports and/or recommendations;
- (h) **Qualifications**

Where required by State or statutes, or where such a Statute does not exist, experience in this or a related work discipline and ability to use appropriate skills and techniques.

21.2.4 Category 4

An employee engaged under this category shall, in addition to Category 3 responsibilities:

- (a) be responsible for the administration and/or co-ordination of a service;
- (b) have a broad understanding of child care, community development and welfare issues, support services liaison and community education and service administration.
- (c) have substantial involvement in service planning, policy development, implementation and administration, responsibility for service delivery and ensuring statutory requirements are met.
- (d) have involvement in more than one (discipline/program) within a service, which may include planning for recruitment, assessment, training and development and support of child care providers/caregivers, early childhood education programming, health, hygiene, welfare and safety policy setting; financial management and reporting.
- (e) undertake significant projects requiring the use of analytical skills and subsequent preparation of reports and/or recommendations.
- (f) have substantial human services management skills.
- (g) Qualifications

Relevant qualifications as required under State Regulations

21.2.5 Category 5

- (a) An employee appointed to this category shall operate at a higher level of discretion, skill and responsibility than a Category 4 employee. In addition to the duties of a Category 4 employee this employee shall:
 - take a leadership role in areas of management;
 - operate with a higher level of independence and be responsible for the overall management of a complex scheme;
 - operate with a higher level of autonomy in the financial/human resources function of the scheme;

- provide advice to the management committee on major areas of policy and/or on key issues of significance to the organization;
 - the influence exercised by an employee in this category would have a critical role in the performance of the organization as a whole;
 - the employee shall manage and be responsible for multiple services or exercise skills and responsibility equivalent to managing a multiple service.
- (b) **“Multiple service”** shall mean, for example, one or more Family Day Care Schemes or one Family Day Care Scheme and a Long Day Care Centre and/or Outside School Hours Care and/or Vacation Care.
- (c) This provision shall operate for an interim period of 6 months. The operation of the provision shall be reviewed no later than 6 months from its operative date or on application by either party.

21.3.1 Increases made under previous National Wage Case principles or under the current Statement of Principles excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- 21.3.1(a) The rates of pay in this award include the arbitrated safety net adjustment payable under the Safety Net Review – Wages May 2000 decision [Print S5000]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption, which is contrary to the terms of an agreement, is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- 21.3.1(a)(i) The rates of pay in this award include the arbitrated safety net adjustment payable under the Safety Net Review – Wages May 2001 decision [PR002001]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption, which is contrary to the terms of an agreement, is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments

22. SALARY BENEFITS

Where mutually agreed between the employer and a full-time or part-time employee, an employer may introduce remuneration packaging in respect of salary as outlined in Clause 21 - Wages. The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award.

23. PROGRESSION WITHIN CLASSIFICATION LEVELS

- 23.1 An employee shall not move from paypoint to the next paypoint within the classification level until:
- 23.1.1 in the case of a weekly employee such employee has received such salary/wage for a period of twelve months;
 - 23.1.2 in the case of a part-time and casual employee such employee has worked 800 ordinary hours and has been employed for a minimum period of twelve months on that paypoint;
 - 23.1.3 the employee has acquired and is required by the employer to utilise new and/or enhanced skills within the ambit of the classification definition for his/her position or other skills where agreed between the employer and employee.
- 23.2 Notwithstanding 23.1 an employee whose performance has been deemed by the employer as not satisfactory in respect to conduct, diligence or efficiency

and who is undergoing a formal counselling process in accordance with Clause 15 – Dispute Resolution Procedure, will remain on that paypoint. The employee will move to the next paypoint on satisfactory completion of the counselling process.

- 23.3 Any disputes between parties shall be referred to Clause 15 – Dispute Resolution Procedure.

24. WORK RELATED EXPENSES

24.1 Travelling and Motor Vehicle Allowance

24.1.1 Should an employee be authorised to use their own vehicle on the employer's business, the employee is to receive a per km rate of reimbursement in respect of kilometres travelled on such business in accordance with the rates prescribed by the Australian Taxation Office.

24.1.2 Where an employee receives a flat monetary payment as a motor vehicle allowance at the time of making this Award such employees are not entitled to the payment of a kilometre allowance prescribed in 24.1.1 unless the flat monetary payment paid is less than the kilometre allowance.

- (a) Such payment to be made to the employee will be determined each twelve monthly period.

24.1.3 An employee authorised to travel by the employer by other means in connection with the employee's work, shall be reimbursed all reasonable travelling expenses so incurred with proof of such expenses to be provided by the employee to the employer. Provided that an employee is not entitled to any form of reimbursement for the regular journey from home to work and vice versa.

24.2 Staying Away from Home

An employee authorised by the employer to stay away from home overnight shall be reimbursed the cost of reasonable board, lodging, meals and transport. Reasonable proof of costs so incurred is to be provided by the employee to the employer.

24.3 Work Equipment

Where an employee at the direction of the employer, incurs other expenses in the course of the employee's duties, and presents evidence of such expenses to the employer, the employer shall reimburse such expenses. Where appropriate such goods shall remain the property of the employer.

- 24.4 Where an employee, who is authorised by the employer to use their personal telephone in the course of their duties, shall be reimbursed the cost of any work related calls made by the employee in accordance with the details supplied.

25. SUPPORTED WAGE ARRANGEMENT

25.1 Workers eligible for a Supported Wage

This clause defines the conditions, which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:

25.1.1 **“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;

25.1.2 **“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;

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

25.1.4 **“Assessment instrument”** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

25.2 Eligibility Criteria

25.2.1 Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

25.2.2 This clause does not apply to any existing employee who has a claim against the employer, which is subject to the provisions of workers' compensation legislation, or any provisions of this award relating to rehabilitation of employees who are injured in the course of their employment.

25.2.3 The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organization which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.

25.3 Supported Wage Rates

25.3.1 Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work, which the person is performing according to the following schedule:

Assessed capacity	% of prescribed award rate
10%*	10
20%	20
30%	30
40%	40
50%	50
60%	60
70%	70
80%	80
90%	90

25.3.2 Provided that minimum amount payable shall not be less than \$53 per week.

25.3.3 Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

25.4 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:

25.4.1 The parties to the award, in consultation with the employee or, if desired by any of these;

25.4.2 The employer and an accredited assessor from a panel agreed by the employer and the Union and the employee.

25.5 Lodgement of Assessment Instrument

25.5.1 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 Australian Industrial Relations Commission;

25.5.2 All assessment instruments shall be agreed and signed by the parties of the assessment, provided that where the Union 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.

25.6 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.

25.7 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.

25.8 Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take all reasonable steps to make changes in the workplace to ensure the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organization in consultation with other workers in the area.

25.9 Trial Period

- 25.9.1 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 twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 25.9.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 25.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$53 per week.
- 25.9.4 Work trials should include induction or training as appropriate to the job being trailed.
- 25.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period a further contract of employment shall be entered into based on the outcome of assessment under subclause 25.4.

26. ALLOWANCES

26.1 Meal Allowance

- 26.1.1 An employee shall be entitled to the provision of a suitable meal or a meal allowance of \$9.87 where:
- (a) the employee works, with the authorization of the employer, after 8.00 p.m. and before midnight for at least one hour on any day; or
 - (b) the employee works, with the authorization of the employer, for five or more hours on a Sunday, public holiday or rostered day off.
- 26.1.2 Where, after meeting the eligibility requirements for meal allowance specified an employee (with authorization of the employer) works for an additional four hours or more; the employee shall be entitled to an additional meal or to an additional meal allowance.

26.2 Out of Work Contact

For the purpose of this clause the following definitions apply:

- 26.2.1 **“On-call”** shall mean a written instruction to an employee to remain at the employee’s residence or to otherwise be immediately contactable by telephone or paging system outside the employee’s normal hours of duty in case of a call out requiring an immediate return to duty.
- 26.2.2 When an employee is required to be on-call and the means of contact is to be by telephone, the employee shall:
- (a) Where the employee does not already have a telephone, pay the cost of such installation;
 - (b) Where the employee pays or contributes to the payment of the rental of such telephone, pay the employee one half of the rental costs.
- 26.2.3 An employee shall be reimbursed the cost of all telephone calls made on behalf of the employer as a result of out of hours contact.
- 26.2.4 An employee authorized by the employer to be on-call shall be paid an allowance equal to one hours ordinary rate of pay in respect to any 24 hour period or part thereof during which the employee is on-call during the period commencing from the time of finishing ordinary duty on Monday and the termination of ordinary duty on Friday.
- (a) The on-call allowance shall be equal to two hours ordinary pay in respect to any other 24-hour period, or part thereof; or any public holiday or part thereof.
 - (b) Where an employee is paid such on-call allowance and the employee is contacted to attend to work matters and such matters are attended to at employee’s residence, actual time worked up to half an hour shall not be deemed as paid time. Any time worked in excess of one half hour shall be paid at overtime rates and shall be rounded off to the nearest half hour.

26.3 Vaccination Health Costs

The employer shall pay all costs of vaccinations or medical tests incurred by an employee, as directed by the employer.

PART 4 HOURS OF WORK

27. HOURS OF WORK

- 27.1 The ordinary hours of work shall be an average of 38 hours per week, to be worked on the following basis:
- 27.1.1 38 hours within a work cycle not exceeding seven consecutive days; or
 - 27.1.2 76 hours within a work cycle not exceeding fourteen consecutive days;
- or

- 27.1.3 114 hours within a work cycle not exceeding 21 days; or
- 27.1.4 152 hours within a work cycle not exceeding 28 consecutive days.
- 27.2 The ordinary hours of work prescribed may be worked on any five consecutive days in the week, Monday to Saturday inclusive, subject to the following:
 - 27.2.1 Any arrangement of hours, which includes Saturday as ordinary hours, shall be subject to agreement between the employer and the employees directly affected.
 - 27.2.2 Ordinary hours worked on a Saturday shall be paid at the rate of time and one half.
- 27.3 The ordinary hours of work prescribed herein shall be worked within a designated spread of hours between 7.30 am to 8.00 pm, inclusive of meal breaks.
- 27.4 The ordinary starting and finishing times of an employee or employees may be staggered, provided that there is agreement between the employer and the majority of employees directly affected. Further, the designated twelve and a half hour spread may be varied subject to there being an agreement between the employer and the employee directly affected.
- 27.5 The ordinary hours of work prescribed therein shall not exceed ten hours on any day.
- 27.6 Flexible Working Hours Option

Notwithstanding the provisions of subclauses 27.1 – 27.5 and where mutual agreement is reached an employee may perform their duties under the following optional Flexi-time system. These provisions shall not apply to casual employees.

27.6.1 Definitions

- (a) **“Flexible working hours”** (flexitime) means a system, which allows employees to set their own patterns of attendance at work subject to the provisions of this award and the requirements of the workplace.
- (b) **“Standard day”** means seven hours and thirty six minutes per day worked in a continuous shift at any time within the designated spread of hours.
- (c) **“Span of hours”** means the span of time on any day within which an employee may work as part of a flexible working hours arrangement subject to the award.
- (d) **“Core time”** means the period during the day when all employees shall be at work unless absent upon approved leave.
- (e) **“Approved leave”** means any leave of absence approved by the employer.

- (f) **“Flex credit”** means the accumulated amount of time worked by an employee in excess of the standard days in the settlement period, including any carry-over, provided that any such time worked as overtime shall not be taken into account.
 - (g) **“Flex debit”** means the difference between the sum of standard days in a settlement period and the aggregate amount of time worked by an employee where the total time worked is less than the sum of the standard days in the settlement period after any necessary adjustment has been made for an absence of approved paid leave and includes any carry-over.
 - (h) **“Carry-over”** means the aggregate of flex credit or flex debit, which an employee has accumulated, during a settlement period which, subject to this award, the employee may carry-over to the next settlement period.
 - (i) **“Settlement period”** means the ordinary working days over which calculations are made to determine flex credit or flex debit carry-over and shall be a fixed period of ten working days aligned with the fortnightly pay period operating in the Centre.
-
- (i) Under the flexible working hours arrangements, the times of commencement and cessation of duty shall be subject to mutual agreement between the employer and the employee.
 - (ii) Where it is reasonable to do so because an employee has failed to comply with the provisions of flexible working hours, (flexitime), an employer may for an agreed period of time require the employee concerned to revert to working an average 38 hour week under the working hours system prescribed by the award.

27.6.2 Span of Hours

Unless mutually agreed between the employer and the employees the span shall commence no later than 7.30 am and shall conclude no earlier than 8. pm.

27.6.3 Core time

Core time shall be between the hours of 10.00 am and 12.00 noon and 2.00 pm and 4.00 pm.

27.6.4 Meal Break

An employee must take an unpaid meal break of not less than thirty (30) minutes and not greater than two (2) hours to start no later than five (5) hours after commencing duty. Employees shall co-operate with the employer in ensuring that the requirements of the Centre are given priority in the arrangement of meal breaks.

27.6.5 Rest Periods

A rest period of ten (10) minutes shall be allowed without deduction of pay each morning between the time of commencing work and the meal interval.

27.6.6 Carry-over

- (a) An employee may carry-over a maximum of ten (10) hours flex credit accumulated in any settlement period into the next settlement period.
- (b) Where this limit is likely to be exceeded, the employer and the employee shall mutually arrange for sufficient core time leave to be taken to bring the credits within the 10 hour limit as soon as is practicable and at least by the end of the next settlement period.
- (c) Where an employee has accumulated balance in excess of ten hours flex debit at the end of a second settlement period, the excess hours shall be taken without pay or from their Annual Leave Entitlement.

27.6.7 Core Leave Time

In any settlement period and in addition to approved leave an employee may, with the employer's approval, take core time leave subject to the following requirements:

- (a) Subject to 27.6.7 (b), that core time leave does not exceed the core time for a single day; and

- (b) That the core time leave does not result in the employee accruing more than ten (10) hours flex debit by the end of the settlement period.

27.6.8 Core time leave may be used for a full day absence or part day absence during the settlement period.

28. METHOD OF WORKING THE 38 HOUR WEEK

28.1 The 38-hour week shall be implemented on one of the following bases, most suitable to the particular business, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:

28.1.1 By employees working less than eight ordinary hours each day; or

28.1.2 By employees working less than eight ordinary hours one or more days during each work cycle; or

28.1.3 By fixing one or more work days on which all employees will be off during a particular work cycle; or

28.1.4 By rostering employees off on various days of the week during a particular work cycle, so that each employee has one workday off during that cycle.

28.2 Notwithstanding any other provision in this clause, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned, may agree to accrue up to a maximum of five rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within twelve calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.

28.3 Where a rostered day off falls on a public holiday, another day shall be agreed to be taken in lieu thereof.

29. MEAL BREAKS

29.1 Employees shall be entitled to a meal break of a minimum of 30 minutes and a maximum of one hour to be taken between the fourth and sixth hours from commencement of duty.

29.2 Where an employee is required to work during a meal break and continuously thereafter they shall be paid at the rate of time and a half until released from duty for a meal break.

- 29.3 not withstanding the provision of clause 29.2 herein, where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program they shall be paid for the duration of the meal period at the ordinary rate of pay.
- 29.4 However, an employee may elect to take an unpaid meal break as prescribed in clause 29.1 herein, after the meal period. If the employee so elects not to have a meal break, all ordinary hours after the meal period shall be paid at the ordinary rate of pay.
- 29.5 By agreement, a part-time employee may forego their unpaid meal break provided that they must take an unpaid meal break on any day in which they work more than six hours continuously.
- 29.6 An employee shall be entitled to a ten minute paid tea break each morning or afternoon.

30. OVERTIME

- 30.1 Overtime means time worked with the authorisation of the employer outside the ordinary hours of work specified in Clause 27 – Hours of Work.
- 30.2 For part-time employees all hours worked in excess of ordinary hours, up to 38 in any one week, shall be paid at ordinary time, not withstanding the provisions at subclause 11.3, provided that:
 - 30.2.1 no part-time employee will be required to work for longer than 10 hours in any one day or 38 hours in any one week without the payment of overtime rates;
 - 30.2.2 such overtime worked in accordance with this clause is with the agreement of the employer and the employee concerned.
- 30.3 Rates of Payment: Monday to Friday

Overtime shall be paid at the rates of time and one half for the first three hours and double time thereafter, except that all overtime shall be paid at the rate of double time where an employee returns to work without having had at least 10 hours break between each day's work.
- 30.4 Rates of Payment: Weekends
 - 30.4.1 Subject to subclause 27.2, weekend overtime shall be paid at a minimum of 3 hours' payment on each day, at the following rates:
 - (a) on Saturdays, time and one half for the first three hours and double time thereafter;
 - (b) on Sundays, double time.
- 30.5 Time off in lieu of Overtime Worked

30.5.1 Where an employee performs duty on overtime the employee, with the agreement of the employer, may subsequently be released from duty in ordinary hours subject to the following conditions:

- (a) the agreement shall be in writing and be kept with the time and wages records;
- (b) for work performed Monday to Friday, for every hour worked, the employee shall take time off for the same number of hours during ordinary time;
- (c) for work performed on Saturdays, Sundays and public holidays, the employee shall take time off in accordance with the appropriate penalties applicable, including minimum starts, converted to the time equivalent;
- (d) an employee may not accumulate more than 38 hours of equivalent time off which shall be taken within four weeks of its accrual.
- (e) Where such time off is not taken the period/s of overtime referable thereto shall be paid for in the next relevant pay period at the appropriate overtime rate otherwise applicable.

30.6 Recall to work

30.6.1 An employee may, at the direction of the employer, be recalled to work outside their ordinary rostered hours and after leaving the workplace, provided that:

- (a) the employee is paid for a minimum of 3 hours at overtime rates, whether a full 3 hours work is completed or not, where the employee actually leaves their home to attend to the work; and
- (b) the employee is paid overtime rates only for the actual time spent working, where such work is conducted from the employee's residence.
- (c) Such time shall be rounded off to the nearest half hour.
- (d) The meal breaks specified in clause 29 – Meal Breaks and all other conditions specified in this clause are complied with.

30.6.2 An employee recalled shall not be required to work the full three hours if the work to be performed is completed in a shorter period.

30.6.3 Subclause 30.7 shall not apply when overtime is continuous with completion or commencement of ordinary working time.

30.6.4 Except as provided for in subclause 30.6.5 hereof, where an employee is recalled for duty on their rostered day off, they shall be paid in accordance with the provisions of this clause and shall be entitled to substitute another day for the rostered day off.

30.6.5 Where a weekly employee has been given reasonable notice that they will be required to work on their rostered day off due to an emergency, the employee shall be paid at ordinary time for that day and a substitute day off shall be granted.

30.7 Travel Expenses

Where an employee is authorised to finish work on any day after 7 pm, or is authorised to work on a weekend, public holiday or rostered day off; reasonable travel expenses shall be reimbursed by the employer in accordance with clause 24 – Work Related Expenses.

PART 5 LEAVE AND STATUTORY HOLIDAYS

31. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees, but do not apply to casual employees.

31.1 Amount of Paid Personal Leave

31.1.1 Paid personal leave is available to an employee when he or she is absent due to:

- personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or
- because of bereavement on the death of an immediate family or household member (bereavement leave).

31.1.2 The amount of personal leave to which an employee is entitled shall be thirteen days' (98.8 hours) leave for each completed year of service. In the case of a part-time employee, their sick leave entitlement shall be a fraction of 98.8 hours per years based on their weekly hours as a proportion of 38 hours.

Calculation (10 sick + 3 bereavement) X 7.6 = 98.8

31.1.3 In any year unused personal leave accrues by the lessor of:

- (a) 76 hours less the total amount of sick leave and care's leave taken during the year; or
- (b) the balance of the year's unused personal leave

31.1.4 Personal leave may accumulate to a maximum of 760 hours.

31.2 Immediate Family or Household

31.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:

- (a) a member of the employee's immediate family; or
- (b) a member of the employee's household.

31.2.2 The term immediate family includes:

- (a) spouse, this may be a person of the same sex (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, means a person of the opposite sex who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (b) child or an adult child (including an adopted child, stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

31.3 Sick Leave

31.3.1 Definition

Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of his or her personal illness or injury.

31.3.2 Entitlement

- (a) The amount of personal leave an employee may take as sick leave is (10 days) 76 hours for the first year and each year thereafter.
- (b) Accumulated personal leave may be used as sick leave if the current sick leave entitlement is exhausted.
- (c) In the case of a weekly or part-time employee, not more than a total of two consecutive days may be taken without the production of a medical certificate.

- 31.3.3 An employee must take all reasonable steps to notify the employer of their absence from work prior the normal commencement time or, if not practicable, as soon as possible thereafter.
- 31.3.4 If the full period of sick leave as described above is not taken in any year, such portion as is not taken shall be accumulative from year to year.
- 31.3.5 Sick leave shall be taken in minimum units of one hour.
- 31.3.6 There shall be no payment of portions of leave not taken, on retirement or termination.
- 31.3.7 Sickness on accrued day off

Where an employee is sick or injured on the weekday they are to take off in accordance with rostered days off arrangements specified in clause 28 – Method of working the 38 hour week, they shall not be entitled to sick pay nor will their sick pay entitlements be reduced as a result of the sickness or injury on that day.

31.4 Bereavement Leave

31.4.1 Paid Leave entitlement

An employee other than a casual is entitled to use up to 3 days X 7.6 hours = 22.8 hours personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household dies.

31.4.2 Unpaid leave entitlement

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, he or she is entitled to take unpaid bereavement leave. The employer and the employee should agree on the length of the unpaid leave. In the absence of agreement, the employee is entitled to take up to 22.8 hours unpaid leave.

- 31.4.3 Reasonable proof of such death shall be furnished by the employee to the employer. Provided, however, that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

31.5 Carer's Leave

31.5.1 Paid leave entitlement

An employee other than a casual is entitled to use up to 5 days X 7.6 hours = 38 hours personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

31.5.2 Notice required

The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take such leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of the absence.

31.5.3 Evidence supporting claim

The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

31.5.4 Unpaid Leave

An employee may take unpaid carer's leave by agreement with the employer.

31.6 Make-up time

An employee may elect, with the consent of their employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided by the award.

31.7 Grievance Process

In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling procedures of this award.

32. ANNUAL LEAVE

32.1 Employees other than casual employees shall be entitled to four weeks annual leave on full pay after each continuous twelve months' service as defined in Clause 37 Calculation of Continuous Service with an employer, in accordance with the respective legislation in each State or Territory, except as provided for in this award.

32.2 Annual leave shall be given at a time determined by mutual agreement between the employer and the employee within a period not exceeding six months from the date when the right to annual leave accrued, provided that such annual leave may be deferred by mutual agreement in writing between employer and employee. In the event that the parties are unable to reach agreement then the employer shall give the employee at least one month's notice of taking the leave.

32.3 Annual Leave payments on termination

An employee who has accrued but not taken annual leave shall be paid for such accrued leave on termination. Should an employee not complete any period of 12 month's service the employee shall, on the termination of employment, provided that the employee has been employed continuously for 1 month or more, be entitled to pay in lieu of annual leave for each completed month of service.

32.4 Annual Leave Loading

32.4.1 In addition to the payments prescribed in subclause 32.1 an employee proceeding on annual leave shall receive an annual leave loading of 17 ½% at the time of taking the leave, provided the employee has completed each 12 months of service.

32.4.2 Where the employment of an employee is terminated by the employer for a cause other than misconduct and at the time of termination the employee has not been given and has not taken the whole of any annual leave to which the employee became entitled, or where the employee has wholly or partly taken annual leave in advance, the employee shall be paid a loading calculated in accordance with subclause 32.4.1. Except as provided, no annual leave loading shall be payable on termination.

32.5 Annual and Sick Leave

Where an employee falls sick or suffers an injury while on annual leave and provides to the employer a medical certificate to show they were incapacitated to the extent that normal duties could not be performed for a period of at least three days, and where the employee has accrued sick leave, the employer shall debit such time as sick leave and grant annual leave at an alternative time.

32.6 Annual Leave

- 32.6.1 Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.
- 32.6.2 Access to annual leave as prescribed in 32.6.1 above, shall be inclusive of any shutdown period provided for elsewhere under this award.
- 32.6.3 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.

33. PUBLIC HOLIDAYS

- 33.1 An employee shall be entitled to holidays on the following days
- 33.1.1 New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- 33.1.2 the following days, as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and
- (a) New South Wales – on a day to be determined each year;
 - (b) Queensland – on the day gazetted for the local show for the appropriate area
- 33.2 Part-time employees shall be entitled, without loss of pay, to those public holidays prescribed in subclauses 33.1 which falls on days on which they would have ordinarily have been required to work.
- 33.3 When Christmas Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 27 December.
- 33.3.1 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- 33.3.2 When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- 33.4 Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 33.1 above, those days shall constitute additional holidays for the purpose of this award.
- 33.5 An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

- 33.6 An employee who works on a public holiday as defined in subclause 33.1 shall be entitled to payment at the rate of double time and a half for such work.

34. SPECIAL LEAVE

34.1 Aboriginal and Torres Strait Islander Ceremonial Leave

34.1.1 An employee who is legitimately required by the employee's Aboriginal or Torres Strait Islander tradition to be absent from work for ceremonial purposes shall be entitled to up to ten working days' unpaid leave in any one year. The employee shall establish to the employer that he/she has an obligation under Aboriginal and Torres Strait Islander custom and/or traditional law to participate in ceremonial activities and shall be granted such leave without pay for a maximum period of ten days per year for such extension granted by the employer. Such leave shall not affect the employee's entitlement to bereavement leave prescribed by clause 31 - Personal Leave.

34.1.2 Approval of all Aboriginal Torres Strait Islander Ceremonial leave will be subject to the employer's convenience and will not unreasonably affect the operation of the scheme concerned but shall not be unreasonably withheld.

35. LONG SERVICE LEAVE

Long service leave will be granted in accordance with provisions of the appropriate State legislation.

36. JURY SERVICE

36.1 A weekly or part-time employee (as defined) 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 they would have received in respect of the ordinary time they would have worked had they not been on jury service.

36.2 An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service. Further the employee shall give the employer documentary proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

37. CALCULATION OF CONTINUOUS SERVICE

- 37.1 For the purpose of calculating entitlements under this award, service with one particular employer shall be deemed to be continuous notwithstanding:
- 37.1.1 Absence from work on account of paid leave, which shall be taken into account and counted as time worked; and
 - 37.1.2 The end of a funding period for a project; and
 - 37.1.3 Unpaid absences – that unpaid absences in excess of one week in any year of employment shall not be counted as time worked. The anniversary date for leave entitlements and increment advancement shall be adjusted to take account of any unpaid absence in excess of one week in any year of employment.
- 37.2 Where a service is before or after the date of this award, transmitted from an employer (in this subclause called the transmitter) to another employee (in this subclause called the transmittee) and an employee who at the time of such transmission was an employee of the transmitter in that service becomes an employee of the transmittee:
- 37.2.1 The continuity of employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - 37.2.2 The period of employment, which the employee has had with the transmitter or any prior transmitter, shall be deemed to be of service to the employee with the transmittee.

38. PARENTAL LEAVE

The provisions of this clause apply to full-time, part-time employees and eligible casual employees, but do not apply to other casual employees.

- 38.1 Definitions
- 38.1.1 For the purpose of this clause child means a child of the employee under the age of one year except for adoption of a child where “child” means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
 - 38.1.2 Subject to 38.1.3 spouse includes a de facto or former spouse.
 - 38.1.3 In relation to 38.5, spouse includes a de facto or former spouse.

38.1.4 An “**eligible casual employee**” means a casual employee:

- (a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
- (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this clause, “continuous service” is work for an employer on a regular and systematic basis (including any period of authorized leave or absence).

38.2 Basic Entitlement

38.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

38.2.2 Subject to 38.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

- (a) for maternity and paternity leave, an unbroken period of one week at the time of the birth of the child;
- (b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

38.3 Maternity Leave

38.3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

- (a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
- (b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.

- 38.3.2 When the employee gives notice under 38.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 38.3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 38.3.4 Subject to clause 38.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- 38.3.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 38.3.6 Special maternity leave
- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (b) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (c) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- 38.3.7 Where leave is granted under clause 38.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

38.4 Paternity Leave

38.4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

- (a) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- (c) a statutory declaration stating:
 - (i) he will take that period of paternity leave to become the primary care-giver of a child;
 - (ii) particulars of any period of maternity leave sought or taken by his spouse; and
 - (iii) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

38.4.2 The employee will not in breach of clause 38.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

38.5 Adoption Leave

38.5.1 The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

38.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

- (a) the employee is seeking adoption leave to become the primary care-giver of the child;
- (b) particulars of any period of adoption leave sought or taken by the employee's spouse; and

- (c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

38.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

38.5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

38.5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

38.5.6 An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days' unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

38.6 Variation of Period of Parental Leave

Unless agreed otherwise between the employer and the employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changes arrangements.

38.7 Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements, which they have accrued subject to the total amount of leave not exceeding 52 weeks.

38.8 Transfer to a Safe Job

38.8.1 Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

38.8.2 If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

38.9 Returning to work after a period of Parental Leave

38.9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

38.9.2 An employee will be entitled to the position, which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 38.8, the employee will be entitled to return to the position they held immediately before such transfer.

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

38.9.4 An employer must not fail to re-engage a casual employee 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.

38.10 Replacement Employees

38.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

38.10.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

39. ANTI-DISCRIMINATION

39.1 It is the intention of the respondents to this award to achieve the principal object in s. 3(j) of the Workplace Relations Act 1996 through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, natural extraction or social origin.

39.2 Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

39.3 Nothing in this clause is taken to affect:

39.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

39.3.2 junior rates of pay;

39.3.3 an employee, employer or registered organization, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

39.3.4 the exemptions in s. 170CK(3) and (4) of the Act.

40. ENTERPRISE FLEXIBILITY PROVISIONS

(See ss. 113A and 113B of the Act)

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 40.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 40.2 For the purpose of the consultative process the employees may nominate the Union or another to represent them.
- 40.3 Where agreement is reached an application shall be made to the Australian Industrial Relations Commission.

41. VACCINATION HEALTH COSTS

The employer shall pay all costs of vaccinations or medical tests incurred by an employee, as directed by the employer.

42. FIRST-AID

An employee who holds a current first aid certificate issued by the St. John's Ambulance Association or Australian Red Cross Society or equivalent qualification, and who is designated or required by their employer to perform first aid duty at their workplace shall be paid an allowance of \$7.10 per week. Where it is required by the employer the costs of obtaining the certificate and the ongoing renewal costs will be met by their employer.

This award shall operate from the first pay period commencing on or after 9 July 1999 and shall continue in force for a period of twelve months

APPENDIX A TRANSITIONAL PROVISIONS

The provisions of this appendix shall be utilised in determining the appropriate translation of existing employees now coming within the scope of the award to the appropriate classification level and incremental step of the pay scale in accordance with Part 3 - Wages and Allowances of the award.

1. CLASSIFICATION LEVEL

- 1.1 The employer shall ensure that all existing employees are assessed and assigned the appropriate classification level in accordance with the classification criteria specified in Part 3 – Wages and Allowances.
- 1.2 For employees whose service is continuous from 9 July 1999 to 20 November 2001. The initial assignment of a classification level shall be completed with a retrospective date of operation of classification being the first pay period commencing on or after the date of variation or 9 July 1999.

- 1.3 For employees whose service commences later than 9 July 2001 and whose service is continuous to 20 November 2001 the initial assignment of a classification level shall be completed and made operative from the date employment commenced.
- 1.4 For employees whose service is continuous from 9 July 1999 to 20 November 2001 the applicable date for annual increments in accordance with Clause 23 – Progression within classification levels – shall be the first pay period to commence on or after 9 July 1999.
- 1.5 For employees whose service commences later than 9 July 1999 and whose service is continuous to 20 November 2001 the applicable date for annual increments in accordance with Clause 23 – Progression within classification levels – shall be the date employment commenced.

2. RATES OF PAY

- 2.1 The actual rate of pay to be assigned initially to existing employees within the appropriate classification level shall be determined having regard to the relevant rates of pay contained in Part 3 - Wages and Allowances and application of the provisions hereunder.
- 2.2 Where an employee's existing salary is less than the rate applicable to the correctly assessed and determined classification level the employee shall be assigned the correct level of the classification rate of pay.
- 2.3 Where an employee's existing salary falls within the salary range of the correctly assessed and determined classification level in accordance with Part 3 – Wages and Allowances, the employee shall be placed on a salary point within the range which is not less than the existing salary.
- 2.4 Where an employee's existing salary is in excess of the maximum level in the salary range of the correctly assessed and determined classification level the employee shall retain that salary with the difference between classification level under this award and the current salary rate being maintained as an all purpose allowance.

Where an employee is in receipt of an existing salary that is in excess of the rates of pay provided for the correct classification level, that employee shall not suffer a reduction of salary.
- 2.5 The following formula for employees who will receive a wage increase as a result of the implementation of this new award shall be completed within the time frame as detailed below:
 - 2.5.1 Increases may be paid in one single payment immediately after the 20 November 2001 provided that an employer may elect to pay increases in three equal instalments.

- 2.5.2 Employers opting to pay in three equal instalments must make the first instalment payment within sixteen working weeks of 20 November 2001.
- 2.5.3 The second instalment must be paid on the first pay period after sixteen working weeks has expired from the date of the first instalment payment.
- 2.5.4 The third instalment must be paid on the first pay period after sixteen working weeks has expired from the date of the second instalment payment.

3. REVIEW PERIOD

The parties have agreed that the classification structure will be subject to a review after six months.

4. DISPUTE PROCESS FOR TRANSLATION EXERCISE

- 4.1 Disputes in relation to the outcome of the translation process shall be resolved in accordance with clause 15 Dispute Resolution Procedure.
- 4.2 Employers will notify employees of their right to dispute the outcome of the translation .

SCHEDULE A LIST OF RESPONDENTS

NEW SOUTH WALES

Armidale Family Day Care Ltd, PO Box 951 Armidale NSW 2350
Australian Red Cross Society, Red Cross House, 159 Clarence Street Sydney NSW 2000
Ballina Byron FDC Assoc Inc., PO Box 807 Ballina NSW 2478
Bellingen Neighbourhood centre, PO Box 204 Bellingen NSW 2454
Barnardos Australia, 60-64 Bay Street Ultimo NSW 2007
Gosford Community & Information Service Ltd, Henry Wheeler Place Gosford NSW 2250
Kempsey Family Day Care Inc, PO Box 49 West Kempsey NSW 2440
Family Day Care Maitland, 13 Ingle Street Metford NSW 2323
Monaro FDC Cooma, PO Box 340 Cooma North NSW 2630
Narromine Preschool, PO Box 229 Narromine NSW 2821
St. Saviours Neighbourhood Centre, 130 Cowper Street Goulburn NSW 2580
Taree & District Pre-School, PO Box 270 Taree NSW 2430

QUEENSLAND

Atherton Children's Centre, PO Box 242 Atherton QLD 4883
 Baptist Union of Queensland, PO Box 2283 Fortitude Valley QLD 4006
 Bayside Community & Child Care Centre Inc, PO Box 170 Wynnum QLD 4178
 Cairns & District Child Care Development Association, PO Box 1337 Cairns QLD 4870
 Central Queensland Union, Rockhampton Mail Centre Rockhampton QLD 4700
 Catholic Social Welfare, GPO Box 282 Brisbane QLD 4000 attn: Brian Kennedy
 Centre Care Catholic Family Welfare, Morgan Street Fortitude Valley QLD 4006 attn: Fr Casey
 Churches of Christ in QLD, PO Box 508 Kenmore QLD 4069
 Creche & Kindergarten, 14 Edmonstone Street Newmarket QLD 4051
 Darra/Jindalee Catholic Parish, PO Box 113 Darra QLD 4074
 East Brisbane Community Centre, 538 Vulture Street East Brisbane QLD 4169
 R Buchanan & S Nunn, Board of Community Services, Griffith University Nathan QLD 4111
 Ipswich Family Care Committee, c/- PO Box 111 Ipswich QLD 4305
 "Kath Dickson Centre", 2 Lawrence Street Toowoomba QLD 4350
 Lady Gowrie Child Centre, 228 St. Pauls Terrace Fortitude Valley QLD 4006
 Mackay Family Care & Community Support Assoc Inc., 60 Wellington Street Mackay QLD 4740
 Mount Isa F.D.C., PO Box 1800 Mount Isa QLD 4825
 Committee of Management, Peninsular & Northern Suburbs Family Day Care, PO Box 94 Margate QLD 4019
 Roma FDC Inc, PO Box 640 Roma QLD 4455
 Salvation Army PO Box 85 Carina QLD 4152
 Salvation Army PO Box 855 Gladstone QLD 4680
 South Burnett Child Care Association Inc., PO Box 586 Kingaroy QLD 4610
 Southern Downs F.D.C. Assoc Inc, PO Box 337 Warwick QLD 4370
 Southside Support Welfare for families of Handicapped Children Inc., PO Box 74 Rochedale South QLD 4123
 Townsville Children's Day Care Centre, PO Box 775 Townsville QLD 4810
 Uniting Church in Australia Balmoral Community Centre, 19 Rogoona Street Morningside QLD 4170
 Uniting Church in Australia, 52 Methyr Road New Farm QLD 4005
 Uniting Church in Australia Sandgate Parish, 41 Deacon Street Sandgate QLD 4017
 Uniting Church in Australia, c/- 143 Rode Road Wavell Heights QLD 4012
 Uniting Church in Australia, 11 Sussex Street West End QLD 4101
 Uniting Church in Australia, 19 Red Hill Road Gympie QLD 4570
 Weipa Community Care Assn, PO Box 481 Weipa QLD 4874
 YMCA Brisbane Inc., PO Box 4 Broadway QLD 4006