



## **HEALTH FITNESS AND INDOOR SPORTS CENTRES (STATE) AWARD**

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**2. RATES OF PAY**

- (a) Weekly Rates — The rates paid to an employee in the classification set out in clause 3, Classifications shall be as set out in (i) of Table 1- Rates of Pay, of Part B, Monetary.

NOTE: These rates are fixed in relation to the tradesperson (C10) classification in the Federal Metal Industry Award. The relativities fixed in relation to that classification are:

|                |       |
|----------------|-------|
| (i) Level      | 1 78% |
| (ii) Level 2   | 82%   |
| (iii) Level 3A | 87.4% |
| (iv) Level 3B  | 91.5% |
| (v) Level 4    | 92%   |
| (vi) Level 5   | 100%  |
| (vii) Level 6  | 115%  |

The wages payable to employees under this award are inclusive of any payment by way of commissions or other similar payments to the extent that commissions or other similar payments match the total Supplementary Payments in Table 4 — Supplementary Payments, of Part B.

- (b) Junior Rates — A junior employee engaged at level 1, 2 or 3 shall be paid the following for that level:

|                            | <b>Percentage of appropriate adult rate</b> |
|----------------------------|---|
| At sixteen years and under | 55%   |
| At seventeen years         | 65%   |
| At eighteen years          | 75%   |
| At nineteen years          | 85%   |
| At twenty years            | 100%  |

Provided that employees who hold recognised industry-wide qualifications and are required to act upon them at 18 years or older with at least 12 months experience shall be paid the full adult rate of pay.

- (c) Supervisory Loadings — an employee appointed by an employer to supervise other employees shall be paid, in addition to the rates of pay prescribed in subclause (a) of this clause, the following amount

per week specified in Table 2 — Other Rates and Allowances, of Part B as follows:

|                                       |         |
|---------------------------------------|---------|
| In charge of up to 5 employees        | Item 1; |
| In charge of 6 and up to 10 employees | Item 2; |
| In charge of 11 or more employees     | Item 3; |

or pro rata amount per engagement for part-time and casual employees.

- (d) For the calculation of the casual hourly rate refer to clause 5, Casual Employment.

### 3. CLASSIFICATIONS

Level 1 — A level 1 employee is an employee who is undertaking training which may include information on the employer's business, conditions of employment, introduction of supervisors and fellow workers, training and career path opportunities, occupational health and safety, equal employment opportunities and quality assurance.

An employee at this level performs routine duties essentially of a manual nature and to the level of his/her training:

exercises minimal judgement;

works under direct supervision;

is undertaking structured training/learning in the following areas:

- clerical assistant duties including switchboard operation, reception, information services, taking bookings;
- providing general assistance to employees of a higher grade, not including cooking or direct service to customers;
- cleaning, tidying and setting up of kitchen, food preparation and customer service areas, including cleaning of equipment, crockery and general utensils;
- assembly and preparation of ingredients for cooking;
- handling pantry items and linen;
- setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
- general cleaning, gardening and labouring tasks
- door duties, attending a cloakroom or car park not involving the handling of cash

Level 2 — A Level 2 employee is an employee who has completed at least 3 months or in the case of a casual or part time employee, 456 hours training at Level 1 so as to enable him/her to perform work within the scope of this level. An employee at this level:

performs work above and beyond the skills of an employee at Level 1 and to the level of is/her training.

works from instructions or procedures and works under direct supervision either individually or in a team environment is primarily engaged in one or more of the following duties:

- overseeing pool activities;
- assisting with classes and directing leisure activities in a recreational complex;
- attending to equipment and displays, eg pool attendant;
- providing customer advice, sales and services;
- operating switchboard and/or telephone paging system;
- clerical duties, involving intermediate keyboard skills with instructions;
- programme/ticket selling and general sales involving receipt of monies and giving change, including operation of cash registers, use of electronic swipe input devices - laundry and/or cleaning duties involving the use of cleaning equipment and/or chemicals;
- maintaining general presentation of grounds;
- door duties, attending a cloak room or car park;
- serving from a snack bar, buffet or meal counter;
- supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
- non-cook duties in a kitchen.

Level 3A — A Level 3A employee has completed structured training (which may include formal Life Saving, Rescue and Resuscitation Training) recognised by the industry as relevant and appropriate to perform within the scope of this level.

is responsible for the quality of their own work subject to routine supervision either individually or in a team environment;

exercises discretion within their level of skills and training;

assists in the provision of on-the-job training of employees at Levels 2 and 1 where applicable.

Indicative of some of the duties which an employee at this level may perform include:

- pool attendant (Lifeguard) involved in overseeing pool activities under supervision by a more qualified employee;
- Instructor who works directly with more qualified staff to provide supervision of a group or individual fitness activity or program, only after commencing a recognised course or undertaking accredited training;
- Aerobics instructor undertaking accredited training with less than 12 months experience in the industry;
- recreational/leisure activities, involving the planning, and/or co-ordinating and/or conduct of individual leisure, games, promotional and/or entertainment activities;
- masseur with less than 12 months experience in the industry;
- supervision of front desk, including customer liaison and rostering of front office staff;
- building service employee who undertakes maintenance and/or restoration of hard floor surfaces, including buffing and sealing and/or operating ride on powered sweeping machines;
- gardener / grounds maintenance employee not possessing trade qualifications (and not employed as green keeper);
- maintenance of machinery, plant and technical equipment (non trade qualifications), including a trade assistant undertaking formal training who takes direction from a more qualified employee;
- preparing and cooking a limited range of basic food items such as breakfasts, grills and snacks;
- security work requiring the holding of an appropriate license
- reconciling cash transactions;
- ordering stock;
- undertakes routine chemical testing under technical supervision

Level 3B — Weight loss counsellor who develops nutritional plans and weight loss programs and who weighs and measures and records clients progress.

Level 4 — An employee at this level shall be capable of performing the indicative skills of a Level 3A employee and shall also be able to work from complex instructions in the following areas:

Aerobics instructor who has undertaken accredited training plus who has a minimum of 12 months of regular employment in the industry;

Masseur with more than 12 months experience in the industry;

Caretaker who is responsible for maintaining general site appearance, and supervising or co-ordinating the work of building services / grounds employees at lower levels.

Progression to Level 5 will be dependent upon successful application and availability of position

Level 5 — An employee who is qualified in a trade recognised by the industry as relevant and appropriate to the work performed, and who is competent to perform work within the scope of this level.

An employee at this level is responsible for supervision, training and co-ordination (including rostering) of employees within their respective work area to ensure delivery of service. An employee at this level is one who performs the following range of tasks or duties:

- Instructor (including Aerobics instructor) who conducts more than one level or type of class or activity and who may assist in the design and delivery of programs and is capable of assessing participants;
- Lifeguard holding relevant industry qualifications at trade or equivalent level;
- Weight loss counsellor responsible for co-ordinating or supervising the work of employees at lower levels;
- Trade qualified in a single trade stream and who is responsible for giving trade directions for Levels 1 to 4;
- Employee performing horticultural duties at a Certificate or equivalent level.
- Building Maintenance supervisor involved in supervising the general maintenance of buildings and work of employees at Levels 1 to 4;

Level 6 — An employee who is engaged in supervising, training and co-ordinating staff and who is responsible for the maintenance of service and operational standards, and who exercises substantial responsibility and independent initiative and judgement with a requisite knowledge of their specific field and of the employers business.

An employee at this level would have:

worked or studied in a relevant field and/or have specialist knowledge, qualifications and experience; or

hold formal trade or technical qualifications relevant to the employer in more than one trade or technical field; which are required by the employer to perform the job; or

hold specialist post trade qualifications which are required by the employer to perform the job, and will have achieved a level or organisation or industry specific knowledge sufficient for them to give advice and/or guidance to their organisation and/or clients in relation to specific areas of their responsibility.

Indicative of duties at this level are:

- General supervision of catering or retail functions;
- Centre administration involving supervision of staff and systems and co-ordinating events;
- development of in-house training programs for instructors and co-ordinators

NOTE: Where supervision is a feature or responsibility of the Level, the supervisory loading referred to in subclause (c), of Clause 2, Rates of Pay, shall not be payable.

FURTHER NOTE: The definitions contained in the classification structure above shall have no application to a person employed in a managerial capacity (including a manager employed in a Weight Loss Centre) that is a person who is employed primarily to control the conduct of the employer's business either in whole or in part and who in the performance of his/her duties regularly makes decisions and accepts responsibility on matters relating to the administration and conduct of business.

#### **4. TERMS OF ENGAGEMENT**

- (a) An employee shall be employed as one of the following:
- (i) a full-time employee;
  - (ii) a part-time employee;
  - (iii) a casual employee
- (b) The employment of employees (excluding casual employees) may be terminated by one week's notice on either side which may be given at any time or by the payment by the employer or forfeiture by the employee of a week's pay in lieu of notice. This shall not affect the right of the employer to dismiss an employee without notice in the case of an employee guilty of malingering, inefficiency, neglect of duty or misconduct.

- (c) Trial Period — Notwithstanding anything elsewhere contained in this clause, the first three months of employment will be on a trial basis and may be terminated by two days' notice by either side, or by the payment in lieu by the employer or forfeiture by the employee, of two days' wages.
- (d) Notwithstanding anything contained in this award, an employer may deduct payment of wages for any day, or part thereof, on which an employee cannot be usefully employed because of:
  - (i) any strike;
  - (ii) any breakdown of machinery; or
  - (iii) any stoppage of work unavoidable by the employer.

## 5. CASUAL EMPLOYMENT

- (a) Casual employees are persons engaged and paid as such.
- (b) A casual employee shall be engaged either on an ordinary or "all-up" basis as detailed below:
  - (i) Ordinary Casual — An ordinary casual shall be paid 1/38 of the appropriate weekly rate plus:
    - (1) a 15 per cent loading (except when Saturday, Sunday, public holiday or night work penalties are paid); and
    - (2) the equivalent of one-twelfth of the ordinary hourly rate of pay for a full-time employee for each hour worked.

The payments specified in this subclause include statutory obligations under the Annual Holidays Act 1944.

An ordinary casual employee shall be paid for a minimum engagement of three hours.

- (ii) All-up Casual — An all-up casual shall be paid 1/38 of the appropriate weekly rate plus a loading of 30 per cent for each hour worked.

This 30 per cent loading includes statutory obligations under the Annual Holidays Act 1944, and the loadings applicable under this award for work on Saturdays, Sundays, public holidays and at night.

An all-up casual employee shall be paid for a minimum engagement of three hours. Provided that where an employer has been engaging casual(s) for periods of less than 3 hours

prior to the commencement of this award, they may continue to do so, subject to a minimum engagement of one hour and a half. Also provided that an all-up casual employee involved in the presentation or conducting of sports games/training (e.g. instructors) shall be paid for a minimum engagement of one hour.

## 5A. SECURE EMPLOYMENT

### (a) Objective of this Clause

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

### (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing

contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

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

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

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

(viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Occupational Health and Safety

(i) For the purposes of this subclause, the following definitions shall apply:

(1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.

(2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

(ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and

- (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the Occupational Health and Safety Act 2000 or the Workplace Injury Management and Workers Compensation Act 1998.
- (d) Disputes Regarding the Application of this Clause  

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the Apprenticeship and Traineeship Act 2001 (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 6. PART-TIME EMPLOYMENT

- (a) A part-time employee is a permanent employee engaged to work less than an average of thirty-eight hours per week over any 28 day period, but not less than 15 hours per fortnight and who is not engaged and paid as a casual.
- (b) A part-time employee shall be engaged in writing, detailing their minimum weekly hours and method of engagement.
- (c) A part-time employee shall be paid an hourly rate equivalent to the appropriate weekly rate divided by thirty-eight with a minimum shift of three consecutive hours.
- (d) Part-time employees shall receive the same benefits as apply to full-time employees under this award but on a pro rata basis.
- (e) A part-time employee can be required to work more than one shift on any day. Provided that the total shifts on any day shall not be less than three hours in duration and there shall be not more than two such shifts per day within a span of 12 hours from the start of the first such shift to the end of the second such shift, exclusive of any breaks.

## 7. HOURS OF WORK

- (a) Subject to subclause (g) of this clause, the ordinary hours of work shall be not more than an average of thirty eight per week to be worked on one of the following bases:
- (i) 38 hours within a work cycle not exceeding seven consecutive days;
  - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
  - (iii) 152 hours within a work cycle not exceeding twenty-eight consecutive days.

The hours of work are to be worked each day in either one or two shifts totalling not more than:

- (i) Ten hours for full-time employees.
- (ii) ten hours for part-time employees, subject to subclause (e) of clause 6, Part-time Employment.
- (ii) Eight hours for casual employees.

exclusive of any breaks.

- (b) All employees shall be notified by the employer of their working shifts by means of a roster placed in the staff room for each employee's perusal. At least seven days notice shall be given to the employee should any alteration of the working hours be intended, except in the case of emergency or where the employee(s) agrees to the alteration.
- (c) Each employee shall have an average of two days off in each week of employment in a 28 day period. Such two days shall be consecutive if it is reasonably possible to arrange rosters accordingly.
- (d) An employee shall be paid a loading of 30 per cent for ordinary hours worked between midnight and 6.00 a.m. on all occasions.
- (e) An employee who is principally engaged as a cleaner shall be paid a loading of 15 per cent for ordinary hours worked between 6.00pm and midnight. This loading is not payable on weekends or public holidays.
- (f) Full-time and part-time employees will be given 10 clear hours off between finishing work on one ordinary shift and starting work on the next ordinary shift on consecutive days or be paid overtime for all time worked until the employee has had ten clear hours off.

- (g) Employees in Weight Loss Centres — the ordinary hours of work for employees in weight loss centres covered by this award shall be 38 per week between the hours of 6.00 am to 8.00 pm, Monday to Friday, and 8.00 am to 6.00 pm on a Saturday.
- (h) Make-up Time —
  - (i) 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.
  - (ii) 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.

## 8. OVERTIME

- (a) All work performed in excess of the hours prescribed in subclause (a) of clause 7, Hours of Work, shall be overtime.
- (b) Overtime shall be paid at the rate of time and a half for the first two hours and double time thereafter on a daily basis, calculated on:
  - (i) The ordinary rate of pay for weekly employees;
  - (ii) The loaded casual rate (i.e. 15 per cent or 30 per cent loading) for casual employees
- (c) Reasonable Overtime
  - (i) Subject to paragraph (ii) below, an employer may require an employer may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
  - (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours, which are reasonable.
  - (iii) For the purposes of paragraph (ii) what is unreasonable or otherwise will be determined having regard to:
    - (1) any risk to employee health and safety;
    - (2) the employee's personal circumstances including any family and carer responsibilities;

- (3) the needs of the workplace or enterprise;
  - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (5) any other relevant matter.
- (d) When overtime work is necessary it shall, wherever reasonably practicable, be arranged that employees have at least ten consecutive hours off duty between the work of successive days. An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day, and that employee has not had at least ten consecutive hours off duty between those times, shall be released after completion of such overtime until ten consecutive hours off duty has been allowed without loss of pay for ordinary working time occurring during such absence.

When such a break is not granted by the employer, the employee shall be paid double time for all time worked until the appropriate break is granted.

- (e) Time Off in Lieu of Payment for Overtime
- (i) Prior to working overtime, 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.
  - (ii) 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.
  - (iii) If, having elected to take time as leave in accordance with paragraph (i) 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.
  - (iv) Where no election is made in accordance with the said paragraph (i), the employee shall be paid overtime rates in accordance with the award.

## **9. SATURDAY AND SUNDAY WORK**

- (a) All ordinary work on a Saturday shall be paid at the employee's ordinary-time classification rate of pay plus a penalty equal to 25 per cent of the employee's ordinary-time classification rate of pay.

- (b) All ordinary work on a Sunday shall be paid at the employee's ordinary-time classification rate of pay plus a penalty equal to 50 per cent of the employee's ordinary-time classification rate of pay.

## **10. PUBLIC HOLIDAYS**

- (a) Employees, other than casual employees, shall be entitled to the following public holidays without deduction of pay: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Birthday of the Sovereign, Christmas Day, Boxing Day, and any other day or days gazetted as public holidays shall be public holidays for the purposes of this clause.

Provided that the abovementioned holidays may be substituted for another day off, by agreement between the employer and the employee(s), to be taken within one month of the said holiday or adjacent to a period of annual leave.

- (b) In addition to the holidays specified in subclause (a) of this clause, an employee shall be entitled to one additional day as a public holiday in each calendar year. Such additional holiday shall be observed on the day when the majority of employees in an establishment observed a day as an additional holiday or on another day mutually agreed between the employer and the employee. The additional holiday is not cumulative and must be taken within each calendar year.
- (c) Where an employee is absent from employment on the working day (or part thereof) before, or the working day (or part thereof) after a public holiday (or group of public holidays) without reasonable cause, onus of proof of which will lie with the employee, the employee shall not be entitled to payment for the holiday(s) succeeding or preceding the absence.
- (d) For all work performed on a public holiday an employee shall be paid at double time and a half.

## **11. PAYMENT OF WAGES**

- (a) All employees are to be paid either weekly, fortnightly or monthly, provided that if demanded by the employee, he/she shall be paid at least once each fortnight.
- (b) Wages shall be paid at the election of the employer by:
  - (i) cash; or
  - (ii) cheque; or

(iii) electronic funds transfer (EFT).

An employer shall be required to give reasonable notice to employee's of any decision to change the method of payments of wages.

(c) Written details of all payments and deductions from wages shall be supplied to employees.

## **12. HIGHER DUTIES**

An employee transferred to work in a classification that provides for a rate of pay higher than the employee's own ordinary rate shall be paid at such higher rate during the period of transfer, such payment to continue for a minimum period of one hour.

## **13. MEAL BREAKS**

(a) Meal breaks shall be not less than thirty minutes and not more than one hour.

(b) Such meal breaks are to be commenced not more than five hours after commencing work.

(c) If the employees are required to work during the time when a meal break should be allowed pursuant to this clause they shall be paid for such time at the appropriate overtime rate and the meal break shall be postponed to another mutually convenient time.

(d) No part of the time taken as a meal interval shall be counted as part of the ordinary hours of work.

(e) Where practicable a paid tea break may be allowed each day for full-time employees. Provided that the taking of such break(s) shall be subject to the workload of the business.

(f) Subject to (c), no employee shall be required to work more than 5 consecutive hours without a break.

## **14. SICK LEAVE**

An employee, other than a casual employee with not less than three months' continuous service with the employer who, by reason of personal ill-health, is unable to attend for duty shall be entitled to ordinary rates of pay for the actual time of such non-attendance, subject to the following conditions and limitations.

- (a) The employees shall not be entitled to paid leave of absence for a period in respect of which the employee is entitled to compensation under the Workplace Injury Management and Workers' Compensation Act 1998.
- (b) The employee wherever possible shall, prior to the commencement of such absence, inform the employer of the employee's inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of absence.
- (c) The employee shall provide, to the satisfaction of the employer, by the production of a medical certificate or such other evidence as may be acceptable to the employer, that he/she was unable, on account of illness or injury, to attend for duty on the day or days for which sick leave is claimed.
- (d) An employee shall be entitled to be paid sick leave according to the following scale:
  - (i) During the first year of service — 38 hours.
  - (ii) During the second year of service — 60.8 hours.
  - (iii) During the third and subsequent years of service — 76 hours.

Provided that the sick leave entitlement under this clause may be accumulated, subject to continuous employment, for a maximum of 228 hours in addition to the current year's entitlement.

- (e) For absences adjacent to public holidays, refer to subclause (c) of clause 10, Public Holidays.

## **15. PERSONAL/CARER'S LEAVE**

- (a) Use of Sick Leave —
  - (i) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (2) of paragraph (iii), 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 14, 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.
  - (ii) The employees shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.

- (iii) The entitlement to use sick leave in accordance with this subclause is subject to:
- (1) the employee being responsible for the care and support of the person concerned; and
  - (2) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a defacto 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), 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 paragraph:

" relative" means a person related by blood, marriage or affinity;

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

"household" means a family group living in the same domestic dwelling.
- (iv) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

## 16. UNPAID LEAVE FOR FAMILY PURPOSE

- (i) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in subparagraph (2) of paragraph (iii) of subclause (a) of Clause 15, Personal/Carers Leave.

## 17. ANNUAL LEAVE

- (a) See *Annual Holidays Act 1944*. Reference should also be made to subclause (b) of clause 5, Casual Employment.
- (b) Annual Leave —
  - (i) 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.
  - (ii) 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.
  - (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

## 18. ANNUAL LEAVE LOADING

- (a) Each employee, other than a casual employee, before going on any period of annual leave shall for each week of such leave be paid an annual leave loading at the rate of 17½ per cent of the ordinary weekly rate of pay prescribed herein for such employee.
- (b) No loading is payable to an employee who takes leave wholly or partly in advance. Provided that if the employment of such an employee continues until the day when they would have become entitled to annual leave, the loading then becomes payable in respect of the period of such leave and is to be calculated by applying the award rates of wages applicable on that day.
- (c) No loading is payable on the termination of an employee's employment.

## 19. COMPASSIONATE LEAVE

- (i) An employee, other than a casual employee, shall be entitled to up to two days compassionate leave, without deduction of pay, on each occasion of the death of a person within Australia as prescribed in subclause (iii) of this clause. Where the death of a person as prescribed by the said subclause (iii) occurs outside Australia, the employee shall be entitled to three days compassionate leave where the person travels overseas to attend the funeral.
- (ii) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will provide to the satisfaction of the employer proof of death.
- (iii) 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 (2) of paragraph (iii) of subclause (a) of Clause 15, 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.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Compassionate leave may be taken in conjunction with other leave available under paragraph (iv) subclause (a) of the said clause 15, and clause 16, Unpaid Leave for Family Purpose. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

## 20. JURY SERVICE

- (a) An employee, other than a casual employee, required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.

- (b) An employee shall notify the employer as soon as possible of the date upon which he/she is required to attend for jury service. Also, the employee shall give the employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

## **21. FIRST-AID**

- (a) An employee appointed by the employer to perform first-aid duties and who holds a first-aid certificate shall be paid an additional amount per week as set out in Item 4 of Table 2 of Part B or per shift as set out in Item 4 of Table 2 of Part B.

This allowance shall not be regarded for calculating other payments arising from this award.

- (b) First-aid Kits — See Occupational Health and Safety Act 2000 (First-aid Regulation).

## **22. GENERAL CONDITIONS**

- (a) A sufficient supply of boiling or purified water shall be provided at meal hours for all employees.
- (b) A lunch room, which may be an area separated by a partition (mobile or otherwise) from the public and is separated from any dressing room, shall be provided by the employer.
- (c) A lockable cabinet, cupboard, drawer or locker where employee's valuable may be stored shall be provided by the employer.
- (d) Access to suitable lavatory facilities, in close proximity to the work station, shall be provided by the employer.
- (e) Where required, an employee working outdoors shall be supplied with wet weather gear, footwear and adequate reflective clothing.

## **23. ALLOWANCES**

- (a) Stocking Allowance — Employees shall be paid a stocking allowance as set out in Item 5 of Table 2 of Part B, if they are required by the employer to wear stockings in the course of their employment. This allowance shall only apply to employees employed in Weight Loss Centres.

- (b) Toilet Cleaning Allowance — A cleaner required to clean lavatories shall be paid an allowance as set out in Item 5 of Table 2 of Part B. Lavatories of both sexes can be cleaned by either male or female cleaners as long as appropriate steps are taken to ensure that the lavatories are not in use at the time of cleaning. This allowance shall not be payable to employees required to clean toilets as an ancillary function to their normal duties.
- (c) Laundry Allowance — Where a Weight Loss Centre requires an employee to wear a uniform or clothing, the Weight Loss Centre shall supply and maintain such uniforms, free of charge to the employee by the Weight Loss Centre laundering or dry cleaning such uniform or clothing. Provided that a laundry allowance as set out in Item 5 of Table 2 may be paid in lieu.
- (d) Broken Shift Allowance — part-time or full-time employees working broken shifts as provided for in subclause (e) of Clause 6, Part-time Employment and clause 7, Hours of Work, shall be paid the additional allowances as set out in Item 5 of Table 2.

#### **24. TRAVELLING TIME**

If an employee is temporarily transferred from the usual place of employment, the employee shall be reimbursed any extra cost of travelling and shall be paid for any excess time occupied in travelling.

#### **25. MISCELLANEOUS STATUTORY PROVISIONS**

- (a) Long Service Leave — *Long Service Leave Act 1955*.
- (b) Parental Leave — See *Industrial Relations Act 1996* (Chapter 2, Part 4, Division 1).
- (c) Particulars of wages to be supplied to employees — See *Industrial Relations Act 1996* (Section 123).
- (d) Time and pay sheets to be kept — See *Industrial Relations Act 1996* (Section 129).

#### **26. GRIEVANCE AND DISPUTE SETTLEMENT PROCEDURE**

Subject to the *Industrial Relations Act 1996* grievances or disputes shall be dealt with in the following manner:

- (a) The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and state the

remedy sought. This meeting shall take place within two working days of the issue arising (weekends and holidays excepted).

- (b) If agreement is not reached, the matter shall then be referred by the employer to a higher authority (where this exists) not later than three working days after (a) above (weekends and holidays excepted). 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 (in writing or otherwise) for not implementing any proposed remedy.
- (c) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission for settlement by either party.
- (d) While a procedure is being followed, normal work must continue.
- (e) The employer may be represented by an industrial organisation of employers and the employees(s) may be represented by the Union for the purposes of each step of the procedure.
- (f) The foregoing disputes settlement procedure is not mandatory for an employee of a small business employer. For the purposes of this subclause a small business employer is defined as:
  - (i) an employer of fewer than 20 employees; or
  - (ii) an employer with a management structure under which all persons employed by the employer are subject to the direct supervision and control of the employer or the chief executive of the employer.

## **27. TRAINING**

The parties acknowledge that varying degrees of training are provided to employees, 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 and the parties agree to co-operate in encouraging both employers and employee to avail themselves of the benefits to both from such training.

## 28. TRAINEESHIPS

- (i) Application
  - (a) Subject to paragraph (c) of this subclause, and clause 34, Area, Incidence and Duration, this clause shall apply to persons who are undertaking a traineeship (as defined) and is to be read in conjunction with this award.
  - (b) Notwithstanding (a), this clause shall apply provisionally for an interim period:
    - (i) Starting upon the commencement date as recorded on a valid "Application to Establish a Traineeship" signed by both the employer and the Trainee, which has been lodged with the Commissioner for Vocational Training; and
    - (ii) Ending at the time the employer is notified that the establishment of the traineeship has been approved, or at the end of the probationary period, whichever is the later.
  - (c) This award or any former industrial agreement of the Industrial Relations Commission of New South Wales shall apply, except where inconsistent with this clause.
  - (d) Notwithstanding the foregoing, this clause shall not apply to employees who were employed by an employer under this award referred to in paragraph (a) of this subclause prior to the date of approval of a traineeship relevant to the employer, except where agreed upon between the employer and the relevant union(s).
  - (e) This clause does not apply to the apprenticeship system or any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 27 April 1998, or in an award that binds the employer. This clause only applies to AQF IV traineeships when the AQF III traineeship in the training package is listed in Appendix A to this award. Further, this award also does not apply to any certificate IV training qualification that is an extension of the competencies acquired under a certificate III qualification which is excluded from this clause due to the operation of this subclause.

NOTATION: - The abbreviation 'AQF' means Australian Qualification Framework.

(f) At the conclusion of the traineeship, this clause shall cease to apply to the employment of the trainee and the rest of this award shall apply to the former trainee.

(ii) Objective

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

(iii) Definitions

Structured Training means that training which is specified in the Training Plan which is part of the Training contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority and leads to a qualification set out in paragraph (f) of subclause (iv) of this clause.

Relevant Union means a union party to the making of this award and which is entitled to enrol the Trainee as a member.

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

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

Training contract means an instrument which establishes a Traineeship under the Apprenticeship and Traineeship Act 2001(NSW).

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

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

Relevant NSW Training Authority means the Department of Education and Training, or successor organisation.

Year 10 - For the purposes of this clause, any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

(iv) Training Conditions

- (a) The Trainee shall attend an approved training course or training program prescribed in the Traineeship contract or as notified to the trainee by the relevant NSW Training Authority in an accredited and relevant traineeship.
- (b) A Traineeship shall not commence until the relevant Training contract, has been signed by the employer and the trainee and lodged for registration with the relevant NSW Training Authority.
- (c) The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship contract and shall ensure that the Trainee receives the appropriate on-the-job training.
- (d) The employer shall provide a level of supervision in accordance with the Training contract during the traineeship period.
- (e) The employer agrees that the overall training program will be monitored by officers of the relevant NSW Training Authority and that training records or work books may be utilised as part of this monitoring process.
- (f) Training shall be directed at:
  - (i) the achievement of key competencies required for successful participation in the workplace (eg. literacy, numeracy, problem solving, team work, using technology) and an Australian Qualification Framework Certificate Level I.

This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise; and/or

- (ii) the achievement of key competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies) as are proposed to be included in an Australian Qualification Framework Certificate Level II or above.

(v) Employment Conditions

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

For example, a part-time trainee working 2½ days per week (including the time spent in approved training) works (and trains) half the hours of a full-time trainee and therefore their traineeship could extend for a maximum of two years.

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

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

- (b) A trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.
- (c) Where the trainee completes the qualification in the Training contract, earlier than the time specified in the Training contract then the traineeship may be concluded by mutual agreement.
- (d) A traineeship shall not be terminated before its conclusion, except in accordance with the Apprenticeship and Traineeship Act 2001 (NSW), or by mutual agreement.

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

- (e) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the approved training in accordance with the Training contract.

- (f) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any award or any other legislative entitlements.
- (g)
  - (i) The Training contract may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.
  - (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of this award.
  - (iii) No Trainee shall work shiftwork unless the relevant parties to this award agree that such shiftwork makes satisfactory provision for Structured Training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
  - (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award.
- (h) All other terms and conditions of this award shall apply.
- (i) A Trainee who fails to either complete the Traineeship or who cannot for any reason, be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payment.

The following employment conditions apply specifically to part-time and school-based trainees

- (j) A part-time trainee shall receive, on a pro rata basis, all employment conditions applicable to a full-time trainee. All the provisions of this award shall apply to part time trainees except as specified in this clause.
- (k) A part time trainee may, by agreement, transfer from a part time to a full time traineeship position should one become available.
- (l) The minimum daily engagement periods applying to part-time employees specified in this award shall also be applicable to part time trainees.

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

- (i) a 2 hour start is sought by the employee to accommodate the employee's personal circumstances, or
  - (ii) the place of work is within a distance of 5km from the employee's place of residence.
- (m) School-based trainees shall not be required to attend work during the interval starting four weeks prior to the commencement of the final year Higher School Certificate Examination period and ending upon the completion of the individual's last HSC examination paper.
- (n) For the purposes of this clause, a school-based trainee shall become an ordinary trainee as at January 1 of the year following the year in which they ceased to be a school student.
- (vi) Wages — Wages — Full-Trainees
- (a) The weekly wages payable to full time trainees shall be as prescribed in Part C of the award, as follows:  
  
Industry/Skill Level A Table 1A  
Industry/Skill Level B Table 1B  
Industry Skill Level C Table 1C  
School-Based Trainees Table 1D
  - (b) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this clause.
  - (c) The wage rates prescribed in this clause do not apply to complete trade level training which is covered by the Apprenticeship system.
  - (d) The rates of pay in this award include the adjustments payable under the State Wage Case 2005. These Adjustments may be offset against:

- (i) any equivalent overaward payments, and/or
  - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
- (e) Appendix A sets out the rate of pay or skill level of a Traineeship. Where the actual traineeship is listed in Appendix A, the rate of pay or skill level in respect of the traineeship is determinative of the actual rate of pay or skill levels (i.e. skill levels A, B or C) that are contained in the Traineeship. Where the traineeship is not listed in Appendix A, the skill levels in Appendix A are illustrative of the appropriate levels, but are not determinative of the actual skill levels. The determination of the appropriate rate of pay or skill level for the purpose of determining the appropriate wage rate shall be based on the following criteria:
- (i) Any agreement of the parties, or submission by the parties;
  - (ii) The nature of the industry;
  - (iii) The total training plan;
  - (iv) Recognition that training can be undertaken in stages;
  - (v) The exit skill level in the Parent Award contemplated by the traineeship.

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

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

(g) (i) Definition of Adult Trainee

An adult trainee for the purpose of this subclause is a trainee who would qualify for the highest wage rate in Industry/Skill Level A, B, or C if covered by that Industry/Skill Level.

(ii) Wage Rates for Certificate IV Traineeships

(a) Trainees undertaking an AQF IV traineeship shall receive the relevant weekly wage rate for AQF III trainees at Industry/Skill Levels A,B, or C as applicable with the addition of 3.8 per cent of that wage rate.

(b) An adult trainee who is undertaking a traineeship for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

| Industry/Skill Level | First Year of Traineeship \$ | Second Year of Traineeship\$ |
|----------------------|------------------------------|------------------------------|
| Level A              | 470.00                       | 488.00                       |
| Level B              | 452.00                       | 469.00                       |
| Level C              | 405.00                       | 420.00                       |

Wages for Part-time and School-Based Trainees

(a) This clause shall apply to trainees who undertake a traineeship on a part time basis by working less than full time ordinary hours and by undertaking the approved training at the same or lesser training time than a full-time trainee.

(b) Table 1 — Hourly Rates for Trainees Who Have Left School and Table 4 — Hourly Rates for School-based Traineeships of Part C, Monetary Rates are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in approved training. These rates are derived from a 38-hour week.

(c) The hours for which payment shall be made are determined as follows:

(i) Where the approved training for a traineeship (including a school based traineeship) is provided off-the-job by a registered training organisation, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part-time trainee on-the-job.

- (ii) Where the approved training is undertaken on-the-job or in a combination of on-the-job and off-the-job, and the average proportion of time to be spent in approved training is 20% (i.e., the same as for the equivalent full-time traineeship):
- (1) If the training is solely on-the-job, then the total hours on-the-job shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.
  - (2) If the training is partly on-the-job and partly off-the-job, then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

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

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

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

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

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

- (i) "Full time wage rate" means the appropriate rate as set out in Table 1 — Industry/Skill Level A, Table 2 — Industry/Skill Level B, Table 3 — Industry/Skill Level C and Table 4 — School-based Traineeships of Part C, Monetary Rates.
- (ii) "Trainee hours" shall be the hours worked per week including the time spent in approved training. For the purposes of this definition, the time spent in approved vocational training may be taken as an average for that particular year of the traineeship.

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

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

NOTE: 1:7.6 in the above formula represents the average weekly training time for a full time trainee whose ordinary hours are 38 per week a pro rata adjustment will need to be made in the case where the Parent Award specifies different ordinary time hours for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

NOTE 2: The parties note that the traineeship agreement will require a trainee to be employed for sufficient hours to complete all requirements of the traineeship, including the on the job work experience and demonstration of competencies the parties also note that this would result in the equivalent of a full day's on the job work per week.

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

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

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

"Trainee hours" totals 15 hours; these are made up of 11 hours work which is worked over two days of the week plus 1-1/2 hours on-the-job training plus 2-1/2 hours off the job approved training at school and at TAFE.

So the wage rate in year 11 is:

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

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

- (vii) Grievance Procedures for Trainees
- (a) Procedures relating to grievances of individual trainees -
- (i) A trainee shall notify the employer as to the substance of any grievance and request a meeting

with the employer for bilateral discussions in order to settle the grievance.

- (ii) If no remedy to the trainee's grievance is found, then the trainee shall seek further discussions and attempt to resolve the grievance at a higher level of authority, where appropriate.
  - (iii) Reasonable time limits must be allowed for discussions at each level of authority.
  - (iv) At the conclusion of the discussions, the employer must provide a response to the trainee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy. At this stage an employer or a trainee may involve an industrial organisation of employers or employees of which he/she is a member.
  - (v) If no resolution of the trainee's grievance can be found, then the matter may be referred to the Industrial Relations Commission of New South Wales by either the trainee or the employer or the industrial organisation representing either party.
  - (vi) While this grievance procedure is being followed, normal work shall continue.
- (b) Procedures relating to disputes, etc., between employers and their trainees:
- (i) A question, dispute or difficulty must initially be dealt with at the workplace level where the problem has arisen. If the problem cannot be resolved at this level, the matter shall be referred to a higher level of authority.
  - (ii) If no resolution can be found to the question, dispute or difficulty the matter may be referred to the Industrial Relations Commission of New South Wales by any party to the dispute or the industrial organisation representing any of the parties to the dispute.
  - (iii) Reasonable time limits must be allowed for discussion at each level of authority.
  - (iv) While a procedure is being followed, normal work must continue.
  - (v) The employer may be represented by an industrial organisation of employers and the trainees may be represented by an industrial organisation of employees for the purpose of each procedure.

## 29. SUPERANNUATION

### Superannuation Legislation —

- (a) The subject of superannuation is dealt with extensively by federal legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act, 1992, the Superannuation Industry (Supervision) Act 1993, the Superannuation (Resolution of Complaints) Act 1993 and s.124 of the Industrial Relations Act 1996. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- (b) Subject to the requirements of this legislation, superannuation contributions may be made to:
- (i) Nationwide Superannuation Fund (NSF); or
  - (ii) ASSET (Australian Superannuation Savings Employment Trust); or
  - (iii) Any industry or multi-employer superannuation fund which has application to the employees in the main business of the employer where employees covered by this award are a minority of award covered employees, provided that such fund complies with the Occupational Superannuation Guidelines and has joint employer/union management such as ARF (Australian Retirement Fund), LIST (Law Industry Superannuation Trust), MTAAISF (Motor Traders' Association of Australia Industry Superannuation Fund), PISF (Printing Industry Superannuation Fund), REST (Retail Employees Superannuation Trust), STA (Superannuation Trust of Australia) and TISS (Timber Industry Superannuation Scheme); or
  - (iv) Any superannuation fund which has application to the employees in the main business of the employer, pursuant to a superannuation arrangement approved by an industrial tribunal prior to 18 July 1989, and where employees covered by this award are a minority of award covered employees. Where freedom of choice is provided for in such arrangement the principle of that provision shall apply; or
  - (v) Any superannuation fund which improves or provides superannuation to employees covered by this clause provided that the employer commenced contributions to such fund prior to 14 February, 1992.
  - (vi) Such other funds that comply with the requirements of this legislation.

- (vii) Any other approved occupational superannuation fund to which an employer or employee who is a member of the religious fellowship known as The Brethren elects to contribute.

### **30. ANNUALISED SALARIES**

Except as to the provisions of subclause (a), of clause 10, Public Holidays, clause 14, Sick Leave, clause 15, Personal/Carer's Leave, clause 16, Unpaid Leave For Family Purpose, clause 17, Annual Leave, clause 19, Compassionate Leave, clause 20, Jury Service, clause 25, Miscellaneous Statutory Provisions and clause 28, Superannuation, this award shall not apply to full-time and part-time employees who are in receipt of a weekly wage in excess of 15 per cent above the rate for a Level 6 employee.

This provision shall not be taken to effect any right to make other salary arrangements.

### **31. STATE WAGE CASE ADJUSTMENT**

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

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

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

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

NOTES:

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

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

**33. REDUNDANCY**

- (i) Application —
  - (a) This clause shall apply in respect of full-time and part-time employees.
  - (b) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
  - (c) 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.

- (d) 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.

(ii) Introduction of Change —

(a) Employer's duty to notify

- (1) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the union to which they belong.
- (2) 'Significant effects' include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

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

(b) Employer's duty to discuss change

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (a) above, 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.
- (2) 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 paragraph (a) of this subclause.

- (3) 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) Redundancy —

(a) Discussions before terminations

- (1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii) above, 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.
- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (1) of this subclause and shall cover, inter alia, any reasons 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.
- (3) For the purposes 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 workers 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.

(iv) Termination of Employment —

(a) Notice for Changes in Production, Programme, Organisation or Structure — This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "production", "programme", "organisation" or "structure" in accordance with subclause (ii) (a)(1) above.

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

| <b>Period of continuous service</b> | <b>Period of notice</b> |
|-------------------------------------|-------------------------|
| Less than 1 year                    | 1 week                  |
| 1 year and less than 3 years        | 2 weeks                 |
| 3 years and less than 5 years       | 3 weeks                 |
| 5 years and over                    | 4 weeks                 |

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

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

(b) Notice for Technological Change — This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with subclause (ii)(a)(1) above:

(1) In order to terminate the employment of an employee the employer shall give to the employee 3 months notice of termination.

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

(3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, or any Act amending or replacing either of these Acts.

- (c) Time off during the notice period —
- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
  - (2) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.
- (d) 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.
- (e) 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.
- (f) Notice to Centrelink — Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (g) Centrelink 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.
- (h) Transfer to lower paid duties — Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii) above, 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.

(v) Severance Pay —

(a) Where an employee is to be terminated pursuant to subclause (iv) above, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

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

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

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

(2) Where an employee is 45 years old or over, the entitlement shall be in accordance with the following scale:

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

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

(3) 'Weeks pay' means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

- (b) Incapacity to pay — Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above. The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Industrial Relations Commission thinks relevant, and the probable effect paying the amount of severance pay in subclause (i) above will have on the employer.
- (c) Alternative Employment — Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above if the employer obtains acceptable alternative employment for an employee.
- (vi) Savings Clause — Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the union and any employer bound by this award.

#### **34. AREA, INCIDENCE AND DURATION**

- (a) (i) This award shall apply to all employees engaged in the classifications detailed in Clause 2, Rates of Pay and clause 3, Classifications by any organisation, whether run for profit or not, whose operation is substantially one or more of the following:

Weight Loss Centres;  
Gymnasiums;  
Squash Courts;  
Indoor Cricket and/or Sports Centres;  
Ten Pin Bowling Allies;  
Aquatic Centres;  
Golf Driving Ranges;  
Dance Schools Including Jazzercise;  
Martial Arts School;  
Tennis Centres; and/or  
other like Health and Fitness Centres; or

- (ii) Or individuals who predominantly carry out one or more of the following activities:  

Aerobics Instructor, Gym Instructor, Dance Instructor, Health Counsellor, Pool Attendant, Sports Instructor and/or any other like Health Attendant work; where such work is performed in an organisation where no other award or registered enterprise agreement covers such persons; and
- (iii) shall be binding upon the Australian Workers' Union, New South Wales, its officers and members, the Australian Liquor, Hospitality and Miscellaneous Workers Union, NSW Branch, its officers and members and employees, whether they are members of the union or not.
- (b) This award shall not apply to employees of:
  - (i) contract companies who may provide cleaning, security, catering and child care to any organisation that this award would normally apply.
  - (ii) Registered Clubs, Hotels, Motels, Resorts, which are already covered by awards.
  - (iii) Outdoor sports stadiums (other than those persons in clause 33 (a) (ii) above,)
  - (iv) Entertainment Venues.
- (c) This Award is made following a review under section 19 of the Industrial Relations Act, 1996 and rescinds and replaces the Health, Fitness and Indoor Sports Centres (State) Award published 4 June 1999 (309 I.G. 561) and the Health, Physical Culture and Weight Loss Centres, &c. (State) Superannuation Award published 13 March 1992 (268 I.G. 666).
- (d) This award shall take effect on and from 2 March 2001 and shall remain in force for a period of 12 months.

### **35. LEAVE RESERVED**

Leave is reserved to the parties to amend this award to provide for the following:

- (a) a specific exclusion for Child Care, pending the decision of the Chief Industrial Magistrate in Court file no. CIM 550 of 1997 and CIM 551 of 1997.
- (b) provision of a laundry allowance and uniforms.

**APPENDIX A - Industry/Skill Levels**

Industry/Skill Level A

Industry/Skill Level B

Sport & Recreation (Sport & Recreation - Certificate) II

Sport & Recreation (Sport & Recreation - Certificate) III

Sport & Recreation (Career Oriented Participation) Certificate II

Sport & Recreation (Career Oriented Participation) Certificate III

Sport & Recreation (Coaching) Certificate III

Sport & Recreation (Officiating) Certificate II

Sport & Recreation (Officiating) Certificate III

Sport & Recreation Sport (Trainer) Certificate III

Sport & Recreation Community Recreation (Instruct) Certificate II

Sport & Recreation Community Recreation Certificate II

Sport & Recreation Community Recreation Certificate III

Sport & Recreation Fitness Certificate III

Sport & Recreation Sport (Massage Therapy) Certificate III

Industry/Skill Level C