



# MOTELS, ACCOMMODATION AND RESORTS (STATE) AWARD

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1. CONTENTS

SECTION	TITLE
1	Contents
2	Definitions
3	Transmission of business
4	Index of facilitative provisions
5	Enterprise Flexibility Provisions
6	Procedure to avoid industrial disputation
7	Employer duties
8	Types of employment
8.1	General
8.2	Casual Employment
8.3	Regular Part-time employees
8.4	Apprentices
8.5	Juniors
9	Standing down employees
10	Redundancy
11	Termination of employment
12	Classifications and wage rates
13	Supported wage system for employees with disabilities
14	Mixed functions
15	Payment of wages, time and wages records
16	Allowances
17	Superannuation
18	Hours of work
19	Meal breaks
20	Overtime
21	Saturday work
22	Sunday work
23	Annual leave
24	Personal leave

<b>SECTION</b>	<b>TITLE</b>
25	Parental Leave
26	Jury service
27	Public holidays
28	National Training Wage
29	Work experience
30	Accident pay
31	Posting of award
32	Leave for consultation meetings
33	Basis of award
34	Anti-discrimination
35	Union Dues
36	Leave Reserved
37	Area, Incidence and Duration

## 2. DEFINITIONS

In this award:

- 2.1 **“Accommodation”** means establishments included in clause 35 of this Award.
- 2.2 **“Day”** means the period of time elapsing from the time an employee commences duty to the time the employee ceases duty within any period of 24 hours.
- 2.3 **“Ordinary earnings”** means the ordinary wages for each classification for ordinary hours Monday to Friday.
- 2.4 **“Rostered day off (RDO)”** means any continuous 24-hour period between the completion of the last ordinary shift and the commencement of the next ordinary shift on which an employee is rostered on for duty.
- 2.5 **“Union”** means the Australian Liquor, Hospitality and Miscellaneous Workers Union and branches thereof.
- 2.6 Hospitality Services
  - 2.6.1 **“Hospitality Services grade 1”** means an employee who is primarily engaged in one or more of the following:
    - (a) Cleaning, tidying and general assistant of kitchen, food preparation, customer service areas, including the cleaning of equipment, crockery and general utensils;
    - (b) Assembly and preparation of ingredients for cooking;
    - (c) Handling, storing and distributing goods, including pantry items and linen;
    - (d) Setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
    - (e) Assisting employees who are cooking;
    - (f) General cleaning duties;
    - (g) Providing general assistance to employees of a higher grade not including cooking or direct service to customers;

- (h) Laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;
- (i) The collection and/or delivery of guests personal dry-cleaning and laundry, linen and associated materials to and from accommodation areas;
- (j) Parking guests cars;

2.6.2 **“Hospitality services grade 2”** means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) Receiving, storing and distributing goods;
- (b) Servicing accommodation areas and cleaning thereof;
- (c) Tray service to guests' rooms;
- (d) Transferring guests' baggage and/or property;
- (e) Driving a passenger vehicle or courtesy bus;
- (f) Providing butler service, basic food and beverage services with personalised guest services;
- (g) Assisting in dry-cleaning process;
- (h) Cleaning duties using specialised equipment and chemicals;
- (i) Handyman, which means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
- (j) Security officer;
- (k) Preparing and/or cooking a limited range of basic food items such as breakfasts, grills and snacks and a cook employed alone;

- (l) Undertaking general waiting duties in a restaurant of food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
- (m) Supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- (n) Taking reservations, greeting and seating guests, taking telephone orders;
- (o) Assisting in the cellar;
- (p) Receipt of monies;
- (q) Attending a snack bar, buffet or meal counter;
- (r) Attending in a coffee shop or espresso bar;
- (s) Attending in a shop.

2.6.3 **“Hospitality services grade 3”** means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) Undertaking general cooking duties, including a la carte cooking, baking, pastry cooking;
- (b) Undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
- (c) Supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- (d) Receipt of monies;
- (e) Receiving, storing and distributing goods;
- (f) Assisting in the training, co-ordination and supervision of employees of lower grades;
- (g) Major repair of linen and/or clothing including basic tailoring and major alterations and refitting;

- (h) Dry-cleaning;
- (i) Handy person, which means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
- (j) Providing butler services, basic food and beverage services with personalised guest services;
- (k) Cellar work, including stock control, ordering and the receipt, delivering and reordering of goods within such area;
- (l) Designing and mixing a range of sophisticated cocktails and other drinks. May include stocktaking and ordering of stock;
- (m) Supervising, training and co-ordination of employees of lower grades;
- (n) Taking reservations, greeting and seating guests and taking telephone orders.

2.6.4 **“Hospitality services grade 4”** means an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:

- (a) Undertaking general cooking duties including a la carte, baking, pastry cooking, butcher, waiting, butler.

2.6.5 **“Hospitality services grade 5”** means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) Solely responsible for other cooks and other kitchen employees in a single kitchen establishment where no other trade qualified cooks are employed;
- (b) Supervising, training and co-ordinating food and beverage staff including maintenance of service and operational standards, preparation of operational reports and staff rostering;

- (c) General or specialised cooking duties including the training and supervision of other cooks and kitchen staff and relieving Hospitality Services Grade 6 employees on their rostered days off or when on annual or other leave;
- (d) Supervising, training and co-ordinating the work of employees engaged in the housekeeping area.

2.6.6 **“Hospitality services grade 6”** means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchery, baking or pastry cooking and has completed additional appropriate training and who performs any of the following:

- (a) General and specialised duties including supervision or training of other trade qualified cooks, ordering and stock control;
- (b) Solely responsible for other cooks and other kitchen employees in a single kitchen establishment where other trade qualified cooks are employed.

## 2.7 Administration Front Office

2.7.1 **“Hospitality administration and front office grade 1”** means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) Front office duties such as receptionist, telephonist, cashier or reservations;
- (b) Performs basic clerical and routine office duties such as collating, filing, photocopying and delivering messages;
- (c) General clerical duties such as typing, basic data entry and calculation functions;
- (d) Accounts;
- (e) Night auditing
- (f) Guest relations officer.

In addition to any of the above duties such employee may also be required to perform any of the duties of Hospitality services grade 2 or below;

2.7.2 **“Hospitality administration and front office grade 2”** means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:

- (a) Front office duties such as receptionist, telephonist, cashier or reservations;
- (b) Clerical and other office duties;
- (c) General clerical duties such as typing, basic data entry and calculation functions;
- (d) Accounts;
- (e) Night auditing in addition to any of the above duties such employee may also be required to perform any of the duties of Hospitality services grade 2 or below;
- (f) Assistant in sales, and/or marketing;
- (g) Guest relations officer.

2.7.3 **“Hospitality administration and front office grade 3”** means an employee appointed as such who has the appropriate level of training and

- (a) Who carries out general secretarial or stenographic duties, clerical duties of an advanced nature, and
- (b) Who has recognised experience in complex duties and may be
- (c) Responsible for guidance of other office personnel including juniors and may check and allocate their work, or
- (d) Who is responsible for sales and marketing
- (e) And/or is in the front office engaged in duties including assisting in training and supervision of front office employees of a lower grade(s).

2.7.4 **“Hospitality administration and front office supervisor”** means an employee appointed as such and who has the appropriate level of training including a supervisor's course and trains and co-ordinates the work of front office and/or other clerical staff.

2.8 Leisure Activities

2.8.1 **“Leisure attendant grade 1”** means a person who is primarily engaged in one or more of the following:

- (a) Acts as an assistant instructor;
- (b) Does basic testing;
- (c) Is responsible for setting up, distribution and care of equipment;
- (d) Takes bookings and works at the front desk of a leisure facility;
- (e) Provides information to guests on leisure activities and facilities;
- (f) Is a pool attendant;
- (g) Tests pools and spa waters for optimal levels;
- (h) Is a powerboat observer;
- (i) Child minding attendant.

2.8.2 **“Leisure attendant grade 2”** means a person who has the appropriate level of training and who is engaged in any of the following:

- (a) Takes classes;
- (b) Directs leisure activities such as in sporting areas, health clubs and swimming pools;
- (c) Leads tours, and/or group activities;
- (d) Developing or implementing activities for individuals or group of guests;
- (e) Child minding attendant.

2.8.3 **“Leisure attendant grade 3”** means a person who has the appropriate level of training, who plans and co-ordinates leisure activities and/or organises activity programs and may supervise other leisure attendants.

2.9 **“Appropriate Level of Training”** means:

2.9.1 Completion of a training course deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification. Such course to be accredited by the Australian Hospitality Review Panel;

2.9.2 That the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in clause 2.9.1, such assessment to be undertaken by a qualified skills assessor.

2.10 **“Introductory level”** means the level of an employee who enters the industry and who has not demonstrated the competency requirements of level 1. Such an employee will remain at this level for up to three months while the appropriate training for level 1 is undertaken and assessment made to move from the introductory level-to-level 1. At the end of three months from entry, an employee shall move to level 1 other than where agreement has been reached and recorded between the employee and the employer that further training of up to three months is required for the employee to achieve competence for movement to level 1.

2.11 Continuous Service

2.11.1 in calculating the twelve months' continuous service, the only absences counted as time worked are the following:

- Up to 152 ordinary working hours in a twelve month period because of sickness or accident;
- Long service leave that an employee takes under the relevant State long service leave legislation; and
- Annual leave.

2.11.2 Where a period of work is less than twelve months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.

2.11.3 The following events do not break an employee's continuous service:

- Sick leave;
- Leave as the result of an accident;
- Leave lawfully granted by the employer; or
- Absence for a reasonable cause. (The employee must prove that the absence was reasonable.)

2.11.4 Where employees are temporarily stood down through no fault of their own, service is not to be considered to be broken.

2.11.5 Any other absence from work does not break continuity of service unless the employer notifies the employee within fourteen days of the employee returning to work after the absence. The employer must tell the employee in writing.

2.11.6 If an individual employee is absent, the employer must tell that employee by:

- Giving the notice to him or her personally; or
- Posting the notice to his or her last known address.

2.11.7 If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the same day.

2.11.8 It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.

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

### **3. TRANSMISSION OF BUSINESS**

- 3.1 Where an establishment covered by this award is sold and the new employer continues to employ any employees the continuity of service of such employee shall be deemed not to have been broken by reason of the sale or transmission of the business for the purpose of the provision of clauses 10 - Redundancy and 11 - Termination of employment and in such circumstances the provisions of clauses 10 - Redundancy and 11 - Termination of employment shall not apply in respect to the transmittor.
- 3.2 The period of service which the employee has had with the transmittor or any previous transmittor shall be deemed to be service of the employer with the transmittor for the purposes of the provisions of clauses 10 - Redundancy and 11 - Termination of employment.

### **4. INDEX OF FACILITATIVE PROVISIONS**

- 4.1 A facilitative provision provides that the standard approach in an Award provision may be departed from by agreement between an individual employer and an employee, or the majority of employees, in the enterprise or part of the enterprise concerned.
- 4.2 Facilitative provisions in this Award are contained in the following clauses:

<b>Clause Title</b>	<b>Clause Number</b>
Alternative method of payment	15.2
Make-up time	18.10
Ordinary Hours - method of working	18.2
Overtime - time off in lieu	20.3
Part time employment	8.3
Payment of wages - method and timing	15.1
Public holidays - payment	27.3
Superannuation - exemption, choice of fund	17.7
Unpaid carers' leave	24.3

## **5. ENTERPRISE FLEXIBILITY PROVISIONS**

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

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

## **6. PROCEDURE TO AVOID INDUSTRIAL DISPUTATION**

- 6.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:
  - 6.1.1 The employee and their supervisor meeting and conferring on the matter; and
  - 6.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his

or her nominated representative, if any, and more senior levels of management.

- 6.2 If the matter is still not resolved a discussion shall be held between representatives of the employer and the Union or other employee representative.
- 6.3 If the matter cannot be resolved it may be referred to the Commission.
- 6.4 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

## **7. EMPLOYER DUTIES**

- 7.1 An employer shall not charge a sum against nor deduct any sum from the wages of an employee in respect of breakages of crockery or other utensils except in the case of wilful misconduct.

## **8. TYPES OF EMPLOYMENT**

### **8.1 General**

8.1.1 Employees under this award will be employed in one of the following categories:

- (a) Full-time employees; or
- (b) Regular part-time employees; or
- (c) Casual employees.

8.1.2 At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, regular part-time or casual.

### **8.2 Casual Employment**

8.2.1 A casual employee is an employee engaged as such.

8.2.2 A casual employee shall be paid per hour at the rate of 1/38 of the weekly rate prescribed for the class of work performed, plus the appropriate undermentioned addition to that rate:

- (a) On any ordinary day Monday to Friday inclusive for all time worked, an additional 25 per cent of the wages prescribed in clause 12 - of this Award for the

- classification in which the employee is casually employed.
- (b) On Saturday and Sunday for all time worked an additional 50 per cent for Saturday and 75 per cent for Sunday of the wages prescribed in clause 12 - of this Award for the classification in which the employee is casually employed.
  - (c) On a holiday as prescribed in clause 27 - Public Holidays of this Award;
    - (i) A casual employed in any capacity in or in connection with flats and residential chambers and establishments of a like nature will receive an additional 150 per cent of wages prescribed in clause 12 of this award for the classification in which the employee is casually employed;
    - (ii) All other casuals will receive an additional 175 per cent of wages prescribed in clause 12 of this Award for the classification in which the employee is casually employed.
  - (d) The loadings prescribed in paragraphs (a), (b) and (c) comprehend the 1/12th payment payable under the Annual Holidays Act 1944 (NSW).
  - (e) A casual employee shall be employed with a minimum payment of two hours pay for each engagement at the appropriate rate that would have been payable had the employee worked.
  - (f) For the purposes of this award engagement means the period or periods for which the employer notifies the employee that he or she is so required to attend on any one day. Each period of engagement stands alone and is treated as an engagement of not less than two hours, and is paid for as such.
  - (g) In this clause, ordinary earnings means 1/38 of the wages prescribed in clause 12 of this Award plus an additional 25 per cent.
  - (h) By mutual consent casual work may be paid for weekly or at the termination of each engagement.
  - (i) Casual employees who are paid their wages at any time other than during their working time shall, if kept waiting

for more than fifteen minutes, be paid overtime rates for all such waiting time.

8.2.3 The following Award clauses apply to casual employees:

- (a) 2, 6, 7, 8.1, 8.2, 8.5, 9, 12, 16.3, 16.4, 16.5, 16.6, 16.7.1, 16.7.2, 17, 19, 27, 32, 35.

### 8.3 Regular Part-Time Employees

8.3.1 An employer may employ regular part-time employees in any classification in this award.

8.3.2 A regular part-time employee is an employee who:

- (a) Works less than full-time hours of 38 per week; and
- (b) Has reasonably predictable hours of work; and
- (c) Receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

8.3.3 At the time of engagement the employer and the regular part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

8.3.4 Any agreed variation to the regular pattern of work will be recorded in writing.

8.3.5 An employer is required to roster a regular part-time employee for a minimum of three consecutive hours on any shift.

8.3.6 An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 8.2.

8.3.7 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 20 - Overtime, of this award.

8.3.8 A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

### 8.4 Apprentices

- 8.4.1 (a) An employee apprenticed in accordance with the provisions of the Industrial and Commercial Training Act 1989 (NSW) must be paid the percentage of the total wage prescribed for Hospitality Services Grade 4 as follows:

<b>Year of Apprenticeship</b>	<b>Percentage</b>
First year	55%
Second year	65%
Third year	80%
Fourth year	95%

- (b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded, 5 cents and over will go to the higher 10 cents.

8.4.2 Waiting Trade

- (a) An employee apprenticed in accordance with the provisions of the Industrial and Commercial Training Act 1989 (NSW), must be paid the percentage of the total wages prescribed for a qualified waiter in Hospitality Services Grade 4 as follows:

<b>Year of Apprenticeship</b>	<b>Percentage</b>
First six months	65%
Second six months	80%
Third six months	80%
Fourth six months	95%
Fifth six months	95%

- (b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded, 5 cents and over will go to the higher 10 cents.
- (c) All matters prescribed in paragraphs 8.4.2(a) of this clause only apply to apprentices wages and in no other way supersede or affect any other provisions of the Industrial and Commercial Training Act 1989 (NSW).

#### 8.4.3 Progression through Wage Structure

- (a) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- (b) The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected for a school based apprentice undertaking the applicable apprenticeship.

#### 8.4.4 Conversion from a school based to a full time apprenticeship

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

#### 8.4.5 Conditions of Employment

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

#### 8.4.6 Disputes and Disciplinary Matters

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

8.5 Juniors (Other Than Office Juniors)

8.5.1 The minimum rates of wages for junior employees shall be the undermentioned percentages of the total rate prescribed for the adult classification appropriate to the work performed for the area in which work is performed.

Age	Percentage
17 years of age and under	60%
18 years of age	70%
19 years of age	85%
20 years of age	100%

8.5.2 Junior office employees

(a) The minimum rates of wages for junior office employees shall be the undermentioned percentages based on the total adult rate for the Hospitality Administration and Front Office Grade 1 classification.

Age	Percentage
At 15 years of age and under	37%
At 16 years of age	44%
At 17 years of age	58%
At 18 years of age	72%
At 19 years of age	82.5%
At 20 years of age	94%

(b) All percentages prescribed in this clause will be calculated to the nearest 10 cents. Any broken part of 10 cents in the result being less than 5 cents will be disregarded, 5 cents and over will go to the higher 10 cents.

8.5.3 Junior employees on reaching the age of 18 years may be employed in the sale of liquor. However, where such a junior is employed, the adult Award rate for the work being performed shall be paid.

8.5.4 An employer may at any time demand the production of a birth certificate or other satisfactory proof for the purpose of ascertaining the correct age of a junior employee. If a birth certificate is required, the cost of it shall be borne by the employer.

## **9. STANDING DOWN EMPLOYEES**

9.1 An employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed for the following reasons:

9.1.1 A strike or stop work meeting (except as provided in clause 32 - Leave for Consultation Meetings).

9.1.2 A breakdown of machinery.

9.1.3 Rationing of power or the lack of fuel or transport.

9.1.4 The non-delivery of the raw material and finished product in the Liquor Trades Industry.

9.1.5 Any cause which the employer cannot reasonably be held responsible for, but shall not apply to slackness of trade.

9.2 In respect to clauses 9.1.1 and 9.1.5 hereof:

9.2.1 No employee shall be deemed to be a casual employee only by reason of being given intermittent work in pursuance of this clause.

9.2.2 At least four hours notice of such deductions shall be exhibited where all employees concerned shall be able to see it.

9.2.3 Service is not to be considered broken merely because employees have been temporarily stood down through no fault of their own.

9.2.4 Continuity of service is to be protected for the purpose of annual leave, holidays and sick pay, as provided by this Award.

9.2.5 Employees allowed or required to commence work at the usual starting time on any day shall be paid for at least four hours, and where they are called upon to attend for duty twice on any one day they shall be paid not less than a full day's pay.

## **10. REDUNDANCY**

## 10.1 Application

10.1.1 This clause shall apply in respect of full-time and part-time employees employed in the classifications specified in clause 12.

10.1.2 This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.

10.1.3 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service, and the general obligation on employers shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

10.1.4 Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

## 10.2 Introduction of Change

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

10.2.2 "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where this clause makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

## 10.3 Employer's Duty to Discuss Change

10.3.1 The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in clause 10.2.1, Introduction of change, of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.

10.3.2 The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 10.2.1 of this clause.

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

#### 10.4 Discussions Before Terminations

10.4.1 Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to clause 10.2.1, Introduction of change, of this clause, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.

10.4.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of clause 10.4.1 of this subclause and shall cover, inter alia, any reasons for the proposed termination, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

10.4.3 For the purposes of the discussions the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to

disclose confidential information the disclosure of which would adversely affect the employer.

10.5 Notice for Changes in Production, Program, Organization or Structure

This subclause sets out the notice for provisions to be applied to terminations by the employer for reasons arising from production, program, organization or structure, in accordance with clause 10.2.1 of this clause.

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

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

10.5.2 In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional 2 weeks' notice.

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

10.6 Notice for Technological Change

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with clause 10.2.1 of this clause.

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

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

10.6.3 The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of

the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of these Acts.

10.7 Time Off During The Notice Period

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

10.7.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

10.8 Employee Leaving During The Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until expiry of such notice. Provided that, in such circumstances, the employee shall not be entitled to payment in lieu of notice.

10.9 Statement of Employment

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

10.10 Notice to Centrelink

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

10.11 Centrelink Employment Separation Certificate

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

10.12 Transfer To Lower-Paid Duties

Where an employee is transferred to lower-paid duties for reasons set out in clause 10.2.1, Introduction of change, of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had terminated and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary-time rates for the number of weeks of notice still owing.

10.13 Severance Pay

Where an employee is to be terminated pursuant to clause 10.5, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service:

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

**Years of Service Under 45 Years of Age Entitlement**

Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

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

**Years of Service Over 45 Years of Age Entitlement**

Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

10.13.3 **“Week’s Pay”** means the all-purpose rate of pay for the employee concerned at the date of termination and shall include in addition to the ordinary rate of pay, over award payments, shift penalties and allowances paid in accordance with this award.

10.14 Incapacity to Pay

Subject to an application by the employer and further order of the Industrial Relations Commission of New South Wales, an employer may pay a lesser amount (or no amount) of severance pay than that contained in clause 10.13.

The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in clause 10.13 will have on the employer.

10.15 Alternative Employment

Subject to an application by the employer and further order of the Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in clause 10.13 of this clause if the employer obtains acceptable alternative employment for an employee.

## 11. TERMINATION OF EMPLOYMENT

### 11.1 Notice of Termination By Employer

11.1.1 In order to terminate the employment of a full-time or regular part-time employee the employer shall give to the employee the period of notice specified in the table below:

<b>Period of Continuous Service</b>	<b>Period of Notice</b>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

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

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

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

11.1.5 The period of notice in this clause, shall not apply in the case of dismissal for conduct that justifies instant dismissal including inefficiency within the first fourteen days, neglect of duty or misconduct and in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

11.1.6 Despite the foregoing provisions, trainees who are engaged for a specific period of time shall once the traineeship is completed and provided that the trainees' services are retained have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of his or her traineeship and is re-engaged by the same employer within six months of such termination the period of traineeship shall be counted as service in determining any future termination.

11.1.7 Continuous service is defined in clause 2.11.

11.2 Notice of Termination by an Employee

11.2.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

11.2.2 If an employee fails to give notice the employer has the right to withhold monies due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

11.3 Time Off During Notice Period

Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

## 12. CLASSIFICATIONS AND WAGE RATES

12.1 An adult employee of a classification specified in the table hereunder shall be paid not less than the rate per week assigned to that classification for the area in which such employee is working.

12.2 Minimum Rates of Pay

12.3 Career Streams

Despite the recognition of three career path streams, such streaming does not prevent employees undertaking duties as are within the limits of the employee's skill, competence and training at the direction of an employer, within or across different streams provided that where work is undertaken at a higher grade and/or higher rate then clause 14 - Mixed Functions is applied.

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

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

12.5 Rate of Pay for school based apprentice

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

**13. SUPPORTED WAGE SYSTEM FOR EMPLOYEES WITH DISABILITIES**

13.1 Workers Eligible For A Supported Wage

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

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

13.1.2 Accredited assessor means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

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

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

13.2 Eligibility Criteria

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

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

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

13.3 Supported Wage Rates

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

<b>Assessed Capacity (clause 13.4)</b>	<b>% of Prescribed Award Rate</b>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

13.3.2 Provided that the minimum amount payable shall be not less than \$45 per week.

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

#### 13.4 Assessment of Capacity

For the purpose of establishing the percentage of the Award rate to be paid to an employee under this Award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

13.4.1 the employer and a union party to the Award, in consultation with the employee or, if desired by any of these;

13.4.2 the employer and an Accredited Assessor from a panel agreed by the parties to the Award and the employee.

#### 13.5 Lodgement of Assessment Instrument

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

13.5.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the Award, is not a party to the assessment, it shall be referred by the Registry to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

#### 13.6 Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

#### 13.7 Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this Award paid on a pro rata basis.

13.8 Workplace Adjustment

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

13.9 Trial Period

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

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

13.9.3 The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.

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

13.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 14.4.

14. MIXED FUNCTIONS

14.1 An employee engaged for two or more hours on one day on duties carrying a higher rate than the ordinary classification shall be paid the higher rate for such day. If for less than two hours he or she shall be paid the higher rate for the time so worked.

14.2 A higher paid employee shall, when necessary, temporarily relieve a lower paid employee without loss of pay.

## 15. PAYMENT OF WAGES, TIME AND WAGES RECORDS

15.1 15.1.1 Except upon the termination of employment, all wages of full time and regular part-time employees including overtime shall be paid on any day other than Friday, Saturday, Sunday in each week and not more than two days wages shall be kept in hand by the employer. However, by agreement between the employer and the majority of employees in the workplace, in a week where a holiday occurs payment of wages may be made on a Friday.

15.1.2 By agreement between the employer and the employee wages may be paid either weekly or fortnightly by one of the following means:

- (a) cash;
- (b) cheque; or
- (c) payment into employee's nominated financial institution account, without cost to the employee.

15.1.3 In the event of a disagreement, the provisions of clause 6 may be applied.

15.1.4 However, an employer may pay an employee weekly by cash without consultation.

15.1.5 Employees who are paid their wages at any time other than during their working time shall, if kept waiting for more than 15 minutes, be paid overtime rates for all such waiting time.

15.1.6 When notice of termination of employment has been given by an employee or an employee's services have been terminated by an employer, payment of all wages and other monies due shall be made at the employee's normal place of employment during normal office hours, prior to the employee leaving such place of employment. If an employee is kept waiting for more than 15 minutes after termination of employment such employee shall be paid overtime rates for waiting time.

15.1.7 Provided where an employee is dismissed for misconduct, such employee shall be paid within one hour from the time of dismissal, if such takes place within ordinary office hours or otherwise as soon thereafter as is practical.

15.1.8 For the purposes of this clause, waiting time means all time an employee is kept waiting on the premises of the employer on the day of termination of employment in excess of the waiting

time specified herein. In the event of an employee not being paid on the day of termination of employment, such employee shall be paid at the rate of time and a half until payment is effected, with a minimum payment of 2 hours and a maximum of eight hours per day. The above eight hours shall refer to the period of shift normally worked by the employee.

15.1.9 Despite the foregoing provisions if it is established the failure to pay an employee correctly at time of termination was due to a genuine error by the employer, payment of waiting time over and above the day of termination shall not apply. Any disputes arising in relation to this issue shall be dealt with in accordance with Clause 6 – Procedure to avoid Industrial Disputation.

## 15.2 Alternative Method of Payment

15.2.1 As an alternative to being paid by the week according to clause 12 - Classifications and Wage Rates by agreement between the employer and the employee an employee can be paid at a rate equivalent to an annual salary of at least 25 per cent or more above the rate prescribed in clause 12 times 52 for the work being performed. In such cases, there is no requirement under clauses 20 Overtime, 21 Saturday work, 22 Sunday work and 18.7 Work outside Daily Hours to pay overtime or penalty rates in addition to the weekly Award wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled if all Award overtime and penalty rate payment obligations had been complied with.

15.2.2 Provided further in the event of termination of employment prior to completion of a year the salary paid during such a period of employment shall be sufficient to cover what the employee would have been entitled to if all Award overtime and penalty rate payment obligations had been complied with.

15.2.3 An employee being paid according to this clause shall be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee shall be entitled to a day off in lieu or a day added to his/her annual leave entitlement.

## 16. ALLOWANCES

### 16.1 Meal Allowance

16.1.1 A full time or regular part-time employee required to work overtime for more than two hours without being notified on the previous day or earlier that he or she will be so required to work

shall either be supplied with a meal by the employer or paid \$9.70 meal money.

16.1.2 If an employee pursuant to notice has provided a meal and is not required to work overtime or is required to work less than the amount advised, he or she shall be paid as above prescribed for the meal which he or she has provided but which is surplus.

16.2 Broken Periods of Work Allowance

16.2.1 A full time or regular part-time employee who has a broken work day shall receive an additional allowance for a spread of hours prescribed as follows:

<b>Spread Of Hours</b>	<b>Rate Per Day \$</b>
Under 10	Nil
10 but under 10-1/2	1.03
10-1/2 but under 11-1/2	2.03
11-1/2 or more	3.05

16.3 Penalty Rates Not Cumulative

Except as provided in clause 19 - Meal breaks of this Award where time worked is required to be paid for at more than the ordinary rate, such time shall not be subject to more than one penalty, but shall be subject to that penalty which is to the employee's greatest advantage.

16.4 Board and Lodging

16.4.1 (a) Where board and residence is made available to adult employees the employer shall have the right to deduct from the pay of the employees residing on the premises an amount of \$142.00 per week of seven days.

(b) Provided that where an adult employee is required to share a room for lodging, the amount to be deducted from the pay of the employee for lodging shall be \$140.20 per week of seven days.

16.4.2 (a) Where lodging only is made available to adult employees, the employer shall have the right to deduct from the pay of the employee residing on the premises the sum of \$135.70 per week of seven days.

(b) Provided that where an adult employee is required to share a room for lodging, the amount to be deducted

from the pay of such employee for lodging, shall be \$135.35 per week of seven days.

16.4.3 In the case of employees who do not reside on the employer's premises a deduction at the rate of \$7.10 for each meal supplied and consumed during the employee's spread of working hours may be deducted by the employer.

16.4.4 The rates for board and lodging for adults shall be increased or decreased by 20 cents, for each meal by one cent, for every 50 cents per week alteration in the rate of classification Hospitality services grade 1 in clause 12 - Classification and wage rates.

16.4.5 Junior employees receiving adult rates of pay as prescribed in this Award shall be subject to the deductions applicable to adults prescribed in this clause.

16.4.6 Junior employees receiving junior rates of pay shall be subject to a deduction at the rate of 50 cents for each meal supplied and consumed during the employee's spread of working hours.

#### 16.5 Laundry Allowance

Where any employee is required to wear a special uniform such uniform shall be provided and laundered by the employer free of cost to the employee or if mutually agreed that the employee shall launder such uniform the employer shall pay the employee \$2.10 for each uniform so laundered with a maximum of \$6.55 per week.

#### 16.6 Clothing, Equipment and Tools

16.6.1 Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons, or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the special clothing is supplied without cost to the employee. Where protective clothing is supplied without cost to the employee, it will remain the property of the employer. In the event of a dispute, the necessity for the provision of protective clothing may be determined by the Motels, Accommodation and Resorts, &c., Employees (State) Conciliation Committee.

16.6.2 Where the employer requires an employee to provide and use any tools, brushes, knives, choppers, implements, utensils and materials, the employer must reimburse the employee for the cost of purchasing such equipment. The provisions of this clause shall not apply where the employer supplied such items without cost to the employee.

16.6.3 An employer may require an employee on commencing employment to sign a receipt for item/s of uniform and property. This receipt must list the item/s of uniform and the value of them. If, when an employee ceases employment the employee does not return the item/s of uniform and property (or any of them) in accordance with receipt the employer will be entitled to deduct the value as stated on the receipt from the employee's wages.

16.6.4 In the case of genuine wear and tear, damage, loss, or theft that is not the employee's fault the provision of 16.6.3 will not apply.

16.6.5 Any disagreement concerning the value of item/s of uniform and any other aspect of this clause shall be dealt with in accordance with Clause 6 – Procedure to avoid Industrial Disputation.

## 16.7 Travelling, Transport and Fares

16.7.1 Where an employee is detained at work until it is too late to travel by the last ordinary train, tram, vessel or other regular conveyance to his or her usual place of residence the employer shall either provide proper conveyance or provide accommodation for the night free of charge.

16.7.2 If an employee is required to start work before his ordinary commencing time and before the first ordinary means of conveyance (hereinbefore prescribed) is available to convey him or her from his or her usual place of residence to the place of employment, the employer shall provide a conveyance or pay the cost thereof.

16.7.3 Where a full time or regular part-time employee is engaged for work outside a distance of 44 kilometres from the place of engagement he or she shall be paid all fares actually and necessarily incurred in travelling from the place of engagement to the place of employment; provided that if the employee leaves his or her place of employment or is dismissed for misconduct within a period of three months of the date engagement, the employer may recover from the employee the fare paid on engagement.

## 17. SUPERANNUATION

### 17.1 Preamble

#### 17.1.1 Superannuation legislation

- (a) The subject of superannuation contributions is dealt with extensively by legislation including the Superannuation

Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

- (b) Notwithstanding 17.1.1(a) above, the following provisions shall also apply.

## 17.2 Definitions

17.2.1 The Fund for the purpose of this clause shall mean the Hospitality Industry Portable Liquor Union Superannuation Trust Deed (HOST-PLUS) which complies with the Superannuation Industry (Supervision) Act 1993 as amended from time to time, and any scheme, which may be made in succession thereto.

17.2.2 Ordinary time earnings for the purpose of this clause, means:

- (a) Award classification rate;
- (b) over award payment;
- (c) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;
- (d) casual loading in respect to casual employees.

17.2.3 Ordinary time earnings does not include bonuses, Commission, payment for overtime or other extraordinary payment, remuneration or allowance.

## 17.3 Employers to Become a Party to the Fund

17.3.1 An employer shall make application to the Fund to become a participating employer in the Fund and shall become a participating employer upon acceptance by the Trustee of the Fund.

17.3.2 An employer shall provide each employee who is not a member of the Fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.

17.3.3 Each employee shall be required to complete the membership application and the employer shall forward the completed application to the Fund by the end of the calendar month of

commencement of this clause or commencement of employment.

17.4 Eligibility of Employees

17.4.1 Each employee shall be eligible to join the Fund upon commencement of employment, subject to 17.3.1.

17.4.2 Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in 17.3.3 was forwarded to the Fund.

17.5 Employer Contribution

17.5.1 (a) An employer shall contribute to the Fund in respect of each employee such contributions as required to comply with the Superannuation Guarantee (Administration) Act 1992 and Superannuation Guarantee Charge Act 1992 as amended from time to time.

(b) Seven per cent or ordinary time earnings on behalf of each eligible employee:

**Ordinary Time Earnings**

2000/2001	8%
2001/2002	8%

17.5.2 (a) Provided that the employer shall make contributions for each employee for each month where the employee earns \$350.00 or more in a calendar month.

(b) The amount of contributions to the fund shall be calculated to the nearest ten cents, any fraction below five cents shall be disregarded.

17.5.3 An employer shall contribute to the Fund:

(a) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or

(b) equivalent monthly contributions at such other times and in such other manner as may be agreed in writing between the Trustees of a Fund and the employer.

(c) Contributions shall continue to be paid in accordance with this subclause during any period in respect of which

an employee is entitled to receive Accident Pay in accordance with clause 30 of this Award.

#### 17.6 Voluntary Employees Contribution

17.6.1 An employee may make contributions to the Fund in addition to those made by the respondent employer under clause 17.5.

17.6.2 An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the Fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.

17.6.3 An employer who received written authorisation from the employee, must commence making payments into the Fund on behalf of the employee within fourteen days of receiving the authorisation.

17.6.4 An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.

17.6.5 Additional employees contributions to the Fund requested under this clause shall be expressed in whole dollars.

17.6.6 Employees shall have the right to adjust the level of contributions made on their own behalf on the first of July each year provided that by agreement with the respondent employer the employees may vary their additional contribution at other times.

#### 17.7 Exemptions

17.7.1 Persons employed in any capacity whether permanent or casual in or in connection with flats and residential chambers and establishments of a like nature, shall be exempt from the provisions of this clause except for 17.1.1(a).

17.7.2 Where an agreement is reached at a particular enterprise or workplace, between the employer and the majority of employees, to provide for the payments of superannuation contributions into a fund other than HOST PLUS, an application shall be made to the Commission to vary the operation of the Award in respect of the enterprise or workplace concerned.

17.7.3 The agreement must meet the following requirements to enable the Commission to vary the Award to give effect to it:

- (a) That the majority of employees covered by the agreement genuinely agree to it; and

- (b) That the fund specified is a complying fund under the Superannuation Industry (Supervision) Act 1993 (SIS).
  - (c) The union must be notified of the terms of the agreement at the time it is lodged with the Commission for approval.
  - (d) In the event that the union does not notify the Commission of an objection to the agreement within fourteen days of the agreement being lodged, the Commission will vary the Award if satisfied the agreement complies with the SIS Act.
  - (e) In the event that the union objects to the agreement within the specified time then the matter will be set down for hearing.
- 17.7.4 (a) In respect of non-union members in any contested matter, the union must bear the onus of establishing that "special circumstances" exist which warrant the continued specification of HOST PLUS as the prescribed fund. In respect of union members, the employer applicant must bear the onus of establishing its case on the usual grounds of "equity, good conscience and the substantial merits of the case".
- (b) Failure by an employer to give each relevant union an opportunity to be involved in the process leading up to the making of an agreement may result in the Commission adjourning or refusing the application to vary the Award.
  - (c) A relevant union in this context means an organization of employees that:
    - (i) is party to this Award; and
    - (ii) has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

## 18. HOURS OF WORK

18.1 The hours of work of a full-time employee are an average of 38 hours per week.

18.1.1 The average of 38 hours per week is to be worked in one of the following ways:

- (a) a nineteen day month, of eight hours each day;
- (b) four days at eight hours and one of six hours;
- (c) four days at nine and a half hours per day;
- (d) five days of seven hours and 36 minutes per day;
- (e) 152 hours per each four week period; or
- (f) 160 hours per each four week period, with a day banked per period up to a maximum of five.
- (g) any combination of the above.

18.2 The arrangement for working the average of 38 hours per week is to be agreed between the employer and the employee from the alternatives in clause 18.1.

18.3 The agreed hours of work arrangement must meet the following conditions:

18.3.1 A minimum of six hours and a maximum of eleven and a half hours may be worked on any one day. The daily minimum and maximum hours are exclusive of meal break intervals.

18.3.2 An employee cannot be rostered to work for more than ten hours per day on more than three consecutive days without a break of at least 48 hours.

18.3.3 No more than eight days of more than ten hours may be worked in a four week period.

18.3.4 An employee shall be entitled to eight full days off per four week period; and

18.3.5 No employee shall work more than ten days in succession without a rostered day off.

18.4 Broken Shifts - Spread of Hours

Where broken shifts are worked the spread of hours can be no greater than twelve hours per day,

18.5 Wage Entitlements

Employees shall be entitled to a week's wages in accordance with clause 12 of this Award for each week of work.

18.6 Sickness on Rostered Day Off

Where an employee is sick or injured on his/her rostered day off he/she shall not be entitled to sick pay nor shall the sick pay entitlement be reduced as a result of sickness or injury on that day.

18.7 Pay Day

In the event that an employee by virtue of the arrangement of his/her ordinary working hours is rostered off duty on a day which coincides with payday such employee shall be paid no later than the working day immediately following such payday.

18.8 Work Outside Daily Hours

18.8.1 Full-time or regular part-time employees who are required to work any of their ordinary hours outside the hours of 7.00 a.m. to 7.00 p.m. on Monday to Friday, inclusive, shall be paid \$1.37 per hour, or part thereof, for any such time worked outside the said hours with a minimum payment of \$2.09 for any one day.

18.9 Posting of Roster

18.9.1 A roster for all full time and regular part-time employees showing normal starting and finishing time and the surname and initials of each employee shall be prepared by the employer and shall be posted in a conspicuous place or places accessible to the employees concerned.

18.9.2 The roster shall be alterable by mutual consent at any time or by amendment of the roster on 7 days' notice.

18.9.3 Where practicable, 2 weeks' notice of rostered day or days off shall be given provided that the days off may be changed by mutual consent or through absence through sickness or other cause over which the employer has no control.

18.9.4 Provided that the provisions of this clause do not permit a change to the agreed number of hours each week or each four week period of a regular part-time employee.

18.10 Work on Rostered Days Off

All work performed on an employee's rostered day off shall be paid for at double time, with a minimum of 4 hours at the rate of double time.

18.11 Make-Up Time

18.11.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off

during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

18.11.2 An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken.

## 19. MEAL BREAKS

### 19.1 Meal Breaks

19.1.1 Each employee shall be granted a meal interval of not less than 30 minutes to be commenced after completing one hour 30 minutes and not later than 6 hours of duty. Provided that an employee allowed a crib break of not less than 20 minutes pursuant to clause 19.1.4 hereof shall be deemed to have been allowed the meal interval provided in this clause.

19.1.2 The foregoing provision does not have to apply to casual or part-time employees who are rostered for 6 hours or less in any day.

19.1.3 Where it is not possible to grant the meal interval on any day the said meal interval shall be treated as time worked and paid at the rate for the day plus half time additional at the ordinary weekly rate, until released for a meal. Provided that where an employee is required to exceed 5 hours work after the first meal interval he or she shall be granted a further meal interval of 20 minutes to be treated as time worked.

19.1.4 Where an employee's hours of work falls wholly between 11.00 p.m. and 8.00 a.m. the employee including a part-time employee shall be allowed a crib break of not less than 20 minutes which shall be counted as time worked.

## 20. OVERTIME

20.1 An employer may require any full time or regular part-time employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

20.2 All time worked by a full time employee in excess of the ordinary hours and/or outside the spread of hours or outside the rostered hours prescribed in clause 18 of this Award shall be overtime and shall be paid for at the following rates:

20.2.1 Monday to Friday inclusive time and a half for the first 2 hours and double time for all work thereafter.

20.2.2 Between midnight Friday and midnight Saturday time and 3/4 for the first 3 hours and double time for all time worked thereafter.

20.2.3 Between midnight Saturday and midnight Sunday double time for all time worked.

20.2.4 Overtime on any day shall stand alone.

20.2.5 If an employee is so long on overtime duty following his or her normal finishing time that he or she has not had 8 hours interval before his or her next regular starting time such employee shall be allowed at least 8 consecutive hours interval without deduction of pay or shall be paid at overtime rates for all time of duty until such employee has had at least 8 hours interval.

20.3 Despite the rate prescribed in clause 20.2.1, 20.2.2 and 20.2.3 at the instigation of the employee there may be an agreement in writing between the employee and employer to take time-off with pay equivalent to the amount for which payment would otherwise have been made. Such accumulated time must be taken within four weeks from the time of accrual.

20.4 A regular part-time employee is paid at overtime rates in the circumstances specified in clause 8.3.7.

## 21. SATURDAY WORK

All ordinary time worked by full time or regular part-time employees from midnight Friday to midnight Saturday shall be paid for at the rate of time and a quarter.

## 22. SUNDAY WORK

All ordinary time worked by full time or regular part-time employees from midnight Saturday to midnight Sunday at time and three quarters.

## 23. ANNUAL LEAVE

23.1 See Annual Holidays Act 1944 (NSW)

23.2 During any period of annual leave an employee shall receive a loading of 17.5% calculated on the rates of pay prescribed by clause 12, Classifications and Wage Rates.

23.3 An employee may elect with the consent of the employer, subject to the Annual Holidays Act 1944, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

23.3.1 Access to annual leave, as prescribed in clause 23.3 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

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

## 24. PERSONAL LEAVE

### 24.1 Sick Leave

#### 24.1.1 Definition

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

#### 24.1.2 Entitlement

- (a) In the first three calendar months of employment - no more than 10 hours.
- (b) In the second three calendar months of employment - no more than a further 10 hours.
- (c) In the first year of employment - no more than 45.6 hours.
- (d) In the second year of employment and thereafter - no more than 76 hours.
- (e) Sick leave may accumulate to a maximum of 304 hours for full time employees, and for part-time employees, to a maximum of 8 times the average weekly hours such employee works in any one year.

#### 24.1.3 Employee must give notice

- (a) Before taking sick leave, an employee must give at least two hours' notice before his or her next rostered starting time, unless he or she has a good reason for not doing so.
- (b) The notice must include:
  - the nature of the injury or illness (if known); and
  - how long the employee expects to be away from work.
- (c) If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

#### 24.1.4 Evidence supporting claim

A claim made for sick leave shall be supported by evidence from the employee satisfactory to the employer that the employee was unable on account of illness or personal injury to attend for duty on the day for which leave is claimed.

#### 24.1.5 The effect of workers' compensation

If an employee is receiving workers' compensation payments, he or she is not entitled to sick leave.

### 24.2 Carer's Leave

#### 24.2.1 Use of Sick Leave

An employee other than a casual employee with responsibilities in relation to a class of person set out in 24.2.3(b) who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for at clause 24, Sick Leave for absences to provide care and support for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

24.2.2 The employee shall, if required:

- (a) establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (b) establish by production of documentation acceptable to the employer or 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 clause where another person has taken leave to care for the same person.

24.2.3 The entitlement to use sick leave in accordance with this clause is subject to:

- (a) the employee being responsible for the care and support of the person concerned; and
- (b) the person concerned being:
  - 1. a spouse of the employee; or
  - 2. a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
  - 3. a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
  - 4. a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
  - 5. a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
    - (a) **“relative”** means a person related by blood, marriage or affinity;

- (b) **“affinity”** means a relationship that one spouse because of marriage has to blood relatives of the other; and
- (c) **“household”** means a family group living in the same domestic dwelling.

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

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

Where the parties are unable to reach agreement the disputes procedure at Clause 6 should be followed.

### 24.3 Unpaid Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in 24.2.3(b) above who is ill or who requires care due to an unexpected emergency.

### 24.4 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 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.

#### 24.5 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 20, 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.

#### 24.6 Personal Carers entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in subclause 1 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 person prescribed in subclause 3 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (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. 2 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.

24.7 Bereavement Leave

- 24.7.1 An employee other than a casual employee shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in 24.7.3 below.
- 24.7.2 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.
- 24.7.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 24.2.3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 24.7.4 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.
- 24.7.5 Bereavement leave may be taken in conjunction with other leave available under 18.11, 23.3, 24.2, 24.3 and 24.4. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

24.8 Bereavement entitlements for casual employees

- 24.8.1 Subject to the evidentiary and notice requirements in subclause 1 of this clause 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 3 of Clause 24 Personal/Carers Leave.
- 24.8.2 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. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- 24.8.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 25. PARENTAL LEAVE

25.1 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).

25.2 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 the engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

25.3 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 iii(a)(ii) and iii(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under iii(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.

25.4 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

## 26. JURY SERVICE

26.1 A full time or regular part-time employee required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service.

26.2 An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service.

- 26.3 Further the employee shall give their employer proof of their attendance, the duration of such attendance and the amount in respect of such jury service.

## 27. PUBLIC HOLIDAYS

### 27.1 Prescribed Public Holidays

27.1.1 Employees other than casuals shall be entitled to the following holidays without loss of pay: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queens Birthday, Labour Day, Union Picnic Day, Christmas Day and Boxing Day, or such other day is generally observed in the locality as a substitute for any of the said days respectively.

27.1.2 In respect to Christmas Day and Boxing Day if either day falls on a Saturday or Sunday and an employee is required to work on such day or days then the day or days shall be treated as the public holiday and day substituted shall be paid at the rate that would otherwise be paid on 25 and/or 26 December.

27.2 Provided that when an employee is absent from his or her employment only on one working day or part of a day before or after a holiday, except on account of illness or other legitimate reason, he or she shall not suffer loss of payment for more than one day of the holidays.

27.3 Subject to 27.6, all time worked by a full time employee on a holiday herein prescribed shall be paid for at the rate of double time and one-half for the hours worked, with a minimum of four hours additional pay. Alternatively, such employees who work on a prescribed holiday, may, by agreement, perform such work at time and one-half the ordinary Monday to Friday rate, provided that the equivalent of the time worked is also added to the employee's annual leave or one day in lieu of such public holiday shall be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to employees within 28 days of such holidays falling due.

27.4 Casual and part-time employees working on a public holiday prescribed by this clause, shall be paid respectively according to the provisions of clauses 8.2.2(c), 8.2.2(d) and 8.3.8 of this Award.

27.5 Where in a State or Territory or locality within a State or Territory an additional public holiday (other than Easter Saturday) is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory government and such proclaimed or gazetted holiday is to be observed generally by persons throughout that State or Territory or a locality thereof, other than by those covered by Federal Awards, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such

day shall be deemed to be a holiday for the purposes of this Award, for the employees covered by this Award who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required.

27.6 Rostered Day Off Coinciding With a Holiday

Where an employee's rostered day or days off coincide with a holiday prescribed in this Award, the holiday shall not be a holiday for such employee and the holiday shall be substituted in one of the methods following:

27.6.1 one day with pay added to the annual leave;

27.6.2 payment of one day's pay shall be made to the employee on the next succeeding pay day;

27.6.3 such holiday may be allowed off with pay to the employee within 28 days after such holiday falls;

27.6.4 one of the above methods must be mutually agreed upon by the employee and the employer. Failing such agreement the provision prescribed in 27.6.1 hereof shall apply.

27.7 Substitution of Days

27.7.1 An employer and a majority of employees in a workplace may, subject to the following conditions, agree to substitute another day for any prescribed in this clause.

27.7.2 If the employer intends to seek agreement on substituting a day or days and the union has members at the particular workplace then the employer must inform the union of its intention and provide the union with an opportunity to participate in negotiations relating to substitution.

27.7.3 After the employer and a majority of employees have agreed to a substitute day, the agreement must be recorded in writing and made available to every affected employee.

27.7.4 The employer must record substitution day arrangements in the time and wages records kept pursuant to Division 2 of Part 3 of the Industrial Relations (General) Regulations.

27.7.5 Any disputes in relation to the practical application of this provision may be dealt with in accordance with Clause 11.

**28. NATIONAL TRAINING WAGE**

The parties to this award shall observe the terms of the National Training Wage Award 1994 as amended, as though bound by clause 3 of that Award.

**29. WORK EXPERIENCE**

The provisions of this Award shall not apply to high or secondary school students whilst undergoing work experience with the written approval of a school career co-ordinator or similar school's officers.

**30. ACCIDENT PAY**

See Workers' Compensation and Injury Management Act 1998.

**31. POSTING OF AWARD**

A copy of this Award, as varied from time to time, shall be maintained in each establishment of an employer and shall be available for inspection at any time by an employee covered by this Award.

**32. LEAVE FOR CONSULTATION MEETINGS**

Each employer must allow his/her employees to attend meetings to discuss industrial matters without loss of ordinary pay provided the following conditions are observed:

32.1 At least fourteen days' notice of such meeting is given to the employer.

32.2 The period of the meeting is no greater than three hours, with employees returning to duty by 5.00pm if so rostered.

32.3 The employer is only obliged to pay wages for the period of the meeting if the employer is in receipt of satisfactory evidence of the employee's attendance at the meeting.

32.4 Such consultation meetings are to be held on either a Monday or Tuesday, not being a week in which a public holiday occurs.

32.5 The employer is only obliged to pay wages for the period that the employee was rostered for duty.

32.6 The employer is not obliged to pay wages for more than one such meeting in any calendar year.

### 33. BASIS OF AWARD

This award is made in relation to the award of the Australian Industrial Relations Commission known as the Motels, Accommodation and Resorts Award 1998.

### 34. ANTI-DISCRIMINATION

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

## 35 UNION DUES

- 35.1 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 this clause;
  - (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 (2) months' service (continuous or otherwise).
- 35.2 The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 35.3 Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to the employee's membership account, provided that:

- (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to 5 per cent of the money deducted; and
  - (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.
- 35.4 Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- 35.5 The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the employer a minimum of two month's notice of any such change.
- 35.6 An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- 35.7 Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the Union's rules, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of Union membership fees to cease.

## 36. LEAVE RESERVED

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

## 37. AREA, INCIDENCE AND DURATION

### 37.1 This award rescinds and replaces

- (a) the Private Hotels, Motels, Guest Houses, &c., Employees (State) Award published 8 July, 1994 (1138 I.G. 280) and all variations thereof;
- (b) the Private Hotels, Motels, Guest Houses, &c., Employees Redundancy and Technological Change (State) Award (290 IG 644), and all variations thereof;
- (c) Private Hotels, Motels, Guest Houses, &c., Employees (State) Wages Award published 28 February 1997 (296 IG 991) and all variations thereof,
- (d) the Flats, Residentials & c., (State) Award published 5 January 1983 (228 I.G. 58), and all variations thereof;
- (e) the Flats, Residentials &c., Redundancy and Technological Change (State) Award published 18 September 1995 (290 I.G. 628), and all variations thereof; and
- (f) the Flats, Residentials & c., (State) Wages Adjustment Award published 28 February 1997 (296 I.G. 1025), and all variations thereof.

It shall apply to all persons employed in any capacity whether permanent or casual in or in connection with motor inns or motels, unlicensed private hotels, serviced apartments, resorts, time share facilities, health or recreation farms, guest houses, ski lodges, holiday flats/units, holiday ranches or farms, condominiums, flats [being premises (not being an hotel licensed to sell spirituous or fermented liquors) where either furnished, unfurnished or service apartments are let or sub-let to tenants (but does not include a private house)] and residential chambers [being a lodging house or residential establishment (not being an hotel licensed to sell spirituous or fermented liquors) where accommodation only is provided] and establishments of a like nature together with restaurants, function areas, convention centres or like facilities, ancillary to or part of any of the above whether such establishments are licensed to serve alcoholic drinks or not and in or in connection with preparing and serving food, cleaning and attending to the premises and all other services associated therewith, excluding the County of Yancowinna and government accommodation houses.

- 37.2 This award shall take effect from the beginning of the first pay period to commence on or after 14 May 2001 and shall remain in force for a period of 12 months.
- 37.3 Unless otherwise agreed (and recorded in writing in the time and wages record), for each employee (full-time, part-time and casual) who was at 24 March, 1999, employed under the provisions of the 1994 Private Hotels, Motels, Guest Houses &c., Employees (State) Award, as varied from time to time, it is a term of this award that they do not suffer any reduction in wages or salary as a result of the making of this award. In this clause, “an overall reduction in wages or salary” means that, when comparing like work pattern with like work pattern, the gross income of the employee is less under this award than it would have been had the employee continued to be paid under the provisions of the 1994 Private Hotels, Motels, Guest Houses, &c., Employees (State) Award immediately prior to 24 March 1999. This Clause shall cease to operate on 23 March 2001.
- 37.4 Unless otherwise agreed (and recorded in the time and wages record), no employee (full-time and part-time) who was at 14 May 2001 employed under the provisions of the Flats, Residential &c., (State) Award, as varied from time to time, shall suffer a reduction in ordinary time earnings as a result of the making of this award.