



RESTAURANT EMPLOYEES (STATE) AWARD

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1. CONTENTS

| SECTION | TITLE |
|----------------|--|
| 1. | Contents |
| 2. | Definitions |
| 3. | Classification Structure |
| 4. | Terms of Employment |
| 5. | Hours |
| 6. | Make Up Time |
| 7. | Meal Break/Rest Pause |
| 8. | Casual Employees |
| 9. | Wages |
| 10. | Mixed Functions |
| 11. | Overtime and Penalty Rates |
| 12. | Public Holidays |
| 13. | Juniors |
| 14. | Apprentices |
| 15. | Payment of Wages |
| 16. | Working Together |
| 17. | Annual Leave |
| 18. | Parental Leave |
| 19. | Sick Leave |
| 20. | Personal/Carers' Leave |
| 21. | Bereavement Leave |
| 22. | Work Clothes and Safety Equipment |
| 23. | Laundry Allowance |
| 24. | Jury Service |
| 25. | Blood Donors |
| 26. | Redundancy |
| 27. | Supported Wage |
| 28. | Traineeships |
| 29. | Grievance Handling and Dispute Procedure |

| SECTION | TITLE |
|----------------|--|
| 30. | Exhibition of Award in Workplace |
| 31. | Employee Representative and Union Business |
| 32. | Anti Discrimination |
| 33. | Area, Incidence and Duration |

2. DEFINITIONS

- 2.1 **"Casual Employee"** means an employee who is engaged as such and paid as such.
- 2.2 **"Establishment"** includes more than one restaurant if they are operated by the same employer and are located in the same structure or place.
- 2.3 **"Employee"** means an employee whose conditions of employment are regulated by this award.
- 2.4 **"Full time employee"** means a permanent employee who is engaged to work an average of 38 ordinary hours in accordance with this award.
- 2.5 **"Part time employee"** means a permanent employee who is engaged to work not less than 9 or 15 hours per week (as set out in clause 5.7), nor more than 32 ordinary hours per week.
- 2.6 **"Restaurant"** means any building, stand, stall, tent, vehicle or boat or any other structure or place on or from which food is sold or served principally for consumption at that structure or place or adjacent to it.
- 2.7 School based apprentice is an employee who is undertaking an apprenticeship under a training contract while also studying for the Higher School Certificate. The school based apprenticeship may commence upon the completion of Year 10 School certificate exams. Such school based apprenticeships undertaken at a minimum Certificate III Australian Qualifications Framework (AQF) qualification level as specified in the relevant Vocational Training Order pursuant to the *Apprenticeship and Traineeship Act 2001*.

3. CLASSIFICATION STRUCTURE

- 3.1 The following classification structure shall apply:
- 3.1.1 GRADE 1 is an employee who is:
- 3.1.1.1 undertaking up to three months on the job training so as to enable the employee to be employed as a Grade 2 employee; or
- 3.1.1.2 providing general assistance to employees of a higher grade, not including cooking or direct

service to customers, and is primarily engaged in one or more of the following:

- Cleaning, tidying and setting up of kitchen, food preparation and customer services areas, including the cleaning of equipment, crockery and general utensils;
- Assembly and preparation of ingredients for cooking;
- Handling pantry items and linen;
- Setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses.
- General cleaning, gardening and labouring tasks.

3.1.2 GRADE 2 is an employee who is primarily engaged in one or more of the following:

- Heating pre prepared meals and/or preparing simple food items, such as sandwiches, salads and toasted foodstuffs
- Undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, clearing tables, taking customer orders at a table;
- Taking orders by telephone or whilst stationed at a fixed ordered point, serving food and/or beverages to tables;
- Service from a snack bar, buffet or meal counter;
- Receipt of monies, giving change, operation of cash registers, and use of electronic swipe input devices.
- Greeting and seating guests under general supervision.
- Supplying, dispensing or mixing of liquor, including cleaning of bar areas and equipment, preparing the bar for service, taking orders and serving drinks and assisting in the cellar.
- Receiving, storing and distributing goods not involving the extensive use of documents and records.
- Attending a cloakroom.

- Laundry and specialised cleaning duties involving the use of specialised cleaning equipment and/or chemicals.
- Allocated building, maintenance and/or gardening duties.

3.1.3 GRADE 3 is an employee who is primarily engaged in one or more of the following:

- Preparing and cooking a limited range of basic food items such as breakfasts, grills and snacks.
- Waiting duties of food and/or beverages, including providing assistance in choosing the meal and wines by providing detailed information when required of each item listed on menus, advising customers on the appropriate choices of wine and providing information on wine types and all items on the wine list, taking customer orders, serving food and/or beverages, supervises or undertakes the clearing of tables after and during meals, receipt of monies, taking reservations, greeting and seating guests.
- Preparing and serving a range of drinks, including blended and other cocktails.
- Receiving, storing and distributing goods not involving the control of the store or cellar.
- Security work requiring the holding of an appropriate licence.
- Assisting in the instruction on a one to one basis of employees of a lower grade.

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

- Undertaking general cooking duties, including a la carte cookery, baking, pastry cooking or butchery.
- Full control of a cellar and/or store, including stock control and ordering.
- Designing, preparing and serving a range of sophisticated cocktails and other drinks, or duties performed by a head bar person.

- Performing specialist-waiting duties in a fine dining or otherwise complex restaurant environment, such as those performed by a headwaiter.
- Performing specialist wine waiting and ordering duties.
- Providing basic supervision and instruction to employees of a lower grade.

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

- Undertaking cooking, baking, pastry cooking or butchering duties.
- Undertaking general and specialised waiting duties in a restaurant.
- Other trade work appropriate to an employee's trade.

The employer may require the employee to provide proof of any previous service or a trade certificate at the time of commencing employment.

Where it is established that the employee failed to disclose that information when required to do so such service or qualification shall not be taken into account when assessing any later claim on the employer.

3.1.6 GRADE 6 is an employee who is engaged in supervising, training and co coordinating staff and who is responsible for the maintenance of service and operational standards.

Duties may include preparation of operational reports, development of stock control and security procedures, menu planning, staff rostering and staff recruitment and induction, but an employee at this grade shall not have the right to engage or terminate the services of employees.

3.1.7 GRADE 7 is an employee who has completed an apprenticeship or has passed the appropriate trade test in cookery, butchery, baking or pastry cooking and has completed appropriate additional training and who is engaged in supervising other trade qualified cooks.

- 3.2 In the event of uncertainty or any dispute arising over classifying employee(s) within the classification structure, the parties shall refer to the training guidelines issued by Tourism Training NSW. These guidelines indicate the relevant training modules, and in more detail, the required competencies that relate to each grade.
- 3.3 If an employee has been assessed as having achieved the competency level by either:
- completing a course recognised by the Australian Hospitality Review Panel; or
 - ACCESS skills assessment scheme
 - and is performing the duties/functions referred to within the appropriate grade then the employee shall be paid at that grade.
- 3.4 The above grades cover all employees working in a restaurant, but not managerial staff whose principal functions are not described in the grade descriptions. Where an employee's duties are not mentioned within these classifications, the employee shall be classified in a grade, which, by reference to the grading descriptors, most closely reflects the skills and responsibilities of the job.

4. TERMS OF EMPLOYMENT

- 4.1 Employees shall be engaged on a full time, part time or casual basis. The basis of the engagement will not be changed without giving the employee 28 day's notice of the change.
- 4.2 Upon engagement an employee shall be informed by the employer of.
- 4.2.1 Whether the employee is to be engaged on a full time, part time or casual basis.
- 4.2.2 The employee's classification, job description and the duties to be performed.
- 4.2.3 The working times including when meal breaks and rest breaks will be taken.
- 4.2.4 Who will supervise the employee.
- 4.2.5 The training the employee will receive.
- 4.2.6 The career path the employee can expect.

4.2.7 Whether the employee starts work on probation (not applicable to apprentices or trainees).

4.3 Probationary Employment:

4.3.1 Employees engaged as full time or part time employees without any previous service with the employer may be employed on probation for the first 14 days of employment, during which period the employment may be terminated with one day's notice.

4.3.2 The work of employees on probation will be assessed by the employer, and, the employee will be told no later than 14 days after the employee has started whether the employee will continue in employment after the probation period.

4.4 Leaving Employment.

4.4.1 An employer may terminate the employment of a full time or part time employee by giving the amount of notice set out below for the employee's period of continuous employment or by paying the employee the monies the employee would otherwise have earned during this period:

| | |
|-------------------------------|---------|
| less than 1 year | 1 week |
| 1 year and less than 3 years | 2 weeks |
| 3 years and less than 5 years | 3 weeks |
| 5 years and over | 4 weeks |

4.4.2 An employer will not terminate an employee's employment unless the employee has been employed with the employer for less than one month or the employer has told the employee that the employer is unhappy with the employee's employment and the employee has not improved after being given a chance to do so.

4.4.3 Nothing in this clause shall affect the right of the employer to dismiss an employee without notice or without paying any monies instead of notice if the employee has acted dishonestly in employment, the employee has unreasonably failed to carry out a direction properly given to them by a person in charge, or the employee has otherwise behaved so badly as to justify being dismissed without notice.

4.4.4 A full time or part time employee when leaving employment must give the employer at least one week's notice or the employer may deduct from wages owing any part of the notice period not worked. An employer shall not terminate an employee's employment only because the employee has given notice.

- 4.4.5 On termination of employment for any reason the employer will give a full or part time employee a certificate of service stating how long the employee had worked for the employer and what job the employee did.
- 4.5 Employees shall perform such work as the employer shall, from time to time, reasonably require (including working reasonable overtime) provided the employee is competent to do the work or, if not, the employer is prepared to train the employee to do the work.
- 4.6 Where an employee is detained at work after the normal finishing time and it is then too late to travel by the employee's usual transport to go home, the employer shall either arrange transport or repay the employee's taxi fare.
- 4.7 Employees shall not to be asked to pay any cash shortages unless the employee deliberately failed to charge the customer the full amount or deliberately failed to collect the amount payable.

5. HOURS

- 5.1 Full time employees will work not more than an average of 38 ordinary hours per week in accordance with this award. These ordinary hours may not be averaged over more than a 4-week period (except if the employee is a seasonal employee).
- 5.2 Full time and part time employees will work not more than 5 days per week or, by agreement between the employer and the employee, not more than 20 days in a 4 week period.
- 5.3 Rosters:
 - 5.3.1 The employer shall display a roster in a place accessible to all employees. The roster shall set out the starting, finishing and meal times for full time and part time employees for each week. The roster shall be posted at least seven days before its commencement.
 - 5.3.2 Subject to other clauses of this award, employees must work at such times and on such days as the employer needs them. An employer cannot change the roster of a full time or part time employee without giving the employee 7 days notice except in an emergency beyond the employer's control. The employer will discuss any change with the employee and try to take into account the employee's family and personal needs.

- 5.4 The ordinary daily working hours of full time and part time employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, an employee, other than an employee under 18 years old, may work up to 12 ordinary hours including the time taken for a paid meal break, without the payment of a penalty under clause 11.1.
- 5.5 Full time and part time employees will be given 10 clear hours off between finishing work on one shift and starting work on the next shift or paid double the employees ordinary rate of pay for all time worked until the employee has had ten clear hours off.
- 5.6 If a full time or part time employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.
- 5.7 A part time employee's ordinary hours shall be:
- 5.7.1 where there are less than 15 full time and part time employees employed at the establishment, not less than 9 hours per week and not more than 128 hours per four-week period.
- 5.7.2 where there are 15 or more full time and part time employees employed at the establishment, not less than 15 hours per week and not more than 128 hours per four week period.
- 5.8 If a part time employee is not given at least 7 days notice of a change of rostered hours the employee will be paid an extra 10% for the whole of the period of any affected shift(s) (and any overtime or other penalty payments will be calculated on this extra 10%) except where the change of roster has been requested by the employee.
- 5.9 Subject to clause 11, Overtime and Penalty Payments, if a part time employee is asked to work extra hours beyond the employee's rostered hours, the employer will pay the employee for the employees work during that time at the rate that would be paid to a casual employee. In addition to all other payments, the rate shall include payment required by the Annual Holidays Act on termination of employment. Hours worked under the provisions of this subclause shall not otherwise be taken into account in determining a person's entitlement to annual leave payments whether on termination of employment or otherwise.

5.10 Seasonal Workers:

5.10.1 If the amount of the employer's business changes substantially during the year because of seasonal factors, the employee and the employer can agree to treat a full time or part time the employee as a seasonal employee. if so, the employer will pay the employee by equal weekly or fortnightly pays notwithstanding the number of hours the employee works in any one day provided that averaged over any period of 52 weeks the employer will not have paid the employee less than the monies the employee would be entitled to receive throughout that period under this award.

5.10.2 If an employee is terminated by the employer, except in circumstances allowing the employer to dismiss them without notice or by the employee for pressing social or domestic or personal reasons the employer will pay the employee any higher amount which would have been earned if the employee had not become a seasonal worker under this clause, calculated from the last anniversary of the date the employee commenced working for the employer as a full time or part time employee.

5.11 Where an employee works a broken shift the employer will pay the employee for not less than 8 hours worked on any one shift. The shift will be spread over not more than 2 periods within a span of not more than 14 hours inclusive of meal breaks. For each broken shift worked, an employee shall be paid an allowance of one half of the hourly ordinary rate of pay payable from time to time to employees at the level 2-work classification.

6. MAKE UP TIME

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

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

7. MEAL BEAK/REST PAUSE

- 7.1 An employee will be given a meal break of between 30 minutes and 1 hour after working not more than 5 hours. The first meal break taken on any shift shall be unpaid. The second meal break will be a paid break, and the employee will be paid a meal allowance for the second break the amount of which is set out in Item 1 of Table 2 of Part B or given a meal. If because (and only because) the work the employee is doing means that the employee cannot take a meal break by the end of 5 hours, the employer can ask the employee to work up to a further hour before the employee takes the break, and that break will become a paid break.
- 7.2 In addition to the employee's meal break(s), an employee win be given a paid rest pause of ten minutes once during each work period of 5 hours.

8. CASUAL EMPLOYEES

- 8.1 Casual employees will not be entitled to annual leave loading or compassionate or bereavement leave or to payment for jury service or as a blood donor and clauses 5, 6, 18, 19, 20, 21, 25, 26, 27 and 29 do not apply to them.
- 8.2 The ordinary daily working hours of casual employees will not be more than 10 hours in any one shift not including the time taken for meal breaks. By agreement between the employer and the employee, hours per shift may be not more than 12 including the time taken for meal breaks (employees under 18 years old will not be required to work more than 10 hours in any one shift), without the payment of a penalty under clause 11. 1.
- 8.3 If a casual employee works less than 3 hours on a shift the employee will be paid for no less than 3 hours worked.
- 8.4 Casual employees will not be entitled to any public holiday penalty unless the employee work on a public holiday.

9. WAGES

9.1 Full Time Employees:

9.1.1 Adult full time employees shall be paid the appropriate minimum weekly wage rate for the employee's grade as set out in Table 1 of Part B of this award.

9.1.2 Wage rates will be calculated to the nearest 10 cents.

9.2 Part Time Employees:

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

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

9.3 Casual Employees:

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

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

9.4 Rate of Pay for school based apprentice

9.4.1 The hourly rates for full time apprentices as set out in this award, shall apply to school based apprentices for total hours worked including time deemed to be spent off-the-job.

9.4.2 For the purposes of subclause 9.4.1 of this clause, where a school based apprentice is a full time school student, the time spent in off-the-job training for which the school based apprentice is paid is deemed to be 25% of the actual hours worked on-the-job each week. The wages paid for training time may be averaged over the school term or year.

9.4.3 Where this award specifies a weekly rate for full time apprentices the hours shall be calculated by dividing the applicable weekly rate by 38.

10. MIXED FUNCTIONS

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

11. OVERTIME AND PENALTY RATES

11.1 If the employer requires an employee to work:

11.1.1 overtime being for full time employees more than 38 hours per week or the employer may average these hours over up to a 4-week period (except if the employee is a seasonal employee).

11.1.2 overtime being for part time employees more than 128 hours in a 4-week period (except if the employee is a seasonal employee).

11.1.3 overtime being more than the ordinary daily working hours set out in 5.4.

11.1.4 on a Saturday (except if the employee works a regular night shift referred to in clause 11.2)

11.1.5 on a Sunday

11.1.6 on a public holiday the employer will pay the employee extra wages (called a penalty) being:

- in the case of 11. 1. 1 and 11. 1. 2 time and one half of the ordinary rate of pay for the first 2 hours worked and after that double time,
- in the case of 11.1.3 double the ordinary rate of pay for an overtime worked,
- in the case of Saturday work time and a quarter of the ordinary rate of pay for all time worked,
- in the case of Sunday work time and a half of the ordinary rate of pay for all time worked, and
- in the case of public holidays work two and a half times the ordinary rate of pay for all time worked.

11.2 Where an employee works ordinary hours between midnight and 6.00am. they are to be paid an extra 30% penalty for all time worked during these hours. Notwithstanding the foregoing, if the employee works more than half of a regular shift on any day between midnight and 6.00am, the employer will pay the employee for all time worked on that shift an extra 30% penalty and clauses 11.1.3 and 11.1.4 will not apply to the employee. The above penalties are not payable for work on Sundays and public holidays, or for overtime worked under clause 11. 1.

11.3 Time off in lieu of payment for overtime:

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

12. PUBLIC HOLIDAYS

12.1 12.1.1 Public holidays are New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day and the days on which Australia Day, Anzac Day, Queen's Birthday and Labour Day are observed as public holidays.

12.1.2 Where a substitute day is proclaimed or gazetted to replace any of the above days, the substituted day shall be the public holiday in lieu of the original day.

12.2 If an employee works on a public holiday, the employee shall be paid at the rate of double time and one half for all time worked.

12.3 If an employee, other than a casual employee, does not work and would normally be rostered to work on a public holiday, the employee will be paid the employees normal ordinary wages for that week.

12.4 If an employee, other than a casual employee, is not normally rostered to work regularly on the same days each week and the employee is not rostered to work on a public holiday, the employer will either pay the employee an additional day's wages, or add a day to the employees annual holiday's leave, or give the employee another day off on ordinary pay within 28 days after or within one week before hat public holiday.

12.5 An employer may not change an employee's normal rosters to avoid paying the employee for a public holiday.

- 12.6 If an employee, other than a casual employee, is absent from work on the working day before or the working day after a public holiday without reasonable excuse, the employee shall not be entitled to payment for such a holiday.
- 12.7 An employee, other than a casual employee, will be given an additional day as a public holiday. The employee will become entitled to this on the anniversary of each continuous year of employment with an employer. That day can be taken on a day, which is convenient to the employee and employer as a public holiday and is instead of a union picnic day.

13. JUNIORS

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

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

14. APPRENTICES

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

| Four year apprentice cooks | % of Grade 5 |
|---|---------------------|
| 1st year (or equivalent training stage) | 46 |
| 2nd year (or equivalent training stage) | 54 |
| 3rd year (or equivalent training stage) | 67 |
| 4th year (or equivalent training stage) | 80 |

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

14.2 Tool Allowance

An apprentice in cooking who provides the employees own tools shall be paid an allowance set out in Item 2 of Table 2 of Part B.

14.3 Progression through Wage Structure

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

14.3.2 The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected for a school based apprentice undertaking the applicable apprenticeship.

14.4 Conversion from a school based to a full time apprenticeship

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

14.5 Conditions of Employment

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

14.6 Disputes and Disciplinary Matters

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

15. PAYMENT OF WAGES

15.1 All wages will be paid weekly or fortnightly by cheque or electronic funds transfer into up to two accounts nominated by the employee from time to time or by cash as the employer may choose.

15.2 Casual employees will be paid at the end of each continuous pay period that they work (but no longer than weekly) either by cash or as the employer may choose.

- 15.3 Wages will be paid within 2 business days of the end of each pay period.
- 15.4 All wages will be calculated in 10-minute intervals for time worked of less than an hour.

16. WORKING TOGETHER

16.1 The parties to this award recognise the need for employers and employees to work closely to make the employers organization a better place to work and to make business better. Employers shall consult with employees either individually, within working groups, or altogether.

16.2 Individually:

Employers shall meet with employees from time to time and at least twice a year to discuss matters such as the employees' progress, job performance, problems, training programme and career prospects.

16.3 As work groups:

Employers and employees shall hold meetings from time to time and at least twice a year to discuss how the business is doing, what changes can be made to increase business and work efficiency, any concerns either party has about work or work related matters and any proposed changes that may lead to employees being made redundant.

16.4 An employer shall not harm an employee in employment because an employee has expressed an opinion.

17. ANNUAL LEAVE

(see the Annual Holidays Act)

17.1 After an employee has worked for the employees employer for 12 consecutive months the employer will pay the employee a loading of 17 1/2 percent on the employees annual holiday pay each time the employee take holidays or on termination of employment.

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

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

18. PARENTAL LEAVE

An employee, other than a casual employee, is entitled to unpaid maternity leave, paternity leave or adoption leave under the Industrial Relations Act 1996.

19. SICK LEAVE

- 19.1 An employee, other than a casual employee, who has worked for the employer for more than one month shall be entitled to up to 38 hours off in the first year of employment and 60.8 hours off in each of the second and subsequent years of employment without loss of pay if the employee is unable to attend work because the employee is ill or has been injured.
- 19.2 An employee employed by the employer on 15 February, 1993 and who is still employed by that employer may have rights to cash in some or all of any sick leave entitlement accumulated to that date when the employee's employment terminates, in accordance with the Industrial Relations Act 1996.
- 19.3 An employee must give the employer as much notice as possible if the employee is to take sick leave, and give the employer any reasonable proof that the employer may ask.
- 19.4 Sick Leave accumulates from year to year for three years, that is, sick leave not taken in each year of service will be available to the employee for a period of three years from the end of each such year.

20. PERSONAL/CARER'S LEAVE

20.1 Use of Sick Leave

- 20.1.1 An employee, other than a casual, with responsibilities in relation to a class of person set out in clause 20.1.3.2 who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 19 of the award, for absences to provide care and support, for

such persons when they are ill. Such leave may be taken for part of a single day.

20.1.2 The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. 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.

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

20.1.3.1 the employee being responsible for the care and support of the person concerned; and

20.1.3.2 the person concerned being:

20.1.3.2.1 a spouse of the employee; or

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

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

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

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

20.1.3.2.5.1 "**relative**" means a person related by

blood, marriage or affinity;

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

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

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

20.2 Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.1.3.2 above who is ill.

21. BEREAVEMENT LEAVE

- 21.1 An employee, other than a casual employee, shall be entitled to up to three days bereavement leave in each year of employment without deduction of pay on the death of a person prescribed in 21.3 below.
- 21.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will, if required by the employer, provide to the satisfaction of the employer proof of death.
- 21.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of Personal/Carer's Leave in 20.1.3, provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

- 21.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which employee has already been granted other leave.
- 21.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 20.2, 20.1.3, 20.1.4 and 20.1.5 of clause 20, Personal Carer's Leave. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

22. WORK CLOTHES AND SAFETY EQUIPMENT

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

23. LAUNDRY ALLOWANCE

- 23.1 The employer will launder an employee's special clothing or pay the employee a laundry allowance the amount of which is set out in Item 2 of Table 3 of Part B.
- 23.2 Special clothes are those which the employer asks the employee to wear as a uniform and which the employee could not use for everyday wear or, if the employee is a chef or cook, the employees uniform.

24. JURY SERVICE

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

24.3 The employee must tell the employer as soon as the employee knows that the employee is required for jury service.

25. BLOOD DONORS

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

- 25.1 The time and day selected meet with the employer's convenience and does not unduly disrupt the employers operations.
- 25.2 The employee is able to donate blood at a place within 5 walking minutes of the restaurant.
- 25.3 The employee must provide the employer with proof that the employee donated blood; and
- 25.4 This entitlement is limited to a maximum of 2 hours on no more than 3 occasions in any one year of employment.

26. REDUNDANCY

This clause only applies to employers, which have 15 or more employees (whether employed under this award or otherwise) immediately before taking a decision to make an employee redundant.

If it is necessary to make an employee redundant the employer will:

- 26.1 Only do so if there is no other job the employer can reasonably give the employee, bearing in mind the employee's skills and experience and any training that can reasonably be given to the employee.
- 26.2 Give the employee as much notice as possible and, in any event, not less than the period of notice set out below for the employee's period of continuous employment:

| 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 |

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.

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

- 26.3 If the employee accepts a transfer to lower paid duties, maintain the employees higher rate of pay for the period of notice set out in clause 26.2 above.
- 26.4 Also give the employee one day a week off without loss of pay for each week of notice set out in clause 26.2 above to look for another job, provided that the employee tells the employer beforehand details of what the employee will be doing.
- 26.5 Give the employee a written statement that the employee is to be made redundant, together with details of the employee's employment record with the employer.
- 26.6 Pay the employee severance pay in accordance with the following table:

| Years of Service | Number of Weeks Severance Pay 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 |

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

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

However, an employer can apply to the Industrial Relations Commission for permission to pay a lower amount if the employee gets another job or if an employer cannot afford to pay all or part of those severance moneys.

27. SUPPORTED WAGE

27.1 Definitions

27.1.1 **"Accredited Assessor"** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity with the Supported Wage System.

27.1.2 **"Assessment Instrument"** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

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

27.1.4 **"Supported Wage System"** means the Commonwealth Government system to promote employment for people

who cannot work at full award wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process.

27.1.5 "**Commonwealth Government Authority**" means the Commonwealth Government Department whose responsibility includes the administration of the Supported Wage System.

27.2 Application

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

27.2.2 This clause does not apply to any existing employee who has a claim against the employer, which is subject to the provisions of Workers' Compensation legislation.

27.2.3 This clause does not apply to employers in respect of the employers facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1993 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a Disability Support Pension, except with respect to an organization which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

27.3 Wages

27.3.1 Following the trial period prescribed in clause 27.4.5, employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by the relevant parent award for the class of work which the person is performing according to the following schedule:

| Assessed Capacity Rate | % of Relevant Parent Award |
|------------------------|----------------------------|
| 10% | 10% |
| 20% | 20% |
| 30% | 30% |
| 40% | 40% |
| 50% | 50% |
| 60% | 60% |
| 70% | 70% |
| 80% | 80% |
| 90% | 90% |

Notation: Where a person's assessed capacity is 10% the person shall receive a high degree of assistance and support.

27.3.2 Notwithstanding anything otherwise contained in this award, the weekly ordinary time rate of pay for employees employed under the terms of this clause shall not be less than the amounts as are fixed from time to time by an competent Commonwealth Government Authority for the purposes of the Supported Wage System.

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

27.4 Employment Conditions

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

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

27.4.1.2 The employer, the employee and an accredited Assessor.

27.4.2 Lodgement of Assessment Instrument

27.4.2.1 All assessment instruments under the conditions of this award, including the

appropriate percentage of the award rate to be paid to the employee, shall be lodged by the employer with the Registry of the Industrial Relations Commission of New South Wales.

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

27.4.3 Review of Assessment

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

27.4.4 Workplace Adjustment

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

27.4.5 Trial Period

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

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

27.4.5.3 Work trials should include induction or training as appropriate to the job being trialed.

27.4.5.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 28.4.

28. TRAINEESHIPS

28.1 Application

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

28.2 Definitions

28.2.1 A "**traineeship**" is a program of training comprising structured training with an employer, and it will include training conducted by a Registered Training Organization that has been approved by the Vocational Education Training Accreditation Board. For the purposes of the traineeship, structured training shall mean formal instruction and closely supervised practice directly related to that instruction that is undertaken according to the provisions of the training agreement.

28.2.2 A "**training agreement**" means an agreement between an employer and a trainee for registered training and employment, which is approved by the Relevant NSW Training Authority.

28.2.3 A "**trainee**" is an employee undertaking a traineeship who is bound by a training agreement.

28.2.4 "**Relevant NSW Training Authority**" means the Department of Education and Training or its successor organization.

28.3 Training Conditions

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

28.4 All Trainees

- 28.4.1 The time spent off the job at training shall be allowed without loss of continuity of employment.
- 28.4.2 Where employment of a trainee by an employer is continued after completion of the traineeship period, the traineeship period shall be counted as service for all award and statutory entitlements where consistent with relevant legislation.
- 28.4.3 For the purposes of the Long Service Leave Act 1955, where an employee has entered into a contract of employment with an employer within a 12 month period after the completion of the traineeship with the employer, the period of the employee's traineeship with the employer shall be taken into account for the purposes of ascertaining the period of service of the employee with that employer under that contract of employment.
- 28.4.4 Preference in continuation of employment shall be given to trainees, where possible, should vacancies occur at the conclusion of the training period.
- 28.4.5 The provisions of the Workplace Injury Management and Workers Compensation Act 1998, and the Occupational Health and Safety Act 1983, shall apply to trainees.
- 28.4.6 It is acknowledged by the parties to this award that the purpose of the relevant traineeships is to create education and career opportunities for persons who would otherwise be unemployed, and to that extent the traineeship systems will not be utilised by employers as a means of displacing existing regular employees, whether full time, part time or casual.
- 28.4.7 The employer shall ensure that the trainee is permitted to attend prescribed off the job training and is provided with on the job training approved by the Relevant State Training Authority.
- 28.4.8 The union shall be afforded reasonable access to trainees and the trainee's records, consistent with the Industrial Relations Act 1996.

28.5 Wages

- 28.5.1 The weekly wage payable to Trainees shall be calculated by multiplying the hourly rate applicable to the trainee by 38, less the average weekly training time to be spent in structured training.

28.5.2 Junior hourly rates shall be calculated in accordance with Clause 13 Juniors. The rate for employees 21 years of age and over shall be calculated at the rate for a Grade 2 employee.

28.5.3 The average weekly training time to be spent in structured training shall be calculated by averaging the total number of hours that the trainee, during each year of employment, spends in structured training over the total number of weeks in that year of employment under the traineeship.

29. GRIEVANCE HANDLING AND DISPUTES PROCEDURE

29.1 Procedures Relating to Grievances of Individual Employees:

29.1.1 The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.

29.1.2 A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.

29.1.3 Reasonable time limits must be allowed for discussion and resolution at higher levels of authority.

29.1.4 At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.

29.1.5 While a procedure is being followed normal work must continue.

29.2 Procedures Relating to Disputes etc. Between Employers and their Employees.

29.2.1 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduate steps for further discussion and resolution at higher levels of authority.

29.2.2 Reasonable time limits must be allowed for discussion at each level of authority.

29.2.3 While a procedure is being followed, normal work must continue.

29.3 The employer may be represented by an industrial organization of employers and the employees may be represented by an industrial organization of employees for the purposes of each procedure.

30. EXHIBITION OF AWARD IN WORKPLACE

A copy of this award must be exhibited in a conspicuous place at the restaurant.

31. EMPLOYEE REPRESENTATIVE AND UNION BUSINESS

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

32. ANTI DISCRIMINATION

32.1 It is the intention of the parties bound by this award to seek to achieve the object of section 3(f) of the Industrial Relations Act 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.

32.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.

32.3 Under the Anti Discrimination Act 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint or unlawful discrimination or harassment.

32.4 Nothing in this clause shall be taken to affect:

- (a) any conduct or act which is specifically exempted from anti discrimination legislation;
- (b) offering or providing junior rates of pay to persons under 21 years of age;
- (c) any act or practice of a body established to propagate religion, which is exempted under section 56(d) of the Anti Discrimination Act 1977;
- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

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

33. AREA, INCIDENCE AND DURATION

33.1 This award rescinds and replaces:

33.1.1 the Restaurant, &c., Employees' (State) Award published 1 September 1982 and reprinted 15 November 1991 (265 IG 1604) as varied;

33.1.2 the Restaurants, &c., Employees (State) Wages Adjustment Award published 17 November 1995 (289 IG 403);

33.1.3 the Restaurant Industry (State) Traineeship Award published 2 December 1994 (282 IG 938)

33.1.4 The Restaurant, &c., Employees Redundancy and Technological Change (State) Award published 16 February 1996 (290 IG 818).

33.2 The award applies to all employees who perform work described in the classification structure in this award in restaurants as defined throughout New South Wales and to the employers of those persons but not in the County of Yancowinna. The award does not apply to restaurants forming part of motels or licensed clubs, or conducted within a retail store, to canteens covered by the Canteen Workers (State) Award employees of the Broken Hill Proprietary Company Limited or to persons employed in hospitals or public charitable institutions.

33.3 Notwithstanding any provision of this award, it shall not operate in circumstances where the Sydney Olympic & Paralympic Games

2000 (State) Award Operates. This sub clause shall cease to operate when the Sydney Olympic Games 2000 (State) Award is rescinded or ceases to have effect.

- 33.4 This award takes effect from the beginning of the first pay period to commence on or after 1 May 1997 and shall remain in force for a period of six months.