



SHOP EMPLOYEES (STATE) AWARD

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2. DEFINITIONS

- (i) **"General Shops"** means and includes all shops other than special shops, and confection shops as defined in this award.
- (ii) **"Special Shops"** means and includes audio shops, book shops, video shops, cake and pastry shops, cooked provisions shops, take-away food shops, fish shops, flower shops, garden plant shops, hairdressers' shop, newsagencies, pet shops, souvenir and gift shops, tobacconists' shops (each as defined in Schedule 2 to the Shop (Registration and Opening and Closing Hours) Regulations to the Factories, Shops and Industries Act 1962), small shops (as defined in Section 76A of the Factories, Shops and Industries Act 1962) and retail liquor shops.
- (iii) **"Confection Shops"** means and includes confectioners' shops, refreshment shops and fruit and vegetable shops as defined in Schedule 2 of the Shop (Registration and Opening and Closing Hours) Regulations to the Factories, Shops and Industries Act 1962.
- (iv) **"Light Refreshments"** means and includes a beverage, hot or cold, served with biscuits, cakes, pastry, sandwiches, meat pies or the like.
- (v) **"Shop"** See Section 78 of the Factories, Shops and Industries Act 1962.
- (vi) **"Ticket Writer"** means employees engaged in forming or designing letters or figures on paper or cardboard having an area not exceeding 7741.92 square centimetres or on pulp board, beaver board and other similar board having dimensions not exceeding 508 millimetres by 762 millimetres or designing or lettering price tickets on any medium having dimensions not exceeding 508 millimetres by 762 millimetres, provided that the paper board and tickets are for the employer's own use and not for sale.
- (vii) **"Salesperson Outdoor"** shall mean an employee employed to solicit retail sales or in the hire of goods by retail, away from the employer's place of business.
- (viii) **"Section Head"** means an employee appointed as such in a section of a shop where there are four or more employees.
- (ix) **"Qualified First-aid Attendant"** shall mean an employee who is a qualified first-aid attendant and is employed to carry out the duties of a first-aid attendant.

- (x) **"Qualified Automotive Parts and Accessories Salesperson"** shall mean an employee who has passed an appropriate course of technical training.
- (xi) **"Retail Merchandiser"** local and country shall mean a person who is employed to stack shelves in a shop and/or carry out such other duties normally associated with the work of a shop assistant, excluding persons employed by a bread manufacturer and, except in an emergency, the preparation of gondola ends and display units where defined in the Commercial Travellers, &c. (State) Award published 25 July 1984 and reprinted 31 January 1992 (267 I.G. 661), as varied. This classification shall not apply to any persons employed by a retail employer in a shop.
- (xii) **"Improver Waiter/Waitress"** shall mean a waitress in a confection shop under 21 years of age with not more than six months experience.
- (xiii) **"Rostered Day Off"** means the day off arising from the working of ordinary hours in a 19-day four-week cycle.
- (xiv) **"Long Day"** means a day on which ordinary hours exceed nine hours but shall not exceed 11 hours.
- (xv) **"Trolley Collector"** means an employee who is engaged by a retail store, wholesaler or contractor, and who is responsible for the collection of shopping trolleys and the loading onto a trailer for transporting to designated storage areas, and the unloading of the trolleys at those areas.
- (xvi) **"Union"** means the Shop, Distributive and Allied Employees' Association, New South Wales and/or the Shop Assistants and Warehouse Employees' federation of Australia, Newcastle and Northern New South Wales.

3. ENGAGEMENT, PAYMENT AND TERMINATION

- (i) Engagement

An employee may be employed as a weekly, part-time or a casual employee. Provided that no later than three months after the coming into force of this award, in a general shop employing 13 or more employees (employee as defined in paragraph (ix) of subclause (II), General Shops - Rosters for Five-day Week, of clause 10, Hours) the total number of hours worked by casual employees shall not exceed 25 per cent of the total hours

worked in that shop. Hours worked by shift work (night fill) employees shall not be included in this calculation.

Provided that the 25 per cent limitation on casual hours in general shops shall not apply to tourist resort areas during the tourist extended trading hours, Christmas and Easter, and provided further that any shop which at the time of the making of the award employs casuals to an extent exceeding 25 per cent of total hours worked in the shop may continue to do so, provided that no additional casuals are employed until the limit of hours of 25 per cent is achieved. The 25 per cent limitation contained in this subclause does not apply to the employment of retail merchandisers as defined.

An employer who is of the opinion that a shop may not operate efficiently within the prescribed limit may seek exemption from this provision by application to the Industrial Relations Commission of New South Wales.

(ii) Proof of Age

Upon the engagement of an employee, such employee, if required to do so, must furnish to the employer a correct statement in writing of his or her age certified to by statutory declaration or birth certificate. When an employee cannot prove his or her age in the ordinary way, a passport, military or naval discharge or Consular document shall be proof of age.

(iii) Time and Payment of Wages

All wages shall be paid weekly in addition to any commission, bonus or premium to which the employee is entitled. Such payment shall be made on the same day of each week, which shall not be a Friday, a Saturday or a Sunday except as herein provided for, and shall be made up to and including at least the third day preceding the day of payment; provided that, in a week where an award holiday falls on the day in which wages are usually paid, payment thereof shall be made not later than the working day immediately preceding the award holiday. Other arrangements regarding payment may be made by agreement between the employer and the union.

Notwithstanding the foregoing:

- (1) Overtime shall be paid not later than a week from the second day succeeding the day on which it was earned. Provided that where an employee is paid fortnightly in accordance with paragraph (7) of this subclause, then overtime worked in the second week of a pay period may be paid in the following pay period.

- (2) 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.
 - (3) In the event of an employer not paying the said overtime and other moneys due at the time on which he/she has undertaken to pay, then the employer shall reimburse the employee all expenses he/she has incurred in attending to collect the amounts due to him/her.
 - (4) By mutual agreement between the employer and employee, casual employees and part-time employees may elect to be paid on a Friday, Saturday or Sunday.
 - (5) When an employee is required by an employer to wait beyond the ordinary ceasing times of the employee for payment of ordinary wages or, when an employee is terminated, to wait for payment of ordinary wages after the period of the termination for a period of more than 15 minutes, he/she shall be paid ordinary wages for the period during which he/she is so required to wait.
 - (6) Wages may be paid by electronic funds transfer. Provided that where wages are paid by electronic funds transfer, additional costs associated with the introduction and operation of electronic funds transfer shall be paid for by the employer.
 - (7) Wages may be paid fortnightly, provided that the employee is paid no later than the third day of the second week of the pay period.
- (iv) Termination of Employment -
- (a) In the case of misconduct justifying instant dismissal an employee may be instantly dismissed.
 - (b) In all other cases employment may be terminated by either party:
 - (1) During the first month of employment by a moment's notice;
 - (2) Thereafter, by one week's notice or by the payment or forfeiture of one week's pay.

(c) Employment shall not be terminated, except for misconduct, while the employee is legitimately absent from duty on accrued sick leave.

(d) Termination Immediately Prior to Holiday

Subject to paragraph (ii) of subclause (A) of clause 17, Holidays, a full-time or part-time employee after more than two weeks' employment whose employment is terminated by the employer on the business day preceding a holiday or holidays, other than for misconduct, shall be paid for such holiday or holidays.

(e) Termination Prior to Christmas

Notwithstanding the provisions of paragraph (d) of this subclause, an employee engaged on or after 1 December in any year whose employment finished before Christmas Day and who is not re-employed within four weeks of Christmas Day by the same employer is not entitled to payment for the Christmas holidays.

(f) Certificate of Service

An 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 termination. The statement shall be the property of the employee and shall be returned to him/her unnoted by any subsequent employer within seven days of the engagement.

4. PART-TIME EMPLOYEES

(A) General Shops -

(a) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.

(b) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours work per day nor less than 12 hours work per week nor more than 30 hours work per week.

Provided further that where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a weekly employee and paid as such.

Provided that employees employed prior to the first pay period in August 1988 shall work their ordinary hours, except where such employees agree otherwise, as follows:

- (i) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours work per day nor less than 16 hours work per week nor more than 30 hours work per week, except as provided in subparagraph (ii) of this paragraph.
 - (ii) Provided that where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a full-time employee and paid as such.
 - (c) Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
 - (d) Notwithstanding the provisions of paragraphs (a) to (c) of this subclause, the union and an employer may agree, in writing, to observe other conditions in order to meet special cases.
- (B) Special and Confection Shops -
- (a) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.
 - (b) Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not, in any case, be less than three hours work per day nor less than nine hours work per week nor more than 30 hours work per week.

Provided that the minimum weekly engagement for all part-time employees employed as at 26 September 1990 shall be 12 hours per week.

Provided further that where an employee's regular rostered work is in excess of 30 hours per week, than such an employee shall be deemed to be a full-time employee and paid as such.

Provided further that employees employed prior to the first pay period in October 1988 shall work their ordinary hours, except where such employees agree otherwise, as follows:

The ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for weekly employees but shall not, in any case, be less than 20 hours per week.

- (c) Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
- (d) Notwithstanding the provisions of paragraphs (a) to (c) of this subclause, the union and an employer may agree, in writing, to observe other conditions in order to meet special cases.

5. CASUAL EMPLOYEES - ALL SHOPS

All Shops

Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38, plus 15 per cent, calculated to the nearest half cent, with a minimum payment on any one shift of three hours' work.

Provided that, upon employment, a new casual employee may be engaged for a minimum of two hours for the first two engagements, provided that these engagements shall be for the purpose of training only.

NOTATION: See Saturday penalty rates in clause 14, Weekend and Late Night Penalty Rates and Loadings, as shown in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

- (a) Theatres, Sports Grounds, etc.

Night interval employees, other than at continuous picture shows, working only during the intervals of picture shows,

theatres and like places of amusement, during not more than one hour at any interval, shall be paid at an hourly rate equal to the appropriate casual rate prescribed by this clause plus, for each night worked, the amount shown in Item 1 of the said Table 2; provided that employees working only one night per week shall be paid such appropriate casual hourly rate plus, for each night worked, the amount shown in Item 2 of Table 2. "Night interval" or "night" shall include Saturday afternoon.

- (b) Employees engaged only in selling goods from trays in picture shows, theatres and like places of amusement, other than continuous picture shows, shall be paid a sum of money per night equal to 12.5 per cent commission on all sales made by them; provided that such payment shall allow the employees to receive per week a sum not less than 17.5 per cent of the appropriate adult weekly rate; provided also that an employee employed on only one night in any week shall be guaranteed for such night one-fifth of the above amount, plus six cents.

For the purposes of this paragraph, "night" includes Saturday afternoon. Persons employed in accordance with the provisions of this paragraph shall not be under 14 years of age and shall not be required to perform any work other than tray work.

- (c) Sports Grounds, etc.

Employees working at sports grounds and the like shall be paid an hourly rate equal to the appropriate adult weekly rate divided by 38, plus 7.5 per cent, with a minimum payment on any one day for four hours.

6. MEAL ALLOWANCE

- (i) An employee who works overtime after 6.30 p.m. shall be paid, on such day, the amount as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, as a meal allowance or, with the prior agreement of the union, shall be provided with a suitable meal approved of by the union, provided that in general shops -
 - (a) An employee who is working his/her normal ordinary hours after 6.30 p.m. on a Thursday or Friday night shall not become entitled to a meal allowance until that employee works overtime of more than 30 minutes after the completion of such ordinary hours.
 - (b) An employee who is required to work overtime on a Sunday beyond 1.00 p.m. shall be paid, on that day, the

amount as set out in the said Item 3 as a meal allowance and, if required to work beyond 6.00 p.m., a further sum of the same amount.

- (c) A full-time or part-time employee in a general shop employed in the industry prior to 25 July 1984 (who elects not to work ordinary hours on a Saturday after 12 noon or on the second additional late night after 6.00 p.m.), who works after 6.00 p.m. on Thursday (Friday in the Shire of Gosford and the Shire of Wyong), shall be paid the amount as set out in Item 3 as a meal allowance, provided that if the shop closes at 7.00 p.m. or earlier, such meal allowance shall not be payable.

- (ii) Breakfast

An amount as set out in Item 4 of Table 2 shall be paid.

7. 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.

8. COMMITMENT TO TRAINING AND CAREERS

The parties acknowledge that varying degrees of training are provided to employees in the retail 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 retail 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 retail 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.

9. MIXED ENTERPRISE

A mixed enterprise is defined as an establishment where the primary operation is not covered by this award to the extent that at least 75 per cent of employees are engaged in an industry other than the retail industry.

For the purpose of increasing productivity, flexibility and efficiency in mixed enterprises, as well as enhancing opportunities for employees, broadbanning may extend, by agreement between an employer and an employee, to allow the employee to perform any work in a mixed enterprise within the scope of their skills and competence. Discussion shall take place at the enterprise with a view to reaching agreement for employees to perform a wider range of tasks, removal of demarcation barriers and participation of employees in additional training.

Subject to the provisions of the previous paragraph, employees in a mixed enterprise shall not impose or continue to enforce demarcation barriers between the work of employees, provided that it is agreed that the work lies within the scope of the skill and competence of the employee concerned.

10. HOURS

(1) General Shops — Hours

(i) Weekly Hours

The ordinary hours of work of employees in shops shall not exceed 38 per week, to be worked in accordance with subclause (II), General Shops — Rosters for Five-day Week, of this clause, Monday to Saturday (Monday to Sunday in shops which may lawfully trade on a Sunday), both days inclusive and, save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

(ii) Commencing Times and Ceasing Times

7.00 a.m. to 6.00 p.m. Monday, Tuesday, Wednesday and Saturday.

7.00 a.m. to 9.00 p.m. Thursday and Friday.

8.00 a.m. to 5.00 p.m. Sunday.

Employees in supermarkets/food stores and hardware shops or departments can be rostered to commence one hour earlier.

(iii) Within the commencing and ceasing times prescribed respectively in paragraphs (ii) and (iii) of this subclause, full-time and part-time employees on engagement shall be notified of:

- (a) The quantum of ordinary hours to be worked each week;
- (b) The days of the week on which such work is to be performed; and
- (c) The commencing and ceasing times of such hours of work for each day of the week on which work is to be performed.

The above subparagraphs (a), (b) and (c) shall not be changed except:

Upon not less than seven days' notice; or

By agreement between the employee and the employer where the extra/other hours may be expressly agreed to be worked as part of a roster change and paid at ordinary rates; where no expressed agreement exists overtime rates must apply.

In the event of an emergency, subparagraphs (b) and (c) above may be changed, the quantum of hours may be increased but not decreased.

Provided that where it is alleged by the unions that a change in rosters is contrary to the wishes of the majority of employees or operates unfairly or to the disadvantage of employees, the employer shall give, in lieu of seven days' notice, 14 days' notice, during which time there shall be discussions and,

where practicable, agreement reached with the union.

- (iv) Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts back to the previous pattern in the following week, then work done by the employee because of the roster change shall be paid for at the overtime rate of pay. (This does not apply where an agreed change to a roster is made at the request of the employee.)

(II) General Shops — Rosters for Five-day Week

- (i) All full-time and part-time employees shall be rostered their ordinary hours of work on any five days of the week, Monday to Saturday, inclusive (Monday to Sunday in shops which may lawfully trade on a Sunday), on the following bases:
 - (a) At least once every two weeks an employee shall be granted two consecutive days off which shall not include the rostered day off (RDO).
 - (b) There shall not be more than one long day in any week. A long day is defined as a day exceeding nine ordinary hours of work. Provided that, by mutual agreement, additional long days may apply.
 - (c) The maximum number of ordinary hours, which may be worked on any one day, shall be 11 hours.
 - (d) Provided that ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days.
 - (e) The following provisions shall apply in general shops, which may lawfully trade on a Sunday:
 - (i) Once every four weeks, an employee who works ordinary hours on a Sunday shall be given three consecutive days off (not including the 19-day month RDO) which shall include Saturday and Sunday. By mutual agreement alternative arrangements may apply.
 - (ii) Where an employee transfers at his/her own request to a store where Sunday trading is already lawful, the employee will

not have the right to refuse to work on Sundays at the new store. Where an employee transfers at the employer's request to another store where Sunday trading is already lawful, the employee will retain the right to refuse to work on Sundays at the new store.

- (f) Subparagraphs (a) to (e) of this paragraph do not apply to employees engaged pursuant to clause 11, Shift Work (Night Fill) — General Shops.
- (g) Each full-time weekly employee shall be rostered so that the maximum number of hours that shall constitute an ordinary week's work without the payment of overtime shall not exceed, on average, 38 per week and may be worked in any of the following forms:
 - (i) 38 hours in one week;
 - (ii) 76 hours in two consecutive weeks;
 - (iii) 114 hours in three consecutive weeks;
 - (iv) 152 hours in four consecutive weeks.
- (ii) There shall be not less than a ten-hour break between finishing work (including overtime) one day or shift and the commencement of work on the next day or shift.
- (iii) When establishing a roster or changing a roster, the employer will have regard for the family responsibilities of the employee.

In having regard for the family responsibilities, it is accepted that the existence of such responsibilities does not in itself prevent an employer changing an employee's roster where necessary.

- (iv) Full-time and part-time employees shall be provided with a regular roster which shall not be subject to frequent variations unless by mutual agreement.
- (v) Provided further that in shops with five or less full-time and part-time employees the rostered days off shall be decided by mutual arrangement between the employer and employees.

- (vi) Provided further that the rostering of store managers shall be by mutual arrangement between the employer and employees.
- (vii) Provided that in shops employing on a regular basis 20 or more employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employee shall not be required to work ordinary hours on more than 19 days in each four-week cycle. Where specific agreement exists between an employer and an employee, the employee may be worked on the basis of:
- Not more than four hours work on one day in each two-week cycle;
 - Not more than six hours work on one day per week.
- (viii) Provided that in shops employing on a regular basis more than five employees but less than 20 employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employees may be worked their ordinary hours on one of the following bases at the employer's direction:
- Not more than 19 days work in each four-week cycle;
 - Not more than four hours work on one day in each two-week cycle;
 - Not more than six hours work on one day in each week.

Where specific agreement exists between an employer and an employee, the employee may be worked on not more than 7.6 hours per day.

Provided further that no existing employee who was employed as at 26 September 1990 and who was entitled to a rostered day off shall lose their entitlement to such rostered day off.

- (ix) Provided that in shops employing on a regular basis five or less employees per week, employees may be worked their ordinary hours on one of the following bases at the employer's discretion:
- Not more than 19 days in each four-week cycle;
 - Not more than four hours work on one day in each two-week cycle;

- Not more than six hours work on one day in each week;
 - Not more than 7.6 hours work on any day.
- (x) In any case where agreement is reached between an employer and an employee pursuant to paragraphs (v) and (vi) of this subclause, the relevant union shall be notified seven days prior to the implementation of such agreement. Any dispute as to such agreement shall be referred to the Industrial Registrar.
- (xi) Provided that, for the purposes of this clause, "employing on a regular basis" includes persons of the following types:
- (a) Employees of the employer engaged on the premises whose terms of employment are not regulated by this award;
 - (b) Employees other than those employed by the employer whose terms of employment are regulated by this award and who regularly work on the premises performing work as demonstrators and the like, but not including the employees of a bona fide franchisor operating on the premises.
- (xii) Every employer shall, by legible notice which shall bear the date when it is fixed, exhibit in a place accessible to employees the current starting and finishing times for each employee for each day of the week. The employer shall retain superseded notices for 12 months. The roster of hours shall, upon request, be produced for inspection by any person authorised to inspect the same.
- (III) Special and Confection Shops — Hours and Rosters
- (i) Weekly Hours

The ordinary hours of work of employees in shops shall not exceed 38 per week and shall be worked on five days of the week, Monday to Sunday, inclusive. Provided that ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days. Save for meal times prescribed, all time between the actual commencing time and ceasing time on any one day shall count and shall be paid for as time worked. Provided that an employee may be worked so that the maximum number of hours that shall constitute an ordinary week's work without the payment of

overtime shall not exceed an average of 38 per week and may be worked in any one of the following forms:

- (a) 38 hours in one week;
- (b) 76 hours in two consecutive weeks;
- (c) 114 hours in three consecutive weeks;
- (d) 152 hours in four consecutive weeks.

(ii) Commencing Times

The commencing time of the ordinary hours of work shall be 7.00 a.m. (6.00 a.m. in take-away food shops, fruit and vegetable shops and newsagencies).

(iii) Ceasing Times

The time for the cessation of the ordinary hours of work by employees shall be:

- (a) In cake and pastry shops, cooked provisions shops, fish shops, pet shops, souvenir and gift shops, tobacconists' shops and small shops, Monday to Sunday, both days inclusive 10.30 p.m.
- (b) In take-away food shops, Monday to Sunday, both days inclusive midnight.
- (c) In flower shops and garden plant shops, Monday to Sunday, both days inclusive 8.30 p.m.
- (d) In hairdressers' shops, Monday to Friday, both days inclusive 5.45 p.m. and Saturday 12.45 p.m.
- (e) In retail liquor shops, Monday to Sunday, both days inclusive 10.00 p.m.

Provided that for employees employed prior to the first pay period in October 1988 the following provisions shall continue to apply, unless the employees agree otherwise:

In retail liquor shops, Monday to Saturday, both days inclusive 10.00 p.m.

- (f) In newsagencies, Monday to Sunday, both days inclusive 9.00 p.m.

- (g) In book shops, Monday to Sunday, both days inclusive 9.00 p.m.
- (h) In video shops, Monday to Sunday, both days inclusive midnight.
- (i) In fruit and vegetable shops, Monday to Sunday, both days inclusive 9.00 p.m.
- (j) In confectionery and refreshment shops, Monday to Sunday, both days inclusive 11.30 p.m.
- (k) Audio Shops

Monday to Sunday, both days inclusive 9.00 p.m.
All employees employed prior to 25 October 1991 will continue to be employed and paid in accordance with general shops award conditions.
- (iv) Within the commencing and ceasing times prescribed respectively in paragraphs (ii) and (iii) of this subclause, employees shall be given a regular starting and ceasing time for each day which shall not be changed except upon not less than seven days' notice, unless by agreement with the employee or in the event of an emergency.
- (v) Every employer shall, by legible notice, which shall bear the date when it is fixed, exhibit and keep exhibited in a place accessible to the employees, the current starting and finishing times for each employee for each day of the week and shall show thereon any change in the commencing time and ceasing time of any employee and the date on which the change was effected.

The employer shall retain superseded notices for 12 months.

The roster of hours shall, upon request, be produced for inspection by any person authorised to inspect the same.
- (vi) There shall be not less than a ten-hour break between finishing work (including overtime) on one day or shift and the commencement of work on the next day or shift.
- (vii) When establishing a roster or changing a roster, the employer will have regard for the family responsibilities of the employee.

In having regard for the family responsibilities, it is accepted that the existence of such responsibilities does not in itself prevent an employer changing an employee's roster where necessary.

(viii) Full-time and part-time employees shall be provided with a regular roster which shall not be subject to frequent variations unless by mutual agreement.

(IV) 38-Hour Week Special and Confection Shops — Method of Implementation —

Method of implementation of the 38-hour week is at the employer's discretion, except where the special/confection shop is under the same roof as a company general shop, then the same method of implementation that operates in the general shop would operate in the special/confection shop.

11. SHIFT WORK (NIGHT FILL) - GENERAL SHOPS

Application:

This clause shall apply only to night fill operations performed in a shop.

(a) Full-time Employees

(i) Notwithstanding any other provision for ordinary hours within the award, an employee may be engaged to work on any five days, Monday to Saturday, afternoon or night shifts, providing they are paid the following additional allowances:

(a) Monday to Friday

(1) Afternoon shift - finishing after 6.00 p.m. and at or before midnight - 17.5 per cent.

(2) Night shift - finishing after midnight and at or before 8.00 a.m. - 30 per cent.

(b) Saturday

Shifts as defined in subparagraph (a) of this paragraph, finishing after midnight on a Friday and at or before midnight on a Saturday - 50 per cent.

(c) Sunday

Night shift finishing after midnight Saturday and at or before 8.00 a.m. on a Sunday - 100 per cent.

The shift loading payable for the entire shift shall be determined by the time at which the shift finishes.

Provided further that the above shift provisions do not apply to an employee engaged on either of the late shopping nights (Thursday or Friday) finishing at or before 9.00 p.m.

(ii) Junior shift workers shall receive the following percentages of the appropriate adult rate prescribed in subclause (2) of clause 34, Wages - Base Rates:

(a) At 18 years of age and under - 70 per cent.

(b) At 19 years of age - 80 per cent.

(c) At 20 years of age - 90 per cent.

Plus the appropriate additional allowance as prescribed in paragraph (i) of subclause (a) of this clause.

(b) Part-time Employees -

(i) Ordinary hours of work, exclusive of meal times, shall not be less than three hours work per shift nor less than 16 hours per week nor more than 30 hours work per week.

All time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

(ii) Starting and finishing times of an employee on a given shift may be changed, provided the employee can be contacted prior to arriving at work.

(iii) Nights on which an employee is rostered to work shall not be altered except upon not less than seven days' notice prior to the commencement of the employee's roster cycle.

(iv) Each part-time employee shall receive a guaranteed minimum number of hours of work each week.

- (v) The performance of work on any night, which is additional to those nights contained in an employee's particular roster week, shall be at the option of the employee.

Where an employee agrees to work an additional night or nights, then the employee shall be paid at ordinary time for the additional night or nights (provided the employee is informed of this prior to agreeing to work), unless the work performed is in excess of eight hours on any shift or in excess of 30 hours in any week or in excess of five starts for the week.

- (vi) The provisions contained under this subclause shall apply only to part-time employees working afternoon shift and/or night shift.

In the case of an employee working day shift plus afternoon and/or night shift in a single week, the provisions of this subclause shall only apply in respect to any afternoon and/or night shift.

- (vii) The provisions of subclause (a), Full-time Employees, of this clause shall apply to part-time employees.

- (viii) **NOTATION:** The above provisions are intended to cover the special features of night-fill work and will not be used as a precedent to achieve similar flexibility for day work.

(c) Casual Employees -

- (i) Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38, plus 15 per cent, and the appropriate additional allowance as prescribed in paragraph (i) of subclause (a) of this clause, calculated to the nearest half cent, with a minimum payment on any shift of three hours.

Provided that for junior casual employees such hourly rate shall be determined by reference to the percentages prescribed in paragraph (ii) of subclause (a) of this clause.

- (ii) Casual employees may only be employed after the prescribed ceasing time pursuant to paragraph (iii) of subclause (l) General Shops - Hours, of clause 10, Hours, except on the late shopping nights (Thursday and Friday) or any substitute late shopping night(s) when the employee may be engaged not prior to 8.00 p.m. on such a night.

(d) Overtime

An employee engaged on shift work shall be paid overtime at the rate of time and a half for the first two hours and double time thereafter for all work:

- (i) In excess of 38 hours per week;
- (ii) In excess of an average of 38 hours per week;
- (iii) In excess of five days in any week;
- (iv) In excess of eight hours on any shift;
- (v) In excess of 30 hours per week in the case of part-time employees.
- (vi) Before an employee's regular commencing time on any one day and/or after an employee's regular ceasing time on any one day, except in the case of part-time employees whose commencing and/or ceasing time has been varied within the terms of paragraph (ii) of subclause (b), Part-time Employees, of this clause.
- (vii) Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes, and any portion of an hour over 30 minutes shall be reckoned as one hour.

(e) Crib Breaks and Rest Pauses -

- (i) An employee engaged on shift work shall be provided with a crib break of not less than 20 minutes where that employee works more than five hours. Such crib break shall be taken between the fourth and sixth hour of work and shall be counted and paid for as time worked.
- (ii) An employee who works seven hours or more on any day shall be allowed both a crib break and one paid rest pause of ten minutes. Provided that where such crib break commences on or before the middle of a shift, then the rest pause shall be taken after the crib break and where the crib break commences after the middle of a shift, then the rest pause shall be taken before the crib break.
- (iii) An employee who works for five hours or less but more than four hours on any shift shall be allowed a paid rest pause of ten minutes.

(iv) No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after any crib break.

(f) Exemptions

The general provisions of this award shall apply to shift workers with the following exemptions: clause 4, Part-time Employees, clause 5, Casual Employees - All Shops, clause 14, Weekend and Late Night Penalty Rates and Loadings, clause 15, Overtime, clause 16, Meal Times and Rest Pauses, and subclause (2), Junior Employees, of Table 1 Wages.

12. SPECIAL PROVISIONS FOR SUBSTITUTED LATE SHOPPING NIGHT (GENERAL SHOPS)

- (i) Where a public holiday falls on a Thursday and trading is not permitted, a substituted late night shall apply automatically on the preceding Tuesday.
- (ii) Where a public holiday falls on a Friday and trading is not permitted, a substituted late night shall apply automatically on the preceding Wednesday.
- (iii) During any week in which a Thursday and/or Friday is substituted for another specified day in accordance with subclause (i) and/or (ii) of this clause, then such specified day shall be deemed to be a Thursday and/or Friday, and Thursday and/or Friday shall be deemed to be the specified day for all purposes of this award except as to clause 17, Holidays.
- (iv) Provided that where a public holiday pursuant to the said clause 17 falls on a Thursday and/or Friday and Thursday and/or Friday is deemed to be another day, employees shall not receive less time off than they might otherwise have received had the substitution not been made.

13. SAVINGS CLAUSE

(A) General Shops

- (i) Notwithstanding anything otherwise contained in this award, full-time and part-time employees employed in the industry prior to 23 July 1984 shall not be required to work their ordinary hours of work after 12.00 noon on Saturdays nor be required to work their ordinary hours of

work past 6.00 p.m. on any night of the week, Monday to Friday, other than Thursday night (Friday night in the Shire of Gosford and the Shire of Wyong).

- (ii) Provided that by mutual agreement an employer and an employee employed in the industry prior to 23 July 1984 may agree to observe different provisions, such provisions to be otherwise consistent with this award.
- (iii) Provided further that persons who were employed as full-time or part-time employees of:

Fosseys (Australia) Pty Limited;
Katies Fashions Pty Limited;
Woolworths Variety Division;

employed as at 22 April 1988 under the Shop Employees' (Major General Shops) (State) Interim Award published 3 February 1988 (247 I.G. 450) shall not by reason only of the making of this award, while their service with that employer remains continuous, suffer a reduction in any items in the award that affect wages payable to them under that award.

- (iv) The following provisions shall apply in general shops which may lawfully trade on a Sunday:
 - (a) All work on Sundays within ordinary hours of work shall be voluntary for all employees (including casuals) employed in that shop at 25 October 1991.
 - (b) Where a shop gains the right to trade lawfully on a Sunday after 25 October 1991 all work on Sundays within ordinary hours of work shall be voluntary for all employees (including casuals) employed in that shop at the date that the Sunday trading becomes lawful.

(B) Special and Confection Shops

Persons employed in fruit and vegetable shops as at 25 May 2000 shall not be required to commence these ordinary hours prior to 7.00 a.m.

14. WEEKEND AND LATE NIGHT PENALTY RATES AND LOADINGS

(a) Saturday -

- (i) All ordinary hours worked by full-time and part-time employees on Saturday shall be paid for at the rate of time and one-quarter.

All employees engaged by their employer on or prior to 25 August 1989 shall continue to be paid for Saturday afternoon work in ordinary time at the employee's penalty rate applicable at that time. No employee shall be disadvantaged by this variation to the award.

(ii) General Shops

Casual employees working on a Saturday shall receive the amounts as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, by way of a fixed loading in addition to the day's pay.

(iii) Special and Confection Shops

Casual employees working on a Saturday shall receive the amounts as set out in the said Item 5 by way of a fixed loading in addition to the day's pay.

(b) Sunday

- (i) All ordinary hours worked by employees on a Sunday in a shop that may lawfully trade shall be paid at the rate of time and one-half.

(c) Late Night Trading

(i) General Shops Only

All ordinary hours worked by full-time and part-time employees after 6.00 p.m. on Thursday and Friday shall be paid for at the rate of time and one-quarter.

(ii) Confection Shops Only

Finishing after 10.00 p.m.

Any employee continuing ordinary hours of work after 10.00 p.m. on any night shall be paid an additional

amount as set out in Item 6 of the said Table 2 for such night.

- (d) The provisions of section 14 of the Industrial Relations Act 1991 are hereby expressly excluded in respect of the fixed loading additions referred to in this clause.
- (e) The penalties and loadings prescribed in this clause shall not be taken into consideration in calculating any payment for overtime or public holidays or for any period of sick leave.

15. OVERTIME

The rate of overtime shall be time and one-half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday, which shall be paid for at the rate of double time.

- (i) An employee shall be paid overtime for all work as follows:
 - (a) In excess of:
 - (1) 38 hours per week; or
an average of 38 hours per week in accordance with clause 10, Hours;
 - (2) five days per week (or six days or four days pursuant to subparagraph (d) of paragraph (i) of subclause (II) and paragraph (i) of subclause (III) of the said clause 10);
 - (3) nine hours on any one day, provided that on one day per week up to 11 hours may be worked without the payment of overtime; by mutual agreement, additional days of up to 11 ordinary hours may be worked without the payment of overtime;
 - (4) in general shops 30 hours per week for a part-time employee, where that work is not done on a regular basis.
 - (b) before an employee's regular commencing time on any one day;
 - (c) after the prescribed ceasing time on any one day;
 - (d) outside the ordinary hours of work.

- (e) In general shops full-time employees who work on their rostered day off or part-time employees who work on any day on which they would not normally work shall be paid overtime with a minimum payment of four hours at the appropriate overtime rate.
- (f) As prescribed by paragraphs (iii) and (iv), of subclause (l), of clause 10, Hours.
- (ii) Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time, with a minimum payment of four hours at such rate.
- (iii) Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes and any portion of an hour over 30 minutes shall be reckoned as one hour, except where an employee is required to work after closing time to attend to customers then in the shop, or in connection with closing the shop, including the checking of cash received, when the time actually worked shall count.
- (iv) By mutual agreement the rate for overtime may be time off in lieu of overtime, provided that:
 - (a) Time off shall be calculated at the penalty equivalent.
 - (b) The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.
 - (c) Time off must be taken within one calendar month of the working of the overtime, or it shall be paid out.

16. MEAL TIMES AND REST PAUSES

- (i) When and where it can be conveniently arranged by the employer, an employee who works more than four ordinary hours on any day shall be allowed a rest pause of ten minutes.
- (ii) A rest pause shall be counted and paid for as time worked. No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after any meal break.
- (iii) In general shops an employee who works more than five hours on any day must be allowed both a rest pause of ten minutes and a meal break of one hour (45 minutes in any establishment

in which a clean, well ventilated room, adequate table and seating accommodation and sufficient crockery, cutlery and hot water are provided for the employee), provided that where agreement exists between the employee and the employer, a meal break of 30 minutes may apply.

In special and confection shops the meal break will be not less than 30 minutes nor more than one hour, the duration of which will be decided by the employer having regard to the needs of the business.

- (iv) A meal break shall be given and taken so that no employee shall work more than five consecutive hours without a meal break.
- (v) Meal breaks are not counted and not paid for as time worked.
- (vi) An employee who works nine hours or more on any day shall be allowed two rest pauses (each of ten minutes duration) if only one meal break is taken; or one rest pause of ten minutes if two meal breaks are taken.

Provided that where two rest pauses and one meal break are taken, then one rest pause shall be taken before the meal break and one rest pause shall be taken after the meal break.

Provided further that where two meal breaks and one rest pause are taken during any shift, then the rest pause shall be taken during the longest unbroken part of such shift.

- (vii) Confection Shops

An employee commencing before 7.00 a.m. in circumstances not covered by paragraph (ii) of subclause (III) of clause 10, Hours, shall be allowed not less than 30 minutes nor more than one hour off for breakfast before 9.00 a.m. If, through distance of residence, the employee cannot return home for breakfast, the employee shall be paid the sum set out in subclause (ii) of clause 6, Meal Allowances, for breakfast each morning the employee starts work before 7.00 a.m.

- (viii) Special and Confection Shops

Subject to the provisions contained in this clause, the actual period of the meal break shall be determined by the employer but shall be subject to discussions and, where practicable, agreement with the union concerned in respect of any individual shop where it is alleged arrangements adopted as to the duration or time of a meal break are contrary to the wishes of the majority of employees or operate unfairly or to the disadvantage of employees.

17. HOLIDAYS

(A) Public Holidays

(i) Subject to subclause (B), work done on any of the holidays prescribed in paragraph (ii) of this subclause shall be paid for at the rate of double time and one-half, with a minimum payment of three hours.

(ii)

a. The days observed as New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, the first Tuesday in November, Christmas Day, Boxing Day and all days proclaimed as public holidays for the State shall be holidays; 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.

b. For all holidays not including the first Tuesday in November:

Every full-time or part-time employee allowed a holiday specified herein shall be deemed to have worked in the week in which the holiday falls the number of ordinary working hours that he/she would have worked had the day not been a holiday.

Provided that any full-time or part-time employee whose roster is changed with the intent of avoiding or reducing payment due or the benefit applicable under this clause and who would, but for the change of roster, have been entitled otherwise to a payment or benefit for a public holiday or holidays shall be paid for such holiday or holidays as if his/her roster had not been changed.

Provided further that where a full-time or part-time employee working an average of five days per week is rostered so that he/she does not work his/her ordinary hours on the same days each week and the employee's rostered day off falls on a day prescribed as a holiday in subparagraph (a) of this paragraph, the employee shall be paid by mutual agreement between the employer and the employee in one of the following methods:

- (1) payment of an additional day's wages;
- (2) addition of one day to the employee's annual holidays;
- (3) another day may be allowed off with pay to the employee within 28 days after the holiday falls, or during the week prior to the holiday.

For the purposes of this paragraph, "day" means the average number of hours in the employee's normal roster cycle worked by the employee prior to the day on which the public holiday falls.

- (iii) A full-time or part-time employee absent without leave on their last working day before or their first working day after any award holiday shall be liable to forfeit wages for the day of 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.

(B) The first Tuesday in November"- Full-time and part-time employees rostered to work shall be entitled to a holiday without loss of pay on the first Tuesday of November in any year.

Work on the first Tuesday in November shall not be paid at the rate of double time and a half, but shall be paid as follows:

Where the establishment of an employer remains open and a full-time or part-time employee volunteers to work on the first Tuesday in November, such employee shall then be given another day off without loss of pay. Such alternative day shall be given and taken not later than 28 days after the nominated day on a day mutually agreed between the employer and the employee.

Provided that in no circumstances shall an employee forfeit entitlement to the additional holiday and should such extenuating circumstances arise where the day is not taken as described above, it must be given and taken on a day without loss of pay added to the employee's next period of annual leave.

Provided further that where an employee's employment terminates prior to the taking of such alternative day, the employee shall receive an additional day's pay on termination.

Provided further that employees on annual leave or long service leave on the day referred to in this subclause shall have an additional day added to their next period of annual leave.

18. SICK LEAVE

- (i) This clause only applies to full-time and part-time employees.
- (ii) An employee who, subject to subclause (iii) of this clause, is unable to attend for duty during ordinary working hours by reason of personal illness or personal incapacity not due to his/her own serious and wilful misconduct, shall be entitled to be paid at ordinary-time rates of pay for the time of such non-attendance, subject to the following:

- (a) An employee shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers' compensation.
- (b) A full-time employee shall not be entitled during his/her first year of continued employment with an employer to sick pay for more than 38 hours and during the second or subsequent years of continued employment with an employer to sick pay for more than 61 hours. Part-time employees have a pro rata entitlement to sick leave based on the number of hours worked in the week in comparison to 38 hours.

Any period of paid sick leave allowed by the employer to an employee in any year of continued employment shall be deducted from the period of sick leave, which may be allowed or may be carried forward under this award in or in respect of such year.

- (c) The rights under this clause shall accumulate from year to year so long as employment continues with the employer whether under this or any other award so that any part of the entitlement prescribed in paragraph (b) of this subclause 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 by this clause, in a subsequent year of such continued employment. Provided that in any year an employee shall not be entitled to take more than 380 hours accumulated sick leave.
- (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 payments shall be made.
- (iv) The granting of sick leave shall be subject to the following conditions and limitations:
 - (a) The employee shall, within 24 hours of the commencement of such absence, inform the employer of his/her inability to attend for duty and, as far as possible, state the nature of the illness or injury and the estimated duration of the absence.

- (b) The employee shall furnish to the employer such evidence as the employer reasonably may desire that he/she was unable by reason of such illness or injury to attend for duty on the day or days for which sick leave is claimed.
- (c) For the purposes of this clause at it relates to part-time employees, "day" shall mean the number of hours the employee would have worked on the day on which he/she was absent, had he/she not been sick.
- (v) For the purpose of this clause, continuous service shall be deemed not to have been broken by
 - (a) any absence from work on leave granted by the employer; or
 - (b) any absence from work by reason of personal illness, injury or other reasonable cause, proof whereof shall, in each case, be upon the employee.
- (vi) Service before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.
- (vii) For the purpose of this clause, the word "year" shall mean a period of 12 months commencing on the day on which the employment commenced.
- (viii) For the purpose of sick leave accumulated for years prior to June 1988 (1984 for general shops) the term "day" shall mean a period of eight hours or pro rata for part-time employees.

19. BLOOD DONOR LEAVE

A full-time or part-time employee who is absent during ordinary working hours for the purpose of donating blood shall not suffer any deduction of pay up to a maximum of two hours on each occasion and subject to a maximum of four separate absences for the purpose of donating blood each calendar year.

Provided further that such employee shall arrange for his/her absence to be on a day suitable to the employer and be as close as possible to the beginning or ending of the ordinary working hours.

Proof of the attendance of the employee at a recognised place for the purpose of donating blood, and the duration of such attendance, shall first be furnished to the satisfaction of the employer.

Further, the employee shall notify the employer as soon as possible of the time and date upon which the employee is requesting to be absent for the purpose of donating blood.

20. COMPASSIONATE LEAVE

- (1) An employee, other than a casual employee, shall be entitled to up to three days compassionate leave without deduction of pay on each occasion of the death of a person as prescribed in subclause 20.3 of this clause. Where the death of a relative named herein occurs outside Australia and the employee does not attend the funeral, he/she shall be entitled to one day only, unless he/she can demonstrate to his/her employer that additional time up to a period of three days is justified.
- (2) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will, if required by the employer, provide to the satisfaction of the employer proof of death, together with proof of attendance in the case of a funeral outside of Australia.
- (3) Compassionate 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 21, Personal/Carer's Leave, provided that, for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
- (4) An employee shall not be entitled to compassionate leave under this clause during any period in respect of which the employee has been granted other leave.
- (5) Compassionate leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said clause 21. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

21. 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 18, Sick Leave, for absences to provide care and support, for such persons when they are ill. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
 - (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
 - 1. **"relative"** means a person related by blood, marriage or affinity;
 - 2. **"affinity"** means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - 3. **"household"** means a family group living in the same domestic dwelling.
 - (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (2) Unpaid Leave for Family Purpose
- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill.
- (3) Annual Leave
- (a) An employee may elect with the consent of the employer, subject to the Annual Holidays Act 1944, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
 - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (4) Time Off in Lieu of Payment for Overtime
- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of subclause (iv) of clause 15, Overtime, the following provisions shall apply.
 - (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
 - (c) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
 - (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
 - (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
 - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate, which would have been applicable to the hours taken off.
- (6) Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.

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

22. JURY SERVICE

A full-time or part-time 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.

23. ANNUAL HOLIDAY LOADING

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

NOTE: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance - see subclause (vi).

- (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) or, where such a holiday is given and taken in separate periods, then in relation to each such separate period.

NOTE: See subclause (vi) as to holidays taken wholly or partly in advance.

- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by clause 38, Wages, or the appropriate junior percentage rate of this award, for the classification in which the employee was classified when the loading is paid. Such wage shall also include payments under subclauses (i) and (ii) of clause 35, Allowances and/or Additional Rates, where applicable, but shall not include other allowances, penalty rates, 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 an employee continues until the day when he/she 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/her under the Act such proportion of the loading that would have been payable to him/her under this clause if he/she had become entitled to an annual holiday prior to the closedown as his/her qualifying period of employment in completed weeks bears to 52.
- (viii)
 - (a) When the employment of an employee is terminated by the employer for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he/she has become entitled after 1 February 1974, he/she shall be paid a loading calculated in accordance with subclause (v) 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.
- (ix) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if he/she had not been on holiday; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

24. TRAVELLING TIME, EXPENSES, ALLOWANCES, ETC.

- (i) If an employee is required by the employer to temporarily transfer from one branch to another the employee shall be allowed any extra cost of travelling and shall be paid at ordinary rates for any excess time occupied in travelling.
- (ii)
 - (a) A window dresser employed by an employer who contracts to dress windows for retail shops shall, at the direction of the employer, present themselves for work at the job at their usual time of starting work.
 - (b) The employee shall be paid for all time spent in excess of the time usually spent by themselves in travelling to or from their home to the employer's business premises at

their ordinary rate of pay, except on a Sunday or a public holiday, when payment shall be at the rate of time and one-half.

- (c) The employee also shall be paid any extra cost of travelling and shall be provided with first-class hotel accommodation at the employer's expense and where rail travelling necessarily is involved first-class rail ticket and sleeping car accommodation, where available, shall be provided.
- (iii) Where an employee is required to work after the ordinary ceasing time prescribed by this award until it is too late to travel by train, omnibus, vessel, or other regular conveyance to his or her usual place of residence, the employer shall provide either proper conveyance or the fare for such conveyance to the employee's usual place of residence.

25. UNIFORMS, PROTECTIVE CLOTHING

- (i) In any shop where an employee wears a uniform, cap, coat, overall or other uniform dress, 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 articles and laundering is done by the employee, the employee shall be paid the allowances as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- (ii) Suitable protective clothing shall be provided, upon request, to employees who are to load or unload trucks or customers' vehicles.

26. FACILITIES

- (i) First-aid Outfit

See Occupational Health and Safety Act 1983 - First-aid regulation.

- (ii) Lockers

Where practicable, an employer shall provide locker accommodation for each employee. Lockers, where provided, shall be maintained in good working order. Any dispute as to

the practicability of providing the locker accommodation may be referred by the employer or the union to the Industrial Relations Commission of New South Wales.

(iii) Dining Accommodation

Where practicable, an employer shall provide a room containing adequate seating accommodation with a sufficient supply of hot water to allow employees to partake of meals during their lunch hour.

Any dispute as to the practicability of providing such a room may be referred by the employer or the union to the Industrial Relations Commission of New South Wales.

(iv) Notice Board

An employer shall permit the erection, in a prominent position to be decided by the employer, on the premises of a notice board of reasonable dimensions or a number of such notice boards reasonable in the circumstances, upon which an accredited representative of an industrial union of employees bound by this award shall be permitted to post formal union notices signed by the Secretary of the union concerned. Provided that such notices shall be referred to the employer before being posted on the notice board. Any notice posted on a board not so signed or not referred to the employer may be removed by an accredited representative of the union concerned or by the employer.

27. RENOVATIONS IN RETAIL SHOPS

- (i) As soon as practicable after a decision has been made to undertake the renovations of premises, the employer shall notify the following:
- the workplace occupational health and safety committee;
 - the employees affected;
 - the appropriate union.
- (ii) The employer shall take appropriate measures to minimise and, where possible, eliminate any disabilities caused by the renovations.
- (iii) Where an issue or disagreement arises regarding the renovations, such issue or disagreement shall be resolved by

taking the matter through the following procedures until it is settled -

- (a) discussions between the union and the Company;
- (b) discussions between the union and The Retail Traders' Association of New South Wales;
- (c) referral of the matter to the Industrial Registrar and/or to WorkCover.

28. NOTATIONS

- (i) Annual Holidays

See Annual Holidays Act 1944. Provided that a full-time employee shall be entitled to not less than a total period of annual leave equivalent to 152 ordinary hours of work and pro rata thereof in the case of part-time employees.

- (ii) Long Service Leave

See Long Service Leave Act 1955.

- (iii) Manual handling procedures will be consistent with the Occupational Health and Safety (Manual Handling) Regulation of 1991.

- (iv) Right of Entry

See Chapter 5 – Part 7 of the Industrial Relations Act 1996.

29. EXEMPTIONS

- (i) Members of The Retail Traders' Association of New South Wales and the R.H.I. Stall Holders' Association shall be exempt from clause 36, Agricultural, Pastoral or Horticultural Societies' Shows, etc., during such time as the members observe the provisions of industrial agreement No. 8712, or any other agreement which rescinds or replaces the said agreement, made between the said associations and the Shop, Distributive and Allied Employees' Association, New South Wales, and the Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales, filed with the Industrial Registrar on 25 March 1992.

- (ii) Leave is reserved to the parties to apply to have the exemption varied or removed in its present terms from this award.
 - (a) Members of the Timber Trade Industrial Association shall be exempt from observing the provisions of subclause (B), Picnic Day, of clause 17, Holidays, and in lieu thereof shall observe the additional holiday provisions for New South Wales in paragraph (a) of subclause (ii) of clause 17, Holidays, of the Federal Timber Industry Award in force from time to time.
 - (b) This award shall not apply to employees covered by the Ski Industry (State) Award published 12 March 1993 (273 I.G. 972), as varied, performing duties within the confines of the Kosciusko National Park.

30. CLEANING DUTIES

- (i) It shall be part of employees' duties to perform cleaning functions incidental to their work. Without limiting the generality of the foregoing, the dusting of shelves and of stock, the sweeping up of string and wrapping around counters, the cleaning of implements and fixtures used in the work, and the cleaning (including vacuum cleaning) of the immediate work area, shall be so included.
- (ii) An employee shall not be required to wet wash floors, clean lavatories, sweep pavements or clean the exteriors of windows other than for the removal of occasional defacements.
- (iii) An employee shall not be required to carry out systematic cleaning duties which go beyond the incidental functions as outlined in subclause (i) of this clause.

31. DISPUTE SETTLEMENT PROCEDURES

The procedure for the resolution of grievances and industrial disputation concerning matters arising under this award shall be in accordance with the following procedural steps:

- (i) Procedure relating to a grievance of an individual employee:
 - (a) The employee shall notify the employer (in writing or otherwise) as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.

- (b) The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
 - (c) Reasonable time limits must be allowed for discussion at each level of authority.
 - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
 - (e) While a procedure is being followed, normal work must continue.
 - (f) The employee may be represented by an industrial organization of employees for the purpose of each procedure.
- (ii) Procedure for a dispute between an employer and the employees:
- (a) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
 - (b) Reasonable time limits must be allowed for discussion at each level of authority.
 - (c) While a procedure is being followed, normal work must continue.
 - (d) The employer may be represented by an industrial organization of employers and the employees may be represented by an industrial organization of employees for the purpose of each procedure.

31A 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 subclause (ii) herein;

- (b) The Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount.
 - (c) Deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
 - (d) There shall be no requirement to make deductions for casual employees with less than two month's service (continuous or otherwise).
- (ii) The employee's authorization shall be in writing and shall authorize 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 authorization to the Union, the Union shall not pass the written authorization on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorization.
- (iii) Monies so deducted from employee's 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 employee's membership accounts, provided that:
 - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five percent of the monies deducted; and
 - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 percent of the monies deducted.
- (iv) Where an employee has already authorized 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 authorization 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 authorization 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 authorized the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorization to the employer in order for the payroll deductions of union membership fees to cease.
- (viii) This clause shall take effect:
 - (i) In the case of employers which currently deduct union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after 21 March 2003;
 - (ii) In the case of employers who do not fall within subparagraph (i) above, but who currently make deductions, other than union membership fees deduction or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on 21 June 2003.
 - (iii) For all other employers, from the beginning of the first pay period to commence on or after 21 September 2003.

32. ANTI-DISCRIMINATION

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

application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.

- (3) Under the Anti-Discrimination Act 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (4) Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the Anti-Discrimination Act 1977;
 - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.
 - (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
 - (b) Section 56(d) of the Anti-Discrimination Act 1977 provides:

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

33. REDUNDANCY

- (1) Application
 - (i) This clause shall apply in respect of full-time and part-time employees.
 - (ii) This clause shall apply in respect of employers who employ 15 employees or more immediately prior to the

termination of employment of employees, in the 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 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 skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award specified in subclause 1 – Application, makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

- (ii) Employer's duty to discuss change
 - (a) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (i) of this subclause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the union in relation to the changes.
 - (b) The 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 said paragraph (i).
 - (c) For the purpose of such discussion, the employer shall provide to the employees concerned and the union to which they belong all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

- (iii) Discussions before terminations
 - (a) Where an employer has made a definite decision that the employer no longer wished the job the employee has been doing to be done by anyone pursuant to subparagraph (a) of paragraph (i) of subclause 2 – Introduction of change, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
 - (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (a) of this subclause and shall cover, inter alia, any reason for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any

adverse effects of any termination on the employees concerned.

- (c) For the purpose of the 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.

(3) Termination of Employment

- (i) Notice for changes in organization or structure

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from organization or structure in accordance with subclause 2 – Introduction of Change:

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

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice 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 said subclause 2.

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

(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 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 or its successor

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

(vii) Employment Separation Certificate

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

(viii) Transfer to lower paid duties

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

(4) Severance Pay

- (i) Where an employee is to be terminated pursuant to subclause 3 – Termination of Employment, subject to further order of the Industrial Relations Commission of New South Wales, the employer shall pay the employee the following severance pay in respect of a continuous period of service.

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

Years of service Under 45 years of age entitlement

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

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

Years of service Over 45 years of age entitlement

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

- (ii) **“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.

- (iii) 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 that that contained in paragraph (i) of this clause.

(iv) The Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in the said paragraph (i) will have on the employer.

(v) Alternative Employment

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

(5) Savings Clause

Nothing in this award 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 Industrial Organization of Employees and any employer bound by this award.

34. SUPPORTED WAGE SYSTEM FOR WORKERS WITH DISABILITIES

Employees Eligible for a 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, 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 (subclause (d))	Percentage of prescribed award rate
10%*	10
20%	20
30%	30
40%	40
50%	50
60%	60
70%	70
80%	80
90%	90

(Provided that the minimum amount payable shall be not 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 review. The process of review must be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other Terms and Conditions of Employment

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

(h) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work 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 an amount as set out in (v) of Table 1 — Wages, of Part B, Monetary Rates.
- (iv) Work trials should include induction or training as appropriate to the job being trialled.

- (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.

35. ALLOWANCES AND/OR ADDITIONAL RATES

- (i) The rates as set out in the following Items of Table 2 – Other Rates and Allowances, of Part B, Monetary Rates, shall be paid in addition to the appropriate adult weekly rate prescribed in Table 1 of Part B Monetary Rates:

	Item No. (Table 2)
(a) Section head	9
(b) Qualified adult automotive parts and accessories salesperson	10
(c) An employee who holds a licence under the Liquor Act 1982	11

Provided that an employee paid in accordance with Group 4 of Table 1 Clause 38- Wages, shall not receive less than the amount shown in Item 11 of the said Table 2 per week, in addition to the appropriate rate prescribed by clause 38, Wages.

- (ii) The rates as set out in the following Items of Table 2 shall be paid in addition to the appropriate weekly rates prescribed by the said clause 38, or the appropriate junior percentage rate:

(a) Employee delivering goods (other than newspapers and the like) by box tricycle	12
(b) Employee engaged on photographic or other modelling or mannequin work, whilst so engaged	13
(c) Qualified first-aid attendant	14
(d) Employee employed by a shop to speak a language in addition to English for the purpose of making sales in that shop	15
(e) Ticket writer who has passed an appropriate technical college course	
21 years of age and over	16
under 21 years of age	16

- (iii) An employee who attends an appropriate course of training at a technical college at the request of his/her employer shall be reimbursed at the completion of this course, if successful, the fees for such course.
- (iv) An employee required to provide a bicycle or motorcycle shall be paid the amounts as set out in Item 17 of Table 2 per week extra. An employee required to provide a motor car shall be paid the amount as set out in Item 18 of Table 2 per week extra. Provided that where an employee occasionally uses his/her car by agreement with his/her employer on the employer's business, he/she shall be paid an allowance for each kilometre so travelled as set out in Item 19 of Table 2. If the employer provides a vehicle, he/she shall pay the whole of the cost of the upkeep, registration, insurance and running expenses.

Provided that a full-time retail merchandiser, local or country, shall receive the benefits of this subclause where applicable, with the exception of the occasional kilometre allowance.

Provided further, a part-time or casual retail merchandiser, local or country, shall be paid for the use of his/her motor vehicle an amount as set out in Item 19 of Table 2 per kilometre travelled in connection with his/her employment, with no standing charge contained in this subclause to apply.

- (v) Freezer and Dairy Allowance and Conditions
 - (a) Employees whose primary function is the handling or loading of goods into or out of freezer rooms or freezer cabinets (i.e., rooms or cabinets with an inside temperature falling below 0 degrees Celsius), shall:
 - (1) be paid a disability allowance of the amount as set out in Item 20 of Table 2 in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
 - (2) when working in freezer rooms, be provided with the following protective clothing:
 - (i) fully insulated parka with hood;
 - (ii) fully insulated protective gloves;
 - (iii) fully insulated protective trousers (upon request).
 - (b) Employees whose primary function is working in a public dairy room or backfilling a dairy cabinet, shall:

- (1) be paid a disability allowance of the amount as set out in Item 21 of Table 2 per week in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
 - (2) be provided with the following protective clothing:
 - (i) fully insulated parka with hood;
 - (ii) fully insulated protective gloves;
 - (iii) fully insulated protective trousers;
 - (iv) waterproof boots.
- (c) Employees whose primary function is backfilling in a freezer room (i.e., a room with an inside temperature falling below 0 degrees Celsius), shall:
- (1) be paid a disability allowance of the amount as set out in Item 22 of Table 2 per week in the case of full-time employees and a pro rata amount in the case of casual and part-time employees;
 - (2) be provided with the following protective clothing:
 - (i) fully insulated protective boiler suit;
 - (ii) fully insulated protective head gear;
 - (iii) fully insulated protective gloves;
 - (iv) fully insulated protective boots;
 - (3) not be required to work in such room for longer than two hours without a ten-minute paid rest pause and, where applied, such rest pause shall be in substitution for any other rest pause under the award, which occurs at or around the same time.
- (d) (1) Employees whose primary function is the handling or loading of goods into or out of freezer cabinets shall be provided with fully insulated protective gloves and, upon request, a fully insulated parka.

- (2) Employees whose primary function is the handling or loading of goods into or out of dairy cabinets shall be provided with fully insulated protective gloves.
- (e) Items of protective clothing detailed in this clause shall be laundered by the employer at the employer's expense.

36. AGRICULTURAL, PASTORAL OR HORTICULTURAL SOCIETIES' SHOWS, ETC.

Subject to the Minister for Industrial Relations giving approval to any agricultural, pastoral or horticultural society's show or any trade exhibition or trade fair under section 101 of the Factories, Shops and Industries Act 1962, persons employed thereat shall be paid as follows:

- (i) Casual Employees
 - (a) The hourly rate of pay for all time worked between 9.00 a.m. and 6.00 p.m. shall be as set out in Item 23 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, with a minimum payment of six hours on any day or part thereof.

NOTE: The Annual Holidays Act 1944 requires that casual employees shall, in addition to their ordinary pay, receive for annual holiday purposes an additional amount equivalent to 1/12 of their ordinary pay.

Upon any increase to the weekly rates prescribed by subclause (a) of clause 38, Wages, the hourly rates contained herein shall be adjusted by adding thereto one thirty-eighth of the increase in the weekly rate, calculated to the nearest cent, any part of a cent not exceeding half a cent to be disregarded.

- (b) Saturday Penalty

The additional amount as set out in the said Item 23 of the said Table 2 shall be paid by way of a fixed penalty addition for any Saturday worked.
- (c) Time and one-half shall be paid for all time worked in excess of eight hours or after 12 noon on Saturday or before 9.00 a.m. or after 6.00 p.m. on any one day.

Double time shall be paid for all time worked on public holidays and Sundays.

(d) Meal Money

Unless a suitable meal consisting of at least two courses and a beverage is provided, an amount as set out in Item 3 of Table 2 shall be paid nightly to each employee who works after 6.00 p.m.

(ii) Regular Employees

The provisions of this award shall apply to an employer in respect of any regular employee of the employer covered by this award except as to subclause (v) of clause 10, Hours, of the parent award, and the following provisions which shall be in substitution for the appropriate provisions of the award:

- (a) An amount as set out in Item 3 of Table 2 shall be paid as meal money if the employee works after 6.00 p.m. on any day, Monday to Friday inclusive, and on Saturdays and Sundays a lunch allowance of the same amount if he/she works after 12.30 p.m., and a tea allowance of the same amount if he/she works after 8.00 p.m.
- (b) For each Saturday worked a fixed penalty addition as set out in Item 23 of Table 2 shall be paid.
- (c) Payment at the rate of time and one-half for all time worked after 12 noon on any Saturday during the said show, other than Easter Saturday, shall be made.
- (d) Payment at the rate of double time for all time worked on public holidays, with a minimum payment as for four hours worked, shall be made.
- (e) For each day they attend the show, etc., an additional amount to reimburse them for fares equal to the normal bus fare from the city to the show and return shall be paid but, in the case of the Royal Agricultural Show, this amount shall be the special bus fare from the city to the Showground and return. This reimbursement shall not be made when transport to the show is provided by the employer.

37. AREA, INCIDENCE AND DURATION

This award rescinds and replaces the following awards:

- (a) Shop Employees (State) Award published 2 June 1995 (286 I.G. 28).

It shall apply to all classes of employees employed under classifications in this award who work in or in connection with a retail shop, employees employed in the sale of goods by retail away from the employer's place of business in the State within the jurisdiction of the Retail Employees (State) Conciliation Committee and the Salesmen, Outdoor (State) Conciliation Committee, excluding the County of Yancowinna.

It shall take effect from the beginning of the first pay period to commence on or after 2 March 2001 and shall remain in force for a period of 12 months.

PART B MONETARY RATES

38. WAGES

- (a) The minimum rate of pay for each classification incorporating both the base rate and supplementary payments is expressed for each classification as set out in Table 1 – Wages.
- (b) The rates of pay in this award include the adjustments payable under the State Wage Case 2006. 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.
- (c) Junior Employees

Junior employees and improver waiters/waitresses shall receive the percentages set out in (iv) of Table 1 – Wages of the appropriate adult rate prescribed in Group No. 1 of Table 1 – Wages.

RETAIL EMPLOYEES (STATE) CONCILIATION COMMITTEE

Industries and Callings¹

Section I

All persons employed in or in connection with a shop² and/or automatic vending device³ including (but without limiting the generality of the foregoing) sales assistants, self-service employees, demonstrators, ticket writers, checkout operators, grocery ordermen, reserve stock hands, display hands, window dressers, persons engaged in the hiring of goods in a shop, office assistants, telephone attendants, delivery clerks, persons employed on machines designed to perform or assist in performing any clerical work whatsoever, and cashiers employed solely as cashiers and/or on other clerical duties, in the State, excluding the County of Yancowinna;

excepting -

Van salesmen;

Storemen and packers;

Employees, other than sales assistants, in restaurants, tea shops and cafeterias;

Persons employed selling motor oils, accessories and petrol at or in motor garages and parking and/or service stations or petrol from petrol pumps;

Drivers of trolleys, drays, carts, motor and other power-propelled vehicles, loaders, brakesmen, extra hands, grooms, stablemen and yardmen;

Cleaners;

Employees, other than sales assistants, in or in connection with hospitals, mental hospitals, public charitable institutions or ambulance work;

Butchers, persons engaged in the sale of uncooked meat by retail, carters and other persons delivering such meat, and cashiers in butchers' shops;

¹ In establishing this committee on 23 March 1977 the Commission (Macken J., Matter 109 of 1977) stated:

Section I of the committee shall convene and sit as a separate section when matters are raised which fall solely within the constitution of Section I.

Section II of the committee shall convene and sit as a separate section when matters are raised which fall solely within the constitution of Section II.

Both sections of the committee will sit together when a matter extends beyond the constitutions of either one of the sections of the committee.

² "Shop" in this constitution shall have the same meaning as "shop" as defined in section 78 of the Factories, Shops and Industries Act 1962, or in any Act amending or replacing that Act.

³ "Automatic vending device" in this constitution means any automatic machine or mechanical contrivance in which goods are offered or exposed for sale by retail

And excepting persons employed by -

Sydney Electricity;
The Australian Gas Light Company;
The Council of the City of Newcastle;
Newcastle Gas Company Limited;

*And excepting also employees within the jurisdiction of the following
Conciliation Committees -*

Commercial Travellers (State);
County Councils (Electricity Undertakings) Employees;
Models and Mannequins (State);
Motor Vehicle Salesmen (State);
Northern Rivers County Council;
Pharmacies (State);
Shortland County Council.

Section II

Shop⁴ assistants, cashiers, office assistants and workers employed in or in connection with automatic vending devices⁵, confectioners, soft drinks, fountain drinks, milk drinks, sundaes, fruit and vegetable shops, including persons engaged in the reception, sale or delivery of goods in such shops, and including also employees engaged in the preparing or serving of light refreshments⁶ in such shops in the State, excluding the County of Yancowinna;

Excepting -

Storemen and packers, carters and cleaners;
Employees within the jurisdiction of the Cement Workers, &c. (State)
Industrial Committee.

⁴ "Shop" in this constitution means place, building or any part thereof, stall, tent, vehicle, boat or pack in which goods are sold or offered or exposed for sale by retail.

⁵ "Automatic vending device" in this constitution means any automatic machine or mechanical contrivance in which goods are offered or exposed for sale by retail

⁶ "Light Refreshment" in this constitution means a beverage, hot or cold, served with biscuits, cakes, pastry, sandwiches, meat pie or the like.