



# STOREMEN AND PACKERS GENERAL (STATE) AWARD

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## 2. DEFINITIONS

- (i) A “**Casual Employee**” shall mean an employee who is engaged and paid as such.
- (ii) A “**Shift Worker**” shall mean a worker who is engaged and paid as such.
- (iii) A “**Work Cycle**” shall mean any period of twenty-eight consecutive days.
- (iv) In this award any reference to one gender shall mean a reference to the other gender.
- (v) A Leading Hand for the purposes of this award:
  - (a) shall be appointed by the employer to assist in the good order of work flow in an operating area by:
    - (1) receiving instructions and allocating the work flow to employees
    - (2) determining shortages in labour, or material or equipment failure, and to bring any deficiencies to the employer for consideration.
  - (b) shall, where a failure in training or behaviour occurs, disengage himself/herself from further action and refer the matter to the employer. Provided that this does not preclude a leading hand from giving training but only on the general instructions of the employer;
  - (c) shall not become involved in planning annual leave rosters or rostered days off except by consultation with the employer to ensure an orderly overview of work cover;
  - (d) shall not become involved in disciplining of employees for behaviour, absenteeism or performance;
  - (e) shall give advice to the employer or other staff to assist with each of the above but only to the extent of ensuring good order and work flow;
  - (f) shall not breach any confidence placed in them by fellow employees or the employer;

- (g) is appointed on merit and skill taking into account the following factors;
- (1) clerical aptitude;
  - (2) H.O.W. supervisor assessment;
  - (3) work performance and experience;
  - (4) attendance;
  - (5) attention to detail;
  - (6) general attitude to company standards;
  - (7) training and education

## **2A. CLASSIFICATIONS**

All storeman and packers covered by this award, shall be classified as follows:

### **FIVE GRADE STRUCTURE**

#### **Storeman and Packer Grade 1**

For the purposes of this award, a Storeman and Packer Grade 1 shall mean an employee who performs work to the level of their training, and:

1. Is responsible for the quality of their own work (subject to instructions and direction)
2. Works in a team environment and/or under routine supervision.
3. Undertakes duties in a safe and responsible manner.
4. Exercises discretion within their levels of skills and training.
5. Possesses good interpersonal and communication skills.
6. Indicative of the tasks which an employee at this level may be required to perform include the following:
  - General labour and cleaning duties.
  - Order assembling including picking stock.
  - Loading/Unloading
  - Receiving, checking, dispatching and sorting products.
  - Satisfying internal and external customer needs.

- Operation of a keyboard to carry out stores work.
- Documenting and recording of goods, materials and components.
- Basic inventory control.
- Use of hand trolleys and pallet trucks.

### **Storeman and Packer Grade 2**

For the purposes of this Award, a Storeman and Packer Grade 2 shall mean an employee, who in addition to performing the duties of a Grade 1 Storeman and Packer:

1. Has performed 12 months service as a Storeman and Packer Grade 1 and has satisfactorily acquired the skills relevant to the enterprise at this level;
2. May be required to use, for training purposes, materials handling equipment which requires licensing/certification, and
3. May be required to assist in the development of Grade 1 Storeman and Packer.

### **Storeman and Packer Grade 3**

For the purposes of this award, a Storeman and Packer Grade 3 shall mean an employee, who has undertaken sufficient training so as to enable him/her to perform work within the scope of this level in addition to the work of lower grades and who has been appointed by the employer to perform such work on a continuous basis. An employee at this level performs work to the level of their training and is:

1. Able to work from complex instructions and procedures.
2. Able to coordinate work in a team environment under general supervision.
3. Responsible for assuring the quality of their own work.
4. Possesses sound interpersonal and communication skills.
5. Licensed and/or certified to operate all appropriate materials handling equipment, eg. forklift, mobile crane, carousel, etc.

6. May be required to perform the following tasks/duties:
  - Inventory and stores control.
  - VDU operation using intermediate keyboard skills to carry out stores work.
  - Use of other electronic equipment, eg. scanner, to carry out stores work.
  - Routine maintenance of stores equipment and machinery.

#### **Storeman and Packer Grade 4**

For the purposes of this award, a Storeman and Packer Grade 4 shall mean an employee, who has undertaken sufficient training so as to enable him/her to perform work within the scope of this level in addition to the work of the lower grades and who has been appointed by the employer as either a single storeworker in charge of a store or as an operator of computer technology used for high level inventory and stock control.

An employee appointed in this capacity performs work to the level of their training and:

1. Understands and is responsible for their own quality control.
2. Possesses a sound level of interpersonal and communication skills.
3. Sound working knowledge of all stores duties performed at levels below this grade, exercises discretion within scope of this grade, and has a good knowledge of the employer's product.
4. Where appropriate, accredited by the employer as a competent in the understanding of Regulations relating to handling, storage and loading/unloading of specific product, eg. chemicals, solvents and explosives.
5. May perform work requiring minimal supervision, either individually or in a team environment.
6. Must be competent to perform the following tasks/duties:
  - Licensed to operate appropriate materials handling equipment eg. forklifts, mobile crane, carousel etc.
  - Routine maintenance of stores equipment or machinery.

7. In addition, may be responsible for the proper application and maintenance of appropriate occupational health and safety standards (optional).
8. May also be responsible for quality control of the work of other Storemen and Packers without being responsible for their direction (optional).

### **Storemen and Packer Grade 5**

For the purposes of this award, a Storemen and Packer Grade 5 shall mean an employee, who undertakes stores work of all lower grades and who has, at the request of an employer, completed a Warehousing and Distribution Course (No. 8502) at a Registered Training Organization. An employee who is appointed by the employer to this level may be required to perform the following in addition to the work performed by other grades:

1. Implement quality control techniques and procedures.
2. Utilise highly developed level of interpersonal and communication skills.
3. Assisting in the provision of on-the-job training and standards.
4. In addition, may be responsible for the proper application and maintenance of appropriate occupational health and safety standards.
5. This position is accountable for performing some of the following tasks, or a combination thereof:
  - Performing multiple stores activities.
  - Managing the information within the store.
  - Has a sound knowledge of the employer's operation and product.

## **2B. SECURE EMPLOYMENT**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by

ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(b) Casual Conversion

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

- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the Industrial Relations Act 1996 (NSW);

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

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

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

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

(d) Disputes Regarding the Application of this Clause

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

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

### **3. ENTERPRISE ARRANGEMENTS**

See the enterprise arrangements principle of the State Wage Case Fixing Principles.

### **4A. CONSULTATIVE MECHANISMS**

Enterprises 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.

### **5. DISPUTE PROCEDURE**

- (i) Any dispute arising out of employment shall be referred by the Shop Steward or an individual employee to the Company representative appointed for this purpose.
- (ii) Failing settlement at this level between the Company and the Shop Steward on the job, the Shop Steward shall refer the dispute within 24 hours to the union organizer who will take the matter up with the Company. All efforts shall be made by the Company and the Union organizer to settle the matter but failing settlement the Union organiser shall refer the dispute to the Union secretary and the Company shall refer the dispute to its employer association and the Union secretary shall take the matter up with the employer association.

- (iii) During the discussions the status quo shall remain and work shall proceed normally. “**Status quo**” shall mean the situation existing immediately prior to the dispute or the matter giving rise to the dispute.
- (iv) At any time either party shall have the right to notify the dispute to the Industrial Registrar.

## 6. LABOUR FLEXIBILITY

- (i) For the purpose of increasing productivity and flexibility, as well as enhancing career opportunities for employees, multi-skilling may extend by agreement between the employer and the majority of employees concerned to allow the employees to perform any work in an enterprise within the scope of their skills and competence.
- (ii) Discussion shall take place at the enterprise with a view to reaching agreement for employees to perform a wider range of tasks and participation of employees in additional training.
- (iii) Notwithstanding the provision of (ii) above, employees shall perform a wider range of duties including work, which is incidental or peripheral to their main tasks and functions.
- (iv) Employees shall perform such work as is reasonable and lawfully required of them by the employer including accepting instruction from authorized personnel.
- (v) Employees shall comply with all reasonable requests to transfer or to perform any work provided for by the Award.
- (vi) Employees shall take all reasonable steps to ensure the quality, accuracy and completion of any job or task assigned to the employee.
- (vii) Employees shall not impose or continue to enforce existing demarcation barriers between the work covered by this Award provided that it is agreed that the work lies within the scope of the skill and competence of the employee concerned.
- (viii) Employees shall not unreasonably impose any limitation or continue to enforce any limitations on supervisors or technical personnel demonstrating the use of new equipment or machinery; provided that the appropriate consultation in relation to the introduction of new technology has taken place.

## **7. TERMS OF ENGAGEMENT**

- (i) Except as to casual employees, employment shall be on a weekly basis.
- (ii) Employment of weekly hands during the first week of service shall be from day to day at the weekly rate terminable at a day's notice on either side; provided that the employer shall indicate, in writing, to an employee, at the time of engagement whether he/she is being engaged as a casual worker or on a weekly basis.
- (iii) Subject as provided elsewhere in this Award, employment shall be terminated by a week's notice on either side given at any time during the week or by payment or forfeiture, as the case may be, of an amount equal to one week's wages.
- (iv) Notwithstanding any provisions of the foregoing subclauses, the employer shall have the right to dismiss an employee without notice for misconduct and/or refusing duty.
- (v) Provided that an employee whose employment is terminated by the employer on the working day immediately preceding a holiday or holidays otherwise than for misconduct shall be paid for such holiday or holidays. This subclause is not to apply to an employee during the first month of engagement.
- (vi) Each employee on the termination of his/her employment shall on request, be given a statement in writing by his/her employer or his/her manager, stating the position held by the employee and the length of service.

## **7A PART TIME WORK**

- (i) An employee may be engaged on a part time basis. A part time employee shall mean a weekly employee engaged to work regular days and hours, either of which are less than the number of days or hours worked by a full time employee.
- (ii) A part time employee is entitled to a minimum start per occasion of 3 continuous hours, except:
  - (a) where the employer and the employee concerned agree 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, which must be specified, or
- (ii) the place of work is within a distance of 5 kilometres of the employee's place of residence
- (iii) A part time employee may work up to 38 hours per week without the payment of overtime.
- (iv) A part time employee will be paid per hour 1/38 of the weekly rate of pay prescribed for a full time employee of the same classification contained in Table 1 of this Award.
- (v) Any hours worked by a part time employee outside the ordinary hours of work as set out in Clause 13, or in addition to the 38 hours per week shall be paid at overtime rates.
- (vi) Subject to this clause, all the provisions of the Award shall apply to a part time employee on a pro rata basis.

## 8. PROPORTION OF JUNIORS

One junior may be employed to every three or fraction of three storemen receiving not less than the adult rate.

## 9. JUNIOR EMPLOYEES - WAGES

Juniors

The minimum rates of pay to be paid to juniors shall be the following percentages of the appropriate rate of pay as set out in Table 1 – Minimum Award Wage Rates, of part b, Monetary Rates, for the employee's classification. Such percentages shall be calculated to the nearest 5 cents, any broken part of 5 cents in the result not exceeding half of 5 cents shall be disregarded.

	<b>Percentage of Appropriate Rate (Clause 2A) as per Employee's classification per week %</b>
At 17 years of age and under	55
At 18 years of age	67.5
At 19 years of age	80
At 20 years of age	92.5

At 21 years of age the minimum adult wage for the classification in which the employee is working; provided that where an employee under 21 years of age is called upon to stack goods weighing 31.75 kg or over more than 0.9144 metres high or to lift or carry without assistance goods weighing over 45.36 kg he/she shall be entitled to the minimum wage prescribed for the appropriate classification.

## 10. WAGES

(i) The wage rates as set out in Table 1 of Part B of this Award are minimum award rates (per week).

(ii) Leading Hand

**Storeman and Packer in charge of one to five employees** shall be paid as set out in Item 1 of Table 2 in addition to the rates set out in Table 1 according to the classification.

**Storeman and Packer in charge of six to ten employees** shall be paid as set out in Item 2 of Table 2 in addition to the rates set out in Table 1 according to the classification.

**Storeman and Packer in charge of eleven to fifteen employees** shall be paid as set out in Item 3 of Table 2 in addition to the rates set out in Table 1 according to the classification.

**Storeman and Packer in charge of over fifteen employees** shall be paid as set out in Item 4 of Table 2 in addition to the rates set out in Table 1 according to the classification.

(iii) Casual Hands

Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-eight plus 15 percent calculated to the nearest half cent with a minimum payment on any days of four hours.

**NOTATION:** The New South Wales Annual Holidays Act provides that casual employees under this award are entitled to receive an additional amount equal to one-twelfth of their ordinary time earnings in lieu of annual leave.

(iv) Single Employees

Where a Storeman and Packer is in charge of the bulk store, i.e. where there is no other person located in the same or adjoining premises to whom such Storeman and Packer is responsible,

then such Storeman and Packer shall be paid a margin of not less than the rate set out in Item 5 of Table 2 in addition to his/her ordinary rate of pay.

- (v) Fork Lift and/or Mobile Crane Drivers
  - (a) A Storeman and Packer who, in the course of his/her employment, operates a fork lift shall, in addition to the rates set out in Table 1 according to the level of classification be paid as set out in Item 6 of Table 2 whilst so employed.
  - (b) A Storeman and Packer who in the course of his/her employment operates a mobile crane, shall, in addition to the rates set out in Table 1, according to the level of classification, be paid as set out in Item 7 of Table 2 whilst so employed; provided that in respect of any hour or part thereof in which both of the additional payments prescribed in paragraphs (a) and (b) of this subclause become payable, the amount payable in respect of that hour shall not exceed the payment as set out in Item 8 of Table 2
  - (c) The additional rates provided for in this subclause shall be calculated on the total time in which employees are actually engaged on such work but any time exceeding half an hour shall be counted as one hour and any time less than half an hour as half an hour; provided further that the ordinary weekly wage payable to any such employee shall not exceed the amounts as set out in Groups 4 and 5 of Table 1 attached to drivers of fork lifts and/or mobile cranes who may be exclusively employed as such.
- (vi) In iron yards, iron and steel pipe yards, machinery stores and ship chandlers, or where the handling of barbed wire, fencing wire, plain or corrugated galvanized iron or bar iron forms part of the usual duty of any employee, an additional amount as set out in Item 9 of Table 2 shall be paid.
- (vii) Employees engaged in packing crockery, china, glass and glassware shall be paid an additional amount as set out in Item 10 of Table 2.
- (viii) Employees engaged in the blending of honey shall be paid an amount at the rate as set out in Item 11 of Table 2 in addition to the ordinary rate for Storemen and Packers.
- (ix) Employees engaged in the preparation of butter for wrapping and packing, the wrapping, packing or despatching of same, or

any work in connection therewith, shall be paid a rate as set out in Group 6 of Table 1; provided that employees engaged in reclaiming waste butter from paper wraps shall be paid an additional payment at the rate as set out in Item 12 of Table 2

- (x) When carrying bagged stuff or other packages exceeding 68.04kg in weight for one hour or more per day, casual or weekly employees shall be paid the amount as set out in Item 13 of Table 2 in excess of ordinary rates for the time so engaged. When the weights exceed 81.65kg the rate shall be as set out in Item 14 of Table 2 in excess of ordinary rates. A stacker of bagged stuff shall be paid carrying rates.

## 10A. ARBITRATED SAFETY NET ADJUSTMENTS

- (a) The rates of pay in this award include the first, second and third arbitrated safety net adjustments (\$8.00 per week – 18 February 1994, 8 May 1995, 27 April 1998) payable under the State Wage Case – December 1994 decision. All of the above Safety Net Adjustments may be offset to the extent of any wage increase received at the enterprise level since 29 May 1991. Increases made under previous State Wage Case principles or under the current principles, excepting those resulting at the enterprise level, are not to be used to offset arbitrated safety net adjustments.
- (b) The rates of pay in this Award include the adjustments payable under the State Wage Case of 2006. These adjustments may be offset against:
  - (i) any equivalent overaward payments, and/or
  - (ii) award wage increase since 29 May 1991 other than Safety Net, State Wage Case and minimum rates adjustments.

## 11. SHIFT WORKERS

- (i) Definitions

For the purposes of this clause:

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

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

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

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

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

(ii) Hours

Continuous Work Shifts

The ordinary working hours of shift workers employed on continuous work shall be an average of thirty-eight per week as provided in Clause 13 – Hours, of this award.

Such ordinary working hours:

- (a) shall not exceed one hundred and fifty-two (152) in any work cycle, and
- (b) except as provided in subclause (iv) of the said Clause 13, shall not exceed:
  - (1) eight (8) in one day, nor
  - (2) forty-eight (48) in any one week, nor
  - (3) eighty-eight (88) in any fourteen (14) consecutive days, nor
  - (4) one hundred and twenty-eight (128) in any twenty-one (21) consecutive days.

(iii) Hours

Other than continuous work

The ordinary working hours of shift workers not on continuous shifts shall be an average of thirty-eight per week as provided in the said Clause 13. Such ordinary working hours:

- (a) shall not exceed one hundred and fifty-two (152) in any work cycle, and

- (b) except as provided in subclause (iv) of the said Clause 13, shall not exceed:
  - (1) eight (8) in one day, nor
  - (2) forty (40) in any one week, nor
  - (3) eighty (80) in any fourteen (14) consecutive days, nor
  - (4) one hundred and twenty (120) in any twenty-one (21) consecutive days.

(iv) Hours

General

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

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

(v) Rosters

Subject to paragraph (a) of this subclause shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

- (a) An employee shall not be required by an employer to work an early morning shift where this would impose upon that employee any unreasonable personal hardship(s). Without limiting the generality of the concept "any unreasonable personal hardship(s)", it shall include where an employee is unwilling to work a morning shift on account of "illness, incapacity, domestic or other pressing necessity". Provided that an employer shall consult with the accredited representative of the Union in relation to the implementation of an early morning shift.

(vi) Variations by Agreement

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

(vii) Early Morning Shift Allowances

- (a) A shift worker, while on early morning shift, shall be paid for such shift a penalty payment of twelve and a half per cent in addition to his/her ordinary rates of pay.
- (b) A shift worker who works on an early morning shift which does not continue for at least five successive mornings in a five-day workshop, or for at least six successive mornings in a six-day workshop, shall be paid for each such shift fifty (50) per cent for the first three hours thereof and one hundred (100) per cent for the remaining hours thereof in addition to his/her ordinary rate.

(viii) Afternoon or Night Shift Allowances

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

to give him/her at least one-third of his/her working time off night shift in each shift cycle;

shall during such engagement period or cycle be paid 30 per cent more than his/her ordinary rate for all time worked during ordinary working hours on such night shift.

(ix) Saturday Shifts

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

(x) Overtime

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

- (a) if employed on continuous work be paid at the rate of double time; or
- (b) if employed on other shift work be paid at the rate of time and one-half for the first two hours and double time thereafter, except in each case when the time is worked.
- (c) by arrangement between the employees themselves;
- (d) for the purposes of effecting customary rotation of shifts; or
- (e) on a shift to which an employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for a day. Provided that when not less than eight hours notice has been given to the employer by a relief man that he/she will be absent from work and the employee whom he/she should relieve is not relieved and is required to continue to work on his/her rostered day off the unrelieved employee shall be paid double time.

(xi) Requirements to work reasonable overtime

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

(xii) Sunday and holidays

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

- (a) Sundays – at the rate of double time.
- (b) Holidays as prescribed by Clause 24 – Holidays, of this Award, at the rate of double time. Shift workers on other than continuous work for all time worked on Sunday or holiday shall be paid at the rates prescribed by Clause 25 – Holiday and Sunday Rates of Pay, of this Award.

Where shifts commence between 11.00 pm and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate; provided that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday. Where shifts fall partly on a holiday, that shift the major portion of which falls on a holiday shall be regarded as the holiday shift.

(xiii) Daylight Saving

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

- (a) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period, and
- (b) commencing on or before the time prescribed by such legislation for the termination of a summer time period,

shall be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be sent to the time fixed pursuant to the relevant State legislation.

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

- (xiv) Clause 16 – Overtime, Clause 14 – Meal Hours and subclause (i) of Clause 13 – Hours, shall not apply to shift workers.
- (xv) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours of duty between the work of successive days.

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

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

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

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

## **12. PAYMENT OF WAGES**

- (i) Wages of weekly employees shall be paid not later than Thursday of each week. Provided that the pay day and the days held in hand for employees employed in a mixed industry shall be the same as for the majority of employees in that industry

conditional upon the employer notifying The National Union of Workers, New South Wales Branch.

- (ii) Except as otherwise provided for in this clause, no employer shall hold more than one day's wages in hand.
- (iii) Casual hands shall be paid at the place of their employment on termination of their service.
- (iv) Any person left waiting for more than fifteen minutes shall be paid the casual rate for such waiting time.
- (v) In the event that an employee, by virtue of the arrangement of his/her ordinary working hours, is to take a day off on a day, which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day.

Provided that where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

- (vi) Subject to the remainder of this clause, payment of wages may be made by means of payment by cash or Electronic Funds Transfer provided that payment by Electronic Funds Transfer shall not be used wherever its use would create harsh or unreasonable circumstances for employees.
- (vii) Wherever wages are paid by Electronic Funds Transfer under subclauses (vi) herein, the employer shall meet the following costs:
  - (a) The employee's account establishment cost.
  - (b) The cost of each deposit of wages in the employee's account including government charges.
  - (c) The cost of a single withdrawal of each deposit of wages from an employee's account.

## **12A. DEDUCTION OF UNION MEMBERSHIP FEES**

- (i) The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
  - (a) The employee has authorised the employer to make such deductions in accordance with subclause (i) herein;

- (b) The Union shall advise the employer of the amount to be deducted
  - (c) Deduction of Union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
  - (d) There shall be no requirement to make deductions for casual employees with less than two months service (continuous or otherwise).
- (ii) The employee's authorization shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorization to the Union, the Union shall not pass the written authorization on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorization.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
  - (a) where the employer has elected to remit on a weekly or fortnightly basis, the employer shall be entitled to retain up to five percent of the monies deducted; and
  - (b) where the employer has elected to remit on a monthly or quarterly basis, the employer shall be entitled to retain up to 2.5 percent of the monies deducted.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorization in order for such deductions to commence or continue.
- (v) The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly or quarterly as the case may be. The Union shall give the employer a minimum of two months notice of any such change.

- (vi) An employee may at any time revoke in writing an authorization to the employer to make payroll deductions of Union membership fees.
- (vii) Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorization to the employer in order for payroll deductions of union membership fees to cease.
- (viii) This clause shall take effect:
  - (i) In the case of employers which currently deduct union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after 25 March 2003;
  - (ii) In the case of employers who do not fall within subparagraph (i) above, but who currently make deductions, other than union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on 25 June 2003.
  - (iii) For all other employers, from the beginning of the first pay period to commence on or after 25 September 2003.

### **13. HOURS**

- (i) The ordinary working hours, exclusive of meal times, shall average 38 hours per week, Monday to Friday, worked as follows:
  - (a) The hours to be worked will be between the span of hours, 6.30 am to 5.30 pm.
  - (b) Once having been fixed the time for commencing and finishing work shall not be altered without at least 7 days notice to the employees concerned or by mutual agreement between the employer and such employees. Where the majority of the employees and the employer so agree, the starting time may be varied to an earlier time.

- (ii) Except as provided in subclauses (iv) and (v) below, the 38 hour average week may be implemented in any one of the following ways:
  - (a) By employees working less than 8 ordinary hours each day; or
  - (b) By employees working less than 8 ordinary hours on one or more days each week; or
  - (c) By fixing one week day on which all employees will be off during a particular cycle; or
  - (d) By rostering the employees off on various days of the week during a particular work cycle so that each employee has one-week day during that cycle.
- (iii) The method of working a 38 hour average week shall be at the discretion of the employer who shall nominate which method prescribed in subclause (ii) above shall apply, provided that the employer shall not subsequently alter the method of implementation without advising the employee subject to the alteration at least 7 days in advance of the date on which the altered method of implementation is to take effect.
- (iv) Subject to the provisions of subclause (i) of this clause and subclauses (ii) and (iii) of Clause 11 – Shift Workers of this award, should the employer and the majority of employees in any establishment agree, the ordinary working hours may exceed 8 on any day, to enable a week off to be taken more frequently than would otherwise apply.
- (v) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned.
- (vi) Except as provided in subclause (vii) hereof, in cases where an employee in accordance with paragraphs (c) and (d) of subclause (ii) hereof, is entitled to a day off during his/her work cycle such employee shall be advised by the employer at least 4 weeks in advance of the week day he/she is to take off.
- (vii) (a) An employer with the agreement of the majority of employees in any establishment, may substitute the day an employee is to take off in accordance with paragraphs (c) or (d) of subclause (ii) hereof, for another day in the case of a breakdown in machinery, a failure or shortage of electric power to meet the requirements of the

business in the event of rush orders or some other emergency situation.

- (b) An employee who is required by his/her employer to work on his/her scheduled day off in circumstances other than those in paragraph (a) of this subclause shall be paid overtime rates or be granted an alternative day off. Such choice shall be at the option of the employee.
- (c) An individual employee, with the agreement of his/her employer, may substitute the day he/she is to take off for another day.
- (d) An employer may hold up to a maximum of 5 days accrued in accordance with (c) and (d) of subclause (ii) hereof. The accrued days are to be taken at a time mutually agreed between the employer and the employee.

#### **14. MEAL HOURS**

- (i) Not less than thirty minutes nor more than one hour shall be allowed for meal breaks. The meal break shall be taken no later than to finish at 2.00 pm provided that no employee shall be required to work for more than five hours without a break for a meal. Such meal break shall not count as time worked.
- (ii) Where overtime is necessary for more than 1 hour after the usual finishing time, a break of not less than 30 minutes, nor more than 1 hour shall be allowed for tea and shall be taken within 1 hour of such finishing time. Where such overtime does not exceed 1 hour, there shall not be any break; Provided that any employer and his/her employee may mutually agree to any variation of this subclause to meet the circumstances of the work in hand.
- (iii) Subject to subclauses (i) and (ii) of this clause an employer may require an employee to work during his/her recognised meal break as part of his/her ordinary time.

#### **15. MORNING REST PERIOD**

All employees shall be allowed ten minutes each morning as a rest period for morning tea, such time to be counted as time worked.

## 16. OVERTIME

- (i) All work done before the starting time and/or after the finishing time fixed in accordance with Clause 13 – Hours, Monday to Friday, inclusive, or on a Saturday, shall be overtime and shall be paid for at the rate of time and one-half for the first two hours and double time thereafter: Provided that all time worked after 12 noon on Saturday shall be paid for at the rate of double time. The minimum payment for work performed on a Saturday shall be four hours at the appropriate rate.
- (ii) An employee recalled to work overtime after leaving his/her employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rate for each time he/she is so recalled. Provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job he/she was recalled to perform is completed within a shorter period. This subclause shall not apply to cases where it is customary for an employee to return to his employer's premises to perform a specific job outside his/her ordinary working hours or where the overtime is continuous, subject to reasonable meal break, with the completion or commencement of ordinary working time.
- (iii) When overtime work is necessary it shall, wherever reasonably practicable, be so 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 his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

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

## **17. CRIB TIME**

An employee working overtime shall be allowed a crib of twenty minutes without deduction of pay after each four hours of overtime worked if the employee continues work after such crib time.

## **18. MEAL ALLOWANCE**

An employee who works overtime for more than one hour on any day or shift after the fixed ceasing time shall be paid on such day the amount as set out in Item 15 of Table 2 as a meal allowance unless notified on the previous day of the intention to work such overtime. Such payment shall be made prior to the commencement of the meal time on the day overtime is to be worked. Should an employee be notified of the intention to work overtime and then not be called upon to do so he/she shall be paid the amount as set out in Item 16 of Table 2.

## **19. SPECIAL RATES**

### **(i) Dirty Work**

Work, which a foreman and storeman and packer shall agree, is of an unusually dirty or offensive nature shall be paid the amount as set out in Item 17 of Table 2.

In case of disagreement between the foreman and workman, the storeman and packer or a shop steward on his/her behalf shall be entitled, within 24 hours, to ask for a decision on the storeman and packer's claim by the employer's industrial officer (if there be one), or otherwise by the employer or the executive officer responsible for the management or superintendence of the plant concerned. In such case a decision shall be given on the workman's claim within 48 hours of it being asked for (unless that time expires on a non-working day, in which case it shall be given during the next working day), or else the said allowance shall be paid. Any dispute arising under this subclause as to whether the work is of an unusually dirty or offensive nature shall be determined by the appropriate Industrial Committee.

### **(ii) Hot Places**

Working for more than one hour in the shade in places where the temperature is raised by artificial means to between 46.1 degrees Celsius and 54.4 degrees Celsius – the amount as set out in Item 18 of Table 2; in places where the temperature exceeds 54.4 degrees Celsius – the amount as set out in Item 19 of Table 2.

Where work continues for more than 2 hours in temperatures exceeding 54.4 degrees Celsius, employees shall also be entitled to 20 minutes rest after every 2 hours work without deduction of pay. The temperature shall be decided by the foreman of the work after consultation with the employees who claim the extra rate.

(iii) Wet Places

An employee working in any place where his/her clothing or boots become saturated whether by water, oil or otherwise shall be paid the amount as set out in Item 20 of Table 2; provided that this extra rate shall not be payable to an employee who is provided by the employer with suitable and effective protective clothing and/or footwear. And provided further that any employee who becomes entitled to this extra rate shall be paid such extra rate for such part of the day or shift as he/she is required to work in wet clothing or boots.

## 20. OBNOXIOUS MATERIALS

- (i) Employees directly engaged in the handling of the materials named in this subclause, subject to the conditions set out herein, shall be paid such extra hourly rate as set out in Item 21 of Table 2 regarding the following paragraphs (a) and (b):
  - (a) Soda ash, Lignosol, Bulk Sulphur, Phosphate Rock, Manganese, Carbon Black, Lamp Black or Fish Meal (other than in undamaged steel drums, undamaged casks, or undamaged polythene bags).
  - (b) Oxides, including antimony oxide, zinc oxide, yellow oxide, titanium, red lead, litharge or any oxide with a similar base when free or packed in sacks or bags (other than in undamaged steel drums, undamaged casks or undamaged polythene bags).
- (ii) Employees engaged in the handling of hydrogen fluoride shall be paid at the rate of double time whilst so engaged.
- (iii) Employees engaged in the handling of any materials mentioned in this clause and for which extra rates are provided, shall, subject to the conditions specified herein, be paid a minimum of four hours at the appropriate rate for each day upon which the employee is so engaged.
- (iv) Employees engaged in the loading, unloading or handling by mechanical appliance of any materials in unbroken containers in

circumstances such that the employee is not exposed to any disability arising from the obnoxious nature of the materials shall not qualify for the extra rates stipulated herein.

- (v) Leave is reserved to the parties to apply as they may be advised for a variation of this clause in relation to the following items: Offal, inflammable or hazardous liquids and gases, cryolites, nitram, nuco clay, powdered molasses, clinker dust and wheat dust.
- (vi) In the event of any dispute as to the obnoxious nature of any additional materials not mentioned in this clause, or the extra rate to be paid for any goods classified as obnoxious materials or as to the application of subclause (v), of this clause, any party to these proceedings may refer the matter to the appropriate Industrial Committee or the Industrial Commission for determination.

## **21. FARES AND TRAVELLING TIME**

- (i) All weekly employees shall be paid at ordinary rates (or overtime rates if overtime is worked) for all times occupied in travelling to and from work when they are required or directed to work at a place other than their usual place of work. When employees have a fixed starting point, they shall be paid for all time occupied in travelling between the starting point and their work and for all time in excess of half an hour from the work to the starting point. All fares shall be paid by the employer.
- (ii) If employees are unable to reach their homes at night, all reasonable expenses incurred, in addition to fares, overtime rates if worked and weekly rates for the class of work prescribed herein, shall be paid to them.
- (iii) An employee who is required by his/her employer to use his/her own motor vehicle for travelling on the employer's business shall be paid a rate as set out in Item 22 of Table 2.

## **22. FIRST-AID**

The employee who is appointed as first-aid attendant shall be paid an additional payment at the rate as set out in Item 23 of Table 2.

## 23. MIXED FUNCTIONS

An employee employed in a higher classification for two hours or more for which a higher rate of pay is provided for herein, shall receive such higher rate of pay for the full day.

If employed for less than two hours on any day or any such higher classification, he/she shall receive such higher rate of pay whilst so employed; shall be holidays.

The aforementioned provisions shall not apply to employees receiving the hourly allowance under subclause (vi), Fork Lift and Mobile Crane Drivers, of Clause 10 – Wages, of the said award.

No employee shall suffer any reduction in wages if temporary employed on work other than on which he/she is regularly employed and for which a lower rate is provided for herein.

## 24. HOLIDAYS

- (i) The days upon which New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day are observed, together with any day gazetted or proclaimed as a public holiday for the district in which the employee is employed shall be holidays.
- (ii) In addition to the holidays specified in subclause (i), of this clause, one additional paid holiday shall apply in each calendar year to an employee on weekly hire. Unless agreed otherwise, the first Tuesday following Easter Monday shall be the additional holiday.

An employer and an employee or an employer and the majority of employees in an establishment, may agree to observe an alternative day as a holiday in lieu of the first Tuesday following Easter Monday.

- (iii) In the case of an employee whose ordinary hours of work are arranged in accordance with subclause (iv) or paragraphs (c) and (d) of subclause (ii) of Clause 13 – Hours, the week day to be taken off shall not coincide with any holiday fixed in accordance with subclauses (i) or (ii) hereof: Provided that in the event that a holiday is prescribed after an employee has been given notice of his/her week day off in accordance with subclause (vi) of the said Clause 13, and the holiday falls on the week day the employee is to take off, the employer shall allow the employee to take the day off on an alternative week day.

- (iv) An employee who works continuous work, and who by the circumstances of the arrangement of his/her ordinary hours of work is entitled to a rostered day off which falls on a public holiday described by this clause, shall, by agreement either be paid for that day, at ordinary rates or have an additional day added to his/her annual leave. This provision shall not apply when the holiday on which he/she is rostered off falls on a Saturday or Sunday.
- (v) Where an employee is absent from his/her 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. Reasonable excuse shall be satisfied by a certificate from a duly qualified medical practitioner or a statutory declaration. An employee shall notify the employer of such an absence prior to normal starting time wherever practicable.

## **25. HOLIDAY AND SUNDAY RATES OF PAY**

- (i) All time worked on Christmas Day and Good Friday shall be paid for at the rate of treble time.
- (ii) All time worked on Sunday shall be paid for at the rate of two and a half times the ordinary rate and all time worked on holidays, other than the aforesaid, shall be paid for at double time and one-half.
- (iii) For work performed on a holiday, which falls on a Saturday payment, shall be made at the rate of double time and one-half.
- (iv) The minimum payment for work performed on Sundays or holidays shall be 4 hours at the appropriate rate.

## **26. SICK LEAVE**

- (i) (a) An employee for the time being working under the award who is unable to attend for duty during his/her ordinary working hours by reason of personal illness or incapacity (including incapacity resulting from injury within the Workers' Compensation Act 1926) not due to his/her own serious and wilful misconduct, shall be entitled to be paid at ordinary rates of pay for the time of such non attendance: Provided that he/she shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to Workers' Compensation.

- (b) An employee shall within 6 hours of the commencement of such absence or within such time as is practicable for the employee inform the employer of his/her inability to attend for duty and, as far as possible, state the nature of the injury or illness and the estimated duration of incapacity.
- (c) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Industrial Commission of New South Wales) that he/she is or was unable, on account of such illness, to attend for duty on the day or days for which payment under this clause is claimed.
- (d) Except as herein provided, he/she shall not be entitled in the first year of employment to leave in excess of 5 days, and 10 days in the second and subsequent years of employment. Sick pay entitlement for part day absences shall be calculated on a proportionate basis by multiplying the duration of sick leave absence by the average daily pay for ordinary hours and dividing the sum by the ordinary hours normally worked that day.
- (e) The rights under this clause shall accumulate from year to year, so that any part of the sick leave which has not been allowed 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. Any rights, which accumulate pursuant to this subclause, shall be available to the employee for a period of 12 years in addition to the current year but no longer, from the end of the year in which they have accrued.
- (f) The payment for any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the employer until the employee completes such three months of employment at which time the payment shall be made.
- (g) For the purpose of this clause, continuous service shall be deemed not to have been broken by any absence from work on leave granted by the employer. Provided that any time so lost shall not be taken into account in computing the qualifying period of three months.
- (h) Accumulated leave at the credit of the employee at the commencement of this award will not be increased or reduced by this clause.

(i) Single day absences

In the case of an employee who claims to be allowed paid sick leave, in accordance with this clause, for an absence of one day only, such employee if in the year he/she has already been allowed paid sick leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless he/she produces to the employer a certificate of a duly qualified medical practitioner that in his/her, the medical practitioner's opinion the employee was unable to attend for duty on account of personal illness or on account of injury by accident. Nothing in this subclause shall limit the employer's right under paragraph (c) of subclause (i) of this clause.

## **26A. PERSONAL/CARER'S LEAVE**

(1) Use of Sick Leave

- (a) An employee other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c), who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for in Clause 26 – Sick Leave 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 employees 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 employees 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:
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lived 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 paragraph:
      - 1. **“relative”** means a person related by blood, marriage or affinity;
      - 2. **“affinity”** means a relationship that one spouse because of marriage has to blood relatives of the other; and
      - 3. **“household”** means a family group living in the same domestic dwelling
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that persons relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of

absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of the absence.

(2) Unpaid leave for family purpose

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

(3) Annual Leave

(a) An employee may elect with the consent of the employer, 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 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

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

(4) Time off in lieu of payment for overtime

(a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.

(b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour for each hour worked.

(c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for the time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.

(d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.

- (5) Make-up time
- (a) An employee may elect, with the consent of the employer, to work “make-up time”, under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work “make-up time” (under which the employee takes off ordinary hours and works those hours at a later time), at the shift work rate, which would have been applicable to the hours taken off.
- (6) Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.
- (7) Personal Carers entitlement for casual employees
- (a) Subject to the evidentiary and notice requirements in subclause 1 of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 3 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend

work for up to 48 hours (i.e. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 27. ANNUAL LEAVE

See *Annual Holidays Act 1944*. Leave is reserved pending the outcome of any test case on this matter in the Industrial Commission of New South Wales.

## 28. ANNUAL LEAVE LOADING

- (i) This clause takes effect on and from 1 January 1974. It applies only in relation to annual holidays to which employees become or have become entitled after 31 December 1973.
- (ii) In this clause the *Annual Holidays Act 1944* is referred to as “the Act”.
- (iii) Before an employee is given and takes his/her 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 period, the employer shall pay his/her 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 (vii) of this clause.

- (iv) The loading is payable in addition to the pay for the period of holidays given and taken and due to the employee under the Act.
- (v) The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled since 31 December 1973 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) and which commences on or after 1 January 1974 or, where such a holiday is given and

taken in separate periods, then in relation to each such separate period.

**NOTE:** See subclause (vii) of this clause as to holidays taken wholly or partly in advance after 31 December 1973.

- (vi) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (v) of this clause, at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by Table 1 – Minimum Award Wage Rates of Part B – Monetary Rates, of this award for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with, where applicable, the rate prescribed by Item 5 (Single Employees) of Table 2 – Other Rates and Allowances of Part B – Monetary Rates, of this award, but shall not include any other allowance, penalty or disability rates, shift allowances, commissions, bonuses, incentive payments, overtime rates or any other payments prescribed by this award.
- (vii) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; Provided that if the employment of such an employee continues until the day when he/she would have become entitled under the Act to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (vi) 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 after 31 December 1973 and the entitlement to the holiday arises on or after 1 January 1974.
- (viii) Where, in accordance with the Act and on or after 1 January 1974 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 (vi) of this clause;
  - (b) an employee who is not entitled under the Act to an annual holiday and who is given and takes leave without pay shall be paid in addition to the amount payable to hi/her under the Act such proportion of the loading that would have been payable to him/her under this clause if he/she had become entitled to an annual holiday prior to the close-down as his/her qualifying period of employment in completed weeks bears to 52.

- (ix) (a) When the employment of an employee is terminated by his/her employer on or after 1 January 1974 for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which he/she became entitled after 31 December 1973 he/she shall be paid a loading calculated in accordance with subclause (vi) for the period not taken.
- (b) except as provided by paragraph (a) of this subclause no loading is payable on the termination of an employee's employment.
- (x) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if he/she had not been on holiday; Provided if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

## **29. LONG SERVICE LEAVE**

*See Long Service Leave Act 1955.*

## **30. BEREAVEMENT LEAVE**

- (i) An employee shall be entitled on notice to bereavement leave, up to and including the day of the funeral, without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days work on each occasion of the death of a person in Australia prescribed in subclause (iii) below.
- (ii) The employee shall provide proof of death to the satisfaction of the employer, if required by the employer.
- (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 clause (1)(c)(ii) of Clause 26A – Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) An employee shall be entitled to bereavement leave under this clause in the event of the death outside Australia of the person prescribed in subclause (iii) above, if the employee goes overseas to attend the funeral.
- (vi) Bereavement leave may be taken in conjunction with other leave available under subclauses (1)(a), (2), (3), (4), (5) and (6) of the said Clause 26A. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- (vii) 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 26A 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.

## **31. JURY SERVICE**

An employee shall be allowed leave of absence during any period when required to attend for jury service.

During such leave of absence, an employee shall be paid the difference between the jury service fees received and the employee's award rate of pay as if working.

An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such

requirements as soon as practicable after receiving notification to attend for jury service.

### **32. REPATRIATION LEAVE**

Upon the production of evidence satisfactory to the employer, an employee who is entitled to supervision by the Commonwealth Repatriation Department shall be entitled to be paid the employee's award rate of pay; Provided the employer shall be obliged to make such payments on not more than four occasions in any year and payment is not to exceed four hours' pay on each occasion.

### **33. GENERAL CONDITIONS**

- (i) There shall be provided a sufficient supply of boiling water at meals for all employees and an adequate supply of fresh cold water for drinking purposes shall be supplied on the job.
- (ii) Where the nature of the work performed by employees necessitates suitable water-proof clothing and/or aprons, rubber boots or clogs, gloves, goggles and protective breathing apparatus applicable to that work, they shall be supplied to and worn by the employees and paid for by the employer and shall remain the property of the employer.
- (iii) See also provisions of the *Factories, Shops and Industries Act 1962*.

### **34. 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 years 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.

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 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 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 minimize 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 of workers normally employed and the period over which the terminations are likely to be carried out. Provided 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 subclause 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)(a)(1) above.

- (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 the age of 45 years of age at the time of the giving of the notice with not less than 2 years continuous service, shall be entitled to an additional weeks 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 days 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.

(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 appropriate commonwealth agency

Where a decision has been made to terminate employees, the employer shall notify the appropriate Commonwealth Agency 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) above, the employee shall be entitled to the same period of notice of transfer as 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 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 that 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.

### **35. SHOP STEWARD**

An employer shall allow a shop steward, appointed by employees in each establishment and whose name has been forwarded by the union, in writing, to the employer the necessary time during working hours to interview him/her or his/her representatives on matters affecting the employees whom the steward represents.

### **36. EXEMPTIONS**

- (i) W.D. & H.O. Wills (Aust.) Limited is exempted from the provisions of this award; Provided that the present conditions observed and agreed to by and between the said company and the Federated Tobacco and Cigarette Workers' Union of Australasia, New South Wales Branch, are adhered to in respect of such employees.
- (ii) For the purpose of the Australasian Conference Association Limited at Cooranbong, the words "Friday" (other than in the expression "Good Friday"), "Saturday" (other than in the expression "Easter Saturday"), "Sunday" and "Monday" (other than in the expression "Easter Monday") wherever appearing in this award are to be read, respectively, as "Thursday", "Friday", "Saturday" and "Sunday".

## 37. SUPERANNUATION

(i) Definitions

In this clause, the following definitions shall apply:

- (a) **“L.U.C.R.F”** shall mean the Labour Union Co-operative Retirement Fund.
- (b) **“Approved Fund”** shall mean a superannuation fund which has been approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.
- (c) **“Eligible Employee”** shall mean a weekly or casual employee who is employed to work in an establishment pursuant to the terms of this award and who has been so employed for four calendar weeks.

In the case of casual employees, ordinary hours of service need not be continuous. All hours of service accumulated by a casual employee shall be included in the calculation of ordinary hours of service towards the attainment of the qualifying period.

- (d) **“Freedom of Choice”** shall mean an individual choice of each employee as to which superannuation scheme he/she wishes to join. The options shall be either L.U.C.R.F. or an approved fund of the Company’s choosing.
- (e) **“Ordinary-time earnings”** shall mean:
  - (1) in the case of a weekly employee, his/her classification’s weekly rate of pay for ordinary hours of labour; or
  - (2) in the case of a casual employee, earnings for his/her classification during ordinary working hours (including 15% casual loading).
  - (3) A classification’s rate shall include the rate per week and allowances related to work and/or conditions.
  - (4) Ordinary time earnings shall also include any “overaward payment”.

**“Overaward payment”** means the amount (whether it be termed “overaward payment”,

“attendance bonus”, “service increment”, or any other term whatsoever), which an employee would receive in excess of an award and/or industrial agreement’s rate of pay for the classification in which such an employee is engaged.

Provided that such payment shall exclude payments related to overtime, penalty rates and meal money allowance and any other ancillary payment of a like nature prescribed by an award and/or industrial agreement.

(ii) Contributions

- (a) An employer shall pay to the Trustee of L.U.C.R.F. or an approved fund, in respect of each eligible employee, an amount equal to 3% of the employee’s ordinary-time earnings in accordance with the exercise of such employee’s freedom of choice.
- (b) When an employee becomes an eligible employee by having completed the required qualifying period of employment, the employer shall pay contributions for the qualifying period.
- (c) Provided that where an eligible employee has not joined the fund and refuses in writing to do so join, the employer shall not be bound to make contributions for that eligible employee.
- (d) An employer may make a pro-rata deduction for the weekly contribution for each hour that an employee is absent from work without pay.
- (e) An employer shall remit to the Trustee of L.U.C.R.F. or an approved fund, whichever is applicable, all payments due in respect of eligible employees, immediately at the conclusion of each calendar month or at such other times and in such other manner as may be agreed in writing between the employer and the Trustee.

(iii) Existing Arrangements

Nothing in this clause shall affect any arrangement for the payment of 3% occupational superannuation (emanating from the State Wage Case Decision of 1986 and subsequent decisions) into L.U.C.R.F. or an approved fund, which commenced before 20 March 1989.

Further, it is not the intent of this clause to reduce the terms of any existing agreement between an employer and the Trustee if L.U.C.R.F. or of an approved fund, whichever is applicable.

(iv) Leave Reserved

Leave is reserved to any party to apply in Matter No. 11 of 1989 in respect of any unforeseen circumstances not contemplated by the parties at the time that this clause was inserted into this award.

**NOTATION:** Employees covered by this award are also covered by the provisions of the *Superannuation Guarantee Charge Act 1992 (Cth)* and the *Superannuation Guarantee (Administration) Act, 1992 (Cth)* and complimentary legislation. Nothing in this notation, however, shall be used to reduce any benefits enjoyed by employees as at the date of making this award).

### 38. 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.

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

- (a) This award shall apply to employees in the classifications specified in the award within the jurisdiction of the Storemen and Packers, General (State) Industrial Committee (sections 1, 2, 5, 6, 7, 8 and 9).
- (b) This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Storemen and Packers, General (State) Award published 21 May 1999 [309 I.G. 369] and all variations thereof.
- (c) The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 18 December 1998 [308 I.G. 307] and take effect on or after 5 March 2004.
- (d) The award remains in force until varied or rescinded, the period for which it was made having already expired.

### **40. PARENTAL LEAVE**

- (i) refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- (ii) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or

- (b) the employee is or has been immediately absent on parental leave.

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

(iii) Right to request

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

To assist the employee in reconciling work and parental responsibilities.

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

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

(d) Request to return to work part-time

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

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

## **STOREMEN AND PACKERS, GENERAL (STATE) INDUSTRIAL COMMITTEE**

### **Industries and Callings**

#### **SECTION 1 STOREMEN AND PACKERS, PRODUCE, & C., STORES (STATE)**

Storemen and packers employed by wholesale and by retail produce, seed and grain merchants, and storemen and packers engaged in handling of produce, grain and seed in stores, in the vicinity of railway stations, sidings, or lines, including in each case storemen and packers who, for the purpose of and in the course of their work as storemen and packers, use mechanical or electrical appliances and male employees engaged in the preparation of butter for wrapping and packing, the wrapping, packing or despatching of same or any work, including the use of mechanical or electrical appliances, in connection therewith in wholesale or retail produce stores in the State, excluding the County of Yancowinna, and excluding the area within the radius of 10 miles round the post and telegraph office, Newcastle, and excluding also as to all but retail establishments the towns of East and West Maitland; excepting storemen and packers employed in retail shops and stores which have no distinct and separate produce, seed, or grain departments, and of which the sale of produce, seed or grain forms only the smaller part of the business;

#### **SECTION 2 STOREMEN AND PACKERS, RETAIL STORES (STATE)**

Storemen and packers in retail shops and stores in the State excluding the County of Yancowinna; including storemen and packers who, for the purpose of and in the course of their work as storemen and packers, use mechanical or electrical appliances in retail shops and stores;

#### **SECTION 4 STOREMEN AND PACKERS, WHOLESALE DRUG STORES (STATE)**

Storemen and packers, including storemen and packers who, for the purpose of and in the course of their work as storemen and packers, use mechanical or electrical appliances employed in wholesale drug stores, drug factories and drug laboratories in the State, excluding the County of Yancowinna;

#### **SECTION 5 STOREMEN AND PACKERS, WHOLESALE GROCERY, & C., STORES (STATE)**

Storemen and packers and sorters and assemblers, including storemen and packers and sorters and assemblers who, for the purpose of and in the course of their work as storemen and packers and sorters and assemblers use mechanical or electrical appliances in wholesale grocers and tea warehouses (but not including tea packers) in the State, excluding the County of Yancowinna, and excluding the area within a radius of 10 miles round the post and telegraph office, Newcastle, and excluding the towns of East and West Maitland;

**SECTION 6 STOREMEN AND PACKERS, WHOLESALE HARDWARE STORES (STATE)**

Storemen and packers, including storemen and packers who, for the purpose of and in the course of their work as storemen and packers use mechanical or electrical appliances in wholesale hardware, Ironmongery, machinery, general merchants, ship chandlers and fancy goods houses, iron yards and rope stores in the State, excluding the County of Yancowinna, excluding the area within a radius of 10 miles round the post and telegraph office, Newcastle, and excluding the towns of East and West Maitland;

And excepting the employees of Australian Wire Industries Pty Ltd – Sydney Wiremill;

And excepting also employees of Australian Iron and Steel Proprietary Limited, within the jurisdiction of the Iron and Steel Works Employees (Australian Iron & Steel Proprietary Limited) Conciliation Committee and the Quarries (Australian Iron & Steel Pty Limited) Conciliation Committee;

**SECTION 7 STOREMEN AND PACKERS, WHOLESALE SORTGOODS, & C., STORES (STATE)**

Storemen and packers, including storemen and packers who, for the purpose of and in the course of their work as storemen and packers use mechanical or electrical appliances in wholesale softgoods boot and shoe and stationery stores and museums in the State, excluding the County of Yancowinna, and excluding the area within a radius of 10 miles round the post and telegraph office, Newcastle, and excluding the towns of East and West Maitland;

**SECTION 8 STOREMEN AND PACKERS, NOT ELSEWHERE INCLUDED (STATE)**

Storemen and packers, including storemen and packers who, for the purpose of and in the course of their work as storemen and packers use mechanical or electrical appliances, other than those mentioned in sections 1, 2, 4, 5, 6, 7 and 9, and other than those mentioned in the Storemen and Packers, Wharf Stores (State) Conciliation Committee, Storemen and Packers, Wholesale Paint, Varnish, Oil and Colour Stores (State) Conciliation Committee and the Storemen and Packers, Wholesale Oil and Petroleum Products (State) Conciliation Committee, in the State, excluding the County of Yancowinna;

Excepting storemen and packers in the porcelain enamelling industry; and

Excepting also employees of the Council of Sydney, and employees in bond and free stores, but including employees in engineering and shipbuilding establishments or any factory;

And excepting also employees of Australia Iron & Steel Proprietary Limited within the jurisdiction of the Iron and Steel Works Employees (Australian Iron & Steel Proprietary Limited) Conciliation Committee and the Quarries (Australian Iron and Steel Pty Limited) Conciliation Committee, the Wholesale Fruit and Vegetable Employees (State) Conciliation Committee;

And excepting also persons employed in or by the United Dental Hospital of Sydney.

## **SECTION 9 STOREMEN AND PACKERS, (NEWCASTLE)**

All storemen and packers (other than those in retail shops and stores) employed within a radius of 10 miles round the post and telegraph office, Newcastle, and in the towns of East and West Maitland, and including in both areas sorters and assemblers in wholesale grocery warehouses, and including also storemen and packers and such sorters and assemblers who, for the purpose of and in the course of their work as storemen and packers and sorters and assemblers, use mechanical or electrical appliances;

Excepting in both areas those in wholesale drug warehouses;

And excepting also storemen and packers in wholesale oil and colour stores, in wharf stores, and in bond and free stores;

And excepting also employees within the jurisdiction of the Shortland County Council Conciliation Committee.

## **SECTION 10 STOREMEN AND PACKERS, BOND AND FREE STORES (STATE)**

Storemen and packers, including storemen and packers who, for the purpose of and in the course of their work as storemen and packers use mechanical or electrical appliances, employed in bond and free stores in the state, excluding the County of Yancowinna:

Excepting all persons employed by the Sydney County Council;

Excepting in all sections:

All persons employed in and/or in connection with hospitals, mental hospitals, public charitable institutions or ambulance work;

And also excepting, in all sections, employees within the jurisdiction of the following Conciliation Committees:

Special Steels and Steel Products Manufacture (Commonwealth Steel Company Limited);

University Employee, &c. (State);

Tubemakers of Australia Limited, Newcastle;

County Councils (Electrolytic R & S. Company, & c.);  
John Lysaght (Australia) Limited Port Kembla;  
Australian Wire Industries Pty Limited – Newcastle Ropery;  
John Lysaght (Australia) Limited Unanderra;  
Tubemakers of Australia Limited, Yennora;  
Smelting and Fertilizer Manufacturing (Sulphide Corporation Pty Limited and  
Greenleaf Fertilizers Limited);  
Milk Treatment, &c., and Distribution (State);  
Shoalhaven Scheme;

And also excepting, in all sections, employees of:

The Broken Hill Proprietary Company Limited;  
Australian Wire Industries Pty Limited. As its Newcastle Wiremill;  
Blue Circle Southern Cement Limited;  
The Council of the City of Newcastle;  
The Northern Rivers County Council;  
The Electricity Commission of New South Wales, trading as Pacific Power;  
State Rail Authority of New South Wales;  
The Commissioner for Motor Transport;  
Prospect Electricity;  
The Australian Gas Light Company.