



WAREHOUSE EMPLOYEES GENERAL (STATE) AWARD

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1. CONTENTS

SECTION	TITLE
1	Contents
2	Hours
2A	Secure Employment
3	Wages
4	State Wage Case Adjustment
5	Supported Wage
6	Shift Workers
7	Meal Times
8	Lunch Room
9	Overtime
10	Meal Allowance
11	Holidays and Sundays
12	Time and Payment of Wages
13	Particulars of Wages to be Furnished to Employees
14	Redundancy
15	Mixed Functions
16	Termination of Employment
17	Sick Leave
18	Personal Carer's Leave
19	Bereavement Leave
20	Annual Leave
21	Annual Leave Loading
22	Union Delegates
22A	Deduction of Union Membership Fees
23	Notice Board
24	Transfer of Employees
25	First-Aid Kit
26	Conditions
27	Locomotion
28	Rest Pause
29	Proportion

SECTION	TITLE
30	Long Service leave
31	Right of Entry
32	Jury Service
33	Parental Leave
34	Disputes Procedure
35	Anti-Discrimination
36	Leave Reserved
37	Flexibility of Work
38	Commitment to Training and Careers
39	Enterprise Consultative Mechanism
40	Occupational Superannuation
41	Enterprise Agreements
42	Area, Incidence and Duration
Appendix 1	Retail Industry (State) Training Wage

2. HOURS

- (i) The ordinary working hours, exclusive of meal times shall average 38 hours per week, Monday to Friday, worked as follows:
 - (a) The hours to be worked will be between the span of hours, 6.00 a.m. to 6.00 p.m.
- (ii) Except as provided in subclause (iv) and (v) below, the 38-hour average week may be worked in any one of the following ways:
 - (a) By employees working less than 8 ordinary hours each day; or
 - (b) By employees working less than 8 ordinary hours on one or more days each week; or
 - (c) By fixing one weekday on which all employees will be off during a particular work cycle; or
 - (d) By rostering the employees off on various days of the week during a particular work cycle so that each employee has one weekday off during that cycle.
- (iii) The method of working the 38-hour average week shall be at the discretion of the employer who shall nominate which method prescribed in subclauses (ii) and (iv) shall apply. Provided that the employer shall not subsequently alter the method of implementation without advising the employees subject to the alteration at least 7 days in advance of the date on which the altered method of implementation is to take effect. Provided further that the Union may approach any employer to discuss the method of implementation.
- (iv) Subject to the provisions of subclause (i) of this clause and subclauses (ii) and (iii) of Clause 6 – Shift Workers should the employer and the majority of employees in any establishment agree, the ordinary working hours may exceed 8 of any day, to enable a week off to be taken more frequently than would otherwise apply.
- (v) Different methods of implementation of a 38-hour week may apply to various groups or sections of employees in the plant or establishment concerned.

- (vi) Except as provided in subclause (vii) hereof, in cases where an employee in accordance with paragraphs (c) and (d) of subclause (ii) hereof, is entitled to a day off during his work cycle such employee shall be advised by the employer at least 4 weeks in advance of the week day he is to take off.

- (vii)
 - (a) An employer with the agreement of a majority of employees in any establishment, may substitute the day an employee is to take off in accordance with paragraphs (c) or (d) of subclause (ii) hereof, for another day in the case of a break-down in machinery, a failure or shortage of electric power, to meet the requirements of the business in the event of rush orders or some other emergency situation.

 - (b) An employee who is required by his employer to work on his scheduled day off in circumstances other than those in paragraph (a) of this subclause shall be paid overtime rates or be granted an alternative day off. Such choice shall be at the option of the employer.

 - (c) An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

 - (d) An employer, at his discretion, may hold up to a maximum of 5 days accrued in accordance with (c) and (d) of subclause (ii) hereof. Such days to be taken at a time mutually agreed to between the employer and employee concerned.

- (viii) Part-time Employees

The spread of ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for weekly employees, but shall not, in any case, be less than 12 hours per week nor more than thirty-two hours per week. The ordinary hours of work shall not exceed eight hours on a particular day. Part-time employees employed prior to 21 January, 1992, shall not work less than 20 hours per week, unless by mutual agreement.

2A. SECURE EMPLOYMENT

(a) Objective of this Clause

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

(b) Casual Conversion

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

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

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

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
 - (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the Industrial Relations Act 1996 (NSW);

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

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

- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
- (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and

(4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

(iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the Occupational Health and Safety Act 2000 or the Workplace Injury Management and Workers Compensation Act 1998.

(d) Disputes Regarding the Application of this Clause

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

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

3. WAGES

(i) The minimum weekly wage to be paid to adults shall be:

Adults	Group No. (Table 1)
Checker	1
Assembler	2
Replenisher/Stockhand	3
Sorter	4
Wrapper/Tier	5
Indoor Salesperson	6

(ii) Junior Employees

(a) Junior employees shall receive the percentage of the adult rate prescribed in subclause (i) hereof:

Percentage per week %

At 16 years of age and under	60
At 17 years of age	65
At 18 years of age	75
At 19 years of age	85
At 20 years of age and over	100

(b) Provided that rates calculated herein shall be calculated to the nearest 10 cents, anything in the result not exceeding 5 cents shall be disregarded.

(c) Provided further that employees entering the trade at 17 years of age and over and under 20 years without previous experience, may for the first six months be paid 15 per centum less and for the next six months 10 per centum less than the rates hereinbefore mentioned for adults.

(iii) Casual employees shall be paid per hour one thirty-eight of the adult weekly rate, plus 15 per centum calculated to the nearest half cent with a minimum payment of four hours for each day.

(iv) (a) A part-time employee shall mean any employee who is employed to work regular days and regular hours and they shall not be engaged for less than 12 hours nor more than 32 hours per week. Such employee(s) shall be paid for each hour worked at the rate of at least one-thirty eighth of the minimum weekly wage prescribed by this award for the class of work performed by them.

(b) provided that the total provisions of this award shall apply to such part-time employee on a proportionate basis and, in the case of public holidays, part-time employees shall only be entitled to payment for the number of hours he or she would normally have worked had the day been an ordinary working day. Part-time employees prior to 21 January, 1992, shall not work less than 20 hours per week, unless by mutual agreement.

(v) Section Head

Where there are four or more employees in a section of a warehouse and a section head is appointed, he or she shall be paid the amount as set out in Item 1 of Table 2 of Part B, in addition to the appropriate adult rate.

(vi) An adult automotive parts and accessories salesperson qualified (i.e. one who has passed an appropriate course of technical training) shall be paid the amount as set out in Item 2 of Table 2 of Part B, in addition to the appropriate adult rate.

(vii) Departmental Manager

An employee appointed in charge of a department in a warehouse, not being an employee temporarily in charge during the absence of persons ordinarily in charge of the department:

Group No, (Table 1)

The minimum rate of pay shall be:

In charge of from 1 to 4 assistants	7(i)
In charge of from 5 to 12 assistants	7(ii)
In charge of from 13 to 25 assistants	7(iii)
In charge of over 25 assistants	7(iv)

Provided that this award shall not apply to department managers who are in receipt of a weekly wage in excess of 15 per centum above the rate for a person in charge of 25 assistants, from time to time effective, except as to the provisions of Clause 11 – Holidays and Sundays, Clause 17 – Sick Leave, Clause 30 – Long Service Leave of this award.

4. STATE WAGE CASE ADJUSTMENT

(a) The rates of pay in this award include the adjustments payable under the State Wage Case 2006. These adjustments may be offset against:

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

5. SUPPORTED WAGE

(a) Definition

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

- (i) **“Supported Wage System”** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in “Supported Wage System: Guidelines and Assessment Process”.
- (ii) **“Accredited Assessor”** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.
- (iii) **“Disability Support pension”** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act, 1991, as amended from time to time, or any successor to that scheme.
- (iv) **“Assessment Document”** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(b) Eligibility Criteria

Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a Disability Support Pension. (This clause does not apply to any existing employee who has a claim against the employer, which is subject to the provisions of workers’ compensation legislation, or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment).

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

(c) Supported Wage Rates

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

Assessed Capacity Prescribed (subclause (d))	Percentage of Award Rate
*10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$57.60 per week).

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

(d) Assessment of Capacity

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

- (i) the employer and a union party to the award, in consultation with the employee or, if desired, by any of these;

(ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgement of Assessment Document

(i) All assessment documents under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission of New South Wales

(ii) All assessment documents shall be agreed and signed by the parties to the assessment, provided that, where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and will take effect, unless an objection is notified to the Registrar within ten working days.

(f) Review of Assessment

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

(g) Other Terms and Conditions of Employment

Where an assessment has been made, the appropriate percentage will apply to the wage rate only. Employees covered by the provisions of 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.

(h) Workplace Adjustment

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

(i) Trial Period

(i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause

for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- (ii) During the trial period, the assessment of capacity must be undertaken and the proposed wage rate for a continuing employment relationship must be determined.
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$57.60 per week.
- (iv) Work trials should include induction or training as appropriate to the job being trailed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into, based on the outcome of assessment under subclause (d) of this clause.

6. SHIFT WORKERS

- (i) Definitions

For the purposes of this clause:

“Afternoon Shift” means any shift finishing after 6.00 p.m. and at or before midnight.

“Continuous Work” means work carried on with consecutive shifts of employees throughout the twenty-four hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.

“Night Shift” means any shift finishing subsequent to midnight and at or before 8.00 a.m.

“Rostered Shift” means a shift of which the employee concerned has had at least forty-eight hours notice.

“Early Morning Shift” means any shift commencing at or after 4.00 a.m. and before 6.30 a.m.

When implementing an early morning shift the employer should consult with the relevant employees so as to avoid any unreasonable hardship.

A shift worker whilst on Early Morning Shift shall be paid for such shift 12.5 per cent more than their ordinary pay.

(ii) Hours – Continuous Work Shifts

The ordinary working hours of shift workers employed on continuous work shall be an average of 38 per week. Such ordinary hours:

- (a) shall not exceed one hundred and fifty-two in any work cycle, and
- (b) except as provided in subclause (ii), (iii), (iv), (v), (vi), (vii) of the Clause 2, shall not exceed:
 - (1) eight in one day, nor
 - (2) forty-eight in any one week, nor
 - (3) eighty-eight in any fourteen consecutive days, nor
 - (4) one hundred and twenty-eight in any twenty-one consecutive days.

(iii) Hours – Other than Continuous Work

The ordinary working hours of shift workers not on continuous shifts shall be an average of 38 per week and:

- (a) shall not exceed one hundred and fifty-two in any work cycle, and
- (b) except as provided in subclause (ii), (iii), (iv), (v), (vi), (vii) of the Clause 2, shall not exceed:
 - (1) eight in one day, nor
 - (2) forty in any one week, nor
 - (3) eighty in any fourteen consecutive days, nor
 - (4) one hundred and twenty in any twenty-one consecutive days.

(iv) Hours - General

The ordinary working hours of shift workers shall be worked at such times as the employer may require, provided that:

- (a) except at the regular changeover of shifts, an employee shall not be required to work more than one shift in any twenty-four hours;
- (b) twenty minutes shall be allowed to shift workers each shift for crib, which shall be counted as time worked;
- (c) the ordinary working hours of any shift shall be worked continuously except for meal breaks to be taken at such times as the employer may direct;
- (d) no employee shall be required to work for more than five consecutive hours without a meal break.

(v) Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

(vi) Variations by Agreement

The method of working shifts may in any case be varied by agreement between the employer and the accredited representative of the union to suit the circumstances of the establishment. The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the accredited representative of the union to suit the circumstances of the establishment or in absence of agreement by seven days' notice of alteration given by the employer to the employees.

(vii) Afternoon or Night Shift Allowances

- (a) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his ordinary pay.
- (b) A shift worker who works on an afternoon or night shift which does not continue for at least five successive afternoons or nights in a six day workshop shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof in addition to his ordinary rate.
- (c) An employee who:
 - (1) during a period of engagement on shift, works night shift only; or

- (2) remains on night shift for a longer period than four consecutive weeks, or
- (3) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle; shall during such engagement period or cycle be paid 30 per cent more than his ordinary rate for all time worked during ordinary working hours on such night shift.

(viii) Saturday Shifts

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and one-half. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (vii) of this clause.

(ix) Overtime

Shift workers for all time worked in excess of or outside the working hours prescribed by this award or on a shift other than a rostered shift shall:

- (a) if employed on continuous work be paid at the rate of double time; or
- (b) if employed on other shift work be paid at the rate of time and one half for the first two hours and double time thereafter,

Except in each case when time is worked:

- (c) by arrangement between the employees themselves;
- (d) for the purpose for effecting customary rotation of shifts; or
- (e) on a shift to which an employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for a day.

Provided that when not less than eight hours' notice has been given to the employer by a relief man that he will be absent from work and the employee whom he should relieve is not relieved and is required to continue to work on his rostered day off the unrelieved employee shall be paid double time.

(x) Requirements to Work Reasonable Overtime

An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

(xi) Sundays and Holidays

Shift workers on continuous shifts, for work on a rostered shift, the major portion of which is performed on a Sunday or holiday, shall be paid as follows:

- (a) Sundays – at the rate of double time.
- (b) Holidays as prescribed by Clause 11 – Holidays and Sundays, of this award, at the rate of double time. Shift Workers on other than continuous work for all time worked on a Sunday or holiday shall be paid at the rates prescribed by Clause 11 – Holidays and Sunday Rates of pay of this award. Where shifts commence between 11:00 p.m. and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate; provided that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday. Where shifts fall partly on a holiday, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(xii) Daylight Saving

Notwithstanding anything contained elsewhere in this award, in any area where by reason of the legislation of a State summer time is prescribed as being in advance of the standard time of that State the length of any shift:

- (a) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period, and
- (b) commencing on or before the time prescribed by such legislation for the termination of a summer time period, shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of

the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

In this subclause the expression “standard time” and “summer time” shall be the same meanings as are prescribed by the relevant State legislation.

- (xiii) Clause 2 – Hours; 9 – Overtime; and 7 – Meal Times, shall not apply to shift workers.
- (xiv) When overtime work is necessary it shall, whenever reasonably practicable, be so arranged that employees have at least ten consecutive hours of duty between the work of successive days.

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

If on the instructions of his employer such an employee resumes or continues work without having had such ten consecutive hours off duty he shall be paid at double rates until he is released from duty for such period and he shall be paid at double rates until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of this subclause shall apply in the case of shift workers as if eight hours were substituted for ten hours when overtime is worked:

- (a) for the purpose of changing shift rosters; or
- (b) where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or
- (c) where a shift is worked by arrangement between the employees themselves.

7. MEAL TIMES

- (i) Each employee shall be allowed each day not less than half an hour nor more than one hour for a midday meal, to be taken between 11.30 a.m. and 2.30 p.m.
- (ii) Subject to the provisions of this clause, an employer may require an employee to work during his/her recognized meal break as part of his/her ordinary time.
- (iii) An employee who is required to work on a day later than 7.00 p.m. shall be allowed not less than twenty minutes nor more than forty minutes for an evening meal between 6.00 p.m. and 7.00 p.m. Provided that any employer and his/her employee may mutually agree to any variation of this subclause to meet the circumstances of the work in hand. Provided that an employee shall not forgo this break.

8. LUNCH ROOM

Where not less than ten employees are employed in a warehouse, an employer shall provide free from all charge a suitable room with adequate table and seating accommodation and sufficient cutlery, crockery and hot water. Any dispute as to the practicability of providing such a room or its suitability shall be referred through the Disputes Procedure.

9. OVERTIME

- (i) All time worked:
 - (a) in excess of thirty eight hours per week;
 - (b) before the commencing time on any day;
 - (c) after the prescribed ceasing time on any day;

shall be paid for at the rate of time and one-half for the first two hours and double time thereafter. In computing overtime each day's work shall stand-alone.

- (ii) An employee who works on any Saturday shall be paid overtime at the rate of time and one-half for the first two hours and double time thereafter with a minimum payment of three hours; provided that all time worked after 11.00 a.m. shall be paid for at the rate of double time.

- (iii) In all cases any portion of an hour less than thirty minutes shall be reckoned at thirty minutes and any portion of an hour above thirty minutes shall be reckoned as an hour.

10. MEAL ALLOWANCE

An employee who works overtime after 7.0 p.m. any day shall be paid a meal allowance as set out in Item 3, Table 2 of Part B. The meal allowance shall be paid on the day on which the overtime is worked.

11. HOLIDAYS AND SUNDAYS

- (i) The following day or days observed as such shall be holidays: New year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day or any other gazetted as a public holiday within the area covered by this award, provided that any day proclaimed as a holiday for the State for a special purpose but observed throughout the State on different days, also shall be a holiday.

- (ii) In addition to the holiday prescribed in subclause (i) of this clause employees shall be entitled to an additional public holiday in lieu of a union picnic day.

The date of such additional public holiday shall be set by agreement between an employer and an employee or an employer and the majority of employees in an establishment, having taken into consideration the operation of the particular establishment; provided that where an additional holiday or paid picnic day is observed as a holiday by the general body of employees in an establishment then such day shall be substituted and observed as the additional award holiday under this award.

- (iii) Every employee allowed a holiday specified herein shall be deemed to have worked in that week in which the holiday falls the number of ordinary working hours that he would have worked had the day not been a holiday.
- (iv) For all work done on Sunday double time shall be paid with a minimum payment of four hours; for all work done on holidays, double time and one-half shall be paid with a minimum payment of four hours.
- (v) An employee absent without leave on the day before or the day after any award holiday shall be liable to forfeit wages for the day of the absence as well as for the holiday, except

where an employer is satisfied that the employee's absence was caused through illness, in which case wages shall not be forfeited for the holiday.

Provided that an employee absent on one day only either before or after a group of holidays, shall forfeit wages only for one holiday as well as for the period of absence.

12. TIME AND PAYMENT OF WAGES

- (i) All wages, in addition to any bonus, commission or premium the employer may choose to pay, may be paid weekly or by genuine mutual agreement fortnightly.
- (ii) In the case of weekly pays, wages shall be calculated up to and including the day of payment. In the case of fortnightly pays, wages shall be paid no later than the third day of the second week of the payment period. Wages shall be paid on a day other than Friday or Saturday. Overtime shall be paid no later than the following pay cycle from the day it was earned.
- (iii) Wages shall be paid in cash, cheque or by Electronic Funds Transfer as determined by the employer. Provided that payment by Electronic Funds Transfer shall not be used wherever its use would create harsh or unreasonable circumstances for employees. Provided further that wherever wages are paid by Electronic Funds Transfer, the employer shall meet the following costs:
 - (1) The employee's account establishment cost.
 - (2) The cost of each deposit of wages in the employee's account including government charges.
 - (3) The cost of a single withdrawal of each deposit of wages from an employee's account. (This includes both Bank and Government Charges).
- (iv) All cash wages shall be paid in the employer's time.
- (v) Notwithstanding the foregoing:
 - (a) where employment is terminated an employee shall be paid forthwith all ordinary wages due and shall be paid all overtime and other moneys due within seven days of the date of the termination of employment;

- (b) in the event of an employer not paying the said overtime and other moneys due at the time on which he has undertaken to pay, then the employer shall reimburse the employee all expenses he has incurred in attending to collect the amounts due to him;
- (c) where an employee is required by an employer to wait beyond the ordinary ceasing times of the employee for payment of ordinary wages when an employee is terminated or to wait for payment of ordinary wages after the period of the termination for a period of more than 15 minutes, he shall be paid his ordinary wages for the period during which he is so required to wait.

13. PARTICULARS OF WAGE TO BE FURNISHED TO EMPLOYEES

On the payment of an employer of any wages to an employee covered by an award, whether or not such payment is required by the award to be made, the employer shall furnish to the employee, either by noting on the pay envelope of the employee or by way of a statement in writing handed to the employee at the time when the payment is made, such particulars as may be prescribed as regards:

- (a) the date of payment;
- (b) the classification of the employee under the award;
- (c) the period in respect of which the payment is made;
- (d) times worked or work done by the employee;
- (e) matters in respect of which the payment is made;
- (f) deductions made;
- (g) the amount paid;
- (h) how the amount paid is made up.

14. REDUNDANCY

- (1) Application
 - (i) This clause shall apply in respect of full-time and part-time employees employed in the classifications specified by Table 1 – Wages, of Part B, Monetary Rates.
 - (ii) In respect to employers who employ more than 15 employees immediately prior to the termination of employment of employees, in terms of subclause 4 – Termination of Employment.

- (iii) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service, and the general obligation on employers shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
 - (iv) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.
- (2) Introduction of Change
- (i) Employer's duty to notify
 - (a) Where an employer has made a definite decision to introduce major changes in production, program, 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.
 - (b) **"Significant effects"** include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs

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

- (ii) Employer's duty to discuss change
 - (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (i) of this subclause (2) – Introduction of Change, of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and/or the union in relation to the changes.
 - (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in the paragraph (i) of this subclause (2) of this clause.
 - (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about 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.
- (3) Redundancy
 - (i) Discussions before terminations
 - (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to paragraph (i) of subclause (2) – Introduction of Change of this clause, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
 - (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of the said paragraph (i) of subclause (2) and shall cover, inter alia, any

reasons for the proposed terminations, measures to avoid or minimize the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

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

(4) Termination of Employment

- (i) Notice for changes in production, programme, organization or structure

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from production, programme, organization or structure in accordance with paragraph (i) of subclause (2) – Introduction of Change of this clause.

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

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

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(ii) Notice for technological change

This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with the paragraph (i) of subclause (2) – Introduction of Change, of this clause.

- (a) In order to terminate the employment of an employee, the employer shall give to the employee three months' notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purpose of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, or any Act amending or replacing either of these Acts.

(iii) Time off during the notice period

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

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

(iv) Employee leaving during the notice period

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

(v) Statement of employment

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

(vi) Notice to Centrelink

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

(vii) Department of Social Security Employment Separation Certificate

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

(viii) Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (i) of subclause (2) – Introduction of Change of this clause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee’s employment had been terminated, and the employer may, at the employer’s option, make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rates for the number of weeks of notice still owing.

(5) Severance Pay

(i) Where an employee is to be terminated pursuant to subclause (4) – Termination of Employment, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the following severance pay in respect of a continuous period of service.

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

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

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

Years of Service	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	12.5weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) **“Weeks Pay”** means the all-purpose rate for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, overaward payments, shift penalties and allowances paid in accordance with the relevant clauses of this award.

(ii) Incapacity to pay

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

The Industrial Relations Commission of New South Wales shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect of paying the amount of severance pay in subclause (i) of this clause will have on the employer.

(iii) Alternative Employment

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

(6) Savings Clause

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

15. MIXED FUNCTIONS

Any employee called upon to do work of a higher classification than that in which he is working, shall, if so employed for two hours or more be paid the rate for the higher classification for the whole day, and if so employed for less than two hours shall be paid the higher rate for the time actually worked in the higher classification.

16. TERMINATION OF EMPLOYMENT

- (i) Except in the case of misconduct the employment of an employee may be terminated by one week's notice on either side or by payment or forfeiture (as the case may be) of one week's pay in lieu of such notice; provided that for the first month of engagement employment may be terminated by either side by a moment's notice.
- (ii) Subject to the provisions of Clause 11 – Holidays and Sundays, of this award, an employee whose employment is terminated on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays, but these provisions shall not apply to an employee employed for two weeks or less.
- (iii) Any employee who has been employed for not less than one month, on leaving or being discharged shall, upon request, be entitled to a statement in writing containing the date when the employment began and the date of its termination. This statement shall be the property of the employee and shall be returned to him unnoted, by a subsequent employer within seven days of the engagement.

17. SICK LEAVE

- (i) All weekly employees shall, subject to the production of medical certificate or other evidence satisfactory to the employer, be entitled to two weeks' sick leave each calendar year on full pay.

- (ii) Sick leave shall accumulate from year to year so long as the employment continues with the employer so that any part of two weeks which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed in subclause (i) of this clause, in a subsequent year of such continued employment.

For the purpose of this clause the term year shall mean a twelve-month period commencing from the date of commencement of employment or the anniversary of such date.

- (iii) The payment for any absence on sick leave in accordance with this clause, during the first three months of employment of an employee may be withheld by the employer until the employee completes such three months of employment at which time the payment shall be made.
- (iv) Service under the Van Sales Employees (State) Award, in force from time to time, shall count as service for the purpose of this clause.

18. PERSONAL/CARER'S LEAVE

- (1) Use of Sick Leave
 - (a) An employee other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c), who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for in Clause 17 – Sick Leave for absences to provide care and support for such person's when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for a part of a single day.
 - (b) The employee shall, if required,
 - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person; or

- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

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

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

Where parties are unable to reach agreement the disputes procedure in Clause 34 should be followed.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee; or
 - (d) a same sex partner who lives with the employee as the de facto partner of

that employee on a bona fide domestic basis; or

- (e) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
 1. **“relative”** means a person related by blood, marriage or affinity;
 2. **“affinity”** means a relationship that one spouse because of marriage has to blood relatives of the other; and
 3. **“household”** means a family group living in the same domestic dwelling.

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

(2) Unpaid leave for family purposes

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill or who requires care due to an unexpected emergency.

(3) Annual Leave

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

- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause 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.
- (4) Time off in lieu of payment for overtime
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
 - (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
 - (c) If, having, elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for the time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
 - (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
 - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the

shift work rate, which would have been applicable to the hours taken off.

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

- (7) Personal Carers entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in 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.

19. BEREAVEMENT LEAVE

- (i) An employee, other than a casual employee, shall be entitled to up to three days bereavement leave without deduction of pay up to and including the day of the funeral on each occasion of the death of a person prescribed in subclause (iii) of this clause.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of Clause 18 – Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said Clause 18. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
 - (a) Subject to the evidentiary and notice requirements in 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 18 Personal/Carers Leave.
 - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. 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.

20. ANNUAL LEAVE

See Annual Holidays Act 1944.

21. ANNUAL LEAVE LOADING

- (i) In this clause the Annual Holidays Act 1944, is referred to as “the Act”.
- (ii) Before an employee is given and takes his annual holiday, or, where by agreement between the employer and the employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay his employee a loading determined in accordance with this clause.

NOTE: The obligation to pay in advance does not apply where an employee takes annual holidays wholly or partly in advance – see subclause (vii) of this clause.

- (iii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act.
- (iv) The loading is to be calculated in relation to any period of annual holiday under the Act (but excluding days added to compensate for public or special holidays falling on an employee’s rostered day off not worked) where such a holiday is given and taken in separate periods, then in relation to each such separate period.

NOTE; See subclause (vi) of this clause as to holidays taken wholly or partly in advance.

- (v) The loading is the amount payable for the period or the separate periods, as the case may be, stated in subclause (iv) of this clause at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his annual holiday, but shall not include other allowances, penalty rates,

shift allowances, overtime rates or any other payments prescribed by this award.

- (vi) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such employee continues until the day when he would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (v) of this clause applying the rates of wages payable on that day.
- (vii) Where in accordance with the Act an employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned:
 - (a) an employee who is entitled under the Act to an annual holiday and who is given and takes such a holiday shall be paid the loading calculated in accordance with subclause (v) of this clause;
 - (b) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to him under the Act, such proportion of the loading that would have been payable to him under this clause if he had become entitled to an annual holiday prior to the close-down as his qualifying period of employment in completed weeks bears to 52.
- (viii)
 - (a) When the employment of an employee is terminated for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he has become entitled he shall be paid a loading calculated in accordance with subclause (v) of this clause for the period not taken.
 - (b) Except as provided by paragraph (a) of this subclause no loading is payable on the termination of an employee's employment.

22. UNION DELEGATES

- (i) An employee appointed union delegate in the shop or department in which he is employed shall, upon notification thereof to his employer, be recognized as the accredited

representative of the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales or the Shop, Distributive and Allied Employees' Association, New South Wales. An accredited union delegate shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting employees whom he represents.

- (ii) Subject to the prior approval of the employer an accredited union delegate shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited union official of the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales or the Shop, Distributive and Allied Employees Association, New South Wales on legitimate union business.

22A. DEDUCTION OF UNION MEMBERSHIP FEES

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
 - (a) the employee has authorised the employer to make such deductions in accordance with 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).
- (ii) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.

- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to 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.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the employer a minimum of two month's notice of any such change.
- (vi) An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the 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.

23. NOTICE BOARD

An employer shall erect in a prominent position on his premises a notice board of reasonable dimensions or a number of such notice boards of reasonable dimensions in the circumstances upon which an accredited representative of a union bound by this award shall be permitted to post formal union notices signed by the Secretary or other officials of the union concerned or by the representative posting them. Any notice posted on the board not so signed may be removed by an accredited representative of the union or by the employer.

24. TRANSFER OF EMPLOYEES

- (i) When an employee is required to report for work at a place other than his usual place of work he shall be paid all fares reasonably incurred in excess of those he normally would incur attending at his usual place of work and returning home, and shall be paid all travelling time in excess of that taken to reach his usual place of work and returning home.
- (ii) Travelling time shall be paid for at ordinary rates of pay.
- (iii) The foregoing subclauses shall apply only to an employee temporarily transferred from his usual place of work. A temporary transfer shall mean periods of employment at places other than the usual place of work up to a maximum of three consecutive weeks.
- (iv) An employee transferred from working place to working place during ordinary working hours shall be paid the time spent in travelling as for time worked and shall receive reimbursement of fares incurred in such transfer.
- (v) Where the transfer involves an employee being absent from his normal place of abode he shall be reimbursed for reasonable expenses incurred for accommodation together with first-class fares to and from the place of transfer.

25. FIRST – AID KIT

- (i) An employer shall provide a first-aid outfit, which shall be under the control of the owner or manager or other appointed person.
- (ii) First-Aid Allowance

An employee who is appointed as a first-aid attendant shall be paid an additional payment as set out in Item 4 of Table 2, Part B.

26. CONDITIONS

- (i) In any warehouse where an employee wears a uniform, cap, coat, overall or other uniform dress or protective clothing, the same shall be provided by the employer and shall be laundered by the employer at the employer's expense provided that where by mutual agreement the laundering is done by the employee, or the employer having refused, neglected or failed to launder the article and the laundering is done by the employee, the employee shall be paid an amount set out in Item 5, Table 2 of Part B, except in cases where the articles are made of nylon or other similar material which does not require ironing, in which case the allowance shall also be set out in Item 6, Table 2 of Part B. Employees handling building material and the like shall be supplied with a dust coat at the employer's expense, which shall also be laundered at the employer's expense.
- (ii) Employees required to load or unload vehicles shall be provided with suitable protective clothing. Such clothing shall include adequate provision of wet weather protective clothing.
- (iii) Employees shall not be required to wash floors, sweep pavements, clean lavatories or clean the exterior windows, other than for the purposes of removing occasional defacements.

27. LOCOMOTION

When an employee agrees to use his vehicle for the employer's business, the employee shall be paid for the use of their own vehicle at the rate set out in Item 7, Table 2 of Part B.

28. REST PAUSE

Each employee shall be allowed a rest pause of ten (10) minutes either in the morning or in the afternoon, Monday to Friday inclusive, at a time indicated by the employer.

29. PROPORTION

The proportion of juniors to seniors shall not be more than one junior to one senior plus an additional junior in any one warehouse.

30. LONG SERVICE LEAVE

See Long Service Leave Act 1955

31. RIGHT OF ENTRY

See Section 298 of the Industrial Relations Act 1991 (NSW)

32. JURY SERVICE

An employee shall be allowed leave of absence during any period when required to attend for jury service. During such leave of absence, an employee shall be paid the difference between the jury service fees received and the employee's award rate of pay as if working. An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such requirement as soon as practicable after receiving notification to attend for jury service.

33. PARENTAL LEAVE

- (i) 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)*.
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

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

(iii) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (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.

(iv) Communication during parental leave

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

- (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).

34. DISPUTES PROCEDURES

- (i) Any dispute arising out of employment shall be referred by the Union Delegate to the company representative appointed for this purpose.

Failing settlement at this level between the Company and the Union Delegate shall refer the dispute within 24 hours to the Union Organizer who will take the matter up with the company.

All efforts shall be made by the Company and the Union Organizer to settle the matter but failing settlement the Union Organizer shall refer the dispute to the Union Secretary and the Company shall refer the dispute to its Employer Association. The Union Secretary shall then take the matter up with the Employer Association.

During the discussions the status quo shall remain and work shall proceed normally. "**Status quo**" shall mean the situation existing immediately prior to the dispute of the matter giving rise to the dispute.

At any time either party shall have the right to notify the dispute to the Industrial Registrar.

35. ANTI-DISCRIMINATION

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the Industrial Relations Act 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make applications 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 of obligations in addition to those imposed upon the parties by legislation referred to in this clause.

NOTES:

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

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

36. LEAVE RESERVED

Leave is reserved to the parties to apply at any time in respect of the following:

- (a) Wages
- (b) Blood Donor leave
- (c) Leave of absence to attend Trade Union training courses.

37. FLEXIBILITY OF WORK

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

Employees shall take all reasonable steps to achieve quality, accuracy and completion of any job or task assigned to the employee.

Employees shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times.

38. COMMITMENT TO TRAINING AND CAREERS

The parties acknowledge that varying degrees of training are provided to employees in the industry, both via internal, on the job and through external training providers.

The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

The parties are committed to encouraging young people to view the industry as one, which has the capacity to provide them with an interesting career as they progress not only through junior ranks but also as adults.

The parties agree to continue discussions on issues raised by the unions relating to training.

39. ENTERPRISE CONSULTATIVE MECHANISM

At each enterprise there shall be established a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

40. OCCUPATIONAL SUPERANNUATION

(i) Definitions

(a) **“The Fund”**

For the purpose of this clause shall be a fund prescribed by and pursuant to subclause (ii), Funds, herein

(b) **“Approved Fund”**

Is a fund approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Fund(s).

(c) **“Ordinary time earnings”** means the employee’s award rate of pay as prescribed in Clause 3 – Wages, herein, including any overaward and/or merit payments, casual loadings, penalty rates and/or shift loadings (but excluding overtime, commission and occasional bonus payments).

(d) **“Eligible Employee”**

means an employee, whose work is governed by the industries and callings of Clause 42 – Area, Incidence and Duration herein, with four weeks continuous service with the employer who works as a full-time employee, part-time employee or as an adult casual employee (working regularly 12 hours or more per week). In this clause employee means eligible employee.

(e) **“Eligible Employer”**

Means an employer of eligible employees within New South Wales. In this clause employer means eligible employer.

(ii) Funds

For the purpose of this clause, the fund to which payments on a site shall be made shall be one of the following funds:

- (1) Retail Employees’ Superannuation Trust Pty Ltd (REST), constituted by a Deed made on 18 September 1986.
- (2) Australian Superannuation Savings Employment Trust (ASSET), constituted by a Deed made on 14 October 1987.
- (3) An “Approved Fund” applying to an employer engaged in a mixed enterprise where more than seventy-five percent of employees are engaged in industries and callings other than those governed by Clause 39 – Area, Incidence and Duration, of this award; or
- (4) Such other “Approved Fund” as agreed by an employer on the one part and the Shop, Distributive and Allied Employees’ Association, New South Wales, and/or the Shop Assistants and Warehouse Employees’ Federation of Australia, Newcastle and Northern, New South Wales, on the other part.

(iii) Contributions

- (a) An employer shall pay to the Trustees of the Fund, in accordance with subclause (ii), Funds, hereof, an amount equal to three per cent of the employees' weekly ordinary time earnings.
- (b) Where an employee is absent, on leave without pay, whether or not such leave is approved, no contribution from the employer shall be due in respect of that employee, in respect of the period of unpaid absence.
- (c) When an employee provided for in paragraph (d) of subclause (i) – Definitions, hereof becomes an eligible employee, the employer shall pay contributions for the qualifying period.
- (d) Employees who may wish to make contributions to the Fund additional to those being paid by the employer pursuant to paragraph (a) shall be entitled to authorize the employer to pay into the fund from the employee's wages amounts specified by the employee.

Employee contributions to the Fund requested under this subclause shall be made in accordance with the rules of the fund.

(iv) Frequency of payment

Each member shall pay such contributions together with any employee deductions in accordance with the requirement of the Trust Deed of the Fund.

(v) Pre-existing Arrangements

- (a) Nothing in this clause shall affect any arrangement for the payment of 3% occupational superannuation into an approved superannuation fund to which an employer prior to 20 March 1991 was making contributions on behalf of employees' provided that such contributions were intended to be, and are, in full satisfaction of the superannuation principle adopted by the State Wage Case 1986, as varied from time to time by subsequent State Wage Case decisions. Also provided the employee is not disadvantaged by the Rules and Trust Deed of such fund/s as compared to those of the REST and ASSET funds.

- (vi) Failure of Employer to participate in a fund

Where an employer has failed to make application to participate in the approved fund, the employer shall make application to participate in such fund and upon acceptance by the Trustees shall make an initial contribution to such fund, in respect of each employee, equivalent to the contributions which would have been payable under this clause, had the employer made application to participate in such fund and had been accepted by the Trustee prior to the operation of this clause after which the employer shall then continue to make payments as prescribed by this clause.

- (vii) Failure of employee to participate in a fund

An employer shall not be liable to contribute on behalf of any employee who refuses to sign any application form as required by the Trust Deed of the approved fund. Such refusal shall be in writing, notwithstanding that the employee can at any time apply to have contributions commencing upon becoming a member of the fund. Provided further that where an employee is a member of a union such union shall be notified of the employee's refusal.

41. ENTERPRISE ARRANGEMENTS

- (a) The Industrial Relations Commission may approve of enterprise arrangements reached in accordance with this principle and the provisions of the Act.
- (b) Industrial unions of employees and industrial unions of employers, or industrial unions of employees and employers, or employees and employers may negotiate enterprise arrangements which, subject to the following provisions, shall prevail over the provision of any award or order of the Industrial Relations Commission that deals with the same matters in so far as they purport to apply to parties bound by the arrangements, provided that where the arrangement is between employees and an employer a majority of employees affected by the arrangement genuinely agree.
- (c) An enterprise arrangement shall be an agreed arrangement for an enterprise, or discrete section of an enterprise, being a business, undertaking or project, involving parties set out in paragraph (b).

- (d) Enterprise arrangements shall be for a fixed term and there shall be no further adjustments of wages or other conditions of employment during this term other than were contained in the arrangement itself. Subject to the terms of the arrangement, however, such arrangement shall continue in force until varied or rescinded in accordance with the Act.
- (e) For the purposes of seeking the approval of the Industrial Relations Commission, and in accordance with the provisions of the Act, a party shall file with the Industrial registrar an application to the Commission to either:
 - (i) vary an award in accordance with the Act; or
 - (ii) make a new award in accordance with the Act.
- (f) On a hearing for the approval of an enterprise arrangement, the Industrial relations Commission will consider in addition to the industrial merits of the case under the State Wage Case principles:
 - (i) ensuring the arrangement does not involve a reduction in ordinary time earnings and does not depart from Commission standards of hours of work, annual leave with pay or long service leave with pay; and
 - (ii) whether the proposed award or variation is consistent with the continuing implementation at enterprise level of structural efficiency considerations.
- (g) The operative date for an enterprise arrangement shall be no earlier than the date of approval by the Industrial Relations Commission, except that the Industrial Relations Commission may approve an earlier operative date to achieve consistency with the operative date of an enterprise arrangement, which has earlier been approved by the Australian Industrial Relations Commission.
- (h) Where parties to an enterprise arrangement include employees covered by a federal award, an agreement covering those employees may be submitted to the federal tribunal for approval.

- (i) The Industrial Relations Commission is available to assist the parties to negotiations for an enterprise arrangement by means of conciliation and, in accordance with these principles and the Act, by means of arbitration. If any party to such negotiations seeks arbitration of a matter relating to an enterprise arrangement such arbitration shall be as a last resort.

- (j) Enterprise arrangements entered into directly between employees and employers shall be processed as follows, subject to the Industrial Relations Commission being satisfied in a particular case that departure from these requirements is justified:
 - (i) All employees will be provided with the current prescriptions (eg. award, industrial agreement or enterprise agreement) that apply at the place of work.
 - (ii) The arrangement shall be committed to writing and signed by the employer, or the employer's duly authorized representative, with whom agreement was reached.
 - (iii) before any arrangement is signed and processed in accordance with this principle, details of such arrangement shall be forwarded in writing to the union or unions with members in that enterprise affected by the changes and the employer association, if any, of which the employer is a member.
 - (iv) A union or employer association may, within 14 days thereof, notify the employer in writing of any objection to the proposed arrangements, including the reasons for such objection and in such circumstances the parties are to confer in an effort to resolve the issue.
 - (v) Where an arrangement is objected to by a union or employer association and the objection is not resolved, an employer may make application to the Industrial relations Commission to vary an award or create a new award to give effect to the arrangement.
 - (vi) A union and/or employer association shall not unreasonably withhold consent to the arrangements agreed upon by the parties.
 - (vii) If no party objects to the arrangement, then a consent application shall be made to the Industrial Relations

Commission to have the matter approved in accordance with paragraph (e) of this principle.

- (viii) Such arrangement once approved shall be displayed on a notice board at each enterprise affected.

42. AREA, INCIDENCE AND DURATION

- (a) This award shall apply to employees in warehouses or by an employer in the premises occupied by him or in connection with the handling, reception, sale or delivery of goods by wholesale in the State, excluding the County of Yancowinna, within the jurisdiction of the Warehouse Employees (State) Conciliation Committee.
- (b) This award made following a review under section 19 of the Industrial Relations Act, 1996 and rescinds and replaces the Warehouse Employees' – General (State) Award republished 11 October, 1991 [265 IG 418], and all variations thereof. It also rescinds and replaces the Warehouse Employees' General Redundancy (State) Award, published 24 February, 1995 [284 IG 166], and all variations thereof. It further rescinds and replaces the Warehouse Employees' General Expense Related Allowances (State) Award published 25 March, 1994 [278 IG 1164], and all variations thereof.
- (c) The award published 11 October, 1991 and the variations thereof incorporated herein on the dates set out in the attached Schedule A.
- (d) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the Industrial Relations Act, 1996 and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 18 December, 1998 [308 IG 307] are set out in the attached schedule B and take effect on 21 June, 2001.
- (e) The award remains in force until varied or rescinded, the period for which it was made having already expired.

WAREHOUSE EMPLOYEES (STATE) CONCILIATION COMMITTEE

INDUSTRIES AND CALLINGS

Employees engaged in or in connection with the handling, reception, sale or delivery of goods by wholesale, who are employed in warehouses, or by any employer in the premises, including wholesale markets occupied by the employer, and also van sales employees within the State, excluding the County of Yancowinna, but excluding also employees in wholesale markets within the County of Yancowinna, the County of Northumberland, the Parish of Stockton, and the Municipality of Raymond Terrace;

excepting

- Employees in drug warehouses;
- Sorters and assemblers in wholesale grocery warehouses;
- Storemen and Packers;
- Watchpersons, caretakers, cleaners, lift attendants and porters;
- Clerks;
- Carters, grooms, stablepersons, yardpersons, and drivers of motor and other power-propelled vehicles;
- Persons engaged in handling and putting up of honey, butter, cheese and junket tablets;
- Persons within the jurisdiction of the Models and mannequins (State) Conciliation Committee;
- Persons employed in wholesale meat depots;

And excepting employees within the jurisdiction of the following Conciliation Committees:

- Fish, Wholesale Marketing (State)
- Special Steels and Steel products Manufacture (Commonwealth Steel Company Limited)
- Tubemakers of Australia Limited, Newcastle
- Watchmen and Gatekeepers (Waterfront)
- Wholesale Fruit and Vegetable Employees (State)
- Shortland County Council
- John Lysaght (Australia) Limited Newcastle
- John Lysaght (Australia) Limited Port Kembla
- John Lysaght (Australia) Limited Unanderra
- Cement Workers, etc. (State);

And excepting employees of:

- Australian Wire Industries Pty Ltd at its Newcastle Wiremill;
- Broken Hill Proprietary Company Limited at Newcastle;
- Australian Wire Industries Pty Ltd at its Sydney Wiremill;
- Australian Iron and Steel Proprietary Limited.

**APPENDIX 1 RETAIL INDUSTRY (STATE) TRAINING WAGE
AWARD**

CONTENTS

CLAUSE NO. SUBJECT MATTER

PART A

1	Title
2	Application
3	Objective
4	Definitions
5	Training Conditions
6	Employment Conditions
7	Wages
8	Grievance Procedures
9	Area, Incidence and Duration

PART B MONETARY RATES

Table 1	Industry Skill Level A
Table 2	Industry Skill Level B
Table 3	Industry Skill Level C
Table 4	School Based Traineeships
Table 5	Hourly Rates for trainees who have left school
Table 6	Hourly rates for school-based trainees

1. TITLE

This award shall be known as the Retail Industry (State) Training Wage Award.

2. APPLICATION

(a) Subject to subclause (c) of this clause this award shall apply to persons who are undertaking a traineeship (as defined) and is to be read in conjunction with the awards contained in clause 9 – Area, Incidence and Duration, or any legally registered award or any former industrial agreement of the Industrial relations Commission of New South Wales which covers the terms and conditions of employment of persons performing work covered by the listed awards in the said Clause 9.

(b) Notwithstanding (a), this award shall apply provisionally for an interim period:

(i) Starting upon the commencement date as recorded on a valid “Application to establish a Traineeship” signed by both the employer and the trainee, which has been lodged with the Relevant NSW Training Authority; and

(ii) Ending upon the expiry of one calendar month period immediately following the employer’s receipt of the Indenture Papers from the Relevant NSW Training Authority.

In any case, the duration for which this award may provisionally apply shall be no longer than two calendar months, or such longer period as may be required to accommodate a delay in processing the “Application to establish a Traineeship” which is beyond the control of the employer.

(c) The terms and conditions of the awards in Clause 10 or any former industrial agreement of the Industrial Relations Commission of New South Wales shall apply, except where inconsistent with this award.

- (d) Notwithstanding the foregoing, this award shall not apply to employees who were employed by an employer under an award referred to in subclause (a) of this clause prior to the date of approval of a traineeship relevant to the employer, except where agreed upon between the employer and the relevant union(s).
- (e) This award does not apply to the apprenticeship system or any training program, which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April 1998 or in an award that binds the employer.
- (f) At the conclusion of the traineeship, this Award shall cease to apply to the employment of the trainee and the Parent Award shall apply to the former trainee.

3. OBJECTIVE

The objective of this award is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people, and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees. Nothing in this award shall be taken to replace the prescription of training requirements in the Parent Award.

4. DEFINITIONS

“Structured Training” means training, which is specified in the Training Plan, which is part of the Training Agreement registered with the relevant NSW Training Authority. It includes training undertaken both on and off – the – job in a traineeship scheme and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority and leads to a qualification set out in Clause 5(f).

“Parent Award” means an award that applies to a Trainee, or that would have applied, but for the operation of this award.

“Relevant Union” means a union party to the making of the Parent Award and which is entitled to enrol the Trainee as a member.

“Trainee” is an individual who is a signatory to a training agreement registered with the Relevant NSW Training Authority and is involved in paid work and structured training, which may be on or off the job. A trainee can be full-time, part-time or school based.

“Traineeship” means a system of training, which has been approved by the Relevant NSW Training Authority, and includes full time traineeships and part time traineeships including school-based traineeships.

“Training Agreement” means an instrument which establishes a Traineeship under the Industrial and Commercial Training Act 1989. (Note: Under the Industrial and Commercial Training Act a training agreement is also referred to as an indenture).

“Training Plan” means a programme of training which forms part of a Training Agreement registered with the Relevant NSW Training Authority.

“School-Based Trainee” is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a traineeship which forms a recognized component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority and the NSW Board of Studies as such.

“Relevant NSW Training Authority” means the Department of education and Training, or successor organization.

“Year 10” for the purposes of this award and any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

5. TRAINING CONDITIONS

- (a) The Trainee shall attend an approved training course or training programme prescribed in the Training Agreement or as notified to the trainee by the Relevant NSW Training Authority in an accredited and relevant traineeship.
- (b) A Traineeship shall not commence until the relevant Training Agreement, has been signed by the employer and the trainee and lodged for registration with the Relevant NSW Training Authority.
- (c) The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Training Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

- (d) The employer shall provide a level of supervision in accordance with the Training Agreement during the traineeship period.
- (e) The employer agrees that the overall training program will be monitored by officers of the Relevant NSW Training Authority and that training records or work books may be utilized as part of this monitoring process.
- (f) Training shall be directed at:
 - (i) the achievement of key competencies required for successful participation in the workplace (eg. literacy, numeracy, problem solving, team work, using technology) and an Australian Qualification Framework Certificate Level 1.
 - (ii) the achievement of key competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies) as are proposed to be included in an Australian Qualification Framework Certificate Level 11 or above.

6. EMPLOYMENT CONDITIONS

- (a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration or a part-time trainee for a period no greater than the equivalent of one year full-time employment.

For example, a part-time trainee working 2.5 days per week (including the time spent in approved training) works (and trains) half the hours of a full-time trainee and therefore their traineeship could extend for a maximum of two years.

In any event, unless the Relevant NSW Training Authority directs, the maximum duration for a traineeship shall be thirty six months.

By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship.

- (b) A trainee shall be subject to a satisfactory probation period of up to one month, which may be reduced at the discretion of the employer.

- (c) Where the trainee completes the qualification in the Training Agreement, earlier than the time specified in the Training Agreement then the traineeship may be concluded by mutual agreement.
- (d) A traineeship shall not be terminated before its conclusion, except in accordance with the Industrial and Commercial Training Act 1989, or by mutual agreement.

An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship shall notify, in writing, the Relevant NSW Training Authority of their decision.

- (e) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the approved training in accordance with the Training Agreement.
- (f) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any Parent Award or any other legislative entitlements.
- (g)
 - (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.
 - (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of the Parent Award.
 - (iii) No Trainee shall work shiftwork unless the relevant parties to this Award agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non shiftwork Trainees.
 - (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Parent Award.
- (h) All other terms and conditions of the Parent Award(s) that are applicable to the Trainee or would be applicable to the Trainee but for this Award shall apply unless specifically varied by this Award.

- (i) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payment.
- (j) A part time trainee shall receive, on a pro rata basis, all employment conditions applicable to a full time trainee. All the provisions of this award shall apply to part time trainees except as specified in this clause.
- (k) A part time trainee may, by agreement, transfer from a part time to a full time traineeship position should one become available.
- (l) The minimum daily engagement periods applying to part-time employees specified in the Parent Awards shall also be applicable to part time trainees.

Where there is no provision for a minimum daily engagement period in the Parent Award(s) or other industrial instrument(s), applying to part-time employees, then the minimum start per occasion shall be 3 continuous hours, except in cases where it is agreed that there shall be a start of 2 continuous hours, on 2 or more days per week, provided that:

- (i) a 2 hour start is sought by the employee to accommodate the employee's personal circumstances, or
 - (ii) the place of work is within a distance of 5km from the employee's place of residence.
- (m) School-based trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final year Higher School Certificate Examination period and ending upon the completion of the individual's last HSC examination paper.
 - (n) For the purposes of this award, a school-based trainee shall become an ordinary trainee as at January 1 of the year following the year in which they ceased to be a school student.

7. WAGES

Wages – Full -Trainees

- (a) The weekly wages payable to full time trainees shall be as follows:

Industry Skill Level A	Table 1
Industry Skill Level B	Table 2
Industry Skill Level C	Table 3
School-Based Trainees	Table 4

- (b) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship, which includes approved training as defined in this award.
- (c) The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.
- (d) The rates of pay in this award include the adjustments payable under the State Wage Case of May 2000. These adjustments may be offset against:
 - (i) any equivalent overaward payments, and/or
 - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
- (e) Appendix A sets out the skill level of a traineeship. The industry/skill levels contained in Appendix A are, illustrative of the appropriate levels but are not determinative of the actual skill levels (i.e. skill levels A, B or C) that may be contained in a traineeship scheme. The determination of the appropriate skill level for the purpose of determining the appropriate wage shall be based on the following criteria:
 - (i) Any agreement of the parties or submission by the parties
 - (ii) The nature of the industry
 - (iii) The total training plan
 - (iv) recognition that training can be undertaken in stages
 - (v) The exit skill level in the Parent Award contemplated by the traineeship

In the event that the parties disagree with such determination, it shall be open to any party to the award to seek to have the matters in dispute determined by the Industrial relations Commission of New South Wales.

- (f) For the purposes of this provision. “out of school” shall refer only to periods out of school beyond Year 10, and shall be deemed to:
 - (i) include any period of schooling beyond Year 10, which was not part of nor contributed to a completed year of schooling;
 - (ii) include any period during which a Trainee repeats in whole or part a year of schooling beyond Year 10;
 - (iii) not include any period during a calendar year in which a year of schooling is completed; and
 - (iv) have effect on an anniversary date being January 1 in each year.

Wages for Part-time and School-Based Trainees

- (a) This clause shall apply to trainees who undertake a traineeship on a part-time basis by working less than full time ordinary hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.
- (b) Table 5 – Hourly Rates for Trainees Who Have left School and Table 6 – Hourly Rates for School-Based Traineeships of Part b, Monetary Rates are the hourly rates of pay where training is either fully off-the-job or where 20% of time is spent in approved training. These rates are derived from a 38 hour week.
- (c) The hours for which payment shall be made are determined as follows:
 - (i) Where the approved training for a traineeship (including a school based traineeship) is provided off-the-job by a registered training organization, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part time trainee on-the-job.
 - (ii) Where the approved training is undertaken on-the-job or in a combination of on-the-job and off-the-job, and the average proportion of time to be spent in approved training is 20% (i.e. the same as for the equivalent full time traineeship):
 - (1) if the training is solely on-the-job, then the total hours on-the-job shall be multiplied by

the applicable hourly rate, and then 20 per cent shall be deducted.

- (2) if the training is partly on-the-job and partly off-the-job, then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

NOTE: 20 per cent is the average proportion of time spent in approved training, which has been taken into account in setting the wage rates for most full time traineeships.

- (iii) Where the normal full time weekly hours are not 38 the appropriate hourly rate may be obtained by multiplying the rate in the table by 38 and then dividing by the normal full time hours.
- (d) For traineeships not covered by Clause 8(b) above, the following formula for the calculation of wage rates shall apply:

The wage rate shall be pro-rata the full time rates based on variation in the amount of training and/or the amount of work over the period of the traineeship, which may also be varied on the basis of the following formula:

$$\text{Wage} = \text{Full time wage rate} \times \frac{\text{Trainees hours} - \text{average weekly training time}}{30.4}$$

NOTE: 30.4 in the above formula represents 38 ordinary full time hours less the average training time for full time trainees (i.e. 20%) a pro rata adjustment will need to be made in the case where the Parent Award specifies different ordinary full time hours: for example where ordinary weekly hours are 40, 30.4 will be replaced by 32.

- (i) **“Full time wage rate”** means the appropriate rate as set out in Table 1 – Industry/Skill Level A, Table 2 – Industry Skill level B, Table 3 – Industry/Skill level C and Table 4 – School-based Traineeships of Part B, Monetary Rates.
- (ii) **“Trainee hours”** shall be the hours worked per week including the time spent in approved training. For the purposes of this definition, the time spent in approved vocational training

may taken as an average for that particular year of the traineeship.

- (iii) **“Average weekly training time”** is based upon the length of the traineeship specified in the traineeship agreement or training agreement as follows:

$$\text{Average Weekly Training Time} = \frac{7.6 \times 12}{\text{Length of the traineeship in months}}$$

NOTE 1:

7.6 in the above formula represents the average weekly training time for a full time trainee whose ordinary hours are 38 per week a pro rata adjustment will need to be made in the case where the Parent Award specifies different ordinary time hours for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

NOTE 2:

The parties note that the traineeship agreement will require a trainee to be employed for sufficient hours to complete all requirements of the traineeship, including the on the job work experience and demonstration of competencies the parties also note that this would result in the equivalent of a full day's on the job work per week.

Example of the calculation for the wage rate for a part time traineeship

A school student commences a traineeship in year 11 the ordinary hours of work in the Parent Award are 38. The training agreement specifies two years (24 months) as the length of the traineeship.

“Average weekly training time” is therefore $7.6 \times 12/24 = 3.8$ hours

“Trainee hours” totals 15 hours; these are made up of 11 hours work which is worked over two days of the week plus 1.5 hours on the job training plus 2.5 hours off the job approved training at school and at TAFE.

So the wage rate in year 11 is:

$\$181 \times \frac{15 - 3.8}{30.4} = \66.68 plus any applicable penalty rates under the Parent Award

The wage rate varies when the student completes year 11 and passes the anniversary date of 1 January the following year to begin year 12 and/or if “trainee hours” changes.

8. GRIEVANCE PROCEDURES

- (a) Procedures relating to grievances of individual trainees
 - (i) A trainee shall notify the employer as to the substance of any grievance and request a meeting with the employer for bilateral discussions in order to settle the grievance.
 - (ii) If no remedy to the trainee’s grievance is found, then the trainee shall seek further discussions and attempt to resolve the grievance at a higher level of authority.
 - (iii) Reasonable time limits must be allowed for discussions at each level of authority.
 - (iv) At the conclusion of the discussions, the employer must provide a response to the trainee’s grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy. At this stage an employer or a trainee may involve an industrial organization of employers or employees of which he/she is a member.
 - (v) If no resolution of the trainee’s grievance can be found, then:
 - (i) if the dispute relates to issues of training then the matter may be referred to the NSW Commissioner for Vocational Training in accordance with the Industrial and Commercial Training Act 1989; or
 - (ii) if the dispute relates to industrial issues then the matter may be referred to the Industrial Relations Commission of New South Wales by either the employer, an industrial organization of employers or a union representing the trainee.

- (vi) While this grievance procedure is being followed, normal work shall continue.
- (b) Procedure relating to disputes, etc between employers and their trainees
 - (i) A question, dispute or difficulty must initially be dealt with at the workplace level where the problem has arisen. If the problem cannot be resolved at this level, the matter shall be referred to a higher level of authority.
 - (ii) If no resolution can be found to the question, dispute or difficulty, the matter may be referred to the Industrial relations Commission by any party to the dispute or the industrial organization representing any of the parties to the dispute.
 - (iii) Reasonable time limits must be allowed for discussion at each level of authority.
 - (iv) While a procedure is being followed, normal work must continue.
 - (v) The employer may be represented by an industrial organization of employers and the trainees may be represented by an industrial organization of employees for the purpose of each procedure.

9. AREA, INCIDENCE AND DURATION

This award shall apply to all classes of trainees who would ordinarily be covered by the following awards:

- (i) Shop Employees (State) Award published 2 June 1995 [286 IG 28], as varied;
- (ii) Clerical Employees in Retail (State) Award published 5 April 2000 [317 IG 778];
- (iii) Retail Services Employees (State) Award published 30 June 1995 [286 IG 460], as varied;
- (iv) Restaurant & c., Employees' Retail Shops (State) Award published 6 October 1982 and reprinted 11 October 1991 [265 IG 353];
- (v) Bootmakers & Heel Bar Operatives, & c., (State) Award published 17 February 1995 [283 IG 1290], as varied;

- (vi) Transport Industry – Retail (State) Award published 22 February 1978 and reprinted 4 January 1984 [232 IG 72];
- (vii) Pharmacy (State) Award, published 23 April 1993 [274 IG 781];

excluding the County of Yancowinna.

This award rescinds and replaces the Retail Industry (State) Training Wage Award published 3 March 1995 [284 IG 429], as varied.

This award shall take effect from the beginning of the first pay period to commence on or after 22 March 1996 and shall have a nominal term of twelve (12) months.