



MISCELLANEOUS GARDENERS & C. (STATE) AWARD

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2. ANTI-DISCRIMINATION

- (i) 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.
- (ii) 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.
- (iii) 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.
 - (a) Nothing in this clause is to be taken to affect:
 - (b) Any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (c) Offering or providing junior rates of pay to persons under 21 years of age;
 - (d) Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (e) A party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (iv) 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.
- (v) **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."

3. DEFINITIONS

- (i) Weekly Employee means an employee employed by the week.
- (ii) Part-time Employee means an employee engaged by the week but who is required to work a constant number of ordinary hours each week less than the ordinary number of hours prescribed for weekly employees.
- (iii) Casual Employee means an employee engaged and paid as such but shall not include employees working thirty-eight ordinary hours per week and shall not include employees who are required to work a constant number of ordinary hours each week.
- (iv) Union means the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch.
- (v) Seven-day Shift Worker means an employee whose ordinary working period includes Saturdays, Sundays, and/or public holidays which the employee may be regularly rostered to work.

4. CLASSIFICATIONS

- (i) Introductory Level (less than 3 months experience)

This is an entry-level position. An employee at this level performs routine duties essentially of a manual nature, and:

- (a) Performs general labouring and cleaning duties;
- (b) Exercises minimal judgement;
- (c) Works under direct supervision;
- (d) Is undertaking training so as to enable the employee to work at a higher level;
- (e) After 3 months employment at this level, the employee shall progress to Gardener Level 1.

(ii) Gardener Level 1

An employee at this level has three months experience in aggregate with one or more employers and, in addition:

- (a) Works under direct supervision either individually or in a team environment;
- (b) Is responsible for the quality of the their own work, subject to the employees skill level;
- (c) Exercises discretion within the employee's skill level and training;
- (d) Maintains gardens, lawns and rockeries;
- (e) Is engaged in trimming edges, mowing lawns, sowing, planting, watering, weeding, spreading fertiliser, clearing shrubs and trimming hedges;
- (f) Uses and performs routine maintenance on hand tools, motor mowers and edgers.

(iii) Gardener Level 2

An employee at this level performs the work of a Gardener Level 1 and, in addition:

- (a) Works under routine supervision;
- (b) Exercises discretion within the employee's level of skill and training;
- (c) Is responsible for the quality of the employees own work;
- (d) May possess a Horticultural Certificate or equivalent;
- (e) May perform basic inventory control;
- (f) Prepares and uses fertiliser and pest, disease and weed control mixtures;
- (g) Uses and performs routine maintenance on gardening tools and equipment;
- (h) Has an understanding of plant selection, irrigation systems and pruning techniques;

- (i) Understands safety procedures and requirements in relation to the use of chemicals and poisons and safety equipment and clothing.

(iv) Gardener Level 3

An employee at this level performs the work of the foregoing levels and, in addition:

- (a) Works under general supervision;
- (b) May assist with on-the-job training;
- (c) Assures the quality of the employee's own work;
- (d) Is able to check the work of employees graded at lower levels;
- (e) May operate tractors, backhoes, chain saws, ganged mowers or other like powered machinery and possess appropriate operational licences;
- (f) May perform routine maintenance of power tools and equipment;
- (g) May perform administrative tasks relating to inventory control and ordering and receipt of gardening supplies and equipment.

(v) Gardener Level 4

An employee at this level has completed one or more of the following courses or the equivalent:

Parks and Gardens Certificate III;
Landscaping Certificate III;
Greenkeeping Certificate III; and in addition -

- (a) May work under general supervision;
- (b) Assures the quality of the employees own work and understands and applies quality control techniques;
- (c) May co-ordinate work within a team environment;
- (d) Exercises discretion within the scope of this level;
- (e) May assist in the provision of on-the-job training;

- (f) May perform routine maintenance of tools and equipment;
- (g) May be responsible for inventory control and the ordering and receipt of gardening supplies and equipment;
- (h) Performs non-trade tasks incidental to the employees work.

Where, by consultation between the employer and the employee, it is agreed that the employee, through extensive gardening experience, has the skills of a tradesperson and is required by the employer to work at a level equivalent to a tradesperson, then the employee shall be classified as Gardener Level 4 and paid as such.

To be appointed as a Gardener Level 4 the employee will have attained this level through ten years or more gardening experience and must be fully capable of performing all gardening tasks of a tradesperson. This shall include competency in propagation, grafting and pruning of plants, maintenance of nursery stock, gardens and rockeries, including their design and layout, preparation of fertilisers and pest and weed control mixtures, prevention and control of pests, diseases and weeds, irrigation systems, tree maintenance and indoor plant maintenance. Where agreement is not reached, the parties shall refer to clause 30, Disputes Procedure.

5. CONTRACT OF EMPLOYMENT

- (i) Employees may be employed on a weekly, part-time or casual basis.
- (ii) Part-time and casual employees shall be paid a minimum of three hours pay for each start.
- (iii) The employment of any employee, other than a casual employee, shall be terminated by one week's notice or by the payment or forfeiture, as the case may be, of one week's wages in lieu thereof.
- (iv) Subject to the provisions of this clause, during the first month of full-time or part-time employment the contract of employment shall be of a probationary nature. Provided further, that during such probationary period the employer will provide the employee with training, instruction and supervision appropriate to the size, structure and needs of the plant/enterprise.

- (v) The employment of a casual employee may be terminated by one hour's notice.
- (vi) Notwithstanding the foregoing provisions, the employer may dismiss an employee at any time for misconduct or wilful disobedience and then shall be liable only for payment up to the time of dismissal.
- (vii) Employees covered by this award shall perform all work within their skills and competence, including work which is incidental or peripheral to their main tasks or functions.

6. GENERAL CONDITIONS

(i) Working in the Rain

Where an employee is required to work in the rain, adequate protective clothing shall be provided by the employer for the job. Such clothing shall remain the property of the employer.

(ii) Change and Meal Room

The employer shall provide, free of charge, at each place where this award applies, a change and meal room furnished with individual lockable lockers, tables and seats and facilities for heating and warming food, for use by employees. Such room shall be used exclusively as a change and meal room. Boiling water shall be provided, free of charge, and shall be available to employees at the commencement of meal breaks.

(iii) First-aid Outfit

An adequate first-aid outfit shall be provided by the employer at each establishment where this award applies.

(iv) Tools

All tools required by employees shall be provided, free of charge, by the employer.

7. HOURS

- (i) The ordinary working hours, exclusive of meal times, shall not exceed thirty-eight per week and shall be worked Monday to Friday, inclusive; provided that such daily hours may be varied by agreement between an employer and the union, where applicable, in the event of water restrictions being enforced or other emergencies arising. Provided further, that in

establishments operating from Monday to Sunday the ordinary working hours, exclusive of meal times, shall be an average of 38 per week, which shall be worked Monday to Sunday, inclusive.

- (ii) Such hours shall be worked between the hours prescribed for day workers by the award or industrial agreement covering the majority of employees in the establishment. Provided that, by agreement with the employees, such hours may be worked between the hours of 6.00 a.m. and 6.00 p.m. Provided further that during daylight saving such hours may be worked between 7.00 a.m. and 7.00 p.m.
- (iii) A meal break shall be allowed of the same duration and at the same time as prescribed for day workers by the award or industrial agreement covering the majority of employees in the establishment. Provided that a meal break shall be taken no later than five hours from the commencement of work.
- (iv) The ordinary hours of work shall be notified in writing to employees in a conspicuous place at the employee's place of work. Such hours, when once fixed, shall not be altered without payment of overtime, unless one week's clear notice to the employee is given; provided that such week's notice shall not be required if any change of hours is by mutual agreement between the employer and the employee.

8. IMPLEMENTATION OF 38-HOUR WEEK

Assessment should be made as to which method of implementation best suits the business and such proposal shall be discussed with employees in an effort to reach agreement. In the absence of agreement, the parties shall refer to clause 30, Disputes Procedure.

9. ROSTERED DAYS OFF DUTY

Where by mutual agreement between an employer and the employees a 38-hour week is to be implemented on the basis of a rostered day off in each cycle of twenty working days, or an accumulation of rostered days off up to ten days, the following provisions shall apply:

- (i) Rostering
 - (a) Rostered days off shall be scheduled by mutual agreement between employees and the employer.
 - (b) Except as provided by paragraph (c) of this subclause, an employee shall be advised by the employer at least four

weeks in advance of the weekday(s) to be rostered off duty.

- (c) The employer, with the agreement of the majority of employees concerned, may substitute the day(s) an employee is to be rostered off duty for another day(s) in the case of a breakdown of machinery or to meet the requirements of the plant/enterprise.
- (d) An individual employee, with the agreement of the employer, may substitute the day(s) scheduled to be rostered off duty for another day(s).
- (e) In the event that an employee is rostered off duty on a day which coincides with payday, such employee shall be paid not later than the working day immediately following payday.

(ii) Payment of Rostered Day Off

For every ordinary hour paid for, payment to the employee of one-twentieth (5 per cent) of the hourly rate (weekly rate divided by 38) will be withheld by the employer and then paid in the pay week in which the employee's rostered day(s) off is taken.

(iii) Rostered Day Off Falling on a Public Holiday

In the event of an employee's rostered day off falling on a public holiday, the employee and the company shall agree to an alternative day off duty as a substitute; provided that in the absence of agreement the substituted day shall be determined by the employer.

(iv) Work on Rostered Day Off Duty

Any employee required to work on the employee's rostered day off shall be paid in accordance with the provisions of clause 12, Overtime.

(v) Sick Leave and Rostered Days Off

Employees are not entitled to sick leave in respect of absences on rostered days off as such absences are outside their ordinary hours of duty.

10. WAGES

(i) Weekly Employees

(a) The minimum adult weekly rates of pay for employees in the classifications prescribed in clause 4, Classifications, shall be as set out in Table 1 - Wages, of Part B, Monetary Rates and the rates for allowances shall be as set out in Table 2 — Allowances of the said Part B.

(b) The rates of pay in this award include the adjustments payable under the State Wage Case 2005. These adjustments may be offset against:

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

(ii) Part-time Employees

A part-time employee, for each hour worked during ordinary working hours, shall be paid at an hourly rate equal to the appropriate weekly rate, divided by 38, prescribed by this award for the class of work performed. Provided that employees engaged as part-time as at 16 November 2000, shall continue to receive the rate for the relevant position and shall be entitled to wage increases equivalent to 25% of the future State Wage Case Adjustments until such time as the rates coincide or the new part-time rate (no loading) exceeds the rate, and in which case it shall apply.

(iii) Casual Employees

A casual employee, for each hour worked during ordinary working hours, shall be paid at an hourly rate equal to the appropriate weekly rate, divided by 38, prescribed by this award for the class of work performed, plus 15 per cent.

(iv) The hourly rates of pay prescribed in subclauses (ii) and (iii) of this clause shall be calculated to the nearest whole cent, any amount less than a half cent in the result to be disregarded.

11. ALLOWANCES

- (i) An employee placed in charge of one or more employees shall be paid an additional allowance (per week or per day as applicable) as set out in Item 1 of Table 2 - Allowances, of Part B, Monetary Rates.
- (ii) An employee appointed by an employer to perform first-aid duties shall be paid an additional amount per week as set out in Item 2 of the said Table 2 or an additional amount per day as set out in Item 3 of Table 2.
- (iii) An employee required to work overtime in excess of one hour, and who has not been notified of the necessity to work such overtime on the preceding day, shall be paid a meal allowance as set out in Item 4 of Table 2 for the first and each subsequent meal after each four hours of overtime. An employee who is notified of the necessity to work such overtime on the preceding day and who is not required to work shall be paid the appropriate meal allowances as prescribed.

12. OVERTIME

- (i) All time worked in excess of and/or outside ordinary working hours shall be paid for at the rate of time and one-half for the first two hours and double time thereafter. For the purpose of computing overtime, each day's work shall stand-alone.
- (ii)
 - (a) Subject to subclause (b), an employer may require an employee to work reasonable overtime or as otherwise provided for in this award.
 - (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
 - (c) For the purposes of subclause (b), 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.

13. SATURDAY AND SUNDAY WORK DURING ORDINARY HOURS

- (i) Employees required to work their ordinary hours on a Saturday or Sunday shall be paid for all time so worked at the following rates:

Saturday work	Time and one-half.
Sunday work	Double time

- (ii) For the purposes of this clause, the rates prescribed shall apply in respect of ordinary hours of work only and shall apply to all employees, including casual employees, provided that such casual employees are employed in establishments operating from Monday to Sunday.

14. SUNDAY WORK

An employee required to perform work on a Sunday shall be paid at the rate of double time, with a minimum payment of not less than four hours at such rate for each start.

15. PAYMENT OF WAGES

- (i) Wages may be paid weekly or fortnightly where such method of payment applies to the majority of employees at the establishment.
- (ii) Wages may be paid by cash or, in lieu thereof, an employee may request payment by cheque. Provided that wages may be paid by electronic funds transfer into a bank or other such account at the employer's discretion.
- (iii) The day observed as payday for the majority of employees in the establishment shall be the payday for employees covered by this award.

- (iv) Employees kept waiting for more than fifteen minutes after their normal ceasing time for the payment of wages shall be paid at ordinary rates for the period from the normal ceasing time until payment is made.

16. CALL BACK

- (i) An employee required to attend the employer's premises for any reason other than carrying out rostered duties after leaving the place of employment (whether notified before or after leaving the employees place of employment), shall be paid a minimum of four hours' pay at the appropriate rate for each such attendance.
- (ii) Provided that this clause shall not apply where a period of duty is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- (iii) Provided further that such employee shall be given at least eight hours off duty, excluding travelling time in excess of thirty minutes and a meal break of thirty minutes, before being required to resume ordinary hours.
- (iv) If such employee is requested to resume duty before eight hours rest is given, double ordinary rates shall be paid until the employee has been relieved from duty for a period of eight hours.

17. MIXED FUNCTIONS

- (i) An employee engaged for at least two hours on any day or shift on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for such day or shift; if for less than two hours on one day or shift, the employee shall be paid the higher rate for the time so worked.
- (ii) An employee who is required to perform work temporarily for which a lower rate is paid shall not suffer any reduction in wages whilst so employed; provided that any work of less than one week's duration shall be deemed to be temporary.

18. SICK LEAVE

- (i) An employee who, after not less than two months' continuous service with the employer, is unable to attend for duty during ordinary working hours by reason of personal illness or incapacity not due to the employee's own serious or 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 conditions and limitations:
 - (a) The employee shall not be entitled to paid leave of absence for any period in respect of which there is an entitlement to payment under the Workers' Compensation Act 1987.
 - (b) The employee shall, as soon as reasonably practicable, and in any case within twenty-four hours of the commencement of such absence, inform the employer of the inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.
 - (c) The employee shall furnish to the employer such evidence as the employer may desire that the employee was unable, by reason of such illness or injury, to attend for duty on the day or days for which sick leave is claimed; provided that a Statutory Declaration shall be accepted in respect of any single day absences, but not more than two such declarations in any one year.
 - (d) An employee shall be entitled to five days' sick leave during the first year of service, accruing on the basis of one day's sick leave for each two months service to a maximum of five days.
 - (e) During the second and each subsequent year of service an employee shall be entitled to 10 days sick leave.
- (ii) Cumulative Sick Leave

The rights under this clause shall accumulate from year to year so that any part of the entitlement which has not been taken in any year may, subject to the conditions prescribed by this clause, be claimed by the employee and shall be allowed by the employer in any subsequent year of employment.

(iii) Definitions of Continuous Service

(a) For the purpose of this clause, continuous service shall be deemed not to have been broken by -

(1) Any absence from work on leave granted by the employer; or

(2) Any absence from work by reason of personal illness, injury or other reasonable cause (proof whereof shall, in each case, be upon the employee).

Provided that time so lost shall not be taken into account in computing the qualifying period of two months

(b) Service before the date of coming into force of this award shall be taken into account in computing the qualifying period of two months.

(iv) Attendance at Hospital, etc.

Notwithstanding anything contained in subclause (i) of this clause, a weekly employee suffering injury through an accident arising out of and in the course of the employees employment, not being an injury in respect of which there is an entitlement to workers' compensation, necessitating attendance during working hours on a doctor, chemist or trained nurse, or at a hospital, shall not suffer any deduction from the employees pay for the time (not exceeding four hours) so occupied on the day of the accident, and shall be reimbursed by the employer for all expenses reasonably incurred in connection with such attendance and expenses shall include fares.

(v) Mixed Industries

In any establishment where sick leave is prescribed by award or agreement, Commonwealth or State, for the majority of employees in that establishment, such provisions may apply to an employee otherwise entitled to sick leave in accordance with this clause; provided that such provisions are equal to or more beneficial than this award.

19. HOLIDAYS

- (i) The days on which the following holidays are observed shall be holidays under this award, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and any other day which may hereafter be proclaimed as a public holiday throughout the State and the picnic day of the union, which shall be held on a day to be determined each year by agreement between the employer and the employees. Provided that where a day is observed either as a picnic day or as an additional day by the general body of employees in any establishment, then such day may be substituted for the picnic day of the union as a holiday for any employee in that establishment entitled to such picnic day or additional day as a holiday under this award.
- (ii) Except as hereinafter provided: The above holidays falling on an ordinary working day shall be paid for if not worked; if worked, the employees shall be paid double time and one-half with a minimum payment of not less than four hours at such rate for each start.
- (iii) (a) Where a holiday occurs on the rostered day off of a seven- day shift worker other than a rostered day off given pursuant to the provisions of clauses 8, Implementation of 38-Hour Week, and 9, Rostered Days Off Duty; and
 - (1) The seven-day shift worker is not required to work on that day, the employer shall pay such employee eight hours ordinary pay in respect of such day;
 - (2) The seven-day shift worker is required to work on that day, the employer shall pay such employee eight hours ordinary pay in respect of such time and, in addition, at the rate of time and one-half for the first eight hours (with a minimum payment of four hours) and double time and a half thereafter.
- (b) The employer may, in lieu of the payment of eight hours ordinary pay prescribed in paragraph (a) of this subclause, add a day to the annual leave period.
- (c) Any day or days added in accordance with this subclause shall be the working day or working days immediately following the annual leave period to which the seven-day shift worker is entitled under clause 20, Annual Leave.

- (d) Where the employment of a seven-day shift worker has been terminated and as a consequence there is an entitlement under section 4 of the Annual Holidays Act 1944 to payment in lieu of an annual holiday with respect to a period of employment, such employee shall be entitled also to an additional payment for each day accrued under this clause, at the appropriate ordinary rate of pay, if payment has not already been made in accordance with paragraph (a) of this subclause.
- (iv) Where an employee is absent from their employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday.

20. ANNUAL LEAVE

- (i) All employees except seven-day shift workers — see Annual Holidays Act 1944.
- (ii) Seven-day shift workers
 - (a) In addition to the benefits provided by section 3 of the Annual Holidays Act 1944, with regard to an annual holiday of four weeks, a seven-day shift worker, at the end of each year of employment, shall be entitled to the additional leave as prescribed below:
 - (1) If during the previous year of employment there has been continuous service as a seven-day shift worker, the additional leave with respect to that year shall be one week.
 - (2) If during the previous year of employment there has only been service of a portion of it as a seven-day shift worker, the additional leave shall be 3.25 hours for each completed month of employment as a seven-day shift worker or, provided that where the additional leave is or comprises a fraction of a day, such fraction shall not form part of the leave period and any such fraction shall be discharged by payment only.

- (b) Where the employment of a seven-day shift worker is terminated and there is thereby an entitlement, under section 4 of the said Act, to payment in lieu of an annual holiday with respect to a period of employment such employee also shall be entitled to an additional payment of 3.25 hours at such ordinary rate of pay for each completed month of service as a seven-day shift worker.
- (iii) Payment During Annual Leave

All employees shall receive payment for annual leave periods calculated at their ordinary rate of pay in accordance with the provisions of the said Act and shall, in addition, be paid all Saturday penalty payments and Sunday penalty payments relating to ordinary time the employee would have worked if the employee had not been on annual holidays. Such payment shall not include any penalty payment in respect of a public holiday occurring during the annual holiday which is a public holiday on which the employee would have worked an ordinary shift.

21. ANNUAL LEAVE LOADING

- (i) In this clause the Annual Holidays Act 1944 is referred to as "the Act".
- (ii) Before an employee is given and takes an 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) of this clause.
- (iii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act and this award.
- (iv) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled under the Act and this award (but excluding days added to compensate for public or special holidays worked or 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) of this clause as to holidays taken wholly or partly in advance.

- (v) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (iv) of this clause, at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing the annual holiday, but shall not include any 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 date when there would have been an entitlement 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 award rates of wages payable on that day. This subclause applies where an annual holiday has been taken wholly or partly in advance, and the entitlement to the holiday arises after that date.
- (vii) Where, in accordance with the Act, the 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).
 - (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 under the Act, such proportion of the loading that would have been payable under this clause if the employee had become entitled to an annual holiday prior to the close down as the 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 the employee became entitled, a loading shall be paid calculated in accordance with subclause (v) for the period not taken.

- (b) Except as provided in paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.

22. LONG SERVICE LEAVE

See Long Service Leave Act 1955.

23. PERSONAL/CARER'S LEAVE

(i) 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 (2) 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, of this award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b)
 - (i) 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.
 - (ii) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the nature of the emergency of the person concerned and that the emergency 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:
 - (1) The employee being responsible for the care of the person concerned; and
 - (2) 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.

- (ii) 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 (2) of paragraph (c) of subclause (i) who is ill or who requires care due to an unexpected emergency.

- (iii) 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 ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
 - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
 - (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
 - (d) An employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls.

- (iv) Time Off in Lieu of Payment for Overtime
 - (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
 - (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
 - (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.

- (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (v) 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.
- (vi) 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.
- (vii) Personal Carers entitlement for casual employees
 - (a) Subject to the evidentiary and notice requirements in subclause 1 of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 3 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

24. CATHOLIC EMPLOYERS — PERSONAL/CARER'S LEAVE

Clause 23 and 25 of this Award, shall not apply to employees of a body which has been established by the Catholic Church to propagate religion, who are covered by the Miscellaneous Workers (Catholic Personal/Carer's Leave) (State) Award published 7 May 1999 (309 I.G. 196) as varied.

25. BEREAVEMENT LEAVE

- (i) An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay, up to and including the day of the funeral, on each occasion of the death of a person 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 a minimum of two days bereavement leave where the employee travels outside Australia to attend the funeral.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (c) of subclause (i) of clause 23, Personal/Carer's Leave of this Award, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.

- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (ii), (iii), (iv), (v) and (vi) of the said clause 23. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vi) Bereavement entitlements for casual employees
 - (a) Subject to the evidentiary and notice requirements in subclause 1 of this clause casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 3 of Clause 23 Personal/Carers Leave.
 - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

26. REDUNDANCY

Application

- (a) This clause shall apply in respect of full-time and part-time persons employed in the classifications specified in this award, and all variations thereof.
- (b) 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 (iv), Termination of Employment.
- (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, organization, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the union to which they belong.
 - (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.
 - (3) Provided that where this 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) 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.

- (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 the said paragraph (a).
- (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 to be done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii), 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.
- (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 paragraph 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.
- (3) 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.

(iv) Termination of Employment

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

This paragraph sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, programme, organization or structure, in accordance with subclause (ii), Introduction of Change:

- (1) 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

- (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 paragraph sets out the notice provisions to be applied to termination by the employer for reasons arising from technology in accordance with paragraph (a), Employer's duty to notify, of subclause (ii) Introduction of Change:

- (1) In order to terminate the employment of an employee, the employer shall give to the employee three 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 purpose 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 the 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 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.

(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), 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.

(v) Severance Pay

- (a) Where an employee is to be terminated pursuant to subclause (iv), 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:

- (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 of age 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) **"Week's 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 this award, as varied.

(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) of this subclause. 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 (a) will have on the employer.

(c) 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 (a) of this subclause if the employer obtains acceptable alternative employment for an employee.

(vi) Savings Clause

Nothing in this clause 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 industrial organization of employees and any employer bound by this clause.

27. JURY SERVICE

- (i) An employee shall be allowed leave of absence during any period when required to attend for jury service.
- (ii) During such leave of absence, an employee shall be paid the difference between the jury service fees received and normal rates of pay as if working, provided that payment for such leave shall be limited to a maximum of 2 weeks in any one period of jury service.

- (iii) 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.

28. ATTENDANCE AT REPATRIATION CENTRES

- (i) Weekly employees, being ex-service personnel, shall be allowed as time worked, lost time incurred whilst attending repatriation centres for medical examination and/or treatment, provided that:
 - (a) Such lost time does not exceed four hours on each occasion and a maximum of 20 hours per annum;
 - (b) the employee produces evidence satisfactory to the employer that the employee is so required to and subsequently does attend a repatriation centre.
- (ii) Provided that the employer shall be entitled to deduct from such lost time any payment the employee is entitled to receive for lost time from the Repatriation Department in respect of any such attendance.

29. ENTERPRISE CONSULTATION

Enterprises covered by this award shall establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

30. DISPUTES PROCEDURE

It is the intention of the parties to this award to eliminate disputes which result in stoppages, bans or limitations, and it is agreed that the parties to this award shall confer in good faith with a view to resolving the matter by direct negotiation and consultation in the following sequence:

- (i) Any grievance or dispute which arises shall, where possible, be settled by discussion on the job between the employee and the employee's immediate supervisor.
- (ii) If the matter is not resolved at this level, the matter will be further discussed between the affected employee, the union delegate where applicable and the supervisor or manager of the relevant section or department, and the employer's industrial representative may be notified.

- (iii) If no agreement is reached, the union organiser and union delegate may discuss the matter with the company's nominated industrial relations representative.
- (iv) Whilst the foregoing procedure is being followed, work shall continue normally. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.
- (v) Should the matter still not be resolved, it may be referred by either party to the Industrial Relations Commission of New South Wales for settlement.

31 SUPERANNUATION

(i) Definitions

In this clause:

- (a) "**ASSET**" means the Australian Superannuation Savings Employment Trust.
- (b) "**ARF**" means the Australian Retirement Fund.
- (c) "**Union**" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch.
- (d) "**Ordinary-time Earnings**" means:
 - (1) In the case of a weekly employee, the award classification rate of pay (including shift allowance) together with any overaward payment for ordinary hours of work.
 - (2) In the case of a part-time or casual employee, the number of ordinary hours worked in each week multiplied by the appropriate hourly rate for the award classification of the employee (including the part-time or casual loading and/or shift allowance).
 - (3) Provided that it shall not include overtime, meal allowances, occasional bonus payments, or any other ancillary payments of a like nature.
- (e) "**Overaward Payment**" means the amount (whether it be termed "overaward payment", "attendance bonus", "service increment", or any term whatsoever) which an employee would receive in excess of the award rate of

pay for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, meal allowances and any other ancillary payments of a like nature.

- (f) **"Trustee"** means the trustee of an approved fund as may be appointed from time to time.
- (g) **"Act"** means the Occupational Superannuation Standards Act 1987 and Regulations made thereto.

(ii) Fund

- (a) The employer shall make the superannuation contributions or improvements pursuant to this clause to any of the following funds selected by the employer, provided that such fund complies with the Act:

- (1) ASSET;
- (2) ARF;
- (3) any approved fund that has application to other employees in the employer's business.

- (b) Provided further that an employer shall not be compelled to contribute to more than one fund in respect of employees covered by this clause.

(iii) Pre-existing Arrangement

Nothing in this clause shall affect any arrangement for the payment of 3 per cent occupational superannuation into a fund that complies with the Occupational Superannuation Guidelines and is approved by the Occupational Superannuation Commissioner as conforming to the Commonwealth Government's operational standards for occupational superannuation funds to which an employer prior to 26 August 1991 was making contributions on behalf of employees; provided that such contributions were intended to be, and are, in full satisfaction of the superannuation principle adopted by the State Wage Case of 1986, as varied from time to time by subsequent State Wage Case decisions.

(iv) Employer to Become Party to an Approved Fund:

- (a) Each employee bound by this clause shall sign and execute an application to become a participating employer of an approved fund determined in accordance with subclause (ii), Fund, within one month of an

employee becoming an eligible employee in accordance with subclause (vi), Eligibility of Employees.

- (b) Each employer bound by this clause shall become party to the approved fund upon the acceptance by the Trustee of the approved fund of an application to become a participating employer, duly signed and executed by each employer and the Trustee of the approved fund.
- (c) Each employer bound by this clause shall provide every employee who is not already a member of the approved fund with a membership application form for the approved fund upon commencement of service or upon commencement of this clause.

(v) Employee to Enrol in an Approved Fund

Each employee upon becoming eligible to become a member of a fund determined in accordance with this clause shall -

- (a) complete and sign the necessary application form(s) to enable that employee to become a member of that fund;
- (b) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in subclause (vii), Contributions.

(vi) Eligibility of Employees

(a) Date of Becoming Eligible

(1) Permanent Employees

All weekly and part-time employees shall be eligible to join the approved fund after 3 months continuous service with the employer; provided that part-time employees shall regularly work 12 hours or more per week.

(2) Casual Employees

All casual employees shall be eligible to join the approved fund if they regularly work 12 hours or more per week and have completed six months service with a particular employer.

(b) Payment From Date Eligible

Notwithstanding the date upon which an employee signs a membership application form (refer to subclause (v)),

Employee to Enrol in an Approved Fund), contributions in accordance with subclause (vii), Contributions, shall be made from the date when the employee became accepted for membership.

(vii) Contributions

- (a) Subject to subclauses (vi), Eligibility of Employees, and (viii), Method by Which an Employer Shall Become a Respondent, an employer shall contribute to a superannuation fund in accordance with subclause (ii), Fund, on behalf of each eligible employee a superannuation contribution equivalent to 3 per cent of such eligible employee's ordinary-time earnings from the beginning of the first pay period to commence on or after the date from which the employer is made respondent to this award.
- (b) The benefits offered by the fund selected in accordance with subclause (ii) and of which the employee is a member, may be improved such that the improvements are equivalent to the value of contributions required to be made by this clause and are in accordance with the Act.
- (c) A pro rata deduction shall be made from the weekly contribution payable for any unauthorised absence of at least one day's duration.
- (d) An employer shall not be required to contribute during any periods of unpaid leave - such as unpaid sick leave, maternity leave or the like, or periods of workers' compensation. The obligation of the employer to contribute to the fund in respect of an employee shall cease on the last day of such employee's employment with the employer.

(viii) Method by Which an Employer Shall Become a Respondent

By a consent application to the Industrial Committee, or upon the expiration of 21 calendar days from the date of service by the Secretary of the union upon an employer of an invitation to enter into an agreement providing for 3 per cent occupational superannuation, the employer shall be added or shall be deemed to be added, as the case may be, to the list of respondents. The employer's obligation to commence payment of contributions, subject to subclauses (vii) and (viii), shall come into force from:

- (a) the date upon which such employer becomes respondent to this award; or
- (b) a date joined by agreement; or
- (c) the common rule date of operation.

(ix) Employee's Failure to Enrol in a Fund

Where an employer has complied with the requirements of subclause (iv) and an eligible employee fails to complete, sign and return the application form to become a member of a superannuation fund within 28 days of the receipt by the employee of that form, then that employer shall:

- (a) advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by this award;
- (b) in the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days, be under no obligation to make any occupational superannuation contributions in respect of such eligible employee, excepting as from any subsequent date from which a completed and signed application form is received by the employer;
- (c) in the event that an eligible employee fails to return a completed and signed application form within a period of six months from the date of this original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form is a prerequisite to the payment of any occupational superannuation contributions, and forward a copy of such advice to the union of which the employee is a member.

(x) Death and Disability Cover

This clause places no requirement on an employer to cover an employee against death, disablement or similar occurrences.

(xi) Exemptions

- (a) The following employers shall be exempted from the provisions of this clause:

John Fairfax and Sons Limited;
Rothmans of Pall Mall (Aust) Limited;
Inghams Enterprises Pty Limited;
Broken Hill Proprietary Company Limited and
Tubemakers of Australia Limited or any corporation which
is a related corporation within the meaning of the
Corporations Act 1981 of either the Broken Hill
Proprietary Company Limited or Tubemakers of Australia
Limited.

- (b) Employers of employees who are covered by a superannuation award or agreement made pursuant to the Industrial Relations Act 1996 or the Workplace Relations Act 1996 (Commonwealth) shall be exempted from the provisions of this clause.

(xii) Remitting Payments

Each employer shall remit to the Trustee of the fund all contributions due in respect of their employees retrospectively between the conclusion of the calendar month and before the end of the next calendar month, or such other times and in such manner as may be agreed upon in writing between the employer and the Trustee.

(xiii) Records

Each employer shall retain all records relating to the calculation of payments due to the fund determined in subclause (ii), Fund, in respect of each employee and such records shall be retained for a period of six years. They shall be available for inspection by:

- (a) The officials of the union in accordance the Industrial Relations Act 1996;
- (b) representatives of the Trustee.

32. TRAINEESHIPS

As to traineeships for persons covered by this Award, see the Training Wage (State) Award 2002 published 26 September 2003 (341 I.G. 569) or any successor hereto.

33. SALARY PACKAGING

- (i) Where agreed between the employer and a full-time or part-time employee, an employer may offer salary packaging in respect of salary. Neither the employer nor the employee may be compelled to enter into a salary packaging agreement.
- (ii) Salary packaging shall mean that the employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- (iii) The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions:
 - (a) the employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
 - (b) the employee will be given the opportunity by the employer to seek independent advice including advice from the union prior to entering into any salary packaging agreement;
- (iv) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
- (v) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided, with a printout of the relevant information;
- (vi) the employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of changes to the operation of legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
- (vii) in the event that the employer withdraws from a salary packaging agreement, the individual employee's salary will revert to whichever is the higher of:
 - (a) The ordinary time rate of pay that applied to the employee prior to the commencement of the salary packaging agreement; or
 - (b) The applicable rate specified in Table 1 - Wages of Part B - Monetary Rates of this Award;

- (viii) not withstanding any of the above arrangements, the employer of employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
- (ix) the calculation of entitlements concerning occupational superannuation and annual leave loading on annual leave pursuant to Clause 14.2: - Annual Leave Loadings, will be based on the ordinary time rate of pay that the employee would have received in the absence of the salary packaging, arrangement;
- (ix) unless there is agreement between the employer and the employee to the contrary, all salary packaging arrangements during any period of leave without pay, including periods of unpaid sick leave.

34. AREA, INCIDENCE AND DURATION

- (i) This Award shall apply to all persons employed in the classifications set out in Table 1 — Wages, of Part B, Monetary Rates, within the jurisdiction of the Miscellaneous Gardeners, &c. (State) Industrial Committee.
- (ii) This award was made following a review under section 19 of the Industrial Relations Act, 1996 and rescinds and replaces the Miscellaneous Gardeners, &c. (State) Award published 30 September 1994 (281 I.G. 1211), the Miscellaneous Gardeners, &c., Redundancy (State) Award published 24 March 1995, (284 I.G. 920) the Miscellaneous Gardeners, &c. (State) Wages Adjustment Award published 25 August 1995 (287 I.G. 712), and the Miscellaneous Workers Gardeners, &c. (State) Wages Adjustment and Allowances Award published 2 May 1997 (298 I.G. 14), and all variations thereof.
- (iii) This award takes effect from the beginning of the first full pay period to commence on or after 16 November 2000 and shall remain in force thereafter for a period of 2 years until varied or rescinded.

35. PARENTAL LEAVE

- (j) Refer to the Industrial Relations Act 1996 (NSW). The following provisions shall also apply in addition to those set out in the Industrial Relations Act 1996 (NSW).

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

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

(iii) Right to Request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing.

The employee's request and the employer's decision made under (iii) (b) and (c) must be recorded in writing.

(iv) Request to return to work part-time

Where an employee wishes to make a request under (iii)(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(v) Communication During Parental Leave

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

MISCELLANEOUS GARDENERS, &C. (STATE) INDUSTRIAL COMMITTEE

Industries and Callings

All persons employed as propagators and/or gardeners and general garden hands (other than employees of landscape or master gardeners) employed in and about commercial and industrial undertakings, retirement villages (including company or strata title retirement units) but excluding establishments which are attached to or have a nursing home or facility providing nursing care located within the grounds of the retirement village, and further excluding retirement villages operated by religious organizations and/or charitable institutions and/or voluntary non-profit organizations, and

churches in the State, excluding the County of Yancowinna, excepting employees of the Crown, the State Rail Authority of New South Wales and Urban Transit Authority of New South Wales, Roads and Traffic Authority of New South Wales, the universities, employees engaged in rural industries, employees of Stanton Pipes of Australia Pty Limited, CSR Limited and the ICI Rhodes Factory and employees within the jurisdiction of the following Industrial Committees:

Agricultural Employees (State);
Club Employees (State);
Private Hospital Employees (State);
Cement, &c., Pipe Making (State);
Cement Makers (State);
Cement Workers, &c. (State);
Chemical Workers (State);
Fish Canning, &c. (State);
Gangers (State);
Labourers, Railway and Road Construction, &c. (State);
Lime Makers, &c. (State);
Malted Milk Manufacture (State);
Matches Manufacture (State);
Nut Food Makers, &c. (State);
Quarries, Gravel and Sand Pits (State);
Quarries, &c. (Broken Hill Proprietary Company Limited);
Race Clubs, &c., Employees (Country);
Race Clubs, &c., Employees (Cumberland and Newcastle);
Soap and Candle Makers (State);
Sugar Manufacturers (State);
Australian Wire Industries Pty Ltd — Newcastle Ropery;
Steel Works Employees (Broken Hill Proprietary Company Limited);
Iron and Steel Works Employees (Australian Iron and Steel Proprietary Limited);
Special Steels and Steel Products Manufacture (Commonwealth Steel Company Limited);
John Lysaght (Australia) Limited Newcastle;
John Lysaght (Australia) Limited Port Kembla;
John Lysaght (Australia) Limited Unanderra;
Australian Wire Industries Pty Limited — Sydney Wiremill;
Australian Wire Industries Pty Limited — Newcastle Wiremill;
Australian Gas Light Company (Wages Division);
North Shore Gas Company Limited (Wages Division);
Tubemakers of Australia Limited, Newcastle;
Municipal and Shire Council Employees;
Municipal Employees (The Council of the City of Sydney);
Municipal Employees (Newcastle);
Sydney County Council (Wages Division);
Sydney County Council (Salaried Division);
County Council (Electricity Undertakings) Employees;
Northern Rivers County Council;
St George County Council;

Shortland County Council;
Electricity Commission (Wages Staff);
Electricity Commission (Salaried, Other Than Professional, Staff);
Metalliferous Miners, &c., General (State);
Smelting, &c. (Electrolytic R & S Company, &c.);
Smelting (Sulphide Corporation Limited);
Brass and Copper Workers (State);
Water Supply and Sewerage Employees (Metropolitan);
Butchers, Wholesale (Country);
Butchers, Wholesale (Cumberland);
Butchers, Wholesale (Newcastle and Northern);
Meat Industry Employees (Riverstone Meat Company Proprietary Limited);
Flats, Residentials, &c. (State);
Boarding House Employees (State);
Nurseries Employees (State);
Restaurant, &c., Employees (State);
Retail Services Employees (State);
Public Hospital Employees (State).