

FAIR WORK COMMISSION

Matter No. 2014/301

FOUR YEARLY REVIEW OF MODERN AWARDS

PUBLIC HOLIDAYS COMMON ISSUE

REPLY TO SDA NOTE

1. On 11 August 2017, the SDA filed a document, "*Note – Consideration of Public Holidays Test Case in Proceedings for the Making of the General Retail Award, Fast & Related Proceedings*" (**Note**) in which the SDA purports to address the extent to which the *Public Holidays Test Case (PHTC)* was considered in award modernisation proceedings.
2. The SDA appears to be asserting in the Note that the issue of the PHTC was only raised in respect of the application by the SDA to vary the *General Retail Industry Award 2010* in 2010. The SDA also makes the following assertions:
 - a. the PHTC was not raised by any party in their submissions in award modernisation proceedings;
 - b. the AIRC dismissed all claims for award provisions relating to leave entitlements prescribed by the NES.
3. The ARA rejects the SDA's assertions. We have set out below the extent to which the SDA raised the PHTC and/or the issue of non-working day public holiday benefits in the Award Modernisation process, including links to documents and a summary of the background. We have also attached to these submissions the relevant documents.

a. SDA submission July 2008 (relevant component extracted below)

Public Holidays

Public Holidays are an important entitlement to employees. Their impact is most notable around the Christmas trading period when there is an interaction of weekends, substitution and additional days.

The AIRC heard major test cases on the issue and made decisions as to the operation of "actual" days, e.g. the real public holiday (i.e. 25th December) and substitute days (e.g. 27th December). As the retail industry does in some parts operate on all days, simply moving significant days to another day gives the same quantum but does not recognise the significance of the actual days. Christmas lunch is on the 25th not the 27th. The AIRC decision did give this great consideration and issued a decision to cover such occurrences.

This decision(s) are reflected into the Federal Awards i.e. Victorian Shops, Airport Retail Concessions, ACT Retail Award etc.

In the Modern Award, the SDA has reflected these provisions as they are well tested as they were thoroughly arbitrated by the AIRC.

The SDA has referred to reflecting provisions “*as they were well tested as they were thoroughly arbitrated by the AIRC*”. It cannot be contested that this is a reference to the PHTC, and the provisions that the SDA refers to include the non-working day provisions they proposed to be included in the award they drafted for consideration by the AIRC (extracted below).

b. SDA Parties Draft Award August 2008

The SDA filed a draft award with its July 2008 submission, which included the following clause:

58.8 *A full-time employee, or a part time employee working an average of 5 days per week, whose non-working day falls on a public holiday, shall be paid by mutual agreement either*

58.8.1 *payment of an additional day's wages,*

58.8.2 *addition of one day to the employee's annual holidays, or*

58.8.3 *another day may be allowed off with pay to the employee within twenty-eight days after the holiday falls, or during the week prior to the holiday.*

A part-time employee shall be entitled to the provisions of (a), (b), and (c) above where the employee works an alternating roster and the public holiday falls on a day on which the employee works in any week of their roster cycle.

For the purpose of this paragraph for full-time employees, "day" shall mean 8 hours. In respect of part-time employees "day" shall mean the average number of hours rostered per day by the employee prior to the public holiday in the 4 week cycle.

c. SDA Submission October 2008

Following the release by the AIRC of an Exposure Draft Retail Industry Award which did not include the SDA’s proposed clause 58.8 as extracted above, the SDA filed a submission opposing that approach, and specifically referenced the PHTC in doing so. We extract this below.

The SDA would propose that the following sub clauses are inserted in lieu of 34.2 and 34.3:

.....

34.4 Public Holiday Falling On Non-Working Day

If a Public Holiday falls on the non-working day of a full time employee or of a part time employee who works five days per week (or six days if they have so elected) they shall be entitled to receive by mutual agreement:

- ***Another day off in lieu; or***
- ***An equivalent day's pay; or***
- ***One extra day added to his or her annual leave.***

.....

147. These provisions reflect the current conditions of federal awards that apply in the industry. These conditions were based upon the Public Holidays Rest Cases of the AIRC and the long standing conditions applied in the awards.

4. The SDA's continued push through the award modernisation process for public holiday provisions substantially the same as those being sought now was consistently rejected by the AIRC. For the SDA to assert that issue of the PHTC was not specifically put to the AIRC is plainly wrong. The AIRC took the decision to reject the SDA's submissions regarding the importance or relevance of the PHTC.
5. In relation to the SDA's assertion that the AIRC "*dismissed all claims for award provisions relating to leave entitlements prescribed by the NES*", including public holidays, the SDA is again plainly wrong for the following reasons:
 - a. the AIRC only specifically rejected requests to supplement public holiday entitlements in the NES by including says that are observed as public holidays but not gazette as such¹; and
 - b. this assertion is contrary to the SDA's submission regarding the number of awards which contain non-working day public holiday benefits.
6. The SDA is asserting that the AIRC adopted a blanket approach of dismissing any claim made by any party in relation to leave entitlements prescribed by the NES. That was not what the AIRC did at all. If it had, the AIRC would have taken a one size fits all approach to all NES related award provisions. Instead, the AIRC:
 - a. determined it was not possible to develop a single model clause for annual leave²;

¹ [2008] AIRCFB 1000 at paragraph [105]

² *ibid* at paragraph [95]

- b. allowed for variation in provisions related to annual leave close-down³; and
 - c. allowed for variation in provisions related to direction to take annual leave⁴.
7. The SDA's assertion is also wrong because the AIRC did not reject all matters related to public holidays. What the AIRC said was that the number of public holidays to which employees should be entitled⁵ is governed by the NES. What the SDA sought to do then, and is seeking to do now, is to determine which employees receive those NES public holidays, which is clearly a different consideration.
8. Had the AIRC adopted a blanket approach of rejecting claims related to NES leave entitlements, including public holidays, Schedule 1 to the SDA's reply submission dated 30 June 2017 would not exist, as none of the more than forty award listed, a number of which were dealt with by the AIRC at the same time as the GRIA, would have included non-working day provisions.

Australian Retailers Association

15 August 2017

³ ibid at paragraph [97]

⁴ ibid at paragraph [98]

⁵ ibid at paragraph [105]

AWARD MODERNISATION
AM2008/10 – RETAIL INDUSTRY

SUBMISSION BY

***SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES'
ASSOCIATION***

July 2008

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SUBMISSION

INTRODUCTION

The SDA has embraced the concept of rationalisation and modernisation of awards since this idea was first initiated by the previous government under the Award Rationalisation process. The SDA has always accepted that as the retail industry is heavily award-reliant, that a retail award would always be at the forefront of any award rationalisation or award modernisation process.

The SDA strongly supported having a retail industry award as a priority award for the current government's award modernisation process.

The initial position of the SDA was that there should be several separate awards that would operate across different sectors of the retail industry, namely a general Retail Award, a Community Pharmacy Award, a Fast Food Industry Award and a Hair and Beauty Industry Award. However, the Award Modernisation Full Bench of the Australian Industrial Relations Commission has decided that the Retail Industry is to include fast food, community pharmacy and hair and beauty. On this basis, the SDA has prepared a retail award which will provide comprehensive coverage of all sectors of the retail industry, including community pharmacy, fast food and hair and beauty, as well as general retail.

The Modern Award for the Retail Industry as proposed by the SDA provides a proper safety net set of conditions of employment for all parts of the Retail Industry.

THE AWARD MODERNISATION MINISTERIAL REQUEST

The issue which has caused the SDA the greatest difficulty is that part of the Ministerial request under s.576C(1) where at paragraph 2 the Ministerial request provides that "*the creation of modern awards is not intended to: (c) disadvantage employees; (d) increase costs for employers;*". The SDA clearly and strongly supports the proposition that modern awards should not, and are not intended to either disadvantage employees or increase costs for employers. However, there is no process within the award modernisation request from the Minister, nor in the Workplace Relations Act itself, which provides clear direction and guidance as to how these competing intentions are to be achieved.

In fact, it appears that in order to create a modern award for Australia's retail industry, which results in a single set of classifications, wages and conditions of employment for the entire retail industry, that some workers will be disadvantaged and some employers will have their costs increased. The SDA is of the view that the intentions in paragraphs 2(c) and (d) of the Ministerial request could only be achieved if time was given so as to enable the SDA, the Commission, and the employers, to cost out a proposed modern award against each roster system, type of employment, classification structure, operating in each and every retail establishment, in each and every State and Territory. This is clearly an impossible task and would never be undertaken.

The SDA has formed the view that it would be possible to meet the intentions in paragraphs 2 (c) and (d) of the Ministerial request only by compiling a modern award which contained each and every provision of each and every existing federal award and NAPSA relevant to the retail industry.

Again, such a process is both impossible and self-defeating in the sense of trying to create a simple to understand and easy to apply award.

As the intentions expressed in paragraphs 2(c) and (d) of the Ministerial request are effectively impossible to meet on face value, then the SDA has adopted the approach that a pragmatic construction of a modern award is required which will have the effect of actually creating disadvantage to groups of employees and creating increased costs for groups of employers.

The SDA has approached the task of preparing a modern award for the retail industry on the basis of not cherry picking the best for workers out of each and every federal award and NAPSA, but rather, on the basis of creating a pragmatic, practical and fair minimum set of conditions. This can only be achieved by deliberately removing some good conditions in some States and deliberately improving some poorer conditions in other States.

The aim of the SDA has been to create a modern retail award which, as from the **1st January 2015**, would be able to apply universally across the entire retail industry and across all sectors of the retail industry, and which would operate fairly effectively, be simple to use and would at that stage be universally accepted as being a good, sound, modern award.

The SDA has specifically focused its attention on achieving this outcome by the **1st January 2015** through using the ability to have both transitional arrangements and State based differentials continue from the commencement of a modern award on the 1st January 2010 through to the 31st December 2014.

In the SDA's very strong view, it is only through proper and sensible use of the continued operation of State differentials together with transitional and phase-in arrangements and with some ongoing savings provisions, that employees and employers will be able to easily, effectively and practically move from the very disparate State and Territory federal awards and NAPSAs in operation at the moment, to a single, modern award for the Australian retail industry.

Whilst any Modern Award will commence operation on the 1st January 2010 there is nothing in the Act or the Ministerial Request that requires that the world change on that date. In fact both the Act and the Ministerial Request provide mechanisms that ensure that the award system transformation will not be cataclysmic but will be both gradual and controlled, although nevertheless absolutely inevitable.

Our Modern Award focuses on the date on which it operates on its own and in full, i.e. 1st January 2015.

The SDA is of the view that many employers are wrongly presuming that all phase in or transitioning must occur before 1st January 2010.

Wage Rates and Classification Structure

As a Full Bench of the Australian Industrial Relations Commission has decided that the modern award for the retail industry should include fast food, community pharmacy, hair and beauty as well as general retail, the SDA has developed a classification and wage rates structure which includes all of these elements of the retail industry. The SDA has examined all of the federal award and NAPSAs which would comprise the totality of the retail industry. The wage and classification structure developed by the SDA has had regard to all of the various instruments.

In order to create an easy to use and understand modern award, the SDA has developed a set of four classification streams which allow easy identification of the classification wage rates for each key area within a retail award. The four streams are Community Pharmacy, Clerical and Administration, Hairdressing and Beauty and

Retail. The rationale behind creating a four stream structure is that in the first three streams, Community Pharmacy, Clerical and Administration and Hairdressing and Beauty, there are very specific skills based classification structures currently operating in those areas.

The SDA is of the very strong view that a streamed approach to a classification and wage rate clause within a modern retail award will permit employers and employees working in community pharmacy or in clerical administrative work or in hairdressing and beauty, to quickly identify the relevant classification and wage rate for their work as well as identifying that in each stream progression within the stream reflects the skills based classification structure of these sectors.

For example, the community pharmacy stream has wage rates as at 1st October 2008 ranging from \$512.00 a week for a pharmacy student 1st year through to \$1,080.00 per week for a pharmacist manager Grade 3. The stream includes pharmacy students, pharmacy trainees, that is persons with a pharmacist qualification but still learning on the job, as well as employed pharmacists and pharmacist managers and also pharmacy assistants. The community pharmacy stream reflects the fact that in community pharmacies significant work has been done between the SDA, APESMA and the Pharmacy Guild of Australia over many years, to create a skills based classification structure applicable at all levels of work within community pharmacy.

In the SDA's very strong view, it is important that the unique nature of employment within the community pharmacy sector of the retail industry is properly identified within a separate classification and wage rates stream within the classification and wage rate clause of a modern retail award.

In addition, in order to protect the skills base of the classification structure for community pharmacy, the SDA has proposed a provision within the modern award which requires that the community pharmacy stream can only be used within the community pharmacy sector. This will ensure that there is proper recognition given to the fact that progression for pharmacy assistants or for pharmacists in community pharmacy is based upon the acquisition of skills which have been identified in the Retail Services National Training Package, as endorsed by the National Training Quality Council.

Similarly, the introduction of clerical and administrative work into a modern retail award necessitates a clearly defined stream for clerical and administrative

employees. The clerical and administrative stream provides a clearly defined classification structure based upon increasing level of skill and responsibility inherent within the clerical administrative profession.

Hairdressing and beauty is also a sector of the retail award where employment is based upon the acquisition and utilisation of specific identified skills with each classification relating to a specific set of skills identified in the Hairdressing National Training Package, as endorsed by the National Training Quality Council.

Finally, the retail stream is the general stream applying to general retail and fast food. This stream clearly recognises the increasing level of responsibility through a defined classification structure from shop assistant through to shop manager.

The approach adopted by the SDA in devising the classification and wage rate structure for a modern retail award was to identify across the floor streamed points of commonality. For example, the trades classification rate of pay is present in all four streams - Pharmacy Assistant Competency Level 3 in the pharmacy stream, Clerical Administrative Grade 3 after 6 months, Nail Technician Level 2 and a butcher or pastrycook employed in retail all have a common pay point.

This commonality of pay points across all four streams has enabled the SDA to prepare a chart which clearly identifies and links equivalent skills levels across all four streams so as to create a single, comprehensive classification and wage rate structure.

The wage rates and definitions for community pharmacy reflect the provisions of the Community Pharmacy Award in relation to pharmacists and the Pharmacy Assistant's Award for pharmacy assistants the SDA has used the Victorian Pharmacy Assistant's Award as the base line for pharmacy assistants within the community pharmacy stream.

The clerical administrative stream has been based upon the Victorian Clerical and Administrative Employees Award.

Hairdressing and beauty award stream has been based upon the Victorian Hairdressing & Beauty Industry Award.

In relation to the retail stream, the SDA notes that a shop assistant rate in any State or Territory under a NAPSA or transitional award or pre-reformed award is within a

dollar to two dollars range. Whilst State tribunals have given wage increases that have been at variance to Australian Fair Pay Commission increases, the SDA has, for the purposes of creating the modern award classification and wage rate structure, ignored the wage rates in State awards applying to entities which are not constitutional corporations.

Given that shop assistants around Australia are all paid within one or two dollars of each other, this has made it very easy to create the retail stream as there is a natural starting point which is at \$603.00. This reflects rounding up and rounding down depending upon each State and Territory but shows that the Retail Worker Grade 1, which includes the shop assistant classification, lines up with equivalent positions in the clerical administrative stream, the hair and beauty stream and the community pharmacy stream.

The Association has noted that the Tasmanian Industrial Relations Commission and the Tasmanian Retail Award is the only retail award in which any effort has been made to apply proper skills-based career progression methodology to fixing a classification and wage rate structure. All other State and Federal awards have been created on the basis of ensuring a rate for a shop assistant with such rates being set on the basis of a skill relativity with trades classifications but without applying the previous Structural Efficiency Principle methodology to establishing skills-based classification and wage rates for all classifications above that of a shop assistant.

Therefore in creating a modern award for the retail industry, the SDA has had regard to the Tasmanian Award as providing a clear classification and wage rate structure which can be translated easily into a modern retail award and which reflects the skills based approach in hairdressing and beauty, clerical administration and community pharmacy.

The SDA has, in relation to the development of the retail stream, had regard to the various approaches adopted by federal awards and NAPSAs to wage rates and allowances. In some retail awards, the approach has been to specify each individual skill as a stand alone job title with a specific rate of pay. In other retail awards, or NAPSAs, allowances have been set for employees exercising a higher skill level above the base shop assistant rate. Wherever possible, the SDA has adopted the approach of removing allowances which are skills-based allowances and incorporating those allowances into the classification and wage rate structure.

The SDA notes that the approach adopted by the various federal retail awards and NAPSAs varies remarkably in relation to how they describe the work to be performed at the level of a shop assistant. In some awards and NAPSAs the approach has been to commence with a generic range of broad work functions, followed by some specific job titles. In other federal awards and NAPSAs the approach has been to try and exhaustively list every possible job title as forming the broad definition of a shop assistant.

In creating a modern retail award, the SDA has adopted the approach of defining a Retail Worker Grade 1 by reference to a list of functions which in total comprise what the SDA believes is all of the possible work to be done by shop assistants. In addition, in order to give some practical assistance to employers and employees, the SDA has included a list of indicative job titles which would be expected to be found at the Retail Worker Grade 1 Level. This list includes a shop assistant and a checkout operator which are the most common classification or job titles at the lowest level of the retail stream.

The SDA has utilised much of the language out of the Tasmanian Retail Award to define the definitions of the Retail Worker at the higher levels but has in addition identified specific job titles or specific types of work which are found in other federal or state retail awards and which line up with the generic functions in the Tasmanian Award.

One area of concern to the Association was to ensure that the use of general language to define a Retail Worker Level 1, 2, 3, 4, 5 etc., would not result in existing specific classifications or job titles being lost, nor lead to employees being unfairly downgraded through the omission of a particular job title. To avoid this, the SDA has included a number of specific job descriptors, or job titles, within each of the retail worker levels so as to clarify for employers and employees where particular workers fit. For example, Retail Worker Level 1 will include a video hire worker, a fast food worker and a boot/shoe repairer who is not qualified.

Similarly, in order to ensure that there is no misunderstanding about which supervisory rate of pay might apply to a crew leader in a take away food store, this specific job title has been incorporated into Level 3 so as to distinguish it from supervisory rates that apply at Levels 4 and 5.

The classification structure for the retail stream has an inherently consistent skills-based logic to it. For example, Retail Worker Level 7, which includes persons who

are required to have a diploma qualification, e.g. Visual Merchandiser, lines up directly with the hairdresser technician or trichologist classification in hair and beauty, which is also at the diploma level. The wage rates are clearly below the pharmacist level on the basis the pharmacist is a degree qualified occupation.

Progression through the retail stream is clearly on the basis of the acquisition of increasing levels of skill and responsibility with appropriate key pay points directly lining up with trades rates and diploma qualified rates and all being below the degree qualified rates applicable in the community pharmacy stream.

The SDA's Modern Award for the Retail Industry includes a Shop Manager classification. Managers in retail establishments have long been covered by awards. In Victoria a Shop Manager classification is specifically provided for. In Queensland the Supervisor Grade 2 clearly applies to a Shop Manager. In New South Wales managers who perform any of the work of a shop assistant, e.g. engage in any customer service activity, have been held to fall within the operation of the State Shops Award.

As a simple rule of thumb, if a Shop Manager engages in direct dealing with customers then they will always be engaged in work which is award covered. Retail establishment managers who are purely in a managerial position and perform no work involving a retail function are rare in retail but are in any case still award covered employees.

The SDA's approach has been to consider that as most if not all Shop Managers are award covered employees then a Modern Award for the Retail Industry should and must apply to all retail establishment managers. To exclude Managers would mean taking a large number of award covered employees and strip them of their existing award safety net. As the Retail Industry is a heavily award dependant industry managers need the protection of the Modern Award.

Although the SDA had originally argued for separate awards for Community Pharmacy, Hair and Beauty and Fast Food the SDA has only found it necessary to provide separate streams for Community Pharmacy and Hair and Beauty. The SDA has recognised that take away food falls easily within the Retail Stream.

In particular the NSW State Shops Award and its NAPSA equivalent has always applied to the take away food sector of the retail industry and all classifications, wage rates and allowances have applied equally to a shop assistant in a supermarket or a

shop assistant in a takeaway food outlet. Also the classification and wage rate structure of the National Fast Food Retail Award reflects the Victorian Shops Award structure for all States and Territories other than NSW and in the case of NSW reflects the NSW State Shops Award. The National Fast Food Retail Award is a common rule in Victoria just as the NSW State Shops Award is a common rule in NSW.

Types of Employment

The SDA has constructed a types of employment clause which reflects the traditional approach of the Australian Industrial Relations Commission arising out of award simplification. In particular, the types of employment clause defines three specific types – full-time, part-time and casual employment.

Full-time is self explanatory, being a person working an average of 38 hours a week. Part-time employment reflects the approach adopted by the Australian Industrial Relations Commission in the award simplification of the Victorian Shops Award in which case a set of criteria were clearly articulated as being the parameters for defining a part-time employee. The SDA has made a significant change to the Victorian Shops Award definition of part-time employee and that is to include a minimum number of hours per week and a maximum number of hours per week for part-time employees. This reflects the reality of a number of NAPSA's which operate in the retail industry.

In the absence of a specified weekly minimum and maximum number of hours of work for a part-time employee, the reality is that a person can be employed as a part-time employee with nothing other than a guarantee of one engagement of three hours in each pay cycle, whether that be weekly, fortnightly or monthly. This has proven to be the case in a number of retail businesses which have operated under the Australian Industrial Relations Commission definition of part-time employee. The SDA notes that prior to award simplification as introduced and required by the Workplace Relations Act of 1996, the Victorian Shops Award did contain minimum weekly and maximum weekly engagements for a part-time employee. The previous government specifically prevented awards from containing minimums or maximums for part-time employees.

The SDA notes that the current provisions relating to the creation of modern awards no longer contains this prohibition, thus making it clear that the current government

accepts that in specifying a type of employment it must be possible to specify weekly minimum and maximum weekly engagements for part-time employees. As a number of NAPSA's which operate in the retail industry have such minimums and maximums, it is appropriate that they be incorporated into the modern award.

The SDA has also included casual employment as a type of employment for a modern award. The SDA has made a significant change to the way in which a casual employee is defined. In particular, the SDA recognises that once part-time employment is defined by virtue of a minimum weekly engagement of 12 hours per week and a maximum weekly engagement of 32 hours per week, there will clearly be, in a retail environment, some employees who will regularly work less than 12 hours per week. It is possible that such regular employees who are not casuals in the strict sense, would not be properly covered by the types of employment. To overcome this, the SDA has made it clear that the definition of a casual employee specifically includes an employee who is engaged for less than 12 hours of work per week.

This recognises a practical reality of a modern retail award and that is there will be occasions, limited though the SDA expects them to be, where a retail employer may require an employee to be engaged on a regular and systematic basis for less than 12 hours of work per week. In order to accommodate such workers, they are specifically defined as being casual employees.

Casual Loading

A key issue which has to be addressed by any modern award for the retail industry is the quantum of a casual loading to be paid under the award. At the present time the Victorian Shops Award effectively requires the payment of a casual loading over 33%. This is achieved by having the Victorian Shops Award specify a casual loading of 25% but then in addition, provide that casuals in Victoria are entitled to both annual leave and personal carer's leave as paid leave and annual leave loading on the annual leave. In both instances, a casual is able to cash out the annual leave effectively on the basis that as casuals are employed on a daily basis, their annual leave and sick leave entitlements are paid to them at the termination of each engagement. The net effect is a practical casual loading of over 33%.

It needs to be noted that the casual loading for the Victorian Shops Award was the subject of a specific arbitration in 1994 by Foggo. C.

Contrasting this are a range of casual loadings in other awards and NAPSAs which range from 25%, without additional annual leave or personal carers leave entitlements down to 15% with additional annual leave entitlements. However, when considered as a whole, it is clear that within the retail industry within Australia there are a minority of employees on a casual loading less than 23% with the greater majority of employees on a casual loading in between 23% and 33 1/3%.

In order to devise an appropriate casual loading for a modern retail award, the SDA has considered both the full range of direct casual loading, plus the additional entitlements that flow to casuals in some federal awards and NAPSAs. Having considered all of this, the SDA is of the very strong view that the most appropriate casual rate to be specified in a modern award for the retail industry is 25%. The 25% will include any entitlement to annual leave or personal carer's leave as paid leave.

The position put forward by the SDA is consistent with the approach adopted by a Full Bench of the Commission in the Metals Industry Casual Rates Case, which has been applied in a number of industries.

Specifying a 25% casual loading which includes annual leave and personal carer's leave entitlements represents a significant disadvantage to employees in Victoria and a significant reduction in their casual entitlement. It is a marginal increase in the effective casual rate in New South Wales and in Queensland. In some specific sectors of the retail industry, 25% is already the specified casual loading.

The issue of a casual loading is a core issue for the creation of a modern retail award. The SDA, in proposing a 25% casual loading, is cognisant that this loading will in effect operate as from 1st January 2015 for the entire retail industry. The SDA is conscious that a five year phase in period based upon State differentials, transitional arrangements etc., is available to the industry to achieve a uniform 25% casual rate. Savings provisions will be needed to protect Victorian employees who will suffer over 8% reduction in their current casual rates of pay, whereas employees in other States where there will be small increases in the casual rate, may need a period to have the new casual rate phased in.

The SDA has not devised either a transitional provision or a phase in provision in relation to this issue, however, it is clearly a matter that will need to be addressed by the players within the retail industry in order to achieve a 25% casual rate as from 1st January 2015. The SDA is of the view that the period between the finalisation of the

contents of the Modern Award and the commencement date of the award will give the key stakeholders and the Commission a proper opportunity to devise all necessary transitional or phase in provisions.

Age Based Discounted Rates of Pay for Employees Under 21 Years

The SDA notes that whilst s.576J(1)(a) refers to the concept of “*wage rates for junior employees*” there is no necessity to describe a clause which provides for wage rates for junior employees as a junior rates clause. The SDA draws specific attention to the National Fast Food Retail Award 2000 which at clause 15.2.2 correctly describes the phenomenon of junior rates as age-based discounted rates. The SDA has used this title in the proposed modern award for the retail industry. This title clearly identifies the purpose of these rates. They are discounted and they are discounted merely and solely because of the age of the employee.

The Workplace Relations Act makes specific mention of age based discounted rates of pay in s.576J on the basis that “*a modern award may include terms about any of the following matters*” “*minimum wages (including wage rates for junior employees..)*”. This particular mention in s.576J(1)(a) is the only mention within the list of allowable award matters in relation to junior employees. Section 576J(3) defines a junior employee as being an employee who is under the age of 21.

The specific language of s.576J is that an award may include provisions relating to rates of pay for junior employees but quite clearly a modern award does not have to include rates of pay for junior employees which are less than the rates of pay for senior employees. The award modernisation request from the Minister does not direct the Commission to include age based discounted rates of pay for junior employees in a modern award. In fact the award modernisation request directs the Commission to look at a number of issues which may impact upon whether or not a modern award should or will include age based discounted rates of pay for junior employees. At paragraph 3(b), one of the matters which the Commission must have a regard to in creating a modern award, is “*protecting the position in the labour market of young people*”.

In addition, the Commission must also have regard to matters relating to discrimination as set out in paragraph 3(b) of the Ministerial request which requires that the Commission must have regard to “*the need to help and prevent and*

eliminate discrimination on the grounds of” amongst other things, ‘age’ and also “to promote the principle of equal remuneration for work of equal value”.

Whilst junior rates of pay, as they have traditionally appeared in awards, may be a mechanism which makes the employment of young people attractive to employers, junior rates of themselves do not necessarily protect the position in the labour market of young people and very clearly, junior rates of pay do not promote the principle of equal remuneration for work of equal value and junior rates of pay are clearly discrimination on the grounds of age.

Given the mandatory requirement of the Ministerial request in that the Commission must have regard to matters set out in paragraph 3 of the Ministerial request, it would appear that the mere repetition of junior rate clauses into modern awards from pre-existing federal awards or from NAPSAs is not an option. The Commission must have regard to a range of factors concerning whether or not, and in what form, minimum rates of pay for junior employees should be presented in a modern award.

The SDA has approached the issue of rates of pay for junior employees in a pragmatic manner.

Clearly employers have built cost structures around the significant use of junior employees on existing junior rates of pay.

This is not to say that such use is either fair or reasonable, but rather it is a reflection of the manipulation of junior rates provisions by the retail industry that junior employment on junior rates is a significant feature of the retail industry and that junior rates of pay play a significant role in determining the cost structure for employers.

The SDA has examined the various junior rates of pay appearing in the several federal awards and NAPSAs relating to the retail industry. The SDA has structured an Age Based Discounted Rates of Pay for Employees under 21 Years clause which provides for rates which reflect the Victorian Shops Award approach to junior rate percentages, i.e.

For an employee 16 years and under, the junior rate of pay is 50% of the adult rate:

at age 17	55%,
age 18	67.5%,
age 19	80% and
age 20	90%.

In the Victorian Shops Award history, the removal of rates below 50% occurred over forty years ago. The SDA is not certain as to why such odd rates at the 55% and the 67.5% exist, however, it is apparent that they have been a feature of the Victorian Shops Award for many decades.

In using the Victorian Shops Award junior rates clause, the SDA is conscious that this specifically eliminates the 40% junior rate that does appear in the New South Wales NAPSA. The SDA is of the very strong view that there cannot be any justification for an age based discounted rate of pay for an employee under 16 years as low as 40% of the adult rate. There appears to be no justification offered for the need for a 40% junior rate, nor is there any apparent history which justifies that position in relation to the New South Wales NAPSA.

The SDA also notes that in the Northern Territory Retail Award that the minimum existing junior rate is 60% of the adult rate and other awards also have higher junior rates than what is proposed for the Modern Award. Balance is required and the SDA's Modern Award achieves that necessary balance..

The SDA has also included in its proposed Age Based Discounted Rates of Pay for Employees under 21 Years clause, specific identification of the classifications to which age based discounted rates will apply. In relation to the hairdressing and beauty, community pharmacy and clerical administrative streams, the SDA has reflected the existing practice in the awards applying in those streams where existing junior rates have limited application to a specified number of levels within each stream. This reflects, if nothing else, the reality that junior workers, i.e. workers under the age of 21, who are performing higher grade work in any of those three streams, are entitled to be paid the adult rate of pay. This, if nothing else, is consistent with the concept of equal remuneration for work of equal value.

In relation to the retail stream, the SDA has specified in our Age Based Discounted Rates of pay for Employees under 21 Years clause that age based discounted rates are limited to employees at Retail Worker Levels 1 and 2. This is consistent with both creating a wage structure which allows for young people to enter the workforce at a discounted rate of pay, even where they may be performing full functions and duties at that classification level and may even be performing their work at a higher level and at a better rate than an adult at the same classification level.

In this sense, age based discounted rates at Levels 1 and 2 are a deliberate discount on the value of work for many junior employees. They may have justification as an

introductory rate for some junior employees, but as they apply for the entire employment of a junior employee at Levels 1 and 2, they will quite clearly cover periods of employment where the junior is providing work at a comparable or at an equal value to that of an adult but will receive less remuneration than an adult. This inequity has been a feature of the operation of junior rates of pay so far. The SDA has, however, identified within our Age Based Discounted Rates of Pay for Employees under 21 Years clause that work at Retail Worker Levels 3 and above carries with it such a degree of skill and responsibility that it is inappropriate for age based discounted rates to be applied. These levels are not introductory levels into the retail industry, they are only achieved after employment within the industry and therefore a person under the age of 21 who is employed at Levels 3 and above should have an absolute right to receive equal remuneration for work of equal value. The reality is that no junior employee will be employed at Levels 3 and above unless they are fully competent and are able to either perform at the same level as an adult or even out-perform an adult.

The SDA also draws attention to the proviso at clause 15.2.2. of the National Fast Food Retail Award. This proviso provides a far more fair application of age-based discounted rates than is found in most other awards of the Australian Industrial Relations Commission.

One of the broad rationales for having aged-based discounted rates is that in order to protect the position of junior employees in the labour market, it is necessary to provide employees with a wage incentive to employ junior workers. The rationale often used to justify the existence of age-based discounted rates is that a junior employee lacks work experience or lacks the proper work ethic so that any employer who employs a junior employee cannot expect full value for the adult wage out of a junior employee whilst they are both gaining basic work experience and acquiring a basic work ethic.

This rationale is not sound in the case of most junior employees but completely fails once employers promote junior employees into positions above entry level, including where employers give higher duties or acting promotions to junior employees. The proviso in clause 15.2.2 of the National Fast Food Retail Award recognises the reality that no employer will promote or permit a junior employee to perform high duties in a more senior or supervisory capacity unless the employer is fully satisfied that they are getting full value out of that employee at that higher wage rate. If an employer has such confidence in a junior employee that they are prepared to promote them, either permanently or more importantly, temporarily, then there must be recognition

given to the fact that the junior employee, if they then return to their substantive entry level position, should no longer be treated as being on a learning curve trying to gain both work experience and a work ethic. The proviso in clause 15.2.2 requires that once a junior employee has performed higher duties at a higher level and on return to their entry level position, they must be paid the full adult rate of pay.

This clause is absolutely consistent with the current Ministerial request at paragraph 3(e) which requires the Commission in making a modern award and exercising its powers under the Act “to promote the principle of equal remuneration for work of equal value”.

Notwithstanding the merits of the proviso at clause 15.2.2 of the National Fast Food Retail Award, the SDA recognises that most, if not all, retailers simply do not have this view nor has it been a view supported by the Australian Industrial Relations Commission in the creation of awards other than in the National Fast Food Retail Award. On that basis, the age-based discounted rates clause proposed by the SDA does not include this proviso. This constitutes, in our view, a significant concession to employers and recognises the practical reality of creating an age-based discounted rates clause which contains swings and roundabouts. The absence of the proviso from clause 15.2.2 of the National Fast Food Retail Award is clearly a concession to employers and one which operates against the interests junior employees but one in which the SDA is of the view meets the practical realities of the current state of the retail industry.

Hours of Work

Any consideration or consultation over an appropriate hours of work clause for a modern award must not under any circumstance be seen to be, or to be treated as, a consideration of a discussion on shop trading hours. For more than half a century, the High Court has made it very clear that the role of industry tribunals is to look at the conditions of work of employees and not to intrude into the area of trying to influence or second-guess shop trading hours.

In the two cases in 1950 *RV Kelly, ex parte Victoria* (1950) 81CLR 64 and *Brown Wells Limited v Ironmongers Wages Board* (1950) 81CLR 108, the High Court clearly differentiated between the role of industrial tribunals and the role of State governments. Industrial tribunals have the role of setting the wages and conditions of employees, State governments have the role of setting shop trading hours. The

two are distinct, the two are separate and the two should not be confused. Therefore, in the context of any discussion or consultation about an appropriate hours of work clause for a modern award, the modern award should not be seen as being a vehicle to meet or conform with shop trading hours, nor should shop trading hours be seen as being a controlling element over the construction of an hours of work clause.

The objects specified in s.576A of the Workplace Relations Act do not include the object of having modern awards conform to shop trading hours, rather, modern awards must provide a fair minimum safety net of enforceable terms and conditions of employment for employees, and this can be achieved along with the other objects specified in s.576A without the modern awards merely conforming to shop trading legislation.

The approach adopted by the SDA in constructing an hours of work set of provisions for a modern award is to recognise the reality that in some States and Territories, but certainly not all, trading is permitted over all seven days of the week and all 24 hours of the day. Therefore, a modern retail award should permit workers to be engaged whenever shops are legally allowed to be open provided that the modern award provides for appropriate rates of pay for each of the hours in which an employee works during allowable trading hours.

Trading hours themselves do not write the wage rates for employees in retail, rather the wage rates and issues relating to wage rates should be set on the basis of providing a fair minimum safety net of enforceable terms and conditions of employment for employees in the retail industry and to do so in a way which recognises that some hours of work are socially acceptable as hours of work and other hours of work are clearly unsociable.

The SDA has adopted as its starting point, the hours of work clause in the Victorian Shops Award. To this end, the proposed modern award has ordinary hours of work between 7.00am and 9.00pm Monday-Friday inclusive, 7.00am to 6.00pm on Saturday, and 8.00am to 5.00pm on Sunday. This span of ordinary hours represents a significant change in a number of States and Territories where the span for Monday to Friday ends much earlier than 9.00pm. The SDA has been conscious that there have always been key exceptions to the normal span of hours for newsagencies, given the nature of their early morning start and the SDA has provided a specific commencement time of 5.00am for newsagencies around Australia.

Additionally, the SDA recognises that two key categories of the retail industry have trading patterns which are particular and require an extension in the ordinary hours of work. These are video shops and takeaway food shops. For these two categories of retail establishments, the SDA has proposed an ordinary span of hours of 7.00am to 10.00pm Monday to Friday inclusive. The SDA has defined video shops and takeaway food shops in a way which limits their application to businesses which are solely or principally video hire/sale outlets and establishments which are principally or primarily takeaway food shops.

The specification of any span of ordinary hours carries with it the consequence that work outside the span of ordinary hours is normally treated as overtime. This has clearly been the case in relation to the Victorian Shops Award where all work performed after 9.00pm, except for nightfill operators, has been treated as overtime.

The nightfill exception has always been limited to those persons employed outside the span of ordinary hours whose primary function has been the restocking of shelves within the retail establishment. This means that workers employed in the sale of goods after 9.00pm in Victoria have, of necessity, been employed on overtime and at overtime rates.

The SDA has made a conscious decision in the preparation of a modern retail award to recognise that there is a need for a genuine shiftwork provision which will allow work to be performed in the night hours within retail. The SDA, in coming to this view, has had regard to the fact that a modern retail award will include classes of tradespeople, butchers and bakers who have in the past worked night hours as part of their ordinary pattern of work.

The SDA, to compliment the ordinary hours of work clause, has constructed a shiftwork clause which allows for the employment of shiftworkers to perform night work. The definition of shift work provides a high degree of flexibility for employers. Shiftwork means a shift starting at or after 6.00pm on one day and starting before 5.00am on the following day. This clearly allows employers within the retail industry to employ designated night time shiftworkers. The SDA has also noted that as 6.00pm falls within the span of ordinary hours for normal retail workers that a shift work will not include a shift which starts and finishes on the same day within the span of ordinary hours specified in the award.

This means that a worker employed between 6.00pm and 9.00pm on a week night cannot be treated as a shiftworker, but rather is simply treated as an ordinary day worker.

The combination of a shiftwork clause and an ordinary hours of work clause as constructed by the SDA provides a new and higher level of flexible work arrangements for employees in the retail industry whilst at the same time providing for essential safety net minimum conditions of employment for these workers. The shiftwork provision will require the payment of a shiftwork loading of 30% in addition to any casual loading which will also apply. The shift loadings reflect traditional approaches to the determination of the value of shift loadings for night shift work.

A number of protections built into the proposed shiftwork clause provide both flexibility for employers in the utilisation of shiftwork, whilst at the same time providing the essential protections for employees who will be employed as shiftwork. An effect of both the ordinary hours of work clause and the shiftwork clause is that there is no hour on which a shop can trade for which there is not the capacity of the employer to employ a person to work in the shop. Ordinary hours of work will apply as they traditionally have done to day and early evening work, and the shiftwork will allow employers to trade, if necessary, 24 hours of the day, seven days a week provided that appropriate penalties and loadings are paid.

This is a significant departure from the approach adopted in many of the retail awards but is a recognition of what may be needed in a modern retail award for the future.

It must be noted that the Victorian Shops award currently operates in an environment where under State law retail establishments can trade 24 hours a day 7 days a week, with only 2 ½ days a year being closed to trading. Currently a retail establishment covered by the Victorian Shops Award can trade 24 hours a day under the award provisions. The Victorian Shops award has never prevented a retail establishment from trading as many hours as permitted under the State law. The Victorian Shops Award has simply provided the rates of pay for any and every hour worked.

The SDA's proposed Modern Award for the Retail Industry will in the case of Victoria provide a significant reduction in costs for Victorian employers and a corresponding significant reduction in potential earnings of employees.

In preparing the set of clauses relating to the hours of work, the SDA has had particular regard to the need to specify specific provisions relating to work on Sunday. These provisions reflect the Victorian Shops Award approach and the SDA notes that the position of Sunday work as found in the Victorian Shops Award has been the subject of extensive proceedings before a Full Bench of the Commission only in the last few years. The provision provided for by the SDA in the proposed modern award recognises that the appropriate rate for work on Sunday is double time ordinary time rates and that Sunday work is voluntary for an employee.

It has been clearly established in proceedings before the Australian Industrial Relations Commission, certainly in the case of Victoria, that no employer has had difficulty staffing a retail store on a Sunday where there is both the provision of double time rates of pay and voluntary employment. This position was clearly established in the Sunday rates component of the Victorian Shops Award case in 2000.

The combination of these two provisions has also not led to a decrease in the retail industry in Victoria, rather the retail industry in Victoria has thrived and grown, even with the provisions relating to ordinary hours of work, Sunday provisions and penalties and loadings in the Victorian Shops Award.

Any system of hours of work in a modern award must be predicated upon proper and appropriate rostering provisions. The SDA has set out in the hours of work clause, a detailed set of rostering provisions which have been taken essentially from the Victorian Shops Award and which reflect what should be good, sound, modern practices for the management of staff in a retail environment. Many of the provisions relating to rostering ensure family-friendly workplaces and permit employees to properly balance their family work life commitments.

Breaks

The SDA has constructed a comprehensive clause for a modern retail award dealing with both rest breaks and meal breaks. This clause reflects the entitlements currently found within the Victorian Shops Award but presents them in a much simpler and easier to read manner. The SDA has adopted the approach of specifying the entitlements first in a simple chart followed by provisions relating to the practical application of rest breaks and meal breaks.

The key provisions following the chart identify fundamental principles which would apply and should apply to any modern award relating to the taking of rest breaks and meal breaks. The SDA, however, acknowledges that specifying rest breaks and meal breaks in the form of a chart carries with it a degree of inflexibility and there is often a practical need for flexible approach to the taking of rest breaks and meal breaks.

In the SDA's very strong submission, flexibility for the taking of rest breaks and meal breaks must be provided only in the context where there is a clear acknowledgement of and provision for protections for employees getting the real value of a rest break and a meal break. To this end the SDA has drafted a flexibility clause within the context of the rest breaks and meal breaks provision to allow specific flexibility on the taking of rest breaks and meal breaks but limiting that flexibility to circumstances which still meet the core criteria that rest breaks and meal breaks must provide meaningful breaks for the employee during working hours and where the flexibility cannot be used to effectively avoid the value and entitlements of rest breaks and meal breaks.

On balance, the SDA's rest break/meal break clause provides both protections for employees as well as meeting the genuine operational needs of employees in the retail industry.

The SDA acknowledges that the Victorian Shops Award provisions for meal breaks are in some respects more generous than those in some other federal awards or NAPSAs. However, the SDA notes that the Victorian Shops Award entitlements to rest breaks and meal breaks arose several decades ago and represented the outcome of a very long case before the Victorian Wages Board system. Attachment A to this submission is a summary of the proceedings before the Victorian Wages Board system in 1977/78 in relation to the issue of Breaks.

The SDA has extreme confidence that the Victorian Shops Award provisions on rest breaks and meal breaks is the only example of a properly determined set of safety net minimum conditions for the taking of rest breaks and meal breaks in the retail industry.

NES Interaction

The Modern Award for the Retail Industry needs to meet the needs of the employees and employers by ensuring it is:

- It is a comprehensive document that readily makes available to all as single point reference for conditions of work that apply to the retail industry;
- That its structure and form is simple to use and apply;

The standards set need to reflect a proper safety net for employees.

In order for the modern award to be a proper reference document for the industry, it is appropriate that the NES provisions are reflected into the award. The SDA does not seek to replicate the entire NES in the award, but including key elements that reflect the NES, (and that are appropriately marked) to provide a “full picture” perspective of an entitlement.

For example, the Annual Leave clause contains not only the necessary machinery provisions/entitlements not included in the NES but a reference to the fact of what the entitlement of annual leave is. Without such a reference, a person reading only the award, would not readily identify the quantum of leave making the clause difficult to understand fully, unless they then went and found the NES and then were able to locate the annual leave provisions and then slot the NES and the award clause together. Without reflecting the NES in such clauses, the exercise becomes a “fill in the blanks” as and where appropriate.

It is much more appropriate that the award does the work of mixing and matching so that employers and employees cannot become lost in the maze of legal-speak and writings. Without one comprehensive document every day users (not industrial practitioners) in retail are at risk of missing an entitlement or misapplying a provision.

Such a practice is necessary as the retail award will apply to a very diverse range of people. It will include young workers of 15 years who are in their first job, employees and employers who did not finish secondary school and have a low literacy level, and are not readily able to comprehend complicated documents that need to be cross referenced and checked, part time employees and other employees who do not have bargaining strength and need a simple to use document that covers all their entitlements that they can point to.

The award should be a one stop shop.

Discrimination Provisions in a Modern Award

Both S.576B(2)(e) of the Act and paragraph 3(e) of the Ministerial Request require that the Commission must in creating a Modern Award have regard to:

“the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value”.

Any proposed Modern Award needs to go beyond a mere restatement of this provision. As the Commission must have regard to need to prevent and eliminate discrimination in the creation of a Modern Award then it appears axiomatic that a Modern Award must contain provisions which achieve the prevention and elimination of discrimination.

The SDA has proposed 4 specific clauses to deal with the prevention and elimination of discrimination.

Firstly, the SDA has proposed a clause which prohibits employers and employees to whom the award applies from acting in a discriminatory manner.

Secondly, the SDA has proposed a clause which ensures the application of the principle of equal remuneration.

Thirdly, the SDA has proposed a clause which permits discriminatory conduct which is specifically provided for by the Modern Award, e.g. the payment of age based discounted rates of pay for employees under 21 years.

Fourthly, the SDA has included a clause which is an incidental but essential matter. The SDA has included in the proposed Modern Retail Award, a provision titled “Dress Requirements” which provides a protection for employees against being required to dress in a revealing or an indecent manner. The dress requirements clause was a feature of the Victorian Shops Award for many years prior to award simplification. When the previous government introduced award simplification the dress requirements provision was removed from the award.

The SDA argued before the Australian Industrial Relations Commission in the award simplification of the Victorian Shops Award that the dress requirements clause was a matter which should be contained within the award. However, the Commission determined that pursuant to s.89A(6) that the dress requirements clause was not a matter which was incidental to an allowable award matter in s.89A(2) and was not a matter that was necessary for the effective operation of the award. On that basis the dress requirements clause was removed from the Victorian Shops Award.

This clause was inserted into the Victorian Shops Award as a direct result of serious concerns raised by retail employees and by the SDA over requirements made by retail employers that retail employees either dress in see-through clothing or dress in clothing which was extremely revealing or indecent. In many instances, employees were so embarrassed by the requirement to wear such clothing that they terminated their employment rather than accede to the request of the employer.

The necessity for the dress requirements clause arose because there is no protection under the Equal Opportunity legislation, either federally or in any state, which prevents an employer making a general requirement on all employees in a particular retail establishment that they wear a particular type of clothing, even where that type of clothing is either revealing or indecent.

The retail industry has always had employers who, for the sake of increasing their sales, viz-a-viz a competitor, will resort to such matters as having topless retail workers, whether it be in a sandwich bar in Thomastown, hairdressing salons, or hardware shops. Also, employers have constantly sought to require their employees to wear provocative and indecent clothing so as to entice a particular type of clientele into their stores. In some instances, retailers have directly employed strippers or exotic dancers who are prepared to work either semi-nude or nude in a retail establishment. Even where this occurs, retailers often then require their ordinary employees to wear revealing or indecent dress so as to maximise the effect of having the professional nude worker in the store.

This has placed extraordinary strains upon individual employees and has often forced employees to quit their work rather than continuing in such an establishment. The fact that this practice of retail employers continues was evidenced by statements made by the Federal Sex Discrimination Commissioner, Elizabeth Broderick on ABC Radio on 22 July 2008 where she recounted an incident involving a retail worker in South Australia who was put in the position of either complying with an order from

her employer to wear see-through clothing whilst on a supermarket checkout or resigning her employment. The employee reluctantly chose resignation.

ABC AM – Tuesday 22 July 2008 08:03:00

Reporter: Ashley Hall

“You’ve said that you were surprised by some of the stories that you were told on your 12 months listening tour around Australia. What were the stories that startled you most?”

Elizabeth Broderick:

“I think the one’s that probably shocked me most related to the incidence and nature of sexual harassment in the workplace. For example one woman in South Australia was telling me about the fact she worked in a supermarket, she was on the cash register and she was requested to wear a see-through top, when she declined to do that, she was told that she must do that and in the end you know, she left that employment.”

In the absence of any statutory protection for employees against this type of requirement from employers, an award provision relating to dress requirements is essential.

In the context of a modern award, the dress requirements clause would appear to be an incidental matter which falls within s.576M(1). This is so in that not only is the dress requirement clause a matter which is incidental to types of employment and classification structures and the need to prevent and eliminate discrimination but more importantly, in the language of s.576M(1)(b) it is a matter which is “essential for the purpose of making a particular term operate in a practical way”. Quite clearly, there is a significant difference between the approach adopted by the current Workplace Relations Act and the former Act.

Under s.576M, incidental matters must have a connection with a particular award matter on the basis of practical operation of the award, whereas under the former Section 89A(6) an incidental matter could only be in an award if it was necessary for the effective operation of the award. Under the former provision, an award could clearly operate effectively, although unfairly, without a dress requirements clause. In the context, however, of a modern award, the dress requirements clause is essential to make contract of employment, types of employment and classification and wage structure and anti-discrimination provisions operate in a practical way.

There is no value in having a classification structure, types of employment, termination provisions or anti-discrimination provisions if they can be effectively thwarted by the employer making demands upon an employee to wear indecent or revealing dress, thus forcing an employee to effectively resign their employment in order to avoid having to wear indecent or revealing dress.

The clause sought to be included by the Association in the Modern Retail Award is, in our very strong submission, a matter which is incidental to the operation of several clauses of the award and is essential for the purpose of making the various terms of the modern award operate in a practical way.

Superannuation

The SDA has included within a generic superannuation clause for a modern retail award, a provision that the default fund is to be REST. The SDA acknowledges that in a number of the federal awards and NAPSAs applying to the retail industry in Australia, a number of various funds are mentioned. The SDA is of the very strong view that REST, as the pre-eminent retail industry fund, should be the default fund. The SDA specifically notes the fact that the Minister for Superannuation, the Hon. Nick Sherry, has written to the Australian Industrial Relations Commission urging that the Commission consider its powers to specify as default funds, those who perform well and exclude those who perform poorly.

The SDA, as an active participant in REST, makes the very strong submission that REST is a performance leader amongst industry superannuation funds and that no employer in the retail industry would suffer a detriment by having REST designated as the default fund. The same cannot be said for other funds.

Public Holidays

Public Holidays are an important entitlement to employees. Their impact is most notable around the Christmas trading period when there is an interaction of weekends, substitution and additional days.

The AIRC heard major test cases on the issue and made decisions as to the operation of “actual” days, e.g. the real public holiday (i.e. 25th December) and substitute days (e.g. 27th December). As the retail industry does in some parts operate on all days, simply moving significant days to another day gives the same quantum but does not recognise the significance of the actual days. Christmas lunch

is on the 25th not the 27th. The AIRC decision did give this great consideration and issued a decision to cover such occurrences.

This decision(s) are reflected into the Federal Awards i.e. Victorian Shops, Airport Retail Concessions, ACT Retail Award etc.

In the Modern Award, the SDA has reflected these provisions as they are well tested as they were thoroughly arbitrated by the AIRC.

Conclusion

It was never going to be an easy task to create a comprehensive but fair and effective safety net Modern Award for the Retail Industry. However the SDA's proposed Modern Award for the Retail Industry meets all of the requirements of a Modern Award.

The SDA's Modern Award sets a fair and effective safety net of terms and conditions of employment for employees in the Retail Industry.

The SDA's Modern Award is presented in a manner which ensures that it will be easily understood by employers and employees in the Retail Industry.

The SDA's Modern Award creates a single national standard for the Retail Industry and in doing so, creates a level playing field for all employers in the Retail Industry. Competition between retail industry employers can be real and meaningful but, at the very least, will not be competition on the basis of a downward spiral of wage rates and conditions of workers.

The SDA's Modern Award has, for the first time, created an award which allows employers to engage employees to work over the full 24 hours of a day without the need to pay overtime penalty rates for any hour.

As from the 1st January 2015, the SDA's Modern Award for the Retail Industry will be in full operation. Between the 1st January 2010 and 31st December 2014, there will be within the proposed Modern Award, a comprehensive set of transition and phase in provisions which will assist employers and employees to transition to the new proposed Modern Award in a sensible and controlled manner.

Development of Rest Breaks in Victoria

Seven (7) Joint Meetings of the Wages Board for the Food Shops, Clothing and Footwear Shops, Electrical, Furniture and Hardware Shops and General Shops were held from August 1977 to 3rd October 1978 for the purpose of determining amendments to the Rest Period provisions of the respective Wages Board Determinations.

The first rest period clause to be provided in a Shop Determination was clause 10 of the Miscellaneous Shops Board No. 18 made on the 7th of February 1938 and amended on the 4th May 1939 to provide a rest period for any employee who works "four hours or longer". There was no discrimination between Full time, Part time and casual employees. All received a rest period.

Other changes were made on the 15th June 1949 for the introduction of 2 rest intervals per day (Monday to Friday inclusive) and the 5th December 1967 for a rest period for all employees working more than 3 hours on a Saturday morning.

In 1970 joint hearings of the 4 abovementioned Wages Boards determined a standard rest period clause which provided:

- Clause 10(a) provided for 2 rest periods for all employees (Monday to Friday), one of the rest periods to be before the usual meal interval and one after. Such intervals are to be counted as part of time worked.
- Clause 10(c) provides a rest period for employees who work for more than 3 hours on a Saturday
- Clause 10 recommended a rest period for part time employees who work up to 5 hours on any week day.
- Clause 10 also excluded casual employees from any rest periods whatsoever.

Although two of the four Boards, namely the Food Shops and General Shops had excluded casuals from rest periods, no reason for the exclusion of casuals was given in any of the minutes of these Wages Boards or the 4 amalgamated Shops Boards for adoption of the practice.

Therefore, the main deficiency was the lack of any rest periods for casuals. The employees' representatives wanted to correct this deficiency and improve the rest period provisions for all employees. For example, a 3rd rest period was proposed for employees working from 9 am to 9 pm on Fridays where stores were opened for late trading. In the case of employees who worked from 12 noon to 9 pm and would get a meal break from 4.30 to 5 pm, the employers interpreted the rest period clause not to entitle employees to an evening rest pause after the evening meal break. This inconsistency also had to be addressed.

The employees' representatives also wished to have a rest period clause providing rest pause for all employees who worked any hours up to 5 hours. This would not result in employees working for one hour getting a rest pause because casuals usually had a minimum of 3 to 4 hours engagement per shift and part timers would not be working less than 3 hours per shift. However, every employee would at least get one rest pause.

There was much concern about the mental and physical strain on employees particularly in peak hour trading not granted a rest period.

On the 15th August 1977, the employees' representatives submitted a detailed submission for a new and improved rest period clause, including

- The deficiencies of the old clause, in particular the exclusion of casuals and other inconsistencies;
- a history of rest period provisions in Shop Determinations and other Determinations and the application of principles arising from these Determinations in the retail industry; and
- surveys of individual shop assistants working various shifts and their respective experiences and views on the importance of having adequate rest periods and the otherwise physical and mental strain if not granted.

At a meeting on the 30th May 1978, the employees' representatives called 6 witnesses who had been or were employees in the retail industry to support their submission for an improvement to the old rest period. These witnesses each worked different shifts and represented a cross section of the retail industry. They explained their experience and the physical and mental strain not receiving adequate rest periods after working a number of consecutive hours, and especially when rostered to work Friday late night trading and Saturday mornings.

The RTAV also prepared a written submission in reply (27th July 1978), rejecting any motion to amend the old clause and in particular to include casuals.

Minutes of the final Wages Board meeting held on 3rd October 1978:

After rigorous debates between the employees' and employers' representatives over the preceding year, the rest period clause counter-proposed by The Retail Traders' Association of Victoria (RTAV) at the final meeting on 3rd October 1978, was the clause adopted by the 4 Wages Board for the Clothing and Footwear Shops; Electrical, Furniture & Hardware Shops; Food Shops, and General. The clause was as follows:

Clause 10(a) – All full time weekly employees shall be granted two rest periods on each day (Monday to Friday inclusive); the first of 10 minutes to be allowed between the time of starting work and the usual meal interval and a second period of 10 minutes to be granted between the usual meal interval and the time of ending work.

Provided that where such employee is required to work any of his ordinary working hours between 8 am and 9 pm on a late trading day such rest periods shall be granted at times to be mutually agreed upon, but shall not exceed two rest periods for the day.

Clause 10(b) – All part-time and casual employees who work any period of 4 hours but less than 7 hours on any day Monday to Friday inclusive shall receive one rest period of 10 minutes during such period of work. If the work period includes a meal break, the rest period is to be granted in that portion of the work period which is the greater or where such work periods are of equal duration the rest period of ten minutes shall be given at a time to be mutually agreed on.

Provided that where the work period is of 7 or more hours duration on Monday to Friday inclusive, two rest periods each of 10 minutes duration shall be granted, one during the period of work before and one during the period of

work after the meal break. Provided further that where such employee is required to work any of his ordinary working hours between 8 a.m. and 9 p.m. on a late trading day such rest periods shall be granted at times to be mutually agreed upon, but shall not exceed two rest periods for that day.

Clause 10(c) – All employees (including casuals) who work in excess of 3 consecutive hours on a Saturday morning shall be granted a rest period of 10 minutes between the time of starting work and ceasing work.

Clause 10(d) – All rest periods shall be counted as time worked.

The employee representatives had proposed significant improvements to the rest period clause during the case but were rejected by the employer representatives, for example:

- One (1) rest period for all employees who works continuously for 3 or more;
- A 3rd rest period for all employees who work such hours (e.g. 9 am to 9 pm Friday) that they are required to take 2 meal intervals on any day;
- Two (2) rest periods for all employees who work 6 or more hours.

However, the proposal was amended to 7 or more hours and later included in the RTAV counter-proposal.

After much resistance by the RTAV to accept any change to the old clause and after much opposition to the inclusion of casuals (as reiterated in its written submission to the Wages Board, 27th July 1978), the employees' representatives' proposal for casuals to receive rest periods was ultimately accepted by the employer representatives and adopted by the Wages Board accordingly.

The employees' proposal for a rest period of 10 minutes for all employees who worked on Saturday had also been accepted by the employer representatives, although the entitlement adopted by the Wages Board was a 10 minute rest period available to all employees who only worked more than 3 consecutive hours on a Saturday morning.

Under the Wages Board system where there was no agreement between the employee and employer representatives on the Wages Board then the matter would be decided by the Chairman. In the case of the issue of the Breaks clause the final counter proposal from the employers was acceptable to the employee representatives on the Boards thus allowing the 4 Wages Board to each adopt a resolution proposing the variation of the Breaks clause in terms proposed by the employers.

The big improvements to the rest pause clause (in retail in Victoria) as a result of the case were:

- Casuals are entitled to one rest period of 10 minutes for work of 4 hours or more work and two 10 minute rest periods if worked for 7 hours or more. On Saturday, if a casual worked more than 3 hours, he or she receives one 10 minute rest period.
- Part timers are entitled to rest periods on the same basis as casuals. Previously, part timers would receive two rest periods if they worked a full day and it was recommended that they receive one rest period if they worked up

to 5 hours. Part timers working Friday afternoon and night had not usually received an evening rest period in the past, so this new provision was a big gain for them.

- Any employee who worked from 8 am to 9 pm on a Friday, could (only by mutual agreement with the employer) opt to have one of his or her rest periods in the evening.

Therefore, for retail employees in Victoria, the case had resulted in gaining 2 rest periods for casuals and part timers working 7 hours or more, and 1 rest period for those working 4 hours or more (more than 3 hours on a Saturday morning).

PART 1 - AWARD TITLE

1. This Award is to be known as The Retail Industry Award 2010

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2. TABLE OF CONTENTS

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PART 3 - COVERAGE

3. COVERAGE

This award applies to the retail industry to work in or in connection with retail establishments including:

- the receiving and preparation for sale and or display of goods in or about any shop,
- the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale,
- the display, shelf filling, replenishing or any other method of exposure or presentation for sale of goods,
- the sale or hire of goods by any means,
- the receiving, arranging or making payment by any means,
- the recording by any means of a sale or sales,
- the wrapping or packing of goods for despatch and the despatch of goods.
- the delivery of goods
- window dressing and merchandising
- loss prevention
- demonstration of goods for sale
- the provision of information , advice and assistance to customers
- the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods
- the preparation and sale of meals, snacks and/or beverages which are sold to the public primarily to take away
- the preparation and/or sale of take away food and/or beverages in food courts in shopping centres
- all directly employed persons engaged in retail stores in cleaning, store greeting, security, lift attending, store cafeterias and food services
- work which is incidental to or in or in connection with any of the above

This award applies to the retail industry to

- all work in Community Pharmacies
- all work in Hair and Beauty establishments
- clerical and administrative work in retail establishments
- work which is incidental to or in or in connection with any of the above

This award does not apply to:

- Pharmacies in hospitals and institutions providing an in-patient service.
- Hair and Beauty work undertaken in the theatrical, amusement and entertainment industries.
- Warehousing and Distribution.
- Building, construction, installation, repair and maintenance contractors and their employees working in a retail establishment, Community Pharmacy or Hair and Beauty establishment.

PART 4 - COMMENCEMENT

4.

PART 5 - ANTI-DISCRIMINATION

5. PREVENTION AND ELIMINATION OF DISCRIMINATION

An employer or employee to whom this award applies must not in relation to an employee to whom this award applies, discriminate, either directly or indirectly, on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

6. EQUAL REMUNERATION FOR WORK OF EQUAL VALUE

An employer to whom this award applies must in relation to an employee to whom this award applies provide equal remuneration for work of equal value.

7. AWARD COMPLIANCE NOT PRIMA FACIE DISCRIMINATION, ETC.

Notwithstanding the provisions of clauses 5 and 6, compliance with a specific provision of this award, including but not limited to, age based discounted rates, apprenticeship rates, penalty payments, supported wage payments will not, of itself, constitute either discrimination or the failure to provide equal remuneration for work of equal value..

8. DRESS REQUIREMENTS

An employer shall not require an employee to dress in a revealing or indecent manner which would cause that employee embarrassment.

PART 6 – CLASSIFICATION DEFINITIONS

9. RETAIL STREAM

9.1 Retail Worker Level 1 means:

An employee performing one or more of the following functions in or in connection with a retail establishment:

- the receiving and preparation for sale and or display of goods in or about any shop,

- the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale,
- the display, shelf filling, replenishing or any other method of exposure or presentation for sale of goods,
- the sale or hire of goods by any means,
- the receiving, arranging or making payment by any means,
- the recording by any means of a sale or sales,
- the wrapping or packing of goods for despatch and the despatch of goods.
- the delivery of goods
- window dressing and merchandising
- loss prevention
- demonstration of goods for sale
- the provision of information , advice and assistance to customers
- the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods
- the preparation and sale of meals, snacks and/or beverages which are sold to the public primarily to take away
- the preparation and/or sale of take away food and/or beverages in food courts in shopping centres
- all directly employed persons engaged in retail stores in cleaning, store greeting, security, lift attending, store cafeterias and food services
- work which is incidental to or in or in connection with any of the above

Indicative job titles which are usually within the definition of a Retail Worker Level 1 are:

Shop Assistant, Check-out Operator, Store Worker, Reserve Stock Hand, Driver, Boot / Shoe Repairer (Not Qualified), Window Dresser (Not Qualified), LPO, Photographic Employee, Store Greeter, Assembler, Ticket Writer (Not Qualified), Trolley Collectors, Video Hire Worker, Fast Food Worker, Boot/Shoe Repairer(Not Qualified), Take Away Food Delivery Driver, Telephone Order Salesperson, Door-to-door Salesperson, and, Demonstrator and/or Merchandiser not elsewhere classified (including a Demonstrator and/or Merchandiser who is not a direct employee of the retailer).

9.2 Retail Worker Level 2 means:

An employee performing work at a higher skill level than a Retail Worker Level 1

Indicative job titles which are usually within the definition of a Retail Worker Level 2 include:

- -Forklift Operator
- Ride on Equipment Operator
- Slicer
- Small goods maker in a butcher shop

9.3 Retail Worker Level 3

An employee performing work at a higher level than a Retail Worker Level 2.

Indicative of the tasks which might be required at this level are the following:

- Supervisory assistance to a designated section manager or team leader.
- Opening and closing of premises and associated security.
- Security of cash.
- Fitting of surgical corsets.

Indicative job titles which are usually within the definition of a Retail Worker 3 include:

- Machine operators
- 2IC to Dept Manager
- Senior Salesperson
- Corsetiere
- Driver Selling Stock
- Cook (Not Qualified) in a cafeteria
- Senior LPO, including an armed LPO
- LPO Supervisor
- Minilab Operator
- Designated second-in-charge of a section (i.e. senior sales assistant)
- Designated second-in-charge to a service supervisor
- Person employed alone, with responsibilities for the security and general running of a shop.
- Boner

9.4 Retail Worker Level 4 means:

An employee performing work at a higher level than a Retail Worker Level 3.

Indicative of the tasks which might be required at this level are the following:

- Management of a defined section/department
- Supervision of up to 2 sales staff (including self)
- Stock control
- Buying/ordering requiring the exercise of discretion as to price, quantity, quality etc.
- an employee who is required to utilise the skills of a trades qualification for the majority of the time in a week

Indicative job titles which are usually within the definition of a Retail Worker 4 include:

- an employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist.
- an employee who that has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work.
- a Qualified Auto Parts and Accessories Salesperson
- a Window Dresser (Cert III or equivalent experience)
- a Boot / Shoe Repairer (Cert III)
- a Shift Work Supervisor
- Section/Department manager with up to 2 employees (including self)
- Service Supervisor of up to 15 employees
- Nightfill supervisor/leader

9.5 Retail Worker Level 5 means:

An employee performing work at a higher level than a Retail Worker Level 4

Indicative job titles which are usually within the definition of a Retail Worker 5 include:

- A tradesperson in charge of other tradespersons within a section or department

9.6 Retail Worker Level 6 means:

An employee performing work at a higher level than a Retail Worker Level 5

Indicative job titles which are usually within the definition of a Retail Worker 6 include:

- Section/Department manager with up to 4 employees (including self)
- Service Supervisor (more than 15 employees)

9.7 Retail Worker Level 7 means:

An employee performing work at a higher level than a Retail Worker Level 6

Indicative job titles which are usually within the definition of a Retail Worker 7 include:

- Section/Department manager with 5 or more employees (including self)
- Assistant or Deputy or 2IC Shop Manager
- Deputy or 2IC Shop manager

9.8 Retail Worker Level 8 means:

An employee performing work at a higher level than a Retail Worker Level 7

A person with a Diploma Qualification.

Indicative job titles which are usually within the definition of a Retail Worker 8 include:

- Visual Merchandiser .

9.9 Retail Worker Level 9 means:

An employee performing work at a higher level than a Retail Worker Level 8

Indicative job titles which are usually within the definition of a Retail Worker 9 include:

- A shop manager.
- A butcher in charge of a retail butcher shop

9.10 Retail Workers must undertake duties as directed within the limits of their competence, skills and training including incidental cleaning. The cleaning of toilets is not incidental cleaning except in the case of a Take Away Food establishment.

10. COMMUNITY PHARMACY STREAM

Pharmacist means a person who is registered as a pharmacist pursuant to the relevant State or Territory law.

Experienced pharmacist means a pharmacist who has gained a minimum of four years full-time experience, or the part-time equivalent, as a community pharmacist.

Pharmacist, after first year of experience means a pharmacist who has gained a minimum 1824 hours relevant experience in community pharmacies.

Pharmacist Manager means a pharmacist who is responsible to the proprietor for all aspects of the business.

Pharmacist-in-Charge means a pharmacist who assumes responsibility for the day to day supervision and functioning of a community pharmacy practice.

A Pharmacy Student means a person who is undertaking the accredited course of study leading to a degree or higher degree which would lead to registration as a pharmacist and who enters into a contract of employment with a proprietor of a pharmacy to work in that pharmacy.

Pharmacy trainee means a person who has satisfied the examination requirements for the degree or higher degree which would lead to registration as a pharmacist and is engaging in the period of pre-registration training required under the relevant State or Territory law for the registration of pharmacists.

Pharmacists in Charge and Pharmacist Managers will be graded as follows:

- (i) Grade 1 where supervised hours are up to and including 60 hours per week

- (ii) Grade 2 where supervised hours are over 60 hours and up to and including 160 hours per week
- (iii) Grade 3 where supervised hours are over 160 hours per week

For the purpose of this clause **supervised hours** shall mean hours of work (other than overtime) performed by employees employed as pharmacy assistants.

A **Pharmacy Assistant Competency level 1 first six months**, is an employee who has commenced employment in a community pharmacy and is in the process of acquiring the competencies listed for a holder of Certificate I in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.

A **Pharmacy Assistant Competency level 1** is an employee who has acquired the competencies listed for a holder of Certificate I in Community Pharmacy as determined from time to time by the National Quality Council or any successor thereto, working in a community pharmacy.

A **Pharmacy Assistant Competency level 2** is an employee who has acquired the competencies listed for a holder of Certificate II in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.

A **Pharmacy Assistant Competency level 3** is an employee who has acquired the competencies listed for a holder of Certificate III in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto. and who is required by the employer to work at this level. A Pharmacy Assistant who is a holder of Certificate III in Community Pharmacy may be required to supervise Pharmacy Assistants at Competency levels 1 and 2. A Dispensary Assistant will be paid as Pharmacy Assistant Competency Level 3.

A **Pharmacy Assistant Competency level 4** is an employee who has acquired the competencies listed for a holder of Certificate IV in Community Pharmacy and who is required by the employer to work at this level. A Pharmacy Assistant Competency level 4 may be required to supervise Pharmacy Assistants at Competency levels 1, 2 and 3.

Dispensary Assistant

A person required to undertake duties as a Dispensary Assistant and who has the requisite training as required by the relevant Pharmacy Board (however titled) and where a relevant Pharmacy Board has not specified any minimum competencies then the following minimum competencies are required for a Dispensary Assistant: Pharmacy Assistant Competency Level 2 and

WRPDIS101A	Accept Prescriptions for Dispensing
WRPDIS202A	Delivery of Medication
WRPDIS303A	Assist in Dispensary Operations

Where the National Quality Council or any successor thereto amends, replaces, adds or deletes any of the named qualifications units listed in the definition of Dispensary Assistant above, such changes are incorporated into that definition for the purposes of this Award.

Employees will be eligible to be recognised for the competencies in which they are able to demonstrate competence. This may include existing employees in community pharmacy and those with relevant work experience.

- (i) Pharmacy assistants assist pharmacists in the provision of goods and services to the community.
- (ii) Pharmacy assistants perform tasks which support pharmacists in the discharge of the pharmacists' legal and professional responsibilities to the community.
- (iii) Pharmacy assistants must undertake duties as directed within the limits of their competence.
- (iv) Pharmacy assistants work under the direction and supervision of pharmacists.

11. HAIRDRESSING AND BEAUTY STREAM

Short Term Apprentice (Level 1)

A short term apprentice is a person who is not a certified tradesperson who has applied to the relevant State Training Authority for certification as a hairdresser and who has subsequently been required to undertake a short term apprenticeship of one year or less in order to gain such certification.

Nail Technician Level 1 (Level 1)

A Nail Technician is a person who holds an AQTF Certificate II in Nail Technology or the equivalent thereof.

Indicative of the tasks a Nail Technician may perform are manicure, pedicure, nail enhancement, nail art and selling of beauty products.

Make-Up Artist (Level 1)

A Make-up Artist is a person who holds an AQTF Certificate II in Make-up Artistry or the equivalent thereof

Indicative of the tasks a Make-up Artist may perform are demonstration of retail skin care products, design and application of make-up (including photography and remedial camouflage and selling of beauty products.

Salon Assistant (Level 1)

A Salon Assistant is a person working in or in connection with the Hair or Beauty industry who is not qualified in any higher classification in this award.

A Salon Assistant may carry out any tasks carried on by a person in a higher classification in this award but by virtue of the fact that such person does not hold a recognised qualification in an accredited course relating to any of the higher classifications in the award may be classified here.

Electrologist (Level 2)

An Electrologist is a person who has completed an accredited Electrologists Course.

Note - A person holding higher qualifications as set out in this stream, is to be paid the rates set out thereunder even if such person is only exercising the skills and knowledge related to electrolysis/thermolysis.

Hairdresser (Level 3)

A Hairdresser is an employee who holds an AQTF Certificate III in Hairdressing or the equivalent thereof.

Beautician, or Cosmetologist (Level 3)

A Beautician, Beauty or Cosmetologist is a person who holds an AQTF Certificate III in Beauty or the equivalent thereof.

A Beautician or Cosmetologist works above and beyond an employee at **C7** or below and to the level of her or his training.

Indicative of the tasks a Beautician or Cosmetologist performs are facial treatment (including massage in connection with such treatment), the design and application of make-up, eye brow shaping and eye brow and eye lash treatments, manicure and pedicure, ear piercing temporary epilation and bleaching treatments, service and advice to clients, nail enhancement and art and selling of products.

A Beautician or Cosmetologist does not perform any work on a person's body except for the face, hands and/or feet.

Note - A person performing work or providing treatments to other parts of the body is to be classified according to their qualifications.

Nail Technician Level 2 (Level 3)

A Nail Technician Level 2 is a person who holds an AQTF Certificate III in Nail Technology or the equivalent thereof.

Indicative of the tasks a Nail Technician Level 2 performs are manicure, pedicure, nail enhancements, nail art, service and advice to salon clients and selling of products.

Beauty Therapist - with less than 12 months' experience (Level 4)

A person in this classification is as for a Beauty Therapist except that they have had less than 12 months' post-qualification experience in industry.

Advanced Hairdresser (Level 5)

An Advanced Hairdresser is a person who is a Hairdresser as defined and who has also completed at least 3 units of the AQTF Certificate IV in Hairdressing and who has been employed specifically as a Technician on those areas and/or to train other staff.

An Advanced Hairdresser, in addition to being able to perform the work of a hairdresser, works above and beyond a Hairdresser and to the level of her or his training.

Indicative of the tasks an Advanced Hairdresser may perform are trade tasks plus the specialist skills acquired through the successful completion of units in AQF Certificate IV in Hairdressing.

Beauty Therapist (Level 6)

A Beauty Therapist is a person who holds an AQTF Certificate IV in Beauty Therapy or the equivalent thereof.

A person in this classification must have at least 12 months' post-qualification experience in industry.

Indicative of the tasks a Beauty Therapist may perform facial treatments, temporary epilation and bleaching treatments, manicure, pedicure, design and application of make-up, ear piercing, service and advice to salon clients, selling of products, body treatments and aesthetic aromatherapy massage.

Hairdresser Technician (Level 7)

A Hairdresser Technician is a person who is a hairdresser as defined and who also holds an AQTF Certificate IV in Hairdressing or the equivalent thereof.

Trichologist (Level 7)

A Trichologist is a person who is a hairdresser as defined and who also holds an AQTF Certificate IV in Trichology or the equivalent thereof.

Advanced Beauty Therapist (Level 7)

An Advanced Beauty Therapist is a person who holds an AQTF Diploma of Beauty Therapy or the equivalent thereof.

Indicative of the tasks an Advanced Beauty Therapist may perform include those of a Beauty Therapist as defined, permanent epilation treatments, diathermy service, design and application of cosmetic tattooing, micropigmentation procedures, investigation of new products and services, training, assessment of workplace competencies and/or staff supervision.

Salon Principal or Manager

Except where the salon owner acts as principal or manager, upon every premises in which a business or school of hairdressing and/or beauty is carried on, there must be at least one person who is the principal and/or manager of the business present and in control of the work carried on in the premises.

Any person acting as a principal and/or manager of a salon must be paid as follows:

- For a Salon Principal or Manager Level 1: - the applicable rate for the classification of work performed plus 5%.

- For a Salon Principal or Manager Level 2: - the applicable rate for the classification of work performed plus 10%.

Salon Manager or Principal - Level 2

A Salon Manager or Principal - Grade 2 is a person who is the principal or manager of the salon, (i.e. the person for the time being entrusted with the control or superintendence of the salon despite that she or he may be under the orders of another person who does not devote his or her whole time to the management of the salon), and who holds an AQTF Diploma of Hairdressing Salon Management or otherwise at least an AQTF Certificate III course in management and communications or the equivalent thereof.

Salon Manager or Principal - Level 1

A Salon Manager or Principal Grade 1 is a person who is the principal or manager of the salon, (i.e. the person for the time being entrusted with the control or superintendence of the salon despite that she or he may be under the orders of another who does not devote his or whole time to the management of the salon).

Hairdressing Graduate

A Hairdressing Graduate is a person who has obtained a tradesperson's certificate and who has not had 1000 hours of experience in a commercial hairdressing salon. For the purpose of this award a college based salon is not considered to be a commercial salon.

Hairdressing Trainee

A Hairdressing Trainee is a person undergoing an AQTF Certificate 111 training course and is not an apprentice who is employed under a contract of training.

Trainees have not completed their training and therefore they are not considered to be fully competent in hairdressing skills. During the training period a trainee may work in a commercial salon (other than a college based salon).

Pre Apprentice: A Hairdressing pre apprentice is a person completing a Hairdressing pre apprenticeship training program approved by Skills Victoria or a Hairdressing Traineeship of 6 months duration or less approved by Skills Victoria.

Additional employee duties

An employer may direct a Hair and Beauty Stream employee to carry out such duties, as are within the limits of the employee's skill, competence and training, including work which is incidental or peripheral to their main tasks or functions. Without limiting the scope of these additional duties an employee's duties may include:

- care for and clean all tools, equipment, benches, sinks, mirrors, stock, glassware and the like; and
- to keep the floor clean of hair and mopped when required; and
- to wash, dry and fold towels, capes, sheets and the like which are used for the business, where suitable washing and drying machines are installed.

12. CLERICAL ADMINISTRATIVE STREAM

12.1 Level 1 Clerical Assistant

Employees in this grade perform and are accountable for clerical and office tasks as directed within the skill levels set out. They work within established routines, methods and procedures. Supervision is direct.

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

Employees may be required to train other employees in the skills of their own grade by means of personal instruction and demonstration.

Machine operation - skill level 1

Operate telephone/intercom systems, telephone answering machines, facsimile machines, photocopiers, franking machines and guillotines.

Information handling skills - skill level 1

Receive, sort, open, distribute incoming mail, process outgoing mail, receive incoming and dispatch outgoing courier mail, deliver messages and documents to appropriate persons/locations. Prepare and collate documents. Sort and file documents/records accurately in correct location/sequence using an established paper based filing system.

Enterprise/industry, specialist skills - skill level 1

Acquire and apply a limited knowledge of office procedures and requirements.

12.2 Level 2 Clerical Officer

Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge at a level higher than required in Level 1. They are responsible and accountable for their own work which is performed within established routines, methods and procedures.

Supervision is routine.

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Machine operation - skill level 2

Operate adding machines, switchboard, paging system, telex machine, typewriter and calculator.

Computer - skill level 1

Use knowledge of keyboard and function keys to enter and retrieve data through computer terminal.

Keyboard typing - skill level 1

Copy type at 25 words per minute with 98% accuracy.

Information handling skills - skill level 2

Maintain mail register and records. Maintain established paper-based filing/records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations. Transcribe information into records, complete forms, take telephone messages.

Enterprise/industry, specialist skills - skill level 2

Acquire and apply a working knowledge of office or sectional operating procedures and requirements. Acquire and apply a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locate appropriate staff in different sections, relay internal information, respond to or redirect inquiries, greet visitors.

Business/financial skills - skill level 1

Keep appropriate records. Sort, process and record original source financial documents (e.g. Invoices, cheques, correspondence) on a daily basis; maintain and record petty cash; prepare bank deposits and withdrawals and do banking.

12.3 Level 3 Clerical Officer

Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge at a level higher than required in Level 2.

They are responsible and accountable for their own work, which is performed within established guidelines, they exercise limited discretion within the range of their skill and knowledge. Supervision is general.

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Machine operation - skill level 3

Operate computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters.

Keyboard typing - skill level 2

Produce documents and correspondence using knowledge of standard formats, touch type at 40 words per minute with 98% accuracy, audio type.

Computer - skill level 2

Use one or more software application package(s) developed for a micro/personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer. Following standard procedures or template for the preceding functions using existing models/fields of information. Create, maintain and generate simple reports. Use a central computer resource to an equivalent standard.

Word processing - skill level 1

Use one or more software packages to create, format, edit, proof read, spell check, correct, print and save text documents, e.g. standard correspondence and business documents. Apply additional functions such as search and replace, variable fonts, moving and merging across documents and simple maths.

Secretarial - skill level 1

Take shorthand notes at 70 words per minute and transcribe with 95% accuracy. Arrange travel bookings and itineraries, make appointments, screen telephone calls, follow visitor protocol procedures, establish telephone contact on behalf of executive.

Enterprise/industry, specialist skills - skill level 3

Apply a working knowledge of the organisation's products/services, functions, locations and clients. Respond to and act upon most internal/external inquiries in own function area.

Information handling skills - skill level 3

Use and maintain a computer-based record management system to identify, access and extract information from internal sources. Maintain circulation, indexing and filing systems for publications, review files, close files, archive files.

Business/financial skills - skill level 2

Maintain financial records and journals; collect and prepare time and wages records; prepare accounts payable for authorisation; respond to simple account queries from debtors; post transactions to ledger.

Employees holding a Certificate of Office & Secretarial Studies (TAFE) or accredited equivalent and who are required to use skills and perform tasks within the range of skills in Level 3 shall be graded at Level 3 or above.

12.4 Level 4 Clerical Officer

Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge at a level higher than required in Level 3. They are responsible and accountable for their own work, and exercise discretion and initiative in the organisation of work within prescribed limits. Supervision is limited.

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Keyboard typing - skill level 3

Format complex documents including technical data, technical language, tables, graphs, text design, indexing, variable type face; produce documents requiring specified form or to comply with regulations or standards.

Computer - skill level 3

Apply knowledge of intermediate functions to manipulate data, i.e. modify fields of information, develop new basic databases or spreadsheet models; spreadsheet, perform reconciliation.

Word processing - skill level 2

Use one or more software packages to apply advanced functions such as text columns, money columns, tables, e.g. to produce financial statements, printed forms, sorting, boxes, create displays of charts or graphs in report format, select style sheets appropriate to final presentation.

Secretarial - skill level 2

Take shorthand notes at 100 words per minute and transcribe at 95% accuracy; manage executive appointments; respond to invitations; organise internal meetings on behalf of executive; establish and maintain reference lists/personal contact systems for executives.

Enterprise/industry, specialist skills - skill level 4

Provide detailed advice and information on the organisation's products and services; respond to client/public/supplier and internal organisation inquiries, within own function area, using such techniques as personal interview and liaison; explain organisation's viewpoint to clients and appropriate persons; using knowledge of internal/external regulatory requirements related to own function area. Acquire and use specialist vocabulary, i.e. technical/medical/legal within the scope of this grade.

Information handling skills - skill level 4

Create new forms of files and records as required using computer-based records systems; e.g. customer/client/supplier and subscription lists. Access, identify, and extract information as required from external sources, e.g. databases, libraries, local authorities.

Business/financial skills - skill level 3

Prepare cash payment summaries and banking reports; apply purchasing and inventory control requirements; reconcile debtors, creditors and general ledger accounts to balance; follow-up unpaid accounts by telephone liaison/interview, prepare documentation on overdue accounts for senior officers or referral to debt recovery processes; calculate wage and salary requirements including tax, superannuation and other deductions and transfer payments for authorisation; calculate stock valuations; prepare bank reconciliations; calculate costings using established formulae for all inputs and margins.

Supervisory - skill level 1

Allocate work tasks to individuals, check work progress and correct errors.

12.5 Level 5 Administrative Officer

Employees in this grade perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Level 4. They are responsible and accountable for their own work, and may have limited responsibility for the work of others. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is minimal. Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels numbered set out below.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Computer - skill level 4

Use a variety of application software packages within a micro/personal computer network including importing data from one package to another. Evaluate usefulness or applicability of software programs (using existing software programs) and recommend preferred solutions to meet new or different application requirements. Use advanced spreadsheet functions (e.g. Macro functions etc) to enhance operation of the spreadsheet. Use a central computer resource to an equivalent standard.

Word processing - skill level 3

Use all preceding word processing functions and integrate word processing software with other application software packages to produce complex text and data documents. Apply knowledge of desktop publishing to integrate complex documents. Apply advanced functions including Macros, moving columns for complex formatting of documents

such as multi-column reports and presentations, including booklets.
Apply complex maths functions.

Secretarial - skill level 3

Take shorthand notes at 120 words per minute and transcribe at 95% accuracy; attend executive/organisational meetings and take minutes; answer executive correspondence from verbal or rough handwritten instructions; organise teleconferences.

Enterprise industry, specialist skills - skill level 5

Apply detailed knowledge of the industry in which the organisation operates to complex issues/arrangements in such areas as consumer/client services, special products/service knowledge, and respond within established internal/external regulatory parameters and policies. Indicative Specialist Skills Include; apply detailed knowledge of customs law and regulations to overseas sales and ordering. Apply detailed knowledge of inventory/stock requirements to obtain competitive quotations and initiate purchasing. Apply detailed knowledge of internal/external regulatory parameters and policies relating to industrial employment law, occupational health and safety, workers compensation claims procedures, superannuation requirements.

Information handling skills - skill level 5

Develop, plan and implement new paper based/manual filing records systems for the enterprise; assist in separate undertaking research (locate/solicit, summarise/extract and interpret information) related to function areas.

Business/financial skills - skill level 4

Post transactions to ledger and prepare a trial balance; prepare end of the period adjustments and transfers using general journal; prepare financial/tax schedules for periodic tax requirements such as payroll, sales and group tax returns; reconcile general ledger accounts; determine costings by calculating input costs and margins.

Apply detailed knowledge of organisations credit terms to new accounts and to following up significant debtors, prepare periodic debtor statements.

Supervisory - skill level 2

Resolve operational problems for staff in lower grades, coordinate work flow within a section or unit, and counsel and advise staff who are under routine supervision.

Job tasks include:

- Clerks Level 5:
- Supervision of 5 or more clerical staff (including self)
- Credit control.

12.6 Level 6 Administrative Officer

Employees in this grade perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Level 5. They are responsible and accountable for their own work, and may have responsibility for the work of a section or unit. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is by means of reporting to more senior staff as required.

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below.

Employees may be required to train other employees in the skills of their own grade and below by means of personal instruction and demonstration.

Computer - skill level 5

Operating/coordinating a group of computers such as a small multi-user system or a large group of personal computers which may include operating a help desk, running and monitoring batch jobs and performing regular back-ups and restores.

Enterprise/industry, specialist skills - skill level 6

Apply knowledge of the organisation's objectives and performance, and apply specialist knowledge, in areas such as projected growth, product trends and general industry conditions, examples include: knowledge of competitors and major clients market structure in the performance of own responsibilities; import/export activities. Indicative Specialist Skills Include; Use knowledge of basic statistics to interpret data from spreadsheets, statistical tables, graphs and frequency tables in the performance of own responsibilities. Administration of workers compensation claims, insurance and disputed claims.

Supervisory - skill level 3

Plan and organise work priorities of a unit or section; re-schedule workloads as necessary and resolve operational problems for unit or section; monitor work quality of those supervised; use observations, diagnosis and intervention skills to ensure unit/section meets objectives; organise and chair necessary work meetings/conferences; assist in planning future sectional/office organisational resources and equipment needs.

Business/financial skills - skill level 5

Administer individual salary packages, travel expenses, allowances and company transport. Administer specialist salary and payroll requirements, e.g. Eligible Termination Payments, Superannuation Trust Deed Requirements, Redundancy Calculations, Maintenance Support Schemes, etc.

Secretarial - skill level 4

As well as having shorthand skills of Skill Level 3, arrange conferences and external meetings, including venues, agendas, documentation, audio-visual requirements, catering, transport and accommodation; originate executive correspondence; assist executive in preparing, attending and following up appointments, interviews, meetings, etc; assume responsibility for Designated areas of executive's work, on delegated authority.

12.7 Supervision Definition

Employees in Levels 1 to 5 are subject to supervision, defined as follows:

- (a) **Direct**; the employee receives detailed instructions on work to be performed and is subject to frequent personal progress checks.
- (b) **Routine**; the employee receives broad instructions on work to be performed except when new or unusual features require more specific instructions. Work in progress is checked intermittently whilst all work is checked on completion.
- (c) **General**; the employee receives specific instructions only when new procedures or tasks are involved. Work is checked on completion.
- (d) **Limited**; the employee is subject to work checks which are generally confined to establishing that satisfactory progress is being made. Work is reviewed on completion.
- (e) **Minimal**; the employee is subject to final review/report back on work and may receive assistance with specific problems.

12.8 General Definitions

Community Pharmacy means: any business conducted by the employer in premises:-

- (a) that are registered under the relevant State or Territory legislation for the regulation of Pharmacies; and
- (b) that are established either in whole or in part for the compounding or dispensing of prescriptions or for vending any medicines or drugs; and
- (c) where other goods may be sold by retail.

Pharmacist graded employee means an employee employed as either a pharmacist, experienced pharmacist, pharmacist after first year of experience, or pharmacist manager.

Take Away Food means:

All work in or in connection with the receipt of orders for and/or preparation and/or sale and/or delivery of:

- meals, snacks and/or beverages, including but not limited to, pizzas, hamburgers, chicken, fish and chips, souvlakis, kebabs, muffins, noodles, rice, sandwiches, rolls, ice cream, coffee, juices, which are sold to the public primarily for take away; and/or
- take away foods and beverages packaged sold or served in such a manner as to allow their being taken from the point of distribution to be consumed elsewhere should the customer so decide; and/or,
- food and/or beverages in food courts and/or in shopping centres and/or in retail complexes, excluding coffee shops, cafes, bars and restaurants providing primarily a sit down service in other than food courts of shopping centres and retail complexes.

Without in any way limiting this definition the Take Away Food includes all take away food outlets trading as McDonalds, Hungry Jacks, Red Rooster, Chicken Treat, KFC, Pizza Hut, Dominos, Eagle Boys, Wendys, Baskin and Robbins, Boost Juice, Hudsons, Donut King, Mrs Fields, Muffin Break, WokinaBox, Jesters, Subway and like businesses engaged in the receipt of orders for and/or preparation and/or sale and/or delivery of mass marketed food and/or beverages from a standardised menu.

Video Shop means any business conducted by the employer in premises where the primary function is the hire of videos, dvds or electronic games to the public. Other goods may be sold but are incidental to the primary function of hire.

Without in any way limiting this definition Video Shop includes all video shops trading as Blockbuster, Video Easy, Video 2000, Network Video, Movieland Video Libraries, Movies 4U, Top Video and Video Busters.

PART 7 - AWARD FLEXIBILITY

13. MODEL FLEXIBILITY CLAUSE

This provision is only available following commencement of employment.

A flexibility agreement cannot be a condition of employment.

13.1. An employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; and
- leave loading.

13.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

- 13.3 The agreement between the employer and the individual employee must:
 - 13.3.1 be confined to a variation in the application of one or more of the terms listed in sub-clause 1; and
 - 13.3.2 not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.
- 13.4 For the purposes of sub-clause 3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:
 - 13.4.1 the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Workplace Relations Act 1996 (Cth), as those instruments applied as at the date the agreement commences to operate; and
 - 13.4.2 the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.
- 13.5 The Agreement between the employer and the individual employee must also:
 - 13.5.1 be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - 13.5.2 state each term of this award that the employer and the individual employee have agreed to vary;
 - 13.5.3 detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - 13.5.4 detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
 - 13.5.5 state the date the agreement commences to operate.
- 13.6 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.
- 13.7 The agreement may be terminated:
 - 13.7.1 by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - 13.7.2 at any time, by written agreement between the employer and the individual employee.
- 13.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

PART 8 - TYPES OF EMPLOYMENT

14. GENERAL

14.1.1 Employees under this award will be employed in one of the following categories:

14.1.1.1 full-time employees; or

14.1.1.2 part-time employees; or

14.1.1.3 casual employees.

14.1.2 At the time of engagement an employer will inform each employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

14.2 Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week.

The minimum daily engagement is 4 hours.

14.3 Part-time employees

14.3.1 A part-time employee is an employee who:

14.3.1.1 works at least 12 hours per week but no more than 32 hours per week; and

14.3.1.2 has reasonably predictable hours of work.

14.3.2 At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:

- the hours worked each day;
- which days of the week the employee will work;
- the actual starting and finishing times of each day;
- variation must be in writing;
- minimum daily engagement is three hours;
- all time worked in excess of agreed hours is paid at the overtime rate; and
- the times of taking and the duration of meal breaks.

14.3.3 Any agreement to vary the regular pattern of work must be made in writing before the variation occurs.

14.3.4 The agreement and variation to it must be retained by the employer and a copy given by the employer to the employee.

14.3.5 An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

14.3.6 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 14.4.

14.3.7 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/314th of the weekly rate prescribed for the class of work performed.

14.3.8 Rosters

14.3.8.1 A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of fourteen days or in the case of an emergency 414 hours, by the employer to the employee.

14.3.8.2 Rosters shall not be changed from week to week, or fortnight to fortnight, nor shall they be changed to avoid any award entitlements.

14.3.8.3 No part-time employee may be employed on more than five days per week other than at the request in writing of the employee concerned.

14.3.9 Award entitlements

A part-time employee shall be entitled to payments in respect of annual leave, public holidays, sick leave and bereavement leave arising under this award on a proportionate basis. Subject to the provisions contained in this clause all other provisions of the award relevant to full-time employees shall apply to part-time employees.

14.3.10 Conversion of existing employees

No full-time or casual employee shall be transferred by an employer to part-time employment without the written consent of the employee. Provided that where such transfer occurs all leave entitlements accrued shall be deemed to be continuous. A full-time employee who requests part-time work and is given such work may revert to full-time employment on a specified future date by agreement with the employer and recorded in writing.

14.4 Casual Employment

14.4.1 A casual employee is an employee engaged as such and who does not have an expectation or entitlement to reasonably predictable hours of work or an employee who is engaged for less than 12 hours of work per week.

14.4.2 A casual must be paid both the actual hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee.

14.4.3 Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

14.4.4 The minimum daily engagement of a casual is three hours.

14.5 Casual Conversion

- 14.5.1 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 twelve months shall 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.
- 14.5.2 Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of twelve months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- 14.5.3 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 through the disputes settlement procedure.
- 14.5.4 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.
- 14.5.5 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.
- 14.5.6 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:
- 14.5.6.1 whether the employee will convert to full-time or part-time employment; and
- 14.5.6.2 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 .
- 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.

- 14.5.7 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 through the disputes settlement procedure.
- 14.5.8 An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

15. CLASSIFICATIONS AND WAGE RATES AS AT 1 OCTOBER 2008

Community Pharmacy Stream																								
512.00	554.00	593.00	596.00	603.00	613.00	617.00	624.00	638.00		665.00			677.30			792.00	834.00	871.00	892.00	913.00	955.00	997.00	1038.00	1080.00
Pharmacy Student 1 st year	Pharmacy Student 2 nd year	Pharmacy Asst Comp Level 1 <6 months	Pharmacy Student 3 rd year	Pharmacy Asst Comp Level 1 >6 months	Pharmacy Asst Comp Level 2	Pharmacy Student 4 th year	Minilab Op	Pharmacy Asst Comp Level 3 Pharmacy Trainee 1st half of traineeship		Pharmacy Asst Comp Level 4			Pharmacy Trainee 2 nd half of traineeship			Pharmacist	Pharmacist After 1 st year	Experienced Pharmacist	Pharm IC Gr1	Pharm IC Gr2	Pharm IC Gr3	Pharm Mgr Gr1	Pharm Mgr Gr2	Pharm Mgr Gr3
Clerical and Admin Stream																								
				603.00			624.00	638.00		665.00			676.70		733.00									
				Clerical Admin Level 1			Clerical Admin Level 2	Clerical Admin Level		Clerical Admin Level 4			Clerical Admin Level 5		Clerical Admin Level 6									
Hairdressing and Beauty Award Stream																								
				603.00	613.00			638.00	658.00		671.00	684.00		719.00		669.00 - 755.00		701.80 - 790.90						
				Short term Appr Make up Artist Nail Tech Level 1 Salon Asst	Electrologist			Nail Tech Level 2 Beautician Cosmetologist Hairdresser	Beauty Therapist Less than 12 months		Advanced Hairdresser	Beauty Therapist		Hairdresser Tech Trichologist Advanced Beauty Therapist		Salon Manager Grade 1		Salon Manager Grade 2						
Retail Stream																								
				603.00	613.00		624.00	638.00	658.00	665.00		684.00		719.00	733.00									
				Retail Worker Level 1 includes:	Retail Worker Level 2 includes:		Retail Worker Level 3 includes:	Retail Worker Level 4 includes:	Retail Worker Level 5 includes:	Retail Worker Level 6 includes:		Retail Worker Level 7 includes:		Retail Worker Level 8 includes:	Retail Worker Level 9 includes:									
				Shop Asst Storeworker Driver Boot / Shoe Repairer (Not Qual) Window Dresser (Not Qual) LPO Photographic Employee Cosmetic and or Beauty Aid Consultant Take Away Food Worker Take Away Food Delivery Driver	Forklift Op Ride on Equipment Operator		2IC to Dept Manager or Service Supervisor or a Take Away Crew leader Senior Salesperson Driver Selling Stock LPO Senior/Supervisor Minilab Op	Trades person Qualified Auto Parts and Access Salesperson Window Dresser (Qual) Nightfill Supervisor/Leader Service Supervisor up to 15 employees Boot / Shoe Repairer (Cert III)	Trades person In Charge	Section / Dept Manager up to 4 employees Service Supervisor more than 15 employees		Section / Dept Manager 5 or more employees Assistant Manager		Visual Merchandiser (Dilpoma)	Shop Manager									

16. SALON PRINCIPAL OR MANAGER RATES OF PAY

Except where the salon owner acts as principal or manager, upon every premises in which a business or school of hairdressing and/or beauty is carried on, there must be at least one person who is the principal and/or manager of the business present and in control of the work carried on in the premises.

16.1 Any person acting as a principal and/or manager of a salon must be paid as follows:

- Salon Principal or Manager Grade 1:
- The applicable rate for the classification of work performed plus 5%.
- Salon Principal or Manager Grade 2:
- The applicable rate for the classification of work performed plus 10%.

17. APPLICATION OF THE CLASSIFICATION STREAMS

A person employed in a Community Pharmacy must only be employed in a classification within the Community Pharmacy Stream, except where an employee is both engaged and works principally as a Clerical Administrative employee or as a Hair and Beauty employee in accordance with one of the classifications in the Hair & Beauty Stream or as a Retail Worker Level 7, 8 or 9.

The classification of Pharmacy Assistant Level 1 first 6 months only applies to an employee who is employed in a Community Pharmacy and who is provided with the training necessary to advance to Pharmacy Assistant Level 1 after 6 months.

18. HIGHER DUTIES CLAUSE

Employees engaged for more than two hours during one day or shift on duties carrying a higher rate than their ordinary classification are to be paid the higher rate for such day or shift. If engaged for two hours or less during one day or shift, the employee is to be paid the higher rate for the time worked only.

19. AGE BASED DISCOUNTED RATES

19.1 Age Based Discounted Rates for Employees under 21 Years of Age apply to the following classifications only

- Retail Worker Level 1 and Level 2
- Salon Assistant
- Pharmacy Assistant Levels 1 and 2
- Clerical and Administrative Levels 1, 2 and 3

The following percentages of the appropriate classification will apply:

Age	% of adult rate
16 years and under	50
17 years	55
18 years	67.5
19 years	80
20 years	90

- 19.1.2 The Age Base Discounted wages shall be calculated to the nearest 10 cents, less than 5 cents in a result to be disregarded.

20. APPRENTICES

20.1 Hairdressing and Beauty

- 20.1.1 The minimum award rates of pay for apprentices completing a 4 year apprenticeship are:

Year of Apprenticeship	Hairdresser Rate %
1st year -	42
2nd year	55
3rd year	75
4th year	90

- 20.1.2 The minimum award rates of pay for apprentices completing a 3 year apprenticeship are:

Year of Apprenticeship	Hairdresser Rate %
1st year -	35
	42
2nd year	55
3rd year	77
4th year	100

Note: Where an apprentice has reached the age of 21 years and the appropriate apprenticeship rate would not be equal to at least the rate for an adult employee engaged as a Salon Assistant he/she shall be paid the rate for an employee at that level

- 20.1.3 Pre Apprentices - Hairdressing

Year of Apprenticeship	Hairdresser Rate %
First 6 months	40
Next 12 months	55
Next 12 months	70
Final 12 months	85

- 20.1.4 The ratio of apprentices to tradespeople in each salon is to be one apprentice to each appropriately qualified person. For the purpose of this ratio, fourth year apprentices are considered to be qualified.

- 20.1.5 Hairdressing Trainees

The minimum award rates of pay for hairdressing trainees are:

Hours of training completed	Hairdresser Rate
	%
(i) Completed less than 1000 hours of full time accredited training	55
(ii) Completed at least 1000 hours but less than 2000 hours of full time accredited training	75

20.1.6 Hairdressing Graduate

The minimum award rates of pay for hairdressing graduates are:

Classification	Hairdresser Rate
	%
Hairdressing Graduate	92.5

20.2 Pastrycooks

Year of Apprenticeship	Tradesperson Rate
	%
1st year	50
2nd year	65
3rd year	80
4th year	95

20.3 Bakers

Year of Apprenticeship	Tradesperson Rate
	%
1st year	45
2nd year	57
3rd year	75
4th year	85

20.3.1 Increased rates of pay for proficiency

Where in any year of the apprenticeship course, an apprentice attains the standard of proficiency prescribed in 15.4.4, the apprentice shall:

20.3.1(a) where the apprentice has attained that standard for the first time be paid for the next succeeding year the sum of \$2.74 per week, in addition to the prescribed minimum weekly wage;

20.3.1(b) where the apprentice has attained that standard for the second time be paid for the next succeeding year the sum of \$3.53 per week, in addition to the prescribed minimum weekly wage;

20.3.1(c) where the apprentice has attained that standard for the third time be paid for the next succeeding year the sum of \$4.12 per week, in addition to the prescribed minimum weekly wage.

20.4 Florists

Year of Apprenticeship	Tradesperson Rate %
1st year -	50
2nd year	70
3rd year	80

20.5 Meat

Year of Apprenticeship	Tradesperson rate %
1st year -	50
2nd year	65
3rd year	85
4th year	95

21. ACCIDENT MAKE-UP PAY – VICTORIA

21.1 Entitlement to accident make-up pay

Where an employee becomes entitled to weekly compensation payments under the *Accident Compensation Act 12085* (the Act), the employer will pay to the employee an amount equivalent to the difference between:

- 21.1.1 The level of weekly compensation and any weekly wages earned or able to be earned if partially or totally incapacitated and
 - 21.1.2 The amount that would have been payable under this award for the classification of work if the employee had been performing their normal duties, provided that such rate shall exclude additional remuneration by way of attendance bonus payments, shift premiums, overtime payments, special rates, fares and travelling allowance or other similar payments.
- 21.2 Accident make-up pay shall not apply:**
- 21.2.1 In respect of any injury during the first seven consecutive days (including non working days) of incapacity.
 - 21.2.2 To any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks.
- 21.3 Entitlement to accident make-up pay continues (subject to [320.6](#)) on termination of an employee's employment where such termination:
- 21.3.1 is by the employer other than for reasons of the employee's serious and/or wilful misconduct; or
 - 21.3.2 arises from a declaration of liquidation of the employer, in which case the employee's entitlement in the absence of agreement shall be referred to the Australian Industrial Relations Commission.
- 21.4 Industrial disease contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration shall not be subject to the accident make-up pay unless

the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.

21.5 Maximum period of payment

The maximum period or aggregate period of accident make-up pay to be made by an employer shall be a total of 320 weeks for any one injury.

21.6 Absences on other paid leave

An employee shall not be entitled to payment of accident make-up pay in respect of any period of other paid leave of absence.

21.7 Variation in compensation rates

Any changes in compensation rates under the Act shall not increase the amount of accident make-up pay above the amount that would have been payable had the rates of compensation remained unchanged.

21.8 Medical examination

21.8.1 In order to receive entitlement to accident make-up pay an employee shall conform to the requirements of the Act as to medical examination.

21.8.2 Where, in accordance with the Act a medical referee gives a certificate as to the condition of the employee and fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident make-up pay shall cease from the date of such refusal or failure to commence the work.

21.9 Where there is a redemption of weekly compensation payments under the Act, the employer's liability to pay accident pay shall cease as from the date of such redemption.

21.10 Death of employee

All rights to accident pay shall cease on the death of an employee.

22. SUPERANNUATION

22.1 Definitions

22.1.1 **Fund:** In this clause all references to **Fund** shall mean the Retail Employees Superannuation Trust (REST).

22.1.2 **Ordinary Time Earnings:** In this clause, the term **ordinary time earnings** shall include the classification rates, supplementary payments (if any), overaward payments, casual loadings, penalty rates (excluding overtime payments to weekly employees) and shift loadings.

22.1.3 **Retail Employees:** In this clause all references to **retail employees** shall mean employees whose employment is regulated by this award.

22.1.4 **Trustee:** In this clause all references to **Trustee** shall mean the Trustee of the Retail Employees Superannuation Trust.

22.2 Quantum

An employer shall contribute to the Fund in respect of all eligible employees an amount equal to 3% of each employee's ordinary time earnings each week.

22.3 Employer to continue participation

An employer who participates in the Fund shall not cease participation in the Fund whilst employing any eligible employee.

22.4 Employer's contribution during leave without pay

Where an employee is absent on leave without pay, whether or not such leave is approved, no contribution from the employer shall be due in respect of that employee during and in respect of the period of unpaid absence.

22.5 Eligibility

22.5.1 The employer shall only be required to make contributions in accordance with this clause in respect of full-time employees who have been employed by the employer continuously for a period of six months.

22.5.2 The employer shall only be required to make contributions in accordance with this clause in respect of adult part-time employees who have been employed by the employer continuously for a period of six months.

22.5.3 The employer shall only be required to make contributions in accordance with this clause in respect of adult casual employees who have accumulated 26 weeks in which they have commenced employment on at least one day in each of those weeks within a period of two years.

22.5.4 Employees who become eligible to join the Fund shall, in addition to contributions under 21.2, be entitled to a once only contribution by the employer to the Fund in respect of the six month or 26 week qualifying period. Such contribution shall be equivalent to contributions under 21.2.

22.6 Employee contributions

Employees who may wish to make contributions to the Fund additional to those being paid by the employer pursuant to 21.2, shall be entitled to authorise the employer to pay into the Fund from the employee's wages amounts specified by the employee.

22.6.1 Employee contributions to the Fund requested under this subclause shall be made in accordance with the rules of the Fund.

22.7 Frequency of payment

22.7.1 Each employer shall pay such contributions together with any employee deductions to the Fund in the following manner:

22.7.1(a) in respect of full-time and part-time employees payments shall be made monthly for pay periods completed in such month, and

22.7.1(b) in respect of casual employees payments shall be made every three months for pay periods completed in such three months.

- 22.7.2 Provided that payments may be made at such other times and in such other manner as may be agreed in writing between the Trustee of the Fund and the employer from time to time.

For SGC choice of fund purposes the Fund is the default fund.

23. PAYMENT OF WAGES

- 23.1 In the case of full time employees wages shall be paid weekly or fortnightly according to the actual hours worked each week or fortnight or may be averaged over a period of a fortnight except in the case of a full time employee who works an average of 38 ordinary hours each week over 121 days in a 4 week cycle wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the 4 week cycle.
- 23.2 In the case of a part-time or casual employee, wages shall be paid weekly or fortnightly according to the actual hours worked each week or fortnight.
- 23.3 Where an annualised wage/salary is paid pursuant to Clause 43 – Annualised Salary, the annualised wage/salary must be paid in equal payments made weekly or fortnightly according to the contract of employment.
- 23.4 Where wages are paid by electronic funds transfer, additional costs associated with the introduction and operation of electronic funds transfer shall be paid by the employer.
- 23.5 Where wages are paid in cash, all wages due shall be paid not later than Thursday in each pay period and must be paid during working hours. When Friday is a holiday, wages shall be paid not later than Wednesday in that week.

Where wages are paid by electronic funds transfer wages must be made up to and including at least the third day preceding the day of payment; provided that, in a week where a public holiday falls on the day in which wages are usually paid, payment must be made not later than the working day immediately preceding the public holiday.

- 23.6 Where an employer intends to change from weekly to fortnightly pay, the employer must pay 1 weeks pay in advance at the commencement of the changeover.

24. SALARY PACKAGING/SACRIFICING

- 24.1 Subject to meeting all necessary legislative requirements (including a written election by the employee), an employer and an employee may agree to substitute non-cash benefits in lieu of a proportion of the salary prescribed in Clause XX – Annualised Salary or of wages allowances or other payments to which the employee is entitled under this award.

For the avoidance of doubt, all award or NES entitlements or payments, including penalty rates, overtime, redundancy pay, termination payments, leave payments, and superannuation guarantee entitlements must be based upon the full ordinary rate of pay applicable to the employee and not on the actual cash amount paid to the employee.

It cannot be made a condition of employment that an employee enter into a salary packaging/sacrificing arrangement.

An employee can terminate the arrangement by giving 4 weeks notice to the employer.

25. PAYROLL DEDUCTIONS

- 25.1 The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
- 25.1.1 the employee has authorised the employer in writing to make such deductions.;
- 25.1.2 the Union has advised the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount;
- 25.1.3 deduction of union membership fees will only occur in each pay period in which payment has or is to be made to an employee; and
- 25.2 The employee's authorisation must be in writing and must authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 25.3 Union membership fees deducted from employees' pay must be paid to the Union on either a weekly, fortnightly, or monthly basis at the employer's election, together with all necessary information to enable the reconciliation and crediting of the fees to employees' membership accounts. The employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- 24.4 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 is to be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- 25.5 The Union may 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 and provided that the Union must give the employer a minimum of a months' notice of any such change.
- 25.6 An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- 25.7 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 must inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.
- 25.8. Union means an employee organization registered under the Workplace Relations Act or a trade union registered under any State legislation relating to the registration of trade unions.

26. ANNUALISED WAGE ARRANGEMENTS

26.1 If mutually agreed in writing, an annualised wage/salary for employees engaged and working according to a classification level beyond Level 3 in the classification scale and in a managerial position may be developed. Such annualised wage/salary may be inclusive of overtime, penalty rates, payments for public holidays taken, annual leave taken, meal allowance, recall allowances and meal break on call entitlements. The annual wage/salary paid over a year must be sufficient to cover what the employee would have been entitled to if all award entitlements had been complied with when calculated on an individual basis according to the hours worked.

For the avoidance of doubt, the inclusion of annual leave payments into an annualised wage/salary is not taken to be a cashing out of annual leave and an employee on an annualised salary is entitled to paid annual leave and entitled to be paid annual leave loading in relation to the taking of annual leave.

For the avoidance of doubt, an employee on an annualised wage/salary who works on a public holiday must be paid an additional 150% of the appropriate ordinary time rate of pay.

It cannot be made a condition of employment that an employee enter into an annualised wage/salary arrangement.

An employee can terminate the agreement by giving 4 weeks notice to the employer.

27. SUPPORTED WAGE

27.1 Workers eligible for a supported wage

This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:

27.1.1 **Supported Wage System** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in *Supported Wage System: Guidelines and Assessment Process*.

27.1.2 **Accredited Assessor** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the supported wage system.

27.1.3 **Disability Support Pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 124241*, as amended from time to time, or any successor to that scheme.

27.1.4 **Assessment instrument** means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

27.2 Eligibility criteria

- 27.2.1 Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
- 27.2.2 The award does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- 27.2.3 The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 12486* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act 12486*, or if a part only has received recognition, that part.

27.3 Supported wage rates

- 27.3.1 Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing, according to the following schedule:

Assessed Capacity	Percentage of Prescribed award rate
9.4	award rate
%	%
10*	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

(Provided that the minimum amount payable shall be not less than \$66 per week).

- 27.4 *Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

27.5 Assessment of capacity

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

- 27.5.1 the employer and the union, in consultation with the employee or, if desired by any of these;
- 27.5.2 the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

27.6 Lodgement of assessment instrument

- 27.6.1 All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
- 27.6.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

27.7 Review of assessment

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

27.8 Other terms and conditions of employment

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

27.9 Workplace adjustment

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

27.10 Trial period

- 27.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 27.10.2 During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 27.10.3 The minimum amount payable to the employee during the trial period shall be no less than \$625 per week.
- 27.10.4 Work trials should include induction or training as appropriate to the job being trialled.

- 27.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under 16.4.

PART 9 - ALLOWANCES

28. MEAL ALLOWANCES

28.1 Overtime

An employee required to work not less than one hour of overtime after his or her ordinary time of ending work shall be paid a meal allowance of \$13.45 where 24 hours notice has not been given. Provided that where such overtime work exceeds four hours a further meal allowance of \$12.15 shall be paid.

28.2 Late Night

An employee entitled to a second meal break on a week day shall be paid a meal allowance of \$13.45.

28.3 Sunday

An employee required to work more than four hours overtime on a Sunday shall be paid a meal allowance of \$13.45 and a further \$12.15 when required to work more than eight hours on such day.

28.4 Meal provided

The above allowances shall not be payable where the employer has his or her own cooking and dining facilities and by agreement with the employee supplies a substantial meal which shall consist of food comprising soup, entrée or joint, vegetables and sweet.

28.5 Return home

These foregoing provisions shall not apply where any employee could reasonably return home for a meal within the period allowed.

28.6 Payment

Meal money shall be paid on the same day as the overtime is worked or shall be paid in the weekly or fortnightly pay.

29. SPECIAL CLOTHING REIMBURSEMENT

- 29.1 Where the employer requires an employee to wear any special clothing such as a uniform dress or other clothing then the employer shall reimburse the employee for the cost of purchasing such special clothing and the cost of replacement items, when replacement is due to normal wear and tear. This provision shall not apply where the special clothing is supplied and/or paid for by the employer.

- 29.2 Where an employee is required to launder any special uniform, dress or other clothing, the employee shall be paid an allowance of \$6.25 per garment per week.

30. PROTECTIVE CLOTHING REIMBURSEMENT

Where it is agreed the work performed by an employee is of a dirty, wet or obnoxious nature requiring suitable protective clothing, the employer must reimburse the employee for the costs incurred in purchasing the suitable protective clothing and any necessary laundering cost incurred by the employee. This shall not apply where suitable protective clothing is provided and laundered at the employer's cost.

31. PROTECTIVE CLOTHING REIMBURSEMENT - FREEZER ROOM

31.1 Where an employee is required to work in a freezer room, where the temperature is reduced by artificial means below 0°C, the employer must reimburse the employee for the cost of purchasing suitable protective clothing.

31.2 The provisions of this clause do not apply where the suitable clothing is supplied to the employee at the employer's expense.

32. EXCESS TRAVELLING COSTS

Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional transport costs so incurred shall be reimbursed by the employer.

33. TRAVELLING TIME REIMBURSEMENT

33.1 An employee who on any day is required to work at a place away from his/her usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from his/her home to his/her usual place of employment and returning), shall be paid travelling time and also any fares reasonably incurred in excess of those normally incurred in travelling between his/her home and his/her usual place of employment.

33.1.1 Where the employer provides transport from a pick up point, an employee shall be paid travelling time for all time spent travelling from such pick up point and return thereto.

33.2 The rate of pay for travelling time shall be the ordinary time rate except on Sundays and holidays when it shall be time and half.

34. TRANSFER OF EMPLOYEE REIMBURSEMENT

Where any employer transfers an employee from one township to another, the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges, for the employee and his family.

35. TRANSPORT ALLOWANCE

Where an employer requests an employee to use his/her own motor vehicle in the performance of his/her duties such employee shall be paid an allowance of not less than 68 cents per kilometre.

36. TRANSPORT OF EMPLOYEES REIMBURSEMENT

36.1 Where an employee commences and/or ceases work after 10.00 p.m. on any day or prior to 7.00 a.m. on any day and the employee's regular means of transport is not

available and the employee is unable to arrange his/her own alternative transport, the employer must reimburse the employee for the cost of a taxi fare from the place of employment to the employee's usual place of residence. This shall not apply if the employer provides or arranges proper transportation to and or from the employee's usual place of residence, at no cost to the employee.

- 36.2 Provided always that an employee may elect to provide his or her own transport.
- 36.3 Provided further that this clause shall not apply to employees engaged under the provisions of shift work.

37. COLD WORK DISABILITY ALLOWANCE

- 37.1 Employees principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages such as dairy cases or freezer cabinets shall be paid 22 cents per hour or part thereof, whilst so employed. (\$8.36/week)
- 37.2 Provided that an employee required to work in a cold chamber where the temperature is below 0°C shall be paid in addition to the rate prescribed in **37.1** hereof 33 cents per hour. (An aggregate of twenty minutes in the hour shall be regarded as one hour's work). (\$20.90/week)

38. BICYCLE ALLOWANCE

- 38.1 An employee required to provide:
 - 38.1.1 a bicycle must be paid \$10.70 each week;
 - 38.1.2 a motorcycle must be paid \$32.00 each week;

39. FIRST AID ALLOWANCE

Where an employee who holds an appropriate first aid qualification and is appointed by the employer to perform first aid duty they will be paid an extra \$11.50 a week (30c per hour)

40. LANGUAGE ALLOWANCE

Employees employed by a shop to speak a language in addition to English for the purpose of making sales in the shop will be paid an allowance of \$8.40 a week.

41. AIRPORT TRAVEL ALLOWANCE

- 41.1 An employee working at Airports shall be paid a travelling allowance of \$5.90 per day or shift.
- 41.2 Provided that where an employee is recalled to work overtime he or she shall be paid an additional \$5.90 for each period of recall.

42. TOOL ALLOWANCE

- 42.1 The employer must reimburse the employee for the cost of all electrical equipment necessary for carrying out his or her work. This provision does not apply where electrical equipment is provided at the employer's expense
- 42.3 Where an employee is required to use his or her own tools the employer must pay a tool allowance of \$8.05 per week.

43. RECALL ALLOWANCE

Unless otherwise agreed an employee recalled to work for any reason, before or after completing their normal roster or on a day in which they did not work, shall be paid at the appropriate rate for all hours worked with a minimum of three hours on each occasion.

The time worked shall be calculated from the time the employee leaves home until the time they return home.

44. DISTRICT ALLOWANCES

Qld NT and WA to be included.

45. LIQUOR LICENCE

An employee who holds a liquor licence under a relevant State or Territory law shall be paid an extra \$19.80 per week.

46. ALLOWANCE ADJUSTMENT

Allowances will be increased by one of the following methods:

- 46.1 By the relevant CPI component;
- 46.2 By orders issued by relevant authorities;
- 46.3 Work related allowances will be increased by the percentage increase to the wage rate of the retail worker Level 1. A flat \$ increase will be converted to a percentage using the following formula:

$$\frac{\text{Flat increase}}{\text{Existing Retail Worker Level 1 rate}} \times 100 = \% \text{ increase}$$

PART 10 - ORDINARY HOURS OF WORK

47. HOURS OF WORK

47.1 This clause does not operate to limit or increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.

47.2 Ordinary Hours

47.2.1 Except as provided in sub clause 46.2.2, ordinary hours may be worked, within the following spread of hours:

Monday to Friday, inclusive	7.00 a.m. – 9.00 p.m.
Saturday	7.00 a.m. - 6.00 p.m.
Sunday	9.00 a.m. - 6.00 p.m.

47.2.2 Newsagencies commencement time for ordinary hours of work on each day shall be 5.00 a.m.

In the case of Video Shops as defined and Take Away Food Shops as defined ordinary hours may be worked between 7.00am and 10.00pm Monday to Sunday.

47.2.3 Hours of work on any day must be continuous, except for rest pauses and meal breaks.

47.3 Maximum Hours On a Day

47.3.1 An employee may be rostered to work up to a maximum of 9 hours on any day provided that:

47.3.1.1 An employee may be rostered to work a maximum of 10.5 hours on one day a week;

47.3.1.2 The daily maximums (except in the case of Shift Workers) do not include meal breaks but include rest breaks as part of the daily hours.

47.3.2 A pharmacist graded employee may be rostered to work a maximum of 12 hours. Where a pharmacist is required to remain on the premises during a meal break the period of the meal break shall be included in the calculation of the twelve hours. (See also meal breaks [subclause 53.1.6](#) and [53.1.7](#))

47.3.3 In addition a part time employee may not be rostered to work more than their agreed number of hours on any day.

48. 38 HOUR WEEK ROSTERS

48.1 A fulltime employee shall be rostered for an average of 38 hours per week, worked in any of the following forms:

48.1.1 38 hours in one week;

48.1.2 76 hours in two consecutive weeks;

48.1.3 114 hours in three consecutive weeks; or

48.1.4 152 hours in four consecutive weeks.

48.2 The 38 hour week may be worked in any one of the following methods:

48.2.1 shorter days, that is 7.6 hours;

48.2.2 a shorter day or days each working week;

48.2.3 a shorter fortnight, i.e. four hours off in addition to the rostered day off;

48.2.4 a fixed day off in a four-week cycle;

48.2.5 a rotating day off in a four-week cycle;

48.2.6 an accumulating day off in a four week cycle, with a maximum of five days being accumulated in five cycles.

48.3 In each shop, an assessment shall be made as to which method best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation. An assessment may be initiated by either the employer or employees not more than once a year.

48.4 Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the shop or establishment concerned.

48.5 In retail establishments employing on a regular basis 15 or more employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employee shall not be required to work ordinary hours on more than 19 days in each 4 week cycle.

48.5.1 Where specific agreement exists between an employer and employee, the employee may be worked on the basis of:

48.5.1.1 not more than 4 hours' work on one day in each two week cycle.

48.5.1.2 not more than 6 hours' work on one day in each week.

48.5.1.3 not more than 7.6 hours' work on any day.

48.7 Substitute RDO's

48.7.1 An employer, with the agreement of the majority of employees concerned, may substitute the day or half day an employee is to take off in accordance with 47.2.3, 47.2.4 and 47.2.5, for another day or half day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

48.7.2 By agreement between an employer and an employee, another day may be substituted for the day that employee is to be rostered off.

48.8 Accumulation of RDO's

By agreement between the employer and a worker, the rostered day off may be accumulated up to a maximum of five days in any one year. Such accumulated periods may be taken at times mutually convenient to the employer and the worker.

48.9 A roster period cannot exceed 4 weeks.

48.10 Ordinary hours must be worked on not more than 5 days in each week, provided that if ordinary hours are worked on 6 days in one week, ordinary hours in the following week must be worked on no more than 4 days.

48.11 Ordinary hours must be worked so as to provide an employee with 2 consecutive days off each week or 3 consecutive days off in a 2 week period.

This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.

An employee can terminate the agreement by giving 4 weeks notice to the employer.

48.12 Ordinary hours and any reasonable additional hours may not be worked over more than 6 consecutive days

- 48.13 An employee who regularly works Sundays must be rostered so as to have 3 consecutive days off each 4 weeks and the consecutive days off must include Saturday and Sunday.

This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.

An employee can terminate the agreement by giving 4 weeks notice to the employer.

48.14 Notification of rosters

- 48.14.1 The employer must exhibit staff rosters on a notice board, which must show for each employee:

- the number of ordinary hours to be worked each week;
- the days of the week on which work is to be performed; and
- the commencing and ceasing time of work for each day of the week.

- 48.15 The employer shall retain superseded notices for twelve months. The roster shall, on request, be produced for inspection by an authorised person.

- 48.16 Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.

- 48.17 Any permanent roster change must be provided to the employee in writing with a minimum 7 days notice. Should the employee disagree with the roster change, they shall be given a minimum of 14 days written notice in lieu of 7 days, during which time there shall be discussions aimed at resolving the matter in accordance with **clause XX** - Dispute Settlement Procedure, of this award.

- 48.18 Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster shall be paid at the overtime rate of pay.

- 48.19 An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee shall be entitled to such penalty, loading or benefit as if the roster had not been changed.

49. SUNDAY WORK

- 49.1 The special rate for all work done on Sunday shall be double time.

- 49.2 An employer shall not require any employee to work on a Sunday but an employee may elect to work on a Sunday.

- 49.3 Where an employee genuinely elects to work ordinary hours on a Sunday such election may be either ongoing or temporary.

- 49.4 Where an employee makes an ongoing election to work ordinary hours on Sundays the employees may not subsequently revoke such election.
- 49.5 Where an employee makes a temporary election the employee may not revoke the election during the period of the temporary election but at the end of the period of the temporary election the provision of clause 48.2 shall apply.
- 49.6 Notwithstanding 48.4 and 48.5 an employer may agree to allow an employee to revoke either an ongoing or temporary election at any time.
- 49.7 An election under this clause must be in writing and must state whether it is temporary or ongoing and where temporary must contain a start and finish date.

50. OVERTIME

50.1 Reasonable overtime

- 50.1.1 Subject to clause 49.1.2 an employer may require an employee other than a casual to work reasonable overtime at overtime rates in accordance with the provisions of this clause.
- 50.1.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
- (a) any risk to employee health and safety;
 - (b) the employee's personal circumstances including any family responsibilities;
 - (c) the needs of the workplace or enterprise;
 - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (e) any other relevant matter.

50.2 Overtime applies:

- 50.2.1 Within the ordinary times of beginning and ending work prescribed in XX and in excess of the ordinary number of hours of work prescribed in XX which shall average 38 per week over the period of the roster - time and a half for the first three hours and double time thereafter.
- 50.2.2 Within the ordinary times of beginning and ending work prescribed in XX and in excess of 10.5 hours on one day per week and in excess of nine hours on all other days in the week - time and a half for the first three hours and double thereafter.
- 50.2.3 Outside the ordinary times of beginning and ending work prescribed in XX - double time.
- 50.2.4 On a rostered day off or a day or half day off which accrues under XX, XX, XX and XX - double time.
- 50.3 An employee performing work outside the ordinary times of beginning and ending work prescribed in XX in or in connection with replenishing fixtures while the

shop is not open for trading, or engaged in stocktaking shall be paid time and a half for the first two hours and double time thereafter except on Saturday after 6.00p.m. when the rate shall be double time. For the purpose of computing such overtime each day's work shall stand alone.

50.4 Time off in lieu of payment

50.4.1 Time off in lieu of payment for overtime may be provided if an employee so elects and it is agreed by the employer.

50.4.2 Such time off in lieu must be taken at a mutually convenient time and within four weeks of the overtime being worked or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

50.4.3 Time off in lieu must equate to the overtime rate i.e. if the employee works one hour overtime and elects to take time off in lieu of payment the time off would equal one and a half hours or, where the rate of pay for overtime is double time, two hours.

51. EASTER SUNDAY

51.1 Work on Easter Sunday is voluntary for all employees.

51.2 Employers may seek volunteers for work on Easter Sunday.

51.3 Where an employer requests, employees must advise their employer not less than four weeks before Easter Sunday whether the employee intends not to work on Easter Sunday or whether the employee volunteers to work on Easter Sunday.

51.4 If an employee does not get sufficient employees to volunteer to work on Easter Sunday so as to enable the employer to maintain an adequate staffing of the shop then the employer is entitled to require an employee, who ordinarily works or who may be required to work on a Sunday, to work on Easter Sunday. The requirement for an employee to work on this basis will not be unreasonably required by the employer.

51.5 Where an employee who ordinarily works Sunday elects not to work on Easter Sunday (or where the shop cannot lawfully trade on Easter Sunday) the employee will receive their ordinary hourly rate of pay and not the Sunday penalty rate of pay. The penalty rate of double time will apply to any employee who works on Easter Sunday.

51.6 Roster swapping is permitted by mutual consent of all parties in order to allow adequate staffing of a shop on Easter Sunday.

52. SHIFT WORK

52.1 Application of Clause

52.1.1 This clause shall apply only to persons specifically employed as Shift Workers under this Award.

52.1.2 This clause does not apply to an employee who is employed as a non shift worker and who does additional hours or overtime.

52.2 Shift Work Definition

- 52.2.1 For the purposes of this clause Shift Work means a shift starting at or after 6.00pm on one day and before 5.00am on the following day.
- 52.2.2 Shift work does not include a shift which starts and finishes on the same day within the span of ordinary hours specified in **Clause XX**.
- 52.2.3 All time between the actual commencing time and the actual ceasing time on any shift must count and must be paid for as time worked.

52.3 Rate of Pay for Shift Work

- 52.3.1 Any Shift Work performed between midnight Sunday and Midnight Friday shall be paid at the rate of 130% (155% for casuals) of the ordinary time rate of pay.
- 52.3.2 Any Shift Work performed on a Saturday shall be paid at the rate of 150% (175% for casuals) of the ordinary time rate of pay.
- 52.3.3 Any Shift Work performed on a Sunday shall be paid at the rate of 200% (225% for casuals) of the ordinary time rate of pay.
- 52.3.4 Where an employee elects to work on a public holiday shift within the operation of **clause XX** then the public holiday rate as set out in **clause XX** must be paid for all hours of the shift.
- 52.3.5 For the purposes of this sub-clause, where a shift falls partly on a public holiday, the shift which commences on the public holiday shall be regarded as the public holiday shift. Provided that if the employee elects not to work on a public holiday shift such employee shall be entitled to be absent without loss of pay.
- 52.3.6 Provided that in any shop where it is mutually agreed between an employer and the majority of employees engaged under the provisions of this clause another shift may be substituted for the shift which commences on the holiday as the holiday shift and in such instance the provisions of **Clause XX, Public Holidays** relating to such holiday shall apply only to the day so substituted.

52.4 Rest Pauses and Meal Breaks

Notwithstanding the provision of **clause XX** all rest pauses and meal breaks taken by Shift Workers are paid breaks and form part of the hours of work.

52.5 Age Based Discounted Rates for Shift Workers

The following age based discounted rate percentages apply to Shift Workers under the age of 21 years in lieu of the percentages provided for in **clause XX**

- 52.5.1 At 18 years of age and under 70 per cent.
- 52.5.2 At 19 years of age 80 per cent.
- 52.5.3 At 20 years of age 90 per cent.

52.6 Annual Leave

Shift Workers accrue annual leave entitlements on the basis of 5 weeks annual leave per year.

52.7 General Operation of the Award

Unless specifically modified by or contrary to the operation of this clause all provisions of this award apply to Shift Workers.

52.8 Rosters

52.8.1 Shift Work rosters cannot be varied so as to avoid the provision of the public holiday entitlements of shift workers.

52.8.2 Rosters of shift workers cannot be arranged so as to have the shift worker work both shift work and non shift work in the same week.

53. BANK TRANSACTIONS

An employer must make available upon request an escort or a taxi when an employee is required to attend a banking institution for the purpose of depositing, withdrawing or otherwise handling cash in excess of \$500.00.

54. BREAKS

54.1 Breaks During Work Periods

54.1.1 Breaks shall be given as follows:

Work less than 4 hours	No rest break	No meal break
Work 4 hours or more but less than 5 hours	One 10 minute rest break	No meal break
Work 5 hours or more but less than 7 hours	One 10 minute break	One meal break of at least 45 minutes but not more than 60 minutes.
Work 7 hours or more but less than 9 hours	Two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	One meal break of at least 45 minutes but not more than 60 minutes.
Work 9 hours or more	Two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	Two meal breaks each of at least 45 minutes but not more than 60 minutes.

54.1.2 The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.

54.1.3 An employee cannot be required to take a rest break or meal break within 1 hour of commencing or ceasing of work. An employee cannot be required to take a rest break(s) combined with a meal break.

54.1.4 The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to the roster provisions of this award.

- 54.1.5 Rest breaks are paid breaks and meal breaks (except for shift workers) are unpaid breaks.
- 54.1.6 An employee cannot work more than 5 hours without a meal break. A Pharmacist graded employee who is required to work beyond five hours without a meal break must be paid at time and a half until a meal break is allowed.
- A Pharmacist graded employee who is required to take their meal break on the premises for the purpose of attending to urgent matters requiring the input of a qualified pharmacist, shall be paid at time and a half for the period of the meal break.
- 54.1.7 Notwithstanding the provisions of **XX.1.2 or XX.1.3** an employer and an employee or group of employees may agree to any method or pattern of taking rest breaks and meal breaks, including that meal breaks may be 30 minutes.
- 54.1.8 Any agreement is to be in writing and genuinely made by the employee or employees. The agreement is not to be made for the primary purpose of either avoiding an employer's responsibility under this provision or avoiding an employer's obligation not to employ an employee on 2 shifts on one day. An employee can withdraw from such agreement by giving 4 weeks notice to the employer. This form of agreement cannot be a precondition of employment.

54.2 Breaks Between Work Periods

- 54.2.1 All employees must be granted a 12 hour rest period between the completion of work on one day and the commencement of work on the next day. Work includes any reasonable additional hours or overtime.
- 54.2.2 Where an employee recommences work without having had 12 hours off work then the employee must be paid at double the rate they would be entitled to until such time as they are released from duty for a period of 12 consecutive hours off work without loss of pay for ordinary time hours occurring the period of such absence.
- 54.2.3 By agreement between an employer and an employee or employees the period of 12 hours may be reduced to not less than 10 hours.

55. PENALTY RATES

55.1 Evening Work Monday to Friday (excluding shiftwork)

A loading of 25% shall apply for ordinary hours of work within the span of hours after 6pm.

55.2 Saturday Work (excluding shiftwork)

A loading of 25% shall apply for ordinary hours of work within the span of hours on a Saturday.

55.3 Sunday Work

A 100% loading shall apply for all hours of work on a Sunday. (See **Clause 13.4**)

PART 11 - LEAVE

56. PERSONAL/CARER'S LEAVE

For ease of use this clause contains the National Employment Standard (NES) on personal/carer's leave.

Paid Leave

56.1 An employee is entitled to 10 days of paid personal/carer's leave for each year of service. [NES standard] This is 76 hours for a full time employee (pro-rata for part time employees).

56.2 An employee may take paid personal/carer's leave if the leave is taken:

56.2.1 because the employee is unfit for work because of a personal illness, or personal injury, affecting the employee; or

56.2.2 to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:

- a personal illness, or personal injury, affecting the member; or
- an unexpected emergency affecting the member.

56.3 Personal/carer's leave accrues as follows:

During the first year of employment for the first 6 months, at 12 $\frac{2}{3}$ hours for a fulltime employee (Pro rata for part time employees).

In subsequent years 76 hours at the start of each year for fulltime employees (Pro rata for part time employees).

In the first year of employment, the employee shall be paid for any personal/carer's leave taken during the first six months which was unpaid due to lack of accrual, after 6 months. Such payment will be at the rate applicable to the employee when the unpaid leave was taken.

56.4 An employee shall as soon as reasonably practicable notify the employer of the reason for the personal/carers leave and the approximate period of the absence.

56.5 If requested by the employer, the employee will provide as soon as reasonably practicable:

56.5.1 a Statutory Declaration for more than one single day absence;

56.5.2 a Certificate from a registered health practitioner for any absence which exceeds 3 consecutive days provided that if it is not reasonably practicable to provide a certificate, a Statutory Declaration will suffice;

56.6 If the full period of personal/carers leave is not taken in any year, such portion as is not taken shall, provided an employee remains in the service of the one employer, or any successor of such employer, be cumulative from year to year.

- 56.7 The Act makes it unlawful for an employer to terminate the services of an employee for a reason including the employee's temporary absence from work because of illness or injury.

Unpaid Carer's Leave

- 56.8 Unpaid leave is only available if an employee does not have any accrued paid personal/carer's leave. It is also available to casual employees.
- 56.9 Unpaid leave is available:
- to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
- 56.9.1 a personal illness, or personal injury, affecting the member; or
- 56.9.2 an unexpected emergency affecting the member.
- 56.10 An employee may take unpaid carer's leave for each occasion as:
- 56.10.1 a single continuous period of up to 2 days; or
- 56.10.2 any separate periods to which the employee and employer agree.
- 56.11 Time off in lieu of payment for overtime for caring purpose
- An employee's entitlement to time off in lieu of overtime shall be the entitlement under **29.5.1** of this award.
- 56.12 Make-up time for caring leave purpose
- An employee may elect, with the consent of their employer, to work make-up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- 56.13 Annual leave for caring purpose
- An employee may access their accrued annual leave entitlement instead of unpaid leave.

57. ANNUAL LEAVE

For ease of use this clause contains the National Employment Standard (NES) on annual leave.

- 57.1 An employee is entitled to 4 weeks of paid annual leave for each year of service. [NES standard] This is 152 hours for a full time employee (pro-rata for part time employees).
- 57.2 Annual leave accrues progressively during a year of service based on an employee's ordinary hours. [NES standard].
- 57.3 An employee employed as a Shiftworker or "6 day Baker" is entitled to an extra week of paid annual leave. Broken Hill issue.
- 57.4 Annual Leave shall be taken by mutual agreement between the employer and the employee in varying periods of between 1 day and 4 weeks' duration, provided that

one such period shall be of at least 2 weeks' duration. Where there is no agreement, Annual Leave shall be taken in one period of 4 weeks.

The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave. [NES standard]

57.5 Payment

57.5.1 The employer shall pay each employee in advance, before the commencement of the employee's annual leave, his or her ordinary pay for the leave period.

If the leave is less than one week than payment will be in the normal pay cycle.

57.5.2 In addition, the employer shall pay a loading of 17.5% on the ordinary pay. A shiftworker will also receive payment of the shift loadings for their ordinary hours of work as well as the 17.5% loading.

57.5.3 If an employee's employment ends, the employee will be paid all the accrued annual leave (including for any part of year of service).

57.5.4 Where an employee leaves the employer, the 17.5% loading will be paid on any leave accrued up until the employee's last anniversary date.

57.6 Leave in Advance

An employee and employer may agree to leave being taken in advance of it being accrued by the employee.

If subsequent to taking the leave, the employee leaves the employer without subsequently completing the appropriate accrual period, the employer may deduct the excess paid for annual leave from the remuneration payable to the employee.

57.7 Entitlement Increased or Recredited

Where a public holiday occurs during any period of annual leave taken by an employee, the period of leave will be increased by one day or annual leave recredited for that day.

During a period of paid annual leave, if an employee becomes entitled to personal/carer's leave, compassionate leave, paid safe work leave or community service leave, the employee will be taken to not be on paid annual leave for that period of other leave or absence. Such period will be re-credited to the annual leave accrual of the employee. [NES standard]

57.8. A year of service includes any paid leave/absence or Community leave.

57.9 Annual leave will accrue at a rate of equal of one-twelfth of the employee's ordinary hours worked.

57.10 Baker – Six Shifts

This clause applies to full time employees engaged as bakers who regularly work 6 shifts or 6 periods of duty of 5 hours or more per week (days off and holidays excepted).

57.10.1 An employee who so worked throughout the qualifying year of employment shall be entitled to an additional week's holiday.

57.10.2 An employee who so worked for part of the qualifying year of employment shall be entitled to an additional half day's holiday for each month so worked.

For the purpose of **paragraphs (i) and (ii)**, time spent on Annual Leave which is included in the qualifying year of employment shall be regarded as time so worked provided that the employee has in fact worked for a total of 6 months in that year.

57.10.3 Employees who are entitled to 5 weeks Annual Leave in accordance with this clause shall have the option of either continuing to take 5 weeks Annual Leave or to take 4 weeks Annual Leave and receive a sum equivalent to one week's average weekly earnings payable in December of the relevant year.

57.10.4 In addition to the payments prescribed in this clause, an employee shall receive during a period of Annual Leave a loading of 17½% of the rate for this classification in respect of 4 weeks of such leave or an average rate of pay which shall be calculated by taking the gross wage for the previous 47 or 48 weeks, and dividing the total by 47 or 48, whichever is greater. The average rate of pay shall be in substitution for and not in addition to the 17½% loading and the ordinary wage. The Annual Leave loading or average rate of pay prescribed shall apply to proportionate leave on lawful termination.

Gross wage shall include shift rates, Saturday and Sunday rates but shall not include payments of public holiday rates, overtime payments and laundry and meal allowances.

57.10.5 On termination without completing a full year of service, an employee shall be paid in addition to the amount specified in **Clause 6.2.10(b)** of this Agreement an amount equal to one forth-eighty of his/her ordinary pay for the period he/she so worked.

58. PUBLIC HOLIDAYS

58.1 For the purposes of this award, the following are public holidays:

- New Years Day (**1 January**)
- Australia Day
- Good Friday
- Easter Saturday (except Tasmania)
- Easter Monday
- Anzac Day (**25 April**)
- Queens Birthday (Birthday of Sovereign)*
- Labour Day (8 Hour Day)*
- Christmas Day (**25 December**)
- Boxing Day (Proclamation Day) (**26 December**)

* As observed on dates prescribed in each State or Territory

Permanent employees shall be entitled without loss of pay to all public holidays.

58.2 The following days shall be taken in addition to the days named above, or in lieu of where stated:

Victoria - in addition, Melbourne Cup Day.

Western Australia - in addition, Foundation Day.

Northern Territory - Picnic Day & Show Day as regionally observed

South Australia - in addition, Adelaide Cup, and Picnic Day, Port Pirie.

Tasmania - in lieu of Easter Saturday, Show Day and in addition Hobart Regatta Day (south of Oatlands) or Recreation Day (where Hobart Regatta Day is not observed).

New South Wales - in addition, the first Tuesday of November in any year,.

Australian Capital Territory - in addition, the first Tuesday of November in any year and Canberra Day.

Queensland - in addition Exhibition Day or the appropriate regional show day.

58.3 Where any day other than those referred to in subclauses 58.1 and 58.2 is declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, it shall constitute an additional public holiday for the purposes of this award.

58.4 If under (or in accordance with a procedure under) a law of a State or Territory another day is substituted for a day referred to in subclauses 58.1 or 58.2 the provisions of this clause relating to such public holiday shall apply only to the day so substituted in the State or Territory or region of the State or Territory.

Provided that when Christmas Day, Boxing Day, New Year's Day or Australia Day fall on a Saturday or a Sunday and another day has been substituted in a State or Territory (and no additional day proclaimed*) subclause 58.7 shall apply in the State or Territory.

* "Additional day" includes where an additional public holiday has been declared by or under a law of a State or Territory on 25 December, 26 December, 1 January or 26 January after substitution has occurred. E.g. Boxing Day is substituted to 27 December and an additional public holiday is then declared on 26 December.

58.5 Where a store does not open for trade on a public holiday, and an employee would have been rostered to work on such a day, they shall be entitled to payment for the day based upon their ordinary time earnings for the hours normally rostered to work.

58.6 Where a store opens for trade on a public holiday, employees who would normally be rostered to work may request to work the day or part thereof and shall be paid the appropriate penalty for time so worked. Provided that when an employee chooses not to work they shall be paid in accordance with subclause 58.10.

58.7 This subclause applies in respect of each of the following days –

Christmas Day, Boxing Day, New Year's Day or Australia Day. Where:

(i) a store opens for trade on the actual public holiday;

(ii) the actual public holiday falls on a Saturday or a Sunday; and

- (iii) another day has been substituted in a State or Territory (and no additional day proclaimed);

the following shall apply -

- 58.7.1 If an employee works on the actual public holiday, the employee shall receive the standard public holiday benefits on the actual day.
- 58.7.2 If an employee works on the substituted day and not the actual Public Holiday, the employee shall receive the Public Holiday benefits on the substituted day.

“Actual public holiday” means 25 December, 26 December, 1 January or 26 January as appropriate.

ADDITIONAL CHRISTMAS HOLIDAY LOADING

In the case of Christmas Day where substitution occurs, work on the 25th December will attract an additional loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate and the employee will also be entitled to the benefits of the substituted public holiday.

- 58.8 A full-time employee, or a part time employee working an average of 5 days per week, whose non-working day falls on a public holiday, shall be paid by mutual agreement either
 - 58.8.1 payment of an additional day's wages,
 - 58.8.2 addition of one day to the employee's annual holidays, or
 - 58.8.3 another day may be allowed off with pay to the employee within twenty-eight days after the holiday falls, or during the week prior to the holiday.

A part-time employee shall be entitled to the provisions of (a), (b), and (c) above where the employee works an alternating roster and the public holiday falls on a day on which the employee works in any week of their roster cycle.

For the purpose of this paragraph for full-time employees, "day" shall mean 8 hours. In respect of part-time employees "day" shall mean the average number of hours rostered per day by the employee prior to the public holiday in the 4 week cycle.

- 58.9 All work on a public holiday shall be voluntary.
- 58.10 All full-time and part-time employees who elect to work on a public holiday shall be paid at the rate of 250% of ordinary time earning with a minimum payment as for 3 hours' work.

All casual employees who elect to work on a public holiday shall be paid at the rate of 275% of ordinary time earnings with a minimum payment as for 3 hours' work.

59. TRADE UNION TRAINING LEAVE

- 59.1 A union delegate (shop steward) or duly elected representative shall upon application in writing by the union be granted up to five days' leave with pay each calendar year, non-cumulative, to attend courses conducted or approved by the

Union which are designed to promote good industrial relations and industrial efficiency.

The notice to the employer affected by the leave shall include details of the type and content of the course to be attended and the dates upon which the course is to be conducted.

As far as possible the courses to be attended shall be those most suited to the industrial situation pertaining to the industry.

59.2 Leave shall be granted by the employer on the dates notified by the union but shall be subject to the employee or the union giving not less than one calendar month's notice of the intention to attend such course or such lesser period as may be agreed between the employer, the union and the employee concerned.

Provided that where the leave is to be taken in the four weeks prior to Christmas Day or the five weeks after Christmas Day, in the week prior to or after Easter, in the week prior to Father's Day or Mother's Day, or during an annual or half-yearly sale, the employer may wish that such leave be deferred.

59.3 Except in the case of a new shop opening, only employees who have completed six months' continuous service with their current employer shall be eligible for leave pursuant to this clause.

59.4 Each employee on leave approved in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of the leave. Ordinary time earnings mean the classification rate, supplementary payments (if any), over-award payments, casual loadings, penalty rates (excluding overtime payments to weekly employees) and shift loadings.

59.5 In the event that a day or half day off which accrues under **clause 49** falls within a period of leave granted pursuant to this clause the day or half day off shall be transferred to another week.

59.6 Leave granted will not incur any additional payment to the extent that the course attended coincides with any other period of paid leave granted pursuant to this Award.

59.7 The employer shall not be required to pay the costs of travel to and from the place where such courses are conducted and/or any accommodation costs during such leave.

59.8 Leave of absence granted pursuant to this clause shall count as service for all purposes of the Award.

59.9 For the purposes of this clause the number of employees under this Award in any shop attending courses in any calendar year conducted or approved by the Union shall be :-

Employees in Shop	Number of Representatives
Less than 100	1
100 or more	2

Provided that in the case of multi-level shops, multi department shops and multi shift shops the number of representatives shall be increased as appropriate to ensure appropriate representation.

Provided further that persons who have been elected as Health and Safety Representatives under any relevant State, Territory or Commonwealth legislation shall not be counted as representatives for the purposes of the above calculation.

59.10 Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the course of the nature of the course and their observations on it.

59.11 On completion of the course the employee shall, upon request, provide to the employer proof satisfactory to the employer of his or her attendance at the course.

60. COMPASSIONATE LEAVE

60.1 For ease of use this clause contains the National Employment Standard (NES) on compassionate leave.

60.2 *Compassionate leave is paid leave for all employees except casual employees. It is unpaid leave for casual employees.

60.3 An employee shall on the death of a spouse, parent, foster parent, mother-or father-in-law, sibling, child or stepchild be entitled to 3 days compassionate leave.

An employee shall on the death of a member of the employees immediate family not listed above, or on the death of a member of the employee's household be entitled to 2 days compassionate leave. Immediate family includes grandparent, grandchild, former spouse/defacto and also the grandparent, child or sibling of a spouse/partner or a former spouse/defacto.

60.3.1 Where the death is within the State or Territory in which the employee is employed, an employee shall be granted leave of absence up to and including the day of the funeral. *Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three/two ordinary days' work.

60.3.2 Where the death is outside the State or Territory in which the employee is employed - An employee shall be granted leave of absence for seven calendar days (*of which only three/two days shall be paid) for the purpose of attending the funeral.

60.3.3 Outside Australia - An employee shall be granted leave of absence for 30 calendar days (*of which only three/two days shall be paid) for the purpose of attending a funeral where such occurs outside Australia.

60.4 Proof of such death shall be furnished by the employee to the satisfaction of his/her employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

60.5 In addition to the provisions above, an employee is entitled to a maximum of 2 days Compassionate Leave on each occasion for the purposes of spending time with a person who is a member of the employee's immediate family or household

and has a personal illness or injury that poses a serious threat to his/her life. This leave may be taken as 2 days continuous or broken periods totaling 2 days.

61. BLOOD DONORS

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

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

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

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

62. PARENTAL LEAVE

For ease of use this clause contains the National Employment Standard (NES) on Parental leave.

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

The provisions of this clause apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.

An **eligible casual employee** means a casual employee:

- (a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
- (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this clause, **continuous service** is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

An employer must not fail to re-engage a casual employee because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

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

62.1 Definitions

- 62.1.1 For the purpose of this clause **child** means a child of the employee under school age except for adoption of a child where ‘child’ means a person under school age who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- 62.1.2 Subject to 62.1.3 hereof, in this clause, spouse includes a de facto or former spouse.
- 62.1.3 In relation to 62.5 hereof, **spouse** includes a de facto spouse but does not include a former spouse.

62.2 Basic entitlement

- 62.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- 62.2.2 Subject to 62.3.6 hereof, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 62.2.2(a) for maternity and paternity leave, an unbroken period of up to three weeks at the time of the birth of the child;
- 62.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

62.3 Maternity leave

- 62.3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 62.3.1(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;
- 62.3.1(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.
- 62.3.2 When the employee gives notice under 62.3.1(a) hereof the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 61.3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 62.3.4 Subject to 62.2.1 hereof and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

- 62.3.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 62.3.6 Special maternity leave
- 62.3.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- 62.3.6(b) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- 62.3.6(c) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- 62.3.7 Where leave is granted under 62.3.4 hereof, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

62.4 Paternity leave

- 62.4.1 An employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave, with:
- 62.4.1(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
- 62.4.1(b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- 62.4.1(c) except in relation to leave taken simultaneously with the child's mother under clauses 61.2.2(a), 61.2.2(b) or 61.6.1(a), a statutory declaration stating:
- 62.4.1(c)(i) that he will take the period of paternity leave to become the primary care-giver of a child;
- 62.4.1(c)(ii) particulars of any period of maternity leave sought or taken by his spouse; and
- 62.4.1(c)(iii) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

62.4.2 The employee will not be in breach of 61.4.1 hereof if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

62.5 Adoption leave

62.5.1 The employee will notify the employer at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

62.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

62.5.2(a) except in relation to leave taken simultaneously with the child's other adoptive parent under **clause 61.2.2(b) or clause 61.6.1(a)**, that the employee is seeking adoption leave to become the primary care-giver of the child;

62.5.2(b) particulars of any period of adoption leave sought or taken by the employee's spouse; and

62.5.2(c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

62.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

62.5.4 Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

62.5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

62.5.6 An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

62.6 Right to request

62.6.1 An employee entitled to parental leave pursuant to the provisions of **clause 62** may request the employer to allow the employee:

62.6.1(a) to extend the period of simultaneous unpaid parental leave provided for in **clauses 62.2.2(a) and 62.2.2(b)** up to a maximum of eight weeks;

62.6.1(b) to extend the period of unpaid parental leave provided for in clause 62.2.1 by a further continuous period of leave not exceeding 12 months;

62.6.1(c) 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.

62.6.2 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.

62.6.3 Employee's request and employer's decision to be in writing

The employee's request and the employer's decision made under clauses 62.6.1(b) and 62.6.1(c) must be recorded in writing.

62.6.4 Request to return to work part-time

Where an employee wishes to make a request under clause 30.6.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

62.7 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, where an employee takes leave under clauses 62.2.1 and 62.6.1(b) an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements.

62.8 Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under 61.6.

62.9 Transfer to a safe job

62.9.1 Where an employee is pregnant and, in the opinion of a registered health practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to an appropriate safe job with no other change to the employee's terms and conditions of employment including rate of pay.

An appropriate safe job will have the same ordinary hours of work as the employee's present position. The employee may agree to a different number of ordinary hours.

62.9.2 If the transfer to a safe job is not practicable or there is no safe job available, the employee will take paid no safe job leave for the risk period identified in a medical certificate.

- (1) the entitlement to leave is in addition to any other leave entitlement the employee has; and
- (2) The leave is paid at the employee's base rate of pay for the employee's ordinary hours of work in the risk period
- (3) If the employee's pregnancy ends before the end of the risk period by either the birth of a living child or otherwise than with the birth of a living child, the risk period ends when the pregnancy ends

62.10 Returning to work after a period of parental leave

62.10.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

62.10.2 Subject to clause 62.10.3, an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 62.9 hereof, the employee will be entitled to return to the position they held immediately before such transfer.

62.10.2(a) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

62.10.3 An eligible casual employee who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on parental leave.

62.10.3(a) Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the employer shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.

62.11 Replacement employees

62.11.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

62.11.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

62.12 Communication during Parental leave

62.12.1 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:

- 62.12.1(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- 62.12.1(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- 62.12.2 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.
- 62.12.3 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 61.12.1.

63. EXAMINATION LEAVE

- 63.1 This clause only applies in Community Pharmacy.
- 63.2 A Pharmacy Trainee shall be granted leave with full wages in order to attend the Pharmacy (IV) final examinations.
- 63.3 The amount of such leave shall be sufficient to allow the Pharmacy Trainee:
 - 63.3.1 to proceed to and from the place of examination; and
 - 63.3.2 in addition, allow one clear day for pre-examination study prior to such examination.

64. JURY SERVICE

- 64.1 An employee other than a casual employee required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wage they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- 64.2 An employee shall notify their employer as soon as possible of the date upon which they are required to attend for jury service.
- 64.3 Where requested by the employer, the employee shall give their employer proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

PART 12 - PROCEDURES FOR CONSULTATION, REPRESENTATION AND DISPUTE SETTLEMENT

65. DISPUTE SETTLEMENT PROCEDURE

- 65.1 Issues should be resolved, wherever possible at the level at which they arise.
- 65.2 Each step of the Dispute Settlement Procedure must be followed unless the matter directly relates to the manager specified at that step.

65.3 Nothing contained in this clause precludes an employee or employees from seeking advice from a representative prior to raising the matter with Management.

65.4 If an individual Employee believes the matter is of a personal nature, some steps may be bypassed.

65.4.1 Step 1

A grievance between an Employee and the Employer about matters arising at the workplace should be discussed in the first instance between the Employee and their direct Manager/Supervisor with the joint intent of achieving a satisfactory outcome.

65.4.2 Step 2

If the matter is not resolved, the Employee may then raise the matter with the Store Manager.

65.4.3 Step 3

If the matter is still not resolved, the Employee may then refer the matter to more senior Management.

65.4.4 Step 4

If the matter is still not resolved, either party may refer it to the Australian Industrial Relations Commission (AIRC) for mediation, conciliation and or arbitration.

65.5 At any stage the Employee has the option of enlisting the support of a representative who may be a union representative.

65.6 If arbitration is necessary the AIRC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions in line with the Act which are necessary to make the arbitration effective.

65.7 The decision of the AIRC will bind the parties, subject to either party exercising a right of appeal against the decision.

It is a term of this award that while the grievance resolution procedure is being conducted work shall continue as normal before the matter in dispute arose unless an Employee has a reasonable concern about an imminent risk to his or her health or safety.

65.8 Conduct of the Parties

65.8.1 In order to facilitate this dispute settlement procedure:

65.8.1.1 the Party with the dispute must notify the other Party at the earliest opportunity of the problem;

65.8.1.2 throughout all stages of the procedure all relevant facts must be clearly identified and recorded; and

sensible time limits must be allowed for completion of the various stages of discussion. However, the Parties must co-operate to ensure that the dispute resolution procedure is carried out as quickly as possible.

66. CONSULTATIVE PROCEDURES

66.1 At each establishment covered by this award, the employer and the employees (and their union/s) must establish procedures which enable them to consult about matters arising out of this award or the NES, or any other matters, which assist in achieving and maintaining co-operative workplace relations and mutually beneficial work practices.

66.2 The consultative procedures must be appropriate given the size, structure and needs of the enterprise.

67. NOTICE BOARDS

To facilitate work related communication between employees and their union and/or employee representatives at the workplace, the employer will permit the use of notice boards. The employer retains the right to reject and remove the posting of any material which is not in relation to agreements or award related issues.

68. UNION DELEGATES

68.1 A person elected or appointed as Union Delegate shall, upon notification to the Company, be recognised as the accredited representative of the Union.

68.2 A Union Delegate shall have the right to discuss work related matters of concern of any employee or to convey information relating to the workplace to employees provided that the Union Delegate does not unduly interfere with the work in progress.

68.3 A Union Delegate shall be allowed a reasonable period of time during working hours to interview an authorised official of the Union.

68.4 The period of time is expected to be no greater than half an hour. The time spent in discussions between the Union Delegate and the authorised official shall be devoted to legitimate Union business.

68.5 The Union Delegate shall have access to a telephone to contact a Union officer to progress enquires on behalf of a member on work related matters. The Union Delegate shall be provided with a suitable cupboard and facilities to enable the Union Delegate to keep records, Union circulars and documentation to efficiently carry out Union responsibilities.

68.6 The Union Delegate shall have the right to place notices on notice boards within the store. Provided that such notices are authorised by the Union and deal with legitimate Union matters.

68.7 The Company shall introduce to the Union Delegate, all new employees within their first two days of employment.

69. PARTIES BOUND

70. SAVINGS PROVISIONS/TRANSITIONAL ARRANGEMENTS

70.1 Savings

An employee who has an entitlement to a benefit under the operation of the State or Territory differences provided in this modern award pursuant to the provisions of Section 576T of the Act shall at the end of the period of operation of the State or Territory differences retain the entitlement to the benefit in relation to their employment under this modern award.

70.2 Buy Out of State and Territory Differences

Subject to approval by the AIRC, an employer and all of the employees covered by the modern award and (where an employee is either a member of a union or requests the union to be involved) the union, may genuinely agree to buy out the State and Territory differences provided in the modern award pursuant to S. 576T, and such differences shall not apply to the employer and all of its employees employed under the terms of this modern award.

70.3 Transitional and Other Savings

These items to be included once the award has been finalised. This should occur in 2009, to comprehensively address all issues, including phase in/out of provisions, grandfathering or redlining of provisions and an award by award basis as necessary. Such matters will need to be addressed by the parties involved and include the Commission as appropriate.

SCHEDULE A WAGE RATES – FULL TIME AND PART TIME

Age/ Classification	38 hr weekly rate	Weekday hourly rate	Saturday hourly rate	Weekday nights 6 - 9pm	Sunday hourly rate (200%)	Public Holiday hourly rate (250%)
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Pharmacy Student 1st year

All Ages	\$512.00	\$13.47	\$16.84	\$16.84	\$26.95	\$33.68
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Pharmacy Student 2nd year

All Ages	\$554.00	\$14.58	\$18.22	\$18.22	\$29.16	\$36.45
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Pharmacy Assistant Comp Level 1 <6 months

21 yrs & over	\$593.00	\$15.61	\$19.51	\$19.51	\$31.21	\$39.01
20 yrs	\$533.70	\$14.04	\$17.56	\$17.56	\$28.09	\$35.11
19 yrs	\$474.40	\$12.48	\$15.61	\$15.61	\$24.97	\$31.21
18 yrs	\$400.30	\$10.53	\$13.17	\$13.17	\$21.07	\$26.34
17 yrs	\$326.20	\$8.58	\$10.73	\$10.73	\$17.17	\$21.46
16 yrs & under	\$296.50	\$7.80	\$9.75	\$9.75	\$15.61	\$19.51

Pharmacy Student 3rd year

All Ages	\$596.00	\$15.68	\$19.61	\$19.61	\$31.37	\$39.21
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Retail Worker Level 1 - Pharmacy Assistant Competency Level 1 >6 months - Salon Assistant

21 yrs & over	\$603.00	\$15.87	\$19.84	\$19.84	\$31.74	\$39.67
20 yrs	\$542.70	\$14.28	\$17.85	\$17.85	\$28.56	\$35.70
19 yrs	\$482.40	\$12.69	\$15.87	\$15.87	\$25.39	\$31.74
18 yrs	\$407.00	\$10.71	\$13.39	\$13.39	\$21.42	\$26.78
17 yrs	\$331.70	\$8.73	\$10.91	\$10.91	\$17.46	\$21.82
16 yrs & under	\$301.50	\$7.93	\$9.92	\$9.92	\$15.87	\$19.84

Retail Worker Level 2 - Pharmacy Assistant Competency Level 2

21 yrs & over	\$613.00	\$16.13	\$20.16	\$20.16	\$32.26	\$40.33
20 yrs	\$551.70	\$14.52	\$18.15	\$18.15	\$29.04	\$36.30
19 yrs	\$490.40	\$12.91	\$16.13	\$16.13	\$25.81	\$32.26
18 yrs	\$413.80	\$10.89	\$13.61	\$13.61	\$21.78	\$27.22
17 yrs	\$337.20	\$8.87	\$11.09	\$11.09	\$17.75	\$22.18
16 yrs & under	\$306.50	\$8.07	\$10.08	\$10.08	\$16.13	\$20.16

Pharmacy Student 4th year

All Ages	\$617.00	\$16.24	\$20.30	\$20.30	\$32.47	\$40.59
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Retail Worker Level 3

All Ages	\$624.00	\$16.42	\$20.53	\$20.53	\$32.84	\$41.05
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Retail Worker Level 4 - Pharmacy Assistant Level 3 - Clerical Level 3

All Ages	\$638.00	\$16.79	\$20.99	\$20.99	\$33.58	\$41.97
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Retail Worker Level 5

All Ages	\$658.00	\$17.32	\$21.64	\$21.64	\$34.63	\$43.29
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Retail Worker Level 6 - Pharmacy Assistants/ Clerical Admin Level 4

All Ages	\$665.00	\$17.50	\$21.88	\$21.88	\$35.00	\$43.75
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Advanced Hairdresser

All Ages	\$671.00	\$17.66	\$22.07	\$22.07	\$35.32	\$44.14
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Clerical Admin Level 5

All Ages	\$676.70	\$17.81	\$22.26	\$22.26	\$35.62	\$44.52
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Pharmacy Trainee 2nd half of traineeship

All Ages	\$677.30	\$17.82	\$22.28	\$22.28	\$35.65	\$44.56
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Retail Worker Level 7 - Beauty Therapist

All Ages	\$684.00	\$18.00	\$22.50	\$22.50	\$36.00	\$45.00
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Retail Worker Level 8

All Ages	\$719.00	\$18.92	\$23.65	\$23.65	\$37.84	\$47.30
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Retail Worker Level 9 - Clerical Admin Level 6

All Ages	\$733.00	\$19.29	\$24.11	\$24.11	\$38.58	\$48.22
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Pharmacist

All Ages	\$792.00	\$20.84	\$26.05	\$26.05	\$41.68	\$52.11
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Pharmacist after 1st year

All Ages	\$834.00	\$21.95	\$27.43	\$27.43	\$43.89	\$54.87
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Experienced Pharmacist

All Ages	\$871.00	\$22.92	\$28.65	\$28.65	\$45.84	\$57.30
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Pharmacist IC Grade 1

All Ages	\$892.00	\$23.47	\$29.34	\$29.34	\$46.95	\$58.68
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Pharmacist IC Grade 2

All Ages	\$913.00	\$24.03	\$30.03	\$30.03	\$48.05	\$60.07
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Pharmacist IC Grade 3

All Ages	\$955.00	\$25.13	\$31.41	\$31.41	\$50.26	\$62.83
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Pharmacist Manager Grade 1

All Ages	\$997.00	\$26.24	\$32.80	\$32.80	\$52.47	\$65.59
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Pharmacist Manager Grade 2

All Ages	\$1,038.00	\$27.32	\$34.14	\$34.14	\$54.63	\$68.29
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Pharmacist Manager Grade 3

All Ages	\$1,080.00	\$28.42	\$35.53	\$35.53	\$56.84	\$71.05
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WAGE RATES - CASUALS

Age/ Classification	Full-time weekly rate	Permanent hourly rate	Casual hourly rate (125%)	Saturday hourly rate (150%)	Sunday hourly rate (225%)	Public Holiday hourly rate (275%)
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Pharmacy Student 1st year

All Ages	\$512.00	\$13.47	\$16.84	\$20.21	\$30.32	\$37.05
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Pharmacy Student 2nd year

All Ages	\$554.00	\$14.58	\$18.22	\$21.87	\$32.80	\$40.09
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Pharmacy Assistant Comp Level 1 <6 months

21 yrs & over	\$593.00	\$15.61	\$19.51	\$23.41	\$35.11	\$42.91
20 yrs	\$533.70	\$14.04	\$17.56	\$21.07	\$31.60	\$38.62
19 yrs	\$474.40	\$12.48	\$15.61	\$18.73	\$28.09	\$34.33
18 yrs	\$400.30	\$10.53	\$13.17	\$15.80	\$23.70	\$28.97
17 yrs	\$326.20	\$8.58	\$10.73	\$12.88	\$19.31	\$23.61
16 yrs & under	\$296.50	\$7.80	\$9.75	\$11.70	\$17.56	\$21.46

Pharmacy Student 3rd year

All Ages	\$596.00	\$15.68	\$19.61	\$23.53	\$35.29	\$43.13
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Retail Worker Level 1 - Pharmacy Assistant Competency Level 1 >6 months - Salon Assistant

21 yrs & over	\$603.00	\$15.87	\$19.84	\$23.80	\$35.70	\$43.64
20 yrs	\$542.70	\$14.28	\$17.85	\$21.42	\$32.13	\$39.27
19 yrs	\$482.40	\$12.69	\$15.87	\$19.04	\$28.56	\$34.91
18 yrs	\$407.00	\$10.71	\$13.39	\$16.07	\$24.10	\$29.45
17 yrs	\$331.70	\$8.73	\$10.91	\$13.09	\$19.64	\$24.00
16 yrs & under	\$301.50	\$7.93	\$9.92	\$11.90	\$17.85	\$21.82

Retail Worker Level 2 - Pharmacy Assistant Competency Level 2

21 yrs & over	\$613.00	\$16.13	\$20.16	\$24.20	\$36.30	\$44.36
20 yrs	\$551.70	\$14.52	\$18.15	\$21.78	\$32.67	\$39.93
19 yrs	\$490.40	\$12.91	\$16.13	\$19.36	\$29.04	\$35.49
18 yrs	\$413.80	\$10.89	\$13.61	\$16.33	\$24.50	\$29.95
17 yrs	\$337.20	\$8.87	\$11.09	\$13.31	\$19.97	\$24.40
16 yrs & under	\$306.50	\$8.07	\$10.08	\$12.10	\$18.15	\$22.18

Pharmacy Student 4th year

All Ages	\$617.00	\$16.24	\$20.30	\$24.36	\$36.53	\$44.65
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Retail Worker Level 3

All Ages	\$624.00	\$16.42	\$20.53	\$24.63	\$36.95	\$45.16
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Retail Worker Level 4 - Pharmacy Assistant Level 3 - Clerical Level 3

All Ages	\$638.00	\$16.79	\$20.99	\$25.18	\$37.78	\$46.17
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Retail Worker Level 5

All Ages	\$658.00	\$17.32	\$21.64	\$25.97	\$38.96	\$47.62
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Retail Worker Level 6 - Pharmacy Assistants/Clerical Admin Level 4

All Ages	\$665.00	\$17.50	\$21.88	\$26.25	\$39.38	\$48.13
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Advanced Hairdresser

All Ages	\$671.00	\$17.66	\$22.07	\$26.49	\$39.73	\$48.56
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Clerical Admin Level 5

All Ages	\$676.70	\$17.81	\$22.26	\$26.71	\$40.07	\$48.97
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Pharmacy Trainee 2nd half of traineeship

All Ages	\$677.30	\$17.82	\$22.28	\$26.74	\$40.10	\$49.02
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Retail Worker Level 7 - Beauty Therapist

All Ages	\$684.00	\$18.00	\$22.50	\$27.00	\$40.50	\$49.50
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Retail Worker Level 8

All Ages	\$719.00	\$18.92	\$23.65	\$28.38	\$42.57	\$52.03
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Retail Worker Level 9 - Clerical Admin Level 6

All Ages	\$733.00	\$19.29	\$24.11	\$28.93	\$43.40	\$53.05
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Pharmacist

All Ages	\$792.00	\$20.84	\$26.05	\$31.26	\$46.89	\$57.32
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Pharmacist after 1st year

All Ages	\$834.00	\$21.95	\$27.43	\$32.92	\$49.38	\$60.36
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Experienced Pharmacist

All Ages	\$871.00	\$22.92	\$28.65	\$34.38	\$51.57	\$63.03
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Pharmacist IC Grade 1

All Ages	\$892.00	\$23.47	\$29.34	\$35.21	\$52.82	\$64.55
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Pharmacist IC Grade 2

All Ages	\$913.00	\$24.03	\$30.03	\$36.04	\$54.06	\$66.07
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Pharmacist IC Grade 3

All Ages	\$955.00	\$25.13	\$31.41	\$37.70	\$56.55	\$69.11
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Pharmacist Manager Grade 1

All Ages	\$997.00	\$26.24	\$32.80	\$39.36	\$59.03	\$72.15
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Pharmacist Manager Grade 2

All Ages	\$1,038.00	\$27.32	\$34.14	\$40.97	\$61.46	\$75.12
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Pharmacist Manager Grade 3

All Ages	\$1,080.00	\$28.42	\$35.53	\$42.63	\$63.95	\$78.16
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Part 1—Application and Operation

1. Title

This award is the *Retail Industry Award 2010*.

2. Commencement date

This award commences on 1 January 2010.

3. Definitions

3.1 In this award, unless a contrary intention appears:

Act means the *Workplace Relations Act 1996* (Cth).

Commission means the Australian Industrial Relations Commission or its successor.

Community Pharmacy means any business conducted by the employer in premises:

- that are registered under the relevant State or Territory legislation for the regulation of pharmacies; and
- that are established either in whole or in part for the compounding or dispensing of prescriptions or for vending any medicines or drugs; and
- where other goods may be sold by retail.

Employee has the meaning in the Act.

Employer has the meaning in the Act.

Enterprise award has the meaning in the Act.

NES means the National Employment Standards.

Retail Industry means the sale or hire of goods or services to final consumers for personal or household consumption including:

- Food retailing, supermarket, grocery stores;
- Department stores, clothing and soft goods retailing;
- Furniture, houseware and appliance retailing;
- Recreational goods retailing;
- Personnel and household goods retailing;
- Household equipment repair services;
- Butcher shops;

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- Bakery shops;
- Community pharmacies; and
- Hair and beauty establishments;

but does not include:

- Pharmacies in hospitals and institutions providing an in-patient service;
- Hair and beauty work undertaken in the theatrical, amusement and entertainment industries;
- Retail activities conducted from a manufacturing or processing establishment;
- Warehousing and distribution;
- Restaurants, cafes, hotels and motels; or
- Building, construction, installation, repair and maintenance contractors engaged to perform work at a retail establishment.

Standard rate means the minimum wage for a Retail Employee Level 4 in clause 16. Where an allowance is provided for, on an hourly basis, a reference to **standard rate** means 1/38th of the weekly wage referred to above.

Take away food means all work in or in connection with the receipt of orders for and/or preparation and/or sale and/or delivery of:

- Meals, snacks and/or beverages, which are sold to the public primarily for take away; and/or;
- Take away foods and beverages packaged sold or served in such a manner as to allow their being taken from the point of distribution to be consumed elsewhere should the customer so decide; and/or
- Food and/or beverages in food courts and/or in shopping centres and/or in retail complexes, excluding coffee shops, cafes, bars and restaurants providing primarily a sit down service in other than food courts of shopping centres and retail complexes.

Video shop means any business conducted by the employer in premises where the primary function is the hire of videos, DVDs or electronic games to the public.

3.2 Where this award refers to a condition of employment provided for in the NES the NES definition applies.

4. Coverage of this award and parties bound

This award applies throughout Australia to all employers engaged in the retail industry with respect to their employees engaged in the classifications contained in this award and to those employees to the exclusion of any other modern award. However, the award does not apply to an employee excluded from award coverage by the Act.

The award is binding on the employees and employers to whom it applies but does not bind an employer who is bound by an enterprise award with respect to an employee to whom the enterprise award applies.

5. The National Employment Standards and this award

The [NES](#) and this award combine to form the minimum conditions of employment for employees covered by this award.

6. Access to award

The employer must ensure that a copy of this award is accessible to all employees to whom it applies on a noticeboard which is conveniently located at or near the workplace or through electronic means.

7. Award flexibility

7.1 Notwithstanding any other provision of this award an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee will have genuinely made the agreement without coercion or duress.

7.3 The agreement between the employer and the individual employee will:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment.

7.4 For the purposes of clause 7.3(b) the agreement will be taken not to disadvantage the individual employee in relation to the individual employee's terms and conditions of employment if:

- (a) the agreement does not result, on balance, in a reduction in the overall terms and conditions of employment of the individual employee under this award and any applicable agreement made under the Act, as those instruments applied as

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at the date the agreement commences to operate; and

- (b) the agreement does not result in a reduction in the terms and conditions of employment of the individual employee under any other relevant laws of the Commonwealth or any relevant laws of a State or Territory.

7.5 The agreement between the employer and the individual employee will also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

7.6 The employer will give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.7 The agreement may be terminated:

- (a) by the employer or the individual employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

7.8 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation

8.1 Employer to notify

- (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employee who may be affected by the proposed changes and their union.
- (b) **Significant effects** include termination of employment, major changes in 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 provisions for alteration of any of the matters referred to herein an alteration will be deemed to not have significant effect.

8.2 Employer to discuss change

- (a) The employer must discuss with the employees affected and their union, inter alia, the introduction of the changes referred to in clause 8.1 of this award and the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and will give prompt consideration to matters raised by the employees and/or their union in relation to the change.
- (b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1 of this award.
- (c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer will not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

9. Dispute resolution

- 9.1** In the event of a dispute in relation to a matter arising under this award, or the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties must endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute in relation to a matter arising under this award is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
- 9.3** The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted work must continue normally unless an employee has a reasonable concern about an imminent risk to his

or her health or safety. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform other available work, whether at the same or another workplace that is safe and appropriate for the employee to perform.

Part 3—Employment and Termination of Employment

10. Employment categories

10.1 Employees under this award will be employed in one of the following categories:

- Full-time employees; or
- Part-time employees; or
- Casual employees.

10.2 At the time of engagement an employer will inform each employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

11. Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week.

12. Part-time employees

12.1 A part-time employee is an employee who:

- (a) works less than 38 hours per week; and
- (b) has reasonably predictable hours of work.

12.2 At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:

- the hours worked each day;
- which days of the week the employee will work;
- the actual starting and finishing times of each day;
- variation will be in writing;
- minimum daily engagement is three hours;
- all time worked in excess of agreed hours is paid at the overtime rate; and
- the times of taking and the duration of meal breaks.

12.3 Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.

- 12.4** The agreement and variation to it will be retained by the employer and a copy given by the employer to the employee.
- 12.5** An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- 12.6** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.
- 12.7** A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

12.8 Rosters

- (a) A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of seven days or in the case of an emergency, 48 hours, by the employer to the employee.
- (b) Rosters will not be changed from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.

12.9 Award entitlements

A part-time employee will be entitled to payments in respect of annual leave, public holidays, personal/carer's leave and compassionate leave arising under the NES or this award on a proportionate basis. Subject to the provisions contained in this clause all other provisions of the award relevant to full-time employees will apply to part-time employees.

12.10 Conversion of existing employees

No full-time or casual employee will be transferred by an employer to part-time employment without the written consent of the employee. Provided that where such transfer occurs all leave entitlements accrued will be deemed to be continuous. A full-time employee who requests part-time work and is given such work may revert to full-time employment on a specified future date by agreement with the employer and recorded in writing.

13. Casual employment

- 13.1** A casual employee is an employee engaged as such and who does not have an expectation or entitlement to reasonably predictable hours of work.
- 13.2** A casual will be paid both the actual hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee.
- 13.3** Casual employees will be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.
- 13.4** The minimum daily engagement of a casual is three hours.

14. Termination of employment

14.1 Notice of termination is provided in the NES. This clause contains additional provisions.

14.2 Notice of termination by an employee:

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer has the right to withhold pay to a maximum amount equal to the amount the employee would have received under the terms of the NES.

14.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

15. Redundancy

15.1 Redundancy is provided for in the NES, mainly in Subdivision B – *Redundancy pay* of Division 10.

15.2 In this clause small employer means an employer to whom Subdivision B – *Redundancy pay* of Division 10 of the NES does not apply because of the provisions of s.62(1)(b) of the NES.

15.3 Redundancy pay – employees of a small employer

Despite the terms of s62(1)(b) of the NES, the remaining provisions of Subdivision B – *Redundancy pay* of Division 10 of the NES apply in relation to an employee of a small employer as defined in clause 15.2 above except that the amount of redundancy pay to which such an employee may be entitled in respect of continuous service from 1 January 2010 must be calculated in accordance with the following table:

Period of continuous service	Severance pay
Less than 1 year	Nil
At least 1 year but less than 2 years	4 weeks' pay
At least 2 years but less than 3 years	6 weeks' pay
At least 3 years but less than 4 years	7 weeks' pay
At least 4 years and over	8 weeks' pay

15.4 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may at the employer's option,

make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

15.5 Employees leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice. The employee will be entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but will not be entitled to payment instead of notice.

15.6 Job search entitlement

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or he or she is not entitled to receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (c) This entitlement applies instead of clause 15.6.

Part 4—Classification and Wage Rates

16. Minimum weekly wages

Classifications	Per week
	\$
Level 1	600.00
Level 2	615.00
Level 3	630.00
Level 4	637.60
Level 5	665.00
Level 6	675.00
Level 7	710.00
Level 8	740.00
Level 9	793.00
Level 10	871.00
Level 11	892.00

Level 12 997.00

17. Classifications

- 17.1** The definitions for the above classifications are contained in Schedule A of this award.
- 17.2** All employees covered by this award must be classified according to the structure set out in Schedule A. Employers must advise their employees in writing of their classification and of any changes to their classification.
- 17.3** The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

18. Junior rates

Junior employees will be paid the following percentage of the appropriate wage rate in clause 16:

Age	% of adult amount of pay
Under 16 years of age	45
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

19. Apprentices

- 19.1** The minimum award rates of pay for apprentices completing a four year apprenticeship are:

Year of apprenticeship	% Retail employee Level 4
1st year	50
2nd year	60
3rd year	80
4th year	90

- 19.2** The minimum award rates of pay for apprentices completing a three year apprenticeship are:

Year of apprenticeship	% Retail employee Level 4
1st year	50
2nd year	60
3rd year	80
4th year	100

- 19.3** The minimum award rates of pay for university degree students are:

Year of study	% Retail employee Level 9
1st year	65
2nd year	70
3rd year	75
4th year	80

20. Superannuation

20.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, the superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

20.2 Employer contributions

An employer will make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

20.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the wages of the employee into the same superannuation fund as the employer makes the superannuation contributions

provided for in clause 20.2.

- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer will pay the amount authorised under clauses 20.3(a) or 20.3(b) at the same time as the employer makes the superannuation contributions provided for in clause 20.2.

20.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer will make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) to the Retail Employees Superannuation Trust (REST).

20.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer will also make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b):

(a) Paid leave

While the employee is on any paid leave.

(b) Work related injury or illness

For the period of absence from work (subject to a maximum of 52 weeks in total) of the employee due to work related injury or work related illness provided that:

- (i) the employee is receiving workers' compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements; and
- (ii) the employee remains employed by the employer.

21. Payment of wages

Wages will be paid weekly or fortnightly according to the actual hours worked each week or fortnight or may be averaged over a period of a fortnight.

22. Supported wage

Supported wage arrangements for employees with a disability are contained in [Schedule B](#) of this award.

23. Training wage

Training wage arrangements will be attached as a schedule to this award.

24. Allowances

24.1 Meal allowances

- (a) An employee required to work more than one hour of overtime without being given 24 hours notice after the employee's ordinary time of ending work will be either provided with a meal break or paid a meal allowance of 2.1% of the standard rate. Where such overtime work exceeds four hours a further meal allowance will be paid.
- (b) No meal allowance will be payable where any employee could reasonably return home for a meal within the period allowed.

24.2 Special clothing reimbursement

- (a) Where the employer requires an employee to wear any protective or special clothing such as a uniform dress or other clothing then the employer will reimburse the employee for any cost of purchasing such clothing and the cost of replacement items, when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer.
- (b) Where an employee is required to launder any special uniform, dress or other clothing, the employee will be paid an allowance of 0.98% of the standard rate per garment per week.

24.3 Excess travelling costs

Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional transport costs so incurred will be reimbursed by the employer.

24.4 Travelling time reimbursement

- (a) An employee who on any day is required to work at a place away from his/her usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from his/her home to his/her usual place of employment and returning), will be paid travelling time and also any fares reasonably incurred in excess of those normally incurred in travelling between his/her home and his/her usual place of employment.
- (b) Where the employer provides transport from a pick up point, an employee will be paid travelling time for all time spent travelling from such pick up point and return thereto.
- (c) The rate of pay for travelling time will be the ordinary time rate except on Sundays and holidays when it will be time and half.

25. Transfer of employee reimbursement

Where any employer transfers an employee from one township to another, the employer will be responsible for and will pay the whole of the moving expenses, including fares and transport charges, for the employee and family.

25.1 Transport allowance

Where an employer requests an employee to use his/her own motor vehicle in the performance of his/her duties such employee will be paid an allowance of 0.1% of the standard rate per kilometre.

25.2 Transport of employees reimbursement

(a) Where an employee commences and/or ceases work after 10.00pm on any day or prior to 7.00am on any day and the employee's regular means of transport is not available and the employee is unable to arrange his/her own alternative transport, the employer will reimburse the employee for the cost of a taxi fare from the place of employment to the employee's usual place of residence. This will not apply if the employer provides or arranges proper transportation to and or from the employee's usual place of residence, at no cost to the employee.

(b) Provided always that an employee may elect to provide his or her own transport.

(c) Provided further that this clause will not apply to employees engaged under the provisions of shift work.

25.3 Cold work disability allowance

25.4 Employees principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages such as dairy cases or freezer cabinets will be paid an allowance per hour, while so employed, of 1.3% of the standard rate.

25.5 An employee required to work in a cold chamber where the temperature is below 0°C will be paid an allowance per hour, while so employed, of 2% of the standard rate.

25.6 Bicycle and motorcycle allowance

An employee required to provide:

(a) A bicycle will be paid a weekly allowance of 1.67% of the standard rate; or

(b) A motorcycle will be paid a weekly allowance of 5% of the standard rate.

25.7 First aid allowance

Where an employee who holds an appropriate first aid qualification is appointed by the employer to perform first aid duty they will be paid an extra of 1.3% of the standard rate each week.

25.8 Language allowance

Employees employed by a shop to speak a language in addition to English for the purpose of making sales in the shop will be paid an allowance of 1.8% of the standard rate.

25.9 Tool allowance

- (a) The employer will reimburse the employee for the cost of all electrical equipment necessary for carrying out his or her work. This provision does not apply where electrical equipment is provided at the employer's expense.
- (b) Where an employee is required to use his or her own tools the employer will pay a tool allowance of 1.25% of the standard rate per week.

25.10 Recall allowance

Unless otherwise agreed an employee recalled to work for any reason, before or after completing their normal roster or on a day in which they did not work, will be paid at the appropriate rate for all hours worked with a minimum of three hours on each occasion.

The time worked will be calculated from the time the employee leaves home until the time they return home.

25.11 Liquor licence

An employee who holds a liquor licence under a relevant State or Territory law will be paid an extra 3.1% of the standard rate per week.

25.12 Higher duties

Employees engaged for more than two hours during one day or shift on duties carrying a higher rate than their ordinary classification are to be paid the higher rate for such day or shift. If engaged for two hours or less during one day or shift, the employee is to be paid the higher rate for the time worked only.

Part 5—Ordinary Hours of Work

26. Hours of work

26.1 This clause does not operate to limit or increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.

26.2 Ordinary hours

- (a) Except as provided in clause 26.2(b), ordinary hours may be worked, within the following spread of hours:

Days	Spread of Hours
Monday to Friday, inclusive	7.00am – 9.00pm
Saturday	7.00am - 6.00pm
Sunday	9.00am - 6.00pm

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- (b) Provided that:
 - (i) the commencement time for ordinary hours of work for newsagencies on each day may be from 5.00am and for butcher activities from 4.00am; and
 - (ii) the finishing time for ordinary hours for Video Shops, Take Away Food Shops and Pharmacies may be until 12 midnight.
- (c) Hours of work on any day will be continuous, except for rest pauses and meal breaks.

26.3 Maximum hours on a day

- (a) An employee, other than a pharmacist, may be rostered to work up to a maximum of 10 hours on any day.
- (b) A pharmacist may be rostered to work a maximum of 12 hours. Where a pharmacist is required to remain on the premises during a meal break the period of the meal break will be included in the calculation of the twelve hours.
- (c) A part time employee may not be rostered to work more than their agreed number of hours on any day.

27. 38 hour week rosters

27.1 A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:

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

27.2 The 38 hour week may be worked in any one of the following methods:

- (a) shorter days, that is 7.6 hours;
- (b) a shorter day or days each working week;
- (c) a shorter fortnight, i.e. four hours off in addition to the rostered day off;
- (d) a fixed day off in a four-week cycle;
- (e) a rotating day off in a four-week cycle; or
- (f) an accumulating day off in a four week cycle, with a maximum of five days being accumulated in five cycles.

27.3 In each shop, an assessment will be made as to which method best suits the business

and the proposal will be discussed with the employees concerned, the objective being to reach agreement on the method of implementation. An assessment may be initiated by either the employer or employees not more than once a year.

27.4 Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the shop or establishment concerned.

27.5 In retail establishments employing on a regular basis 15 or more employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employee will not be required to work ordinary hours on more than 19 days in each 4 week cycle.

27.6 Where specific agreement exists between an employer and employee, the employee may be worked on the basis of:

- (a) not more than 4 hours' work on one day in each two week cycle;
- (b) not more than 6 hours' work on one day in each week; or
- (c) not more than 7.6 hours' work on any day.

27.7 Substitute Rostered Days Off (RDOs)

- (a) An employer, with the agreement of the majority of employees concerned, may substitute the day or half day an employee is to take off in accordance with a roster arrangement for another day or half day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
- (b) By agreement between an employer and an employee, another day may be substituted for the day that employee is to be rostered off.

27.8 Accumulation of RDOs

By agreement between the employer and an employee, the rostered day off may be accumulated up to a maximum of five days in any one year. Such accumulated periods may be taken at times mutually convenient to the employer and the employee.

27.9 A roster period cannot exceed four weeks.

27.10 Ordinary hours will be worked on not more than five days in each week, provided that if ordinary hours are worked on six days in one week, ordinary hours in the following week will be worked on no more than four days.

27.11 Consecutive days off

- (a) Ordinary hours will be worked so as to provide an employee with two consecutive days off each week or three consecutive days off in a two week period.
- (b) This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an

employee make such a request.

- (c) An employee can terminate the agreement by giving four weeks notice to the employer.

27.12 Ordinary hours and any reasonable additional hours may not be worked over more than six consecutive days

27.13 Employees regularly working Sundays

- (a) An employee who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.
- (b) This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.
- (c) An employee can terminate the agreement by giving four weeks notice to the employer.

27.14 Notification of rosters

- (a) The employer will exhibit staff rosters on a notice board, which will show for each employee:
 - (i) the number of ordinary hours to be worked each week;
 - (ii) the days of the week on which work is to be performed; and
 - (iii) the commencing and ceasing time of work for each day of the week.
- (b) The employer will retain superseded notices for twelve months. The roster will, on request, be produced for inspection by an authorised person.
- (c) Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.
- (d) Any permanent roster change will be provided to the employee in writing with a minimum 7 days notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice in lieu of 7 days, during which time there will be discussions aimed at resolving the matter in accordance with clause 9 - *Dispute resolution*, of this award.
- (e) Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.
- (f) An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances

arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.

28. Sunday work

- 28.1** The special rate for all work done on Sunday will be 200%.
- 28.2** An employer will not require any employee to work on a Sunday but an employee may elect to work on a Sunday.
- 28.3** Where an employee genuinely elects to work ordinary hours on a Sunday such election may be either ongoing or temporary.
- 28.4** Where an employee makes an ongoing election to work ordinary hours on Sundays the employee may not subsequently revoke such election.
- 28.5** Where an employee makes a temporary election the employee may not revoke the election during the period of the temporary election but at the end of the period of the temporary election the provision of clause 28.2 will apply.
- 28.6** Notwithstanding 28.4 and 28.5 an employer may agree to allow an employee to revoke either an ongoing or temporary election at any time.
- 28.7** An election under this clause will be in writing and will state whether it is temporary or ongoing and where temporary will contain a start and finish date.
- 28.8** Work on Easter Sunday is voluntary for all employees.
- 28.9** Roster swapping is permitted by mutual consent of all parties in order to allow adequate staffing of a shop on Easter Sunday.

29. Overtime

29.1 Reasonable overtime

- (a)** Subject to clause 29.1(b) an employer may require an employee other than a casual to work reasonable overtime at overtime rates in accordance with the provisions of this clause.
- (b)** An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
- (i)** any risk to employee health and safety;
 - (ii)** the employee's personal circumstances including any family responsibilities;
 - (iii)** the needs of the workplace or enterprise;
 - (iv)** the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (v)** any other relevant matter.

29.2 Overtime and penalty rates

(a) Hours worked in excess of the ordinary number of hours of work prescribed in clause 27.1 are to be paid at 150% for the first three hours and 200% thereafter.

(b) Evening work Monday to Friday (excluding shiftwork)

A loading of 25% will apply for ordinary hours of work within the span of hours after 6.00pm.

(c) Saturday work (excluding shiftwork)

A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday.

(d) Sunday work

A 100% loading will apply for all hours of work on a Sunday.

29.3 Time off in lieu of payment

(a) Time off in lieu of payment for overtime may be provided if an employee so elects and it is agreed by the employer.

(b) Such time off in lieu will be taken at a mutually convenient time and within four weeks of the overtime being worked or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

(c) Time off in lieu will equate to the overtime rate i.e. if the employee works one hour overtime and elects to take time off in lieu of payment the time off would equal one and a half hours or, where the rate of pay for overtime is 200%, two hours.

30. Shift work

30.1 Application of clause

(a) This clause will apply only to persons specifically employed as shift workers under this award.

(b) This clause does not apply to an employee who is employed as a non shift worker and who does additional hours or overtime.

30.2 Shift work definition

(a) For the purposes of this clause **shift work** means a shift starting at or after 6.00pm on one day and before 5.00am on the following day.

(b) Shift work does not include a shift which starts and finishes on the same day within the span of ordinary hours specified in this award.

(c) All time between the actual commencing time and the actual ceasing time on

any shift will count and will be paid for as time worked.

30.3 Rate of pay for shift work

- (a) Any shift work performed between midnight Sunday and midnight Friday will be paid at the rate of 130% (155% for casuals) of the ordinary time rate of pay.
- (b) Any shift work performed on a Saturday will be paid at the rate of 150% (175% for casuals) of the ordinary time rate of pay.
- (c) Any shift work performed on a Sunday will be paid at the rate of 200% (225% for casuals) of the ordinary time rate of pay.
- (d) Where an employee elects to work on a public holiday shift then the provisions set out in clause 34.3 will apply for all hours of the shift.
- (e) For the purposes of this clause, where a shift falls partly on a public holiday, the shift which commences on the public holiday will be regarded as the public holiday shift. Provided that if the employee elects not to work on a public holiday shift such employee will be entitled to be absent without loss of pay.
- (f) Provided that in any shop where it is mutually agreed between an employer and the majority of employees engaged under the provisions of this clause another shift may be substituted for the shift which commences on the holiday as the holiday shift and in such instance the provisions of clause 34.3 relating to such holiday will apply only to the day so substituted.

30.4 Rest breaks and meal breaks

Notwithstanding the provision of clause 31.1(a) all rest pauses and meal breaks taken by shift workers are paid breaks and form part of the hours of work.

30.5 General operation of the award

Unless specifically modified by or contrary to the operation of this clause all provisions of this award apply to shift workers.

30.6 Rosters

- (a) Shift work rosters cannot be varied so as to avoid the provision of the public holiday entitlements of shift workers.
- (b) Rosters of shift workers cannot be arranged so as to have the shift worker work both shift work and non shift work in the same week.

31. Breaks

31.1 Breaks during work periods

- (a) Breaks will be given as follows:

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Hours worked	Rest break	Meal break
Work less than 4 hours	No rest break	No meal break
Work 4 hours or more but less than 5 hours	One 10 minute rest break	No meal break
Work 5 hours or more but less than 7 hours	One 10 minute rest break	One meal break of at least 30 minutes but not more than 60 minutes.
Work 7 hours or more but less than 10 hours	Two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	One meal break of at least 30 minutes but not more than 60 minutes.
Work 10 hours or more	Two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	Two meal breaks each of at least 30 minutes but not more than 60 minutes.

- (b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- (c) An employee cannot be required to take a rest break or meal break within 1 hour of commencing or ceasing of work. An employee cannot be required to take a rest break(s) combined with a meal break.
- (d) The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to the roster provisions of this award.
- (e) Rest breaks are paid breaks and meal breaks (except for shift workers) are unpaid breaks.
- (f) An employee cannot work more than 5 hours without a meal break. A Pharmacist graded employee who is required to work beyond five hours without a meal break will be paid at 150% until a meal break is allowed.
- (g) A Pharmacist graded employee who is required to take their meal break on the premises for the purpose of attending to urgent matters requiring the input of a qualified pharmacist, will be paid at 150% for the period of the meal break.

31.2 Breaks between work periods

- (a) All employees will be granted a 12 hour rest period between the completion of work on one day and the commencement of work on the next day. Work includes any reasonable additional hours or overtime.
- (b) Where an employee recommences work without having had 12 hours off work

then the employee will be paid at double the rate they would be entitled to until such time as they are released from duty for a period of 12 consecutive hours off work without loss of pay for ordinary time hours occurring the period of such absence.

- (c) By agreement between an employer and an employee or employees the period of 12 hours may be reduced to not less than 10 hours.

Part 6—Leave and Public Holidays

32. Annual leave

32.1 Annual leave is dealt with in Division 5 of the NES. This clause contains additional and supplementary provisions.

32.2 Definition of shift worker

For the purpose of the additional week of annual leave provided for in the NES, a “shift worker” is a seven day shift worker who is regularly rostered to work on Sundays and public holidays.

32.3 Annual leave loading

During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 16 of this award. Annual leave loading payment is payable on leave accrued.

The loading will be as follows:

- (a) Day work: Employees who would have worked on day work only had they not been on leave – 17 ½ per cent or the relevant weekend penalty rates, whichever is the greater but not both.
- (b) Shift work: Employees who would have worked on shift work had they not been on leave – a loading of 17 ½ per cent or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.

32.4 Paid leave in advance of accrued entitlement

An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued. Where paid leave has been granted to an employee in excess of the employee’s accrued entitlement, and the employee subsequently leaves or is discharged from the service of the employer before completing the required amount of service to account for the leave provided in advance, the employer is entitled to deduct the amount of leave in advance still owing from any remuneration payable to the employee upon termination of employment.

33. Personal/Carer's leave and compassionate leave for casual employees

- 33.1** Personal carer's leave and compassionate leave are dealt with in Division 6 of the NES. This clause contains an additional provision.
- 33.2** Casual employees are entitled to be not available for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency.
- 33.3** Such leave is unpaid. A minimum of 48 hours absence is allowed by right with additional absence by agreement.
- 33.4** An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.

34. Public Holidays

- 34.1** Public holidays are dealt with in Division 9 of the NES. This clause contains a supplementary provision.
- 34.2** An employer and the employee may by agreement substitute another day for a public holiday. Where there is no agreement the employer may substitute another day but not so as to give an employee less time off work than the employee would have had if the employee had received the public holiday.
- 34.3** Work on a public holiday must be compensated by either:
- (a) payment at the rate of 250%;
 - (b) an equivalent day or equivalent time off in lieu without loss of pay; or
 - (c) an additional day or equivalent time as annual leave.

Part 7—Transitional Provisions

35. Savings and transitional arrangements

- 35.1** The making of this award will not result in the rate of pay of any existing employee being reduced below the level of pay in an award or NAPSAs that applies to the employee immediately before this award comes into effect.
- 35.2** Notwithstanding the provisions of this award an employer will not be required to increase the rate of pay of any existing classification of employee by more than 5% per year above the level of safety net adjustments in any year. An employer utilising this provision must increase the rate of pay by 5% on 1 January 2010 and on each subsequent year until the rate of pay reaches the award rate.

Schedule A—Classifications

Retail Employee Level 1

An employee performing one or more of the following functions in or in connection with a retail establishment:

- the receiving and preparation for sale and or display of goods in or about any shop;
- the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale;
- the display, shelf filling, replenishing or any other method of exposure or presentation for sale of goods;
- the sale or hire of goods by any means;
- the receiving, arranging or making payment by any means;
- the recording by any means of a sale or sales;
- the wrapping or packing of goods for despatch and the despatch of goods;
- the delivery of goods;
- window dressing and merchandising;
- loss prevention;
- demonstration of goods for sale;
- the provision of information , advice and assistance to customers;
- the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods;
- the preparation and sale of meals, snacks and/or beverages which are sold to the public primarily to take away;
- the preparation and/or sale of take away food and/or beverages in food courts in shopping centres;
- all directly employed persons engaged in retail stores in cleaning, store greeting, security, lift attending, store cafeterias and food services;
- persons engaged as a pharmacy assistant with a competency level 1 or who is in the first 6 months of acquiring competencies for a Certificate I in Community Pharmacy;
- a short term apprentice hairdresser, or a nail technician, or a make-up artist, or a salon assistant;
- Clerical Assistants Level 1 functions; or
- work which is incidental to or in or in connection with any of the above.

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Retail Employees will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning. The cleaning of toilets is not incidental cleaning except in the case of a Take Away Food establishment.

Indicative job titles which are usually within the definition of a Retail Employee Level 1 are:

- Shop Assistant,
- Pharmacy Assistant,
- Clerical Assistant,
- Check-out Operator,
- Store Worker,
- Reserve Stock Hand,
- Driver,
- Boot / Shoe Repairer (Not Qualified),
- Window Dresser (Not Qualified),
- LPO,
- Photographic Employee,
- Store Greeter,
- Assembler,
- Ticket Writer (Not Qualified),
- Trolley Collectors,
- Video Hire Worker,
- Fast Food Worker,
- Boot/Shoe Repairer (Not Qualified),
- Take Away Food Delivery Driver,
- Telephone Order Salesperson,
- Door-to-door Salesperson, and,
- Demonstrator and/or Merchandiser not elsewhere classified (including a Demonstrator and/or Merchandiser who is not a direct employee of the retailer).

Clerical Assistant Level 1 means employees accountable for clerical and office tasks as directed within the skill levels set out.

Employees at this level may include the initial recruit who may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.

Such employees perform routine clerical and office functions requiring an understanding of clear, straightforward rules or procedures and may be required to operate certain office equipment. Problems can usually be solved by reference to established practices, procedures and instructions.

Employees at this level are responsible and accountable for their own work within established routines, methods and procedures and the less experienced employee's work may be subject to checking at all stages. The more experienced employee may be required to give assistance to less experienced employees in the same classification.

Indicative typical duties and skills at this level may include:

- reception/switchboard, e.g. directing telephone callers to appropriate staff, issuing and receiving standard forms, relaying internal information and initial greeting of visitors;
- maintenance of basic records;
- filing, collating, photocopying, etc;
- handling or distributing mail including messenger service;
- recording, matching, checking and batching of accounts, invoices, orders, store requisitions, etc, or
- the operation of keyboard and other allied equipment in order to achieve competency as prescribed in Level 2.

Pharmacy Assistant Competency Level 1 is an employee who has commenced employment in a community pharmacy and is in the process of acquiring the competencies listed for a holder of Certificate I in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.

Retail Employee Level 2

An employee performing work in or in connection with a retail establishment at a higher skill level than a Retail Employee Level 1

Indicative job titles which are usually within the definition of a Retail Employee Level 2 include:

- Forklift Operator,
- Ride on Equipment Operator,
- Slicer,
- Small goods maker in a butcher shop,
- Pharmacy Assistant Competency Level 2, or
- Electrologist Level 2.

Electrologist Level 2 means a person who has completed an accredited Electrologists Course.

Pharmacy Assistant Competency Level 2 is an employee who has acquired the competencies listed for a holder of Certificate II in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.

Retail Employee Level 3

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 2.

Indicative of the tasks which might be required at this level are the following:

- Supervisory assistance to a designated section manager or team leader,
- Opening and closing of premises and associated security,
- Security of cash, or
- Fitting of surgical corset.

Indicative job titles which are usually within the definition of a Retail Employee 3 include:

- Machine operators,
- 2IC to Dept Manager,
- Senior Salesperson,
- Corsetiere,
- Driver Selling Stock,
- Cook (Not Qualified) in a cafeteria,
- Senior LPO, including an armed LPO,
- LPO Supervisor,
- Minilab Operator,
- Designated second-in-charge of a section (i.e. senior sales assistant),
- Designated second-in-charge to a service supervisor,
- Person employed alone, with responsibilities for the security and general running of a shop, or
- Boner.

Retail Employee Level 4

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 3.

Indicative of the tasks which might be required at this level are the following:

- Management of a defined section/department,
- Supervision of up to 2 sales staff (including self),

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- Stock control,
- Buying/ordering requiring the exercise of discretion as to price, quantity, quality etc.,
- An employee who is required to utilise the skills of a trades qualification for the majority of the time in a week, or
- Clerical Officer Level 2 functions.

Indicative job titles which are usually within the definition of a Retail Employee 4 include:

- An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist,
- An employee who that has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work,
- A Qualified Auto Parts and Accessories Salesperson,
- A Window Dresser (Cert III or equivalent experience),
- A Boot / Shoe Repairer (Cert III),
- A Shift Work Supervisor,
- Section/Department manager with up to 2 employees (including self),
- Service Supervisor of up to 15 employees,
- Nightfill Supervisor / Leader,
- Pharmacy Assistant competency Level 3,
- Pharmacy Trainee in the 1st half of their traineeship,
- Nail Technician Level 2,
- Beautician or Cosmetologist Level 3, or
- Hairdresser Level 3.

Beautician or Cosmetologist Level 3 means a person who holds an AQTF Certificate III in Beauty or the equivalent thereof. A Beautician or Cosmetologist works above and beyond an employee at C7 or below and to the level of her or his training. A Beautician or Cosmetologist does not perform any work on a person's body except for the face, hands and/or feet.

Hairdresser Level 3 is an employee who holds an AQTF Certificate III in Hairdressing or the equivalent thereof.

Nail Technician Level 2 means a person who holds an AQTF Certificate III in Nail Technology or the equivalent thereof.

Pharmacy Assistant Competency Level 3 is an employee who has acquired the competencies listed for a holder of Certificate III in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto and who is

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required by the employer to work at this level. A Pharmacy Assistant who is a holder of Certificate III in Community Pharmacy may be required to supervise Pharmacy Assistants at Competency levels 1 and 2. A Dispensary Assistant will be paid as Pharmacy Assistant Competency Level 3.

Clerical Officer Level 2 characteristics:

- This level caters for the employees who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction.
- Employees at this level are responsible and accountable for their own work which is performed within established guidelines. In some situations detailed instructions may be necessary. This may require the employee to exercise limited judgement and initiative within the range of their skills and knowledge.
- The work of these employees may be subject to final checking and as required progress checking. Such employees may be required to check the work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level.

Indicative typical duties and skills at this level may include:

- Reception/switchboard duties as in Level 1 and in addition responding to enquiries as appropriate, consistent with the acquired knowledge of the organisation's operations and services, and/or where presentation, and use of interpersonal skills are a key aspect of the position.
- Operation of computerised radio/telephone equipment, micro personal computer, printing devices attached to personal computer, dictaphone equipment, typewriter.
- Word processing, e.g. the use of a word processing software package to create, format, edit, correct, print and save text documents, e.g. standard correspondence and business documents.
- Stenographer/person solely employed to take shorthand and to transcribe by means of appropriate keyboard equipment.
- Copy typing and audio typing.
- Maintenance of records and/or journals including initial processing and recording relating to the following:
 - (i) reconciliation of accounts to balance;
 - (ii) incoming/outgoing cheques;
 - (iii) invoices;
 - (iv) debit/credit items;
 - (v) payroll data;
 - (vi) petty cash Imprest System;
 - (vii) letters etc.

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- Computer application involving use of a software package which may include one or more of the following functions:
 - (i) create new files and records;
 - (ii) spreadsheet/worksheet;
 - (iii) graphics;
 - (iv) accounting/payroll file;
 - (v) following standard procedures and using existing models/fields of information.
- Arrange routine travel bookings and itineraries, make appointments.
- Provide general advice and information on the organisation's products and services, e.g. front counter/telephone.

Retail Employee Level 5

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 4

Indicative job titles which are usually within the definition of a Retail Employee 5 include:

- A tradesperson in charge of other tradespersons within a section or department,
- Section / Department manager with up to 4 employees (including self),
- Service Supervisor (more than 15 employees),
- A Pharmacy Assistant competency Level 4, or
- A Beauty Therapist with less than 12 months experience.

Pharmacy Assistant Competency Level 4 is an employee who has acquired the competencies listed for a holder of Certificate IV in Community Pharmacy and who is required by the employer to work at this level. A Pharmacy Assistant Competency level 4 may be required to supervise Pharmacy Assistants at Competency levels 1, 2 and 3.

Retail Employee Level 6

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 5.

Indicative job titles which are usually within the definition of a Retail Employee 6 include:

- Section/Department manager with 5 or more employees (including self),
- Assistant or Deputy or 2IC Shop Manager,
- Deputy or 2IC Shop Manager,
- A Pharmacy trainee in the 2nd half of their traineeship,
- A Beauty therapist, or
- Clerical Officer Level 3.

Clerical Officer Level 3 characteristics:

- Employees at this level have achieved a standard to be able to perform specialised or non-routine tasks or features of the work. Employees require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgement in carrying out their assigned duties.
- Such employees may be required to give assistance and/or guidance (including guidance in relation to quality of work and which may require some allocation of duties) to employees in
- Levels 1 and 2 and would be able to train such employees by means of personal instruction and demonstration.

Indicative typical duties and skills at this level may include:

- Prepare cash payment summaries, banking report and bank statements; calculate and maintain wage and salary records; follow credit referral procedures; apply purchasing and inventory control requirements; post journals to ledger.
- Provide specialised advice and information on the organisation's products and services; respond to client/public/supplier problems within own functional area utilising a high degree of interpersonal skills.
- *Apply one or more computer software packages developed for a micro personal computer or a central computer resource to either/or:
 - (i) create new files and records;
 - (ii) maintain computer based records management systems;
 - (iii) identify and extract information from internal and external sources;
 - (iv) use of advance word processing/keyboard functions.
- Arrange travel bookings and itineraries; make appointments; screen telephone calls; respond to invitations; organise internal meetings on behalf of executive(s); establish and maintain reference lists/personal contact systems for executive(s).
- Application of specialist terminology/processes in professional offices.

* NOTE: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular Level.

Retail Employee Level 7

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 6

Indicative job titles which are usually within the definition of a Retail Employee 7 include:

- Visual Merchandiser (diploma),
- A hairdresser Technician Level 7,
- An Advanced Beauty Therapist Level 7,
- A Trichologist Level 7, or

- Clerical Officer Level 4.

Advanced Beauty Therapist Level 7 means a person who holds an AQTF Diploma of Beauty Therapy or the equivalent thereof.

Hairdresser Technician Level 7 means a person who is a hairdresser as defined and who also holds an AQTF Certificate IV in Hairdressing or the equivalent thereof.

Trichologist Level 7 means a person who is a hairdresser as defined and who also holds an AQTF Certificate IV in Trichology or the equivalent thereof.

Clerical Officer Level 4 characteristics:

- Employees at this level will have achieved a level of organisation or industry specific knowledge sufficient for them to give advice and/or information to the organisation and clients in relation to specific areas of their responsibility. They would require only limited guidance or direction and would normally report to more senior staff as required. Whilst not a pre-requisite a principal feature of this level is supervision of employees in lower levels in terms of responsibility for the allocation of duties, co-ordinating work flow checking progress, quality of work and resolving problems.
- They exercise initiative, discretion and judgement at times in the performance of their duties.
- They are able to train employees in Levels 1-3 by personal instruction and demonstration.

Indicative typical duties and skills at this level may include:

- Secretarial/Executive support services which may include the following: maintain executive diary; attend executive/organisational meetings and take minutes; establish and/or maintain current working and personal filing systems for executive; answer executive correspondence from verbal or handwritten instructions.
- Able to prepare financial/tax schedules, calculate costings and/or wage and salary requirements; complete personnel/payroll data for authorisation; reconciliation of accounts to balance.
- Advise on / provide information on one or more of the following:
 - (i) employment conditions
 - (ii) workers compensation procedures and regulations
 - (iii) superannuation entitlements, procedures and regulations
- *Apply one or more computer software packages, developed for a micro personal computer or a central computer resource to either/or:
 - (i) create new files and records;
 - (ii) maintain computer based management systems;
 - (iii) identify and extract information from internal and external sources;

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(iv) use of advanced word processing/keyboard functions.

* NOTE: These typical duties/skills may be either at Level 3 or Level 4 dependent upon the characteristics of that particular Level.

Retail Employee Level 8

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 7.

A person with a Diploma Qualification.

Indicative job titles which are usually within the definition of a Retail Employee 8 include:

- A Shop Manager,
- A Butcher in charge of a retail butcher shop,
- Hair Salon Manager, or
- Clerical Officer Level 5.

Clerical Officer Level 5 characteristics:

- Employees at this level are subject to broad guidance or direction and would report to more senior staff as required.
- Such employees will typically have worked or studied in a relevant field and will have achieved a standard of relevant and/or specialist knowledge and experience sufficient to enable them to advise on a range of activities and features and contribute, as required, to the determination of objectives, within the relevant field(s) of their expertise.
- They are responsible and accountable for their own work and may have delegated responsibility for the work under their control or supervision, in terms of, inter alia, scheduling workloads, resolving operations problems, monitoring the quality of work produced as well as counselling staff for performance as well as work related matters.
- They would also be able to train and to supervise employees in lower levels by means of personal instruction and demonstration. They would also be able to assist in the delivery of training courses. They often exercise initiative, discretion and judgement in the performance of their duties.
- The possession of relevant post secondary qualifications may be appropriate but not essential.

Indicative typical duties and skills at this level may include:

- Apply knowledge of organisation's objectives, performance, projected areas of growth, product trends and general industry conditions.
- Application of computer software packages within either a micropersonal computer or a central computer resource including
- The integration of complex word processing/desktop publishing, text and data documents.

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- Provide reports for management in any or all of the following areas:
 - (i) account/financial
 - (ii) staffing
 - (iii) legislative requirements
 - (iv) other company activities.
- Administer individual executive salary packages, travel expenses, allowances and company transport; administer salary and payroll requirements of the organisation.

Salon Manager or Principal Level 1 means a person who is the principal or manager of the salon, (i.e. the person for the time being entrusted with the control or superintendence of the salon despite that she or he may be under the orders of another who does not devote his or whole time to the management of the salon).

Retail Employee Level 9

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 8.

Indicative job titles which are usually within the definition of a Retail Employee 9 include:

- Pharmacist.

Pharmacist means a person who is registered as a pharmacist pursuant to the relevant State or Territory law.

Retail Employee Level 10

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 9.

Indicative job titles which are usually within the definition of a Retail Employee 10 include:

- Experienced pharmacist.

Retail Employee Level 11

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 10.

Indicative job titles which are usually within the definition of a Retail Employee 11 include:

- Pharmacist in Charge.

Pharmacist-in-Charge means a pharmacist who assumes responsibility for the day to day supervision and functioning of a community pharmacy practice.

Retail Employee Level 12

An employee performing work in or in connection with a retail establishment at a higher level than a Retail Employee Level 11.

Indicative job titles which are usually within the definition of a Retail Employee 12 include:

- Pharmacist Manager.

Pharmacist Manager means a pharmacist who is responsible to the proprietor for all aspects of the business.

Schedule B—Supported Wage System

SUBMISSION TO
THE AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
CONSULTATION

**DRAFT EXPOSURE
AWARD MODERNISATION
AM2008/10**

SUBMISSION BY

***SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES'
ASSOCIATION***

OCTOBER 2008

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**SUBMISSION OF THE SHOP DISTRIBUTIVE & ALLIED
EMPLOYEES' ASSOCIATION
TO THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
AWARD MODERNISATION FULL BENCH**

INTRODUCTION

1. The Award Modernisation Full Bench in its statement of 12 September 2008 [2008 AIRCFB 717], has identified in paragraphs 3 and 4, two purposes for the ongoing consultations over Award Modernisation .
2. At paragraph 3, the Full Bench says, *“It would assist if comments could be directed to a specific clause in a particular draft where it is practicable to do so.”* This clearly invites parties to consider and comment on each of the clauses in the Exposure Draft of the award. At paragraph 3, the Full Bench also says that there will be further oral consultations in addition to the filing of written submissions and that, *“the purpose of those consultations will be to permit discussion on matters arising from the written material already filed but not to repeat that material.”*
3. At paragraph 4, the Full Bench clearly permits parties to revisit aspects of earlier decisions, in particular relating to the coverage of the Exposure Draft awards. At paragraph 4, the Full Bench says, *“We think it is desirable that parties see the Exposure Drafts and the conditions they contain and have the opportunity to make further suggestions and submissions. To take the retail industry as an example, we have included fast food and pharmacies in the draft scope of the industry at this stage. The parties concerned will have the opportunity to consider their positions in light of the terms of the whole draft and make further comments and proposals.”*
4. The SDA supports the broad approach of the Full Bench in relation to creating an Exposure Draft Modern Award for the retail industry which will include both community pharmacy and take away food. The SDA is of the very strong view that a single award for the retail industry is appropriate and the SDA supports the approach of the Commission in having a single award for the entire retail industry and not hiving off segments of the retail industry into separate awards.
5. The Association is aware that some employer organisations are most likely to make detailed submissions arguing against the concept of a single modern award

for the entire retail industry and that they will argue for separate awards for segments of the retail industry. In this respect the Association understands that some employer organisations will simply repeat much of the material that they have already put to the Commission on several occasions.

6. The SDA is of the very strong view that the Exposure Draft Modern Award for the retail industry issued by the Full Bench does contain the essential elements necessary for having a single modern award for the entire retail industry. In the SDA's very strong view, there is no longer any need for, or justification for, separating segments of the retail industry out of the industry and into separate awards. The draft exposure provides a Modern Award for the industry.
7. The efforts of the SDA have, in the most recent proceedings and in this current submission, been directed to fine tuning a single modern award for the entire retail industry, so as to make it practical and effective. It gives for the first time an award that provides for 24 hour trade 7 days a week.
8. In undertaking a detailed consideration of the proposed Exposure Draft Modern Award for the retail industry, the SDA has approached that review from two specific perspectives. Firstly, there are a number of issues of real substance where the SDA is of the view that significant defects exist within the structure of the Exposure Draft Modern Award. The second approach has been to identify what appear to be unintended consequences arising from the drafting style within the award or unintended consequences arising from errors made when sourcing various conditions from submissions to the Full Bench.

COVERAGE OF THE RETAIL INDUSTRY AWARD

9. The SDA makes the following comments concerning the proposed coverage of the Retail Industry Award.

Definitions Clause 3

10. The SDA strongly supports the approach of defining the scope of operation of a Modern Award by providing both specific inclusions and specific exclusions. Such an approach promotes certainty about the scope of a Modern Award. The SDA

would seek to have added to the definition of Retail Industry two further examples of 'shops' that are covered by the modern award. These inclusions would be:

- Take away/ Fast Food establishments
- Video Shops

11. This simply provides greater clarity.

12. The Full Bench, at para 12 of the Statement of 12 September 2008, [2008] AIRCFB 717, states that:

*“There is always a risk of unintended inclusions and omissions. And
“We recognise that there is scope for refining application clauses as the award
modernisation stages progress.”*

13. Retail Industry is defined by reference to an activity namely, “the sale or hire of goods or services to final consumers for personal or household consumption” and with certain specific retail activities excluded.

14. The net effect of the definition is that it appears to capture employees and work which may be better covered by another modern award as much as not capturing work and employees which should be covered by the Retail Industry Award.

15. The SDA is of the view that employers who operate within the retail industry and who in addition have separate head offices should have their head office locations covered by the Private Sector Clerical Award.

16. In contrast employers in the manufacturing or wholesale industry who engage Merchandisers to work in retail stores should have such employees covered by the Retail Industry Award.

17. Also the limitation of the retail industry to “the sale or hire of goods or services to final consumers for personal or household consumption” doesn’t necessarily capture work which is incidental to or in connection with that activity, such as cleaning, security etc performed by employees of the retailer. The classification structure appears to make clear that such employees are intended to be included within the Retail Industry.

18. The Retail Industry should include both employers and employees who are involved in “the sale or hire of goods or services to final consumers for personal or household consumption” as well as employers and employees who are engaged in activities which are intrinsically connected to the “the sale or hire of goods or services to final consumers for personal or household consumption”. This latter group would then clearly pick up Merchandisers employed by a manufacturer or wholesaler to promote a product in a retail store. In the case of Merchandisers there would then need to be a change to clarify the exclusion within the Retail industry definition in relation to “retail activities conducted from a manufacturing or processing establishment” as language of this exclusion is too broad. Whilst the SDA conceded that the traditional factory outlet shop is one the “retail activities conducted from a manufacturing or processing establishment” could be excluded from the Retail Industry Award and if necessary included in another Modern Award, the activities of Merchandisers is a “retail activity conducted from a manufacturing or processing establishment” which should not be excluded from the Retail Industry.
19. The exclusion of “restaurants, cafes, hotels and motels” from the Retail Industry Award appears to be consistent with the general demarcation of work between the Hospitality Industry and the Retail Industry, including Fast Food.
20. However, experience in the past in Victoria has shown that some employers will seek to move their business from one industry to another if there is a financial advantage available to them.
21. The SDA has been involved in disputes with take away food establishment who have sought to avoid being caught by either the Victorian Shops Award or the National Fast Food Award on the basis that they have called themselves ‘cafes’ through the simple action of putting a couple of tables and some chairs in a corner of a takeaway food shop.
22. To avoid the potential for any confusion over the demarcation between the modern Hospitality and Retail Awards, it would appear appropriate to define “restaurants, cafes, hotels and motels”. These terms are not at present defined in either of the Exposure Drafts.

AWARD FLEXIBILITY

23. The SDA notes that in its Statement on 12 September, [2008] AIRCFB 717 that the Full Bench said at para 17:

“With one exception we have not found it necessary to modify the substance of the model award flexibility clause.”

24. The SDA is of the very strong view that it is proper in the context of the Retail Industry for the Award Flexibility clause to contain a provision which prevents the award flexibility agreement being made a condition of employment. This is in line with the Full Bench consideration of this issue:

25. The Full Bench in PR062008 discussed the issue of flexibility agreements and the commencement of employment and said:

“[165] We next consider whether the model clause ought permit an agreement to be made prior to the commencement of employment. The terms of cl.10 suggest that an agreement ought be available only after employment has commenced. Had it been intended that an agreement be permitted between an employer and a prospective employee that could have been made clear. By way of contrast to the language of cl.10, s.326(5) specifically provides that an interim transitional employment agreement may be made prior to the commencement of employment. The absence of such direct language in cl.10 is telling. We recognise that this interpretation may limit the flexibility available under the clause in some circumstances. On the other hand it is consistent with the statutory concept of awards as a safety net that the parties should initially be bound by the award provisions, which then form the base from which a flexibility agreement might be made.”

26. The existing model clause does not spell out clearly that flexibility agreements cannot be a condition of employment. Unless you know the background of the clause and understand the contractual arrangements and employee/employer relationship then you would have no understanding that you could not enter into such arrangement until after you were employed. This is something the majority of the young workers employed in retail would not understand. These young

people often enter the workforce for the first time in the retail industry and are vulnerable to exploitation.

27. It is clear that the Full Bench intended that flexibility agreements would not be available to employers as a condition of employment for new employees. The SDA clearly and strongly supports this approach.
28. However, unless the Award Flexibility clause specifically prohibits an award flexibility agreement being made a condition of employment, employers will simply draft award flexibility agreements and require potential employees to agree to whatever flexibility the employer wants as a condition of being offered work.
29. This would be grossly unfair.
30. The Award Flexibility clause needs to be adapted to provide a specific statement that an Award Flexibility Agreement cannot be made as a condition of employment and cannot be entered into until after the employment relationship has commenced.
31. In its decision on Award Flexibility clause, PR062008, the Full Bench said:

“[188] Some features of the clause which we have not dealt with above justify some comment. We think it is appropriate to regard any flexibility agreement reached under the clause as varying the application of the terms of the award rather than as varying the terms themselves. The award terms remain even though their application is varied by the agreement between the employer and the individual employee concerned.

[189] Any agreement under the clause should be in writing, name the parties to the agreement, identify the specific term or terms of the award concerned, how the application of the terms is to be varied and the date the agreement is to commence. The agreement should be signed by the employer and the individual employee and, if the employee is under 18 years old, by the employee’s parent or guardian. The employer must provide the individual employee with a copy of the agreement and the agreement itself should be kept

as a time and wages record so that it is readily available for inspection by an authorised person.

and

[191] The model clause may require adaptation to suit the circumstances of the industry or occupation covered by a particular modern award. Clause 11 of the Minister’s request provides that the model flexibility clause is to be included in each modern award “with such adaptation as is required for the modern award in which it is included.” In this respect some of the proposals directed at ensuring employees are aware of their award rights which we have not included in the model clause might be reconsidered in particular industries. We have in mind in particular proposals for translation of relevant materials into languages other than English. Overall, however, we would expect that changes in the model clause would not be numerous. An adaptation would only be appropriate where it is “required” in the modern award concerned.”

32. In the context of the Retail Industry with its heavy reliance upon awards and in its reliance on youth employment and casual and part time employment there is a very strong need for adaptation of the model Award Flexibility Clause.
33. The SDA is of the very strong view that the Full Bench comments at paras 188 and 189 should be specifically incorporated into the Award Flexibility Clause in the Modern Retail Award.
34. In addition the SDA is of the very strong view that the comment of the Full Bench at para 191 that: *“some of the proposals directed at ensuring employees are aware of their award rights which we have not included in the model clause might be reconsidered in particular industries”*, should be translated into a specific provision within the Award Flexibility Clause so as to require the employer to explain to employees the nature and content of the award right that the flexibility agreement is intended to change.

JUNIOR RATES (CLAUSE 18)

35. The exposure draft allows every employee under the age of 21 to be paid a reduced rate. This could not possibly have been the intention. Given the

broadness of the classification structure a large number of issues arise from the current form of drafting.

36. A qualified tradesperson sits at Retail Employee Level 4. A twenty year old could be fully qualified as a tradesperson but under the current drafting receive only 90% of the Level 4 rate.

37. The SDA also believes that it could have been intended to apply to the more senior supervisory classifications in retail or to the senior clerical and administrative levels.

38. The cut off point needs to be set no higher than the tradesperson level, although the SDA is of the very strong view that the level of seniority of work and/or supervision exercised at Retail Employee Level 3 clearly warrants payment of the full wage rate set for that level without any discounting because of the age of the employee.

39. No employee will be permitted to work at Retail Employee Level 3 unless the employer has confidence that the employee (including an employee under the age of 21) is fully competent to perform the tasks of the job. No job within Retail Employee Level 3 is introductory work, or work requiring close and personal supervision or work requiring constant on the job training, which are the hallmarks of jobs which it is often claimed justify the payment of lower than adult wage rates to junior employees.

40. Additionally the presence within Retail Employee Level 3 of the job title of Senior Loss Prevention Officer and Armed Loss Prevention Officer give a clear indication that at this level junior rates are simply unwarranted. As an example, under Victorian law a person aged 18 can be employed as an Armed Loss Prevention Officer and the responsibility that goes with this job warrants payment of adult rates of pay.

41. The appropriate additional wording to be added to Clause 18 is:

“Provided that an employee employed at or above Retail Employee Level (3 or 4) must be paid the adult rate of pay.”

42. The SDA had proposed separate streams for some sections of the Retail industry. The Commission has however developed one all encompassing classification structure.
43. The SDA is not seeking to argue for separate streams again but one of the consequences of the all encompassing structure is that even if the Commission adopted the above exclusions of junior rates from a certain classification level upwards, some particular classifications could have junior percentages applied where this has not been the practice of previous awards. In the Hair and Beauty Awards junior rates only applied to employees under 18 and then only to salon assistants. Employees with a qualification received the full rate regardless of age. To overcome this, specific reference should be made to the classifications within Retail Worker level 1 to exclude the application of junior rates.
44. The additional wording to do this is simple, **“Provided also that any other person holding an AQF Cert II in Nail Technology or MakeUp Artist will be paid the adult rate”** This type of wording prevents the extension of junior rates into traditionally junior rate free classifications.
45. There is a similar but reversed issue in relation to the operation of Clause 19.3. It appears that this provision has been inserted into the Modern Award to replace the provisions in the Community Pharmacy Award which provided for separate classification of Pharmacy Students employed in Community Pharmacy.
46. The replacement of the Pharmacy Student classification with the provision of a percentage payment of the Level 9 rate of pay achieves the same result.
47. However as constructed it appears that a university student employed in fast food is now entitled to be paid a percentage of the Level 9 rate of pay which will mean that some university students in fast food will earn more than adults paid the Level 1 or Level 2 rate of pay!
48. Quite clearly this outcome appears to be unintended!
49. The SDA suggests that the wording of Clause 19.3 be amended to read:

“The minimum award rates of pay for a person who is undertaking the accredited course of study leading to a degree or higher degree which would lead to registration as a pharmacist and who is employed in a community pharmacy are:”

50. This proposed wording reflects the existing definition of a Pharmacy Student and provides the necessary level of clarity and certainty that the rates apply to a very small and particular group of university students.

51. The SDA does not envisage that there are other categories of university students in retail who would warrant being paid in the same way as currently applies to Pharmacy Students who are required as part of their course of study to undertake work in a Pharmacy environment.

WAGE RATES

52. The SDA has a concern over the proposed rate set for Level 1. The draft sets \$600.00 as the weekly rate. This is the level at which shop assistants have been placed. The rate of \$600 is below that of any shop assistant in any award or NAPSA. There is a range of rates and the SDA would see that the rate from the Victorian Federal Shops Award should be adopted. This rate is \$602.68, which could for simplicity be rounded to \$603.00.

53. If this is rectified then the other rates will be acceptable.

CLASSIFICATION

54. The SDA notes that the Full Bench has adopted that part of our proposed classification structure which had a Butcher in Charge of shop at the same classification level as a Shop manager.

55. On reflection it appears that this may have overstated the wage rate for a butcher in charge of a shop.

56. A shop assistant in charge of a shop is not necessarily a Shop Manager but may be in many cases. Equally a butcher in charge of a butchers shop is not necessarily a Shop manager but may be in many cases.

57. The Shop Manager title is sufficiently precise as it clearly carries with it all of the concepts inherent in the management

ALLOWANCES

Expense Related Allowances

58. The SDA supports the approach of the Commission to provide a mechanism to automatically adjust allowances. The approach to specify each allowance as a percentage of the key rate of pay in the award works perfectly in relation to any allowance that is wage related but it fails in relation to allowances which are expensed related allowances.
59. Linking an expense related allowance to movements in wages leads to the unintended consequence that either the expense related allowance moves significantly faster than the actual expense it refers to, or the actual expense has increased at a significantly greater rate than the movement in wages.
60. There is a need to construct an approach which permits the designation of an expense related allowance which reflects its appropriate current monetary value and then which permits the automatic adjustment of the allowance.
61. These allowances should be adjusted by the appropriate CPI index and adjusted annually. The following are the appropriate CPI components to be used:
- Meal Allowance – Subgroup of “Meal Out and takeaway Foods”.
 - Laundry Allowance – Subgroup of “Clothing Services and Shoe Repair”.
 - Transport Allowance – Subgroup of “Private Motoring”.

Cold Work

62. The SDA notes that the Exposure Draft partially reflects the approach adopted by the SDA in our proposed Modern Award in relation to Cold Work allowances. However the approach adopted in clauses 25.3, 25.4 and 25.5 does not properly reflect the value of Cold Work allowances in the Victorian Shops Award. This is probably a consequence of the SDA not having clarified the existing provision.
63. The Victorian Shops Award approach is to specify cold work allowances which are applied cumulatively as the temperature decreases. This has meant that the

allowances in the Victorian Shops Award are both expressed as low amounts because they operate by being added together when the temperature is at the lowest level. Other State and Territory retail awards specify separate allowances based on set temperature levels. This means that the allowance for the higher temperature level is low and that the allowance for the lower temperature level is high.

64. The Modern Award for the Retail Industry either needs to identify that the 2 allowances are cumulative (the Victorian Shops Award approach) or to add the first allowance to the second so that each stands alone (the other States approach).

Recall Allowance Clause 25.10

65. The recall allowance is not a condition of general retail work. It is a condition that applies to Pharmacists through the Community Pharmacy Award. It is in that award to ensure a pharmacy can provide prescription medicine by ensuring that a pharmacy can get a pharmacist on the premises. It is a particular need of pharmacies but then only to pharmacists and no other employee at the pharmacy. The SDA would seek that this provision **only be applied to pharmacist classifications**. This is the approach taken with some other particular provisions in the draft exposure eg shift lengths in clause 26.3(b).

66. As a drafting issue the term 'appropriate rate' should be replaced with 'overtime'.

Other Allowance Matters

67. In relation to all allowances in the Exposure Draft the SDA notes that before the final version of the Retail Industry Award is issued that each of the allowances need to have the percentage values set to reflect the correct value of each allowance based upon the most recent movement in both the wage rate and adjustment of allowances in the award. This is a timing issue as the draft work was based on 2007 allowances and since that time State and Federal Allowances have increased for the various 2008 wage cases. The Exposure Draft reflects the value of allowances as they were before the allowances were adjusted for the 2008 wage increase whereas the wages used to set the % value were the rates

after the 2008 increase. If all the 2008 wage increases are properly reflected in the allowances then the correct percentages are:

<u>Allowance</u>	<u>%</u>
25.6 (a)	1.79
25.6(b)	5.35
25.7	1.35
25.11	3.25

68. Another critical issue is that some allowances are missing. These are:

69. Airport Allowance. This allowance is specifically provided for in the Airport Retail Concessions Award and applies at all airports.

70. Vehicle Allowance. This allowance applies where an employee is required to provide their car for substantial travel as part of their employment. It involves a flat weekly amount and a per kilometre amount.

71. Further tidying up of the exposure draft would involve:

72. Deleting in clause 24.1(a) the word "break".

73. Clause 25.5 The % should be 3.3% (The two % are added together). Also the reference of one hour is equal to 20 minutes should be added. Such standard is normal in relation to cold work (see Vic Shops Award)

Location of Place of Work Allowances

74. The SDA is of the view that locality allowances, however described, are not inconsistent with or in conflict with the obligation to remove State based differentials in a modern Award. Locality allowances relate to the disability encountered in living in places outside major metropolises. In this sense locality allowances are no different from cold work allowances. Cold work allowances apply to the whole of the Modern Award but the only employees capable of claiming the cold work allowance are those who work in a cold environment. Equally the locality allowances apply to the whole award but the only employees capable of claiming the locality allowance are those who work in the locality. A

locality allowance for Alice Springs is available to any employee under the Modern Award if they, at any time and even temporarily, work in Alice Springs.

ACCIDENT MAKE UP PAY – VICTORIA

75. As part of the Award Simplification process undertaken by the Commission after introduction of the Workplace Relations Act in late 1996 the issue of whether accident make up pay could be included in awards considered by the Commission. The Commission as constituted at that time held that accident make up pay was an allowance. There appears to be no reason why accident make up pay cannot continue to be treated as an allowance.

APPRENTICESHIP ISSUES

Pre-Apprentices

76. In some States, pre-apprenticeship programs in Hairdressing are being delivered. In Victoria, at least, completion of a pre-apprenticeship entitles a person to 6 months off the duration of their apprenticeship. In other words they can complete their apprenticeship in 2.5 years.

77. The current provision in the Victorian Award reflects the appropriate rate of pay for such persons, taking into account their level of skill at any point in time.

78. Accordingly there should be a definition of pre-apprenticeship in the new retail award in the following terms:

Pre-Apprentice: A Hairdressing pre apprentice is a person completing a Hairdressing pre-apprenticeship training program approved by the relevant State Training Board or a Hairdressing Traineeship of 6 months duration or less approved by the relevant State training Board.

79. There should be a pay scale for such persons in the following terms:

Hairdressing Pre-Apprentices undertaking Hairdressing Apprenticeships

Year of Apprenticeship	% Retail Employee Level 4
First 6 months	50
Next 12 months	60
Next 12 months`	80

80. If such a provision is not inserted into the award there will be confusion and ambiguity as to what people who have completed a pre-apprenticeship should be paid once they commence an apprenticeship.

Adult Apprentices

81. A clause needs to be included in the modern award to reflect the practice of adult apprentices (21 years and over) earning a higher wage than other apprentices. There are various forms this can take the two most common are either higher percentages or the percentages taken from a higher classification or setting a base rate that adult apprentices cannot be paid below.

82. At this stage for simplicity the SDA proposes that the base rate approach be adopted. **The rate of \$488.40 is the suggested.**

JUNIOR RATES AND CHILD LABOUR LAWS

83. The Full Bench has included junior rates in the majority of the Exposure Draft Modern awards and has by the structure of those awards made it clear that all employees regardless of age are bound by the terms and conditions of the Modern Awards.

84. The difficulty with this approach is that it runs counter to the express provision of S.16 of the Act which ensures that Child Labour laws enacted by the States and Territories will operate in preference to a Modern Award. The government has indicated that the proposed new law Forward with Fairness will continue this relationship between Child Labour laws and Modern Awards.

85. If Child Labour laws have pre-eminent operation in relation to Modern Awards then should any modern Award attempt to set the wages and conditions of employment of persons under the age of 18?

86. Whilst the States of New South Wales and Queensland have Child Labour laws that would conflict with the operation of a Modern Award it would appear that a Modern Award which attempts to deal with Child Labour employed in either of those 2 States may be in direct breach of Clause 1(a), (b) and (e) of the Ministerial Request and of S.576A(2)(a), (b) and (e) of the Act.

87. The assessment as to whether a State or Territory has a law which deals with the matter of “Child Labour” as mentioned in S.16 and which will operate in precedence to a Modern Award should be undertaken. Every State and Territory has some law or laws which deal with the subject matter of Child Labour. Some laws are explicitly titled as laws dealing with Child Labour but other laws will clearly deal with the matter of Child Labour but do under a law which may be titled as a Child Protection law or as an Education law.
88. For example the Fair Work Act (SA) is clearly an act dealing with the matter of Child Labour because the objects of the Act directly refers to one of the core ILO Conventions on Child Labour. If the Fair Work Act (SA) is a law which deals with “Child Labour” and therefore operates in precedence to a Modern Award then do the awards of the SAIRC continue to prevail over Modern Awards in relation to constitutional corporations insofar as the awards of the SAIRC contain provisions which determine the terms and conditions of employment of “Child Labour”?
89. The difficulty with this conflict of laws issue is that the Commonwealth parliament has intended that State or Territory laws dealing with the matter of “Child Labour” will operate and will not be prevailed over by the Workplace Relations Act or an award or agreement made under that Act.
90. However where an award or agreement made under the Workplace Relations Act provides a better protection or right or better terms and conditions of employment for Child Labour then the federal instrument would operate along side of the State Child Labour Law but only to the extent of the improved protection, right or term.
91. Thus Modern Awards should only deal with Child Labour where the provisions of the Modern Award are better than the provisions of the State or Territory Child Labour law.
92. What provisions of any of the Exposure Draft Modern Awards provide terms and conditions of employment for persons under 18 which are superior to the provisions of State or Territory laws that deal with “Child labour” and what provisions of the Exposure Draft Modern Awards provide terms and conditions of employment for persons under the age of 18 years which are worse than the

provisions established by State and Territory laws dealing with the matter of Child Labour?

93. In the absence of a thorough examination of the interaction, in a practical sense, of the proposed modern Awards with the various State and Territory laws dealing with Child Labour it will not be possible to craft any Modern Award which deals with terms and conditions of employment of Child Labour where such terms and conditions of employment (including even the fact of employment) are guaranteed to not be in conflict with the relevant State and Territory laws dealing with Child Labour.

94. However, it would appear that from a practical perspective it is not an option for Modern Awards to be silent in relation to the employment of persons under the age of 18.

95. In the absence of a thorough examination of the interaction, in a practical sense, of the proposed modern Awards with the various State and Territory laws dealing with Child Labour the most effective approach for the Modern Awards is for each award to contain a clear statement as to the relationship between the award and the relevant State and Territory laws dealing with Child Labour.

96. Each Modern Award which operates in an Industry in which persons may be employed under the age of 18 years should contain a clause to the following effect:

“This Modern Award applies to the employment of persons under the age of 18 years subject to the operation of any law of the State or Territory which deals with the matter of child labour.”

97. Such a clause provides no clear direction to any employer of a person under the age of 18 nor does it provide any clarity to an employee who is under the age of 18. However at the very least it acts as a warning that in the case of employment of persons under the age of 18 what appears in the Modern Award may not be the actual terms and conditions of employment.

DISPUTE RESOLUTION

98. The Full Bench should consider having separate or slightly different clauses for each award based upon the history of the industry.
99. Construction makes great use of private arbitration processes.
100. Some awards never had status quo but retail had status quo provisions. Some industries have strong award reliance and need more detailed award provisions.
101. This consideration needs to look at structure of workforce. In some industries male dominated, tradesperson dominated, or dominated by professionals.
102. Retail dominated by females, part timers and lots of young people who have little bargaining strength or knowledge about award entitlements..

The proposed clause only dispute resolution nothing about dispute prevention

103. Consultation processes in modern awards can and should be included as they provide mechanisms to deal with issues before an issue becomes a dispute. Genuine consultation with employers talking to employees and employees talking to employers is an extremely valuable tool.
104. In award reliant industries these types of mechanisms are needed in the award.
105. The Ministerial Request requires at Clause 11A that:

“The Commission should ensure that each modern award includes a clause that sets out a process or processes to ensure the settlement of disputes in relation to matters arising under the award. The Commission should ensure the process or processes are suitable for the settling of disputes in relation to matters arising under the NES for employees to whom awards apply. In drafting this clause the Commission may have regard to any method of dispute resolution that it considers appropriate.”

106. The critical part of this request is that the clause devised by the Commission is “to ensure the settlement of disputes”.
107. The proposed clause will fail the Ministerial Request if the clause does not provide an effective process for the settlement of disputes.
108. Quite clearly the Ministerial Request will not be satisfied by having a process which allows the issue in dispute to be mediated or conciliated but not settled. Mediation and conciliation can in some circumstances lead to a settlement of disputes but often a dispute remains unsettled even after the parties have attempted mediation and conciliation.
109. As the Ministerial Request requires that modern awards have processes which “ensure the settlement of disputes”, it will never be sufficient to provide a process which merely encourages the parties to resolve a dispute.
110. The words used by the Ministerial Request are “**to ensure the settlement of disputes**”.
111. The only process that ultimately can ensure the settlement of disputes is a process which imposes an enforceable settlement on the disputants in circumstances where the disputants, either with or without external assistance, have been unable to settle the dispute themselves.
112. McHugh. J said in, *Re Pacific Coal Pty Limited; Ex parte: Construction, Forestry, Mining and Energy Union*, [2000] HCA 34, at para 154,
- “that implied in the notion of effective “settlement” of disputes is some ability to enforce that settlement after it is reached.”*
113. In the SDA’s very strong view arbitration is the only process which can ultimately ensure the settlement of disputes.
114. Arbitration must therefore form part of the process provided for by the Commission in any disputes settlement clause in any Modern Award.

115. Furthermore, arbitration itself is only an effective process if any party to the dispute can initiate the arbitral process and initiate the arbitration at a time which will ensure the settlement of the dispute.
116. The dispute settlement clause required by the Ministerial Request must contain a provision which provides for arbitration if any party to the dispute forms the view at any time that arbitration is necessary to ensure the settlement of the dispute.
117. Accessing arbitration only after all other processes provided by the disputes procedure have been exhausted is both unnecessary and unhelpful as such a requirement may simply lead to an increase in the tension at the workplace over the issue in dispute. Some disputes are so obviously in need of arbitration that forcing the parties to go through the motions of mediation or conciliation is extremely counter productive to the speedy and effective settlement of a dispute. Additionally a process that requires exhaustion of the processes of discussion, mediation and conciliation before arbitration can be accessed is a recipe for continual delay and frustration of the process by any party which seeks to avoid arbitration.
118. An additional matter that arises in relation to the settlement of disputes is the fact that each industry is different and there should be the capacity to tailor a disputes settlement clause in each Modern Award to best suit the nature of the industry.
119. The Retail Industry is heavily award reliant with many small employers and with a workforce characterised by large numbers of young workers and women workers with the majority of all workers being part time or casual.
120. This dynamic is more than sufficient justification for a tailoring of the disputes settlement procedure so that it fits with the retail industry.
121. The Retail industry is significantly different from industries where the majority of workers are trades qualified or semi professionals or professionals.
122. One of key protections needed by retail workers and this has been a feature of retail award disputes procedures is the retention of the status quo ante whilst a

dispute is being resolved. The extreme inequality in the respective bargaining positions of employees and employers in retail means that without the retention of the status quo ante the employer can make a decision which is disputed and the employer will inevitably win simply because the employer has no incentive to resolve the dispute when the decision at the centre of the dispute is operating.

123. The proposed Dispute Resolution clause should be amended so that the first sentence of Clause 9.6A should read:

“While the dispute resolution procedure is being conducted work must continue as normal before the matter in dispute arose unless an employee has a reasonable concern about an imminent risk to his or her health or safety.

SPAN OF HOURS

124. The draft exposure sets out various exceptions to the span of ordinary hours. These include pharmacy, fast food and video stores. The span for these sectors is set to midnight which the SDA considers to be very generous. The midnight extension is well beyond what the SDA proposed. The SDA can reluctantly accept this for fast food and video stores, but the SDA is opposed to this exception being given to pharmacies.

125. The SDA had not identified pharmacies as a sector requiring a special extended span of hours beyond general retailing. Many pharmacies, like other retailers, do not operate beyond 9.00 pm Monday-Friday. It is an exception for pharmacies to open to midnight. Trying to find a pharmacy open at 10.00 pm or 11.00 pm is mission almost impossible.

126. Equally, there are substantial numbers of pharmacies that do not trade beyond 1.00 pm on Saturday. Sunday opening for pharmacies is also not the norm.

127. The SDA cannot see justification for an expansion of hours beyond the general retail hours. Further, Victorian pharmacy assistants only have ordinary hours to 8am to 9pm Monday-Friday, 8am-12 noon on Saturday and no hours on Sunday.

NES PROVISIONS

128. The SDA had previously proposed that the Modern Award should contain comprehensive clauses with respect to conditions covered by the NES. This was reflected in the SDA draft award. The SDA does contend that this is still an appropriate and allowable method and would prefer such an approach however as the Commission has decided to exclude the NES the SDA will not press its preferred position.

129. In doing so the SDA contends that some important conditions were missed. The SDA details these conditions and reasons for their inclusion.

130. The NES is allowed to be supplemented or added to in a modern award.

Sick Leave

131. One such key addition the SDA seeks to have included in the exposure draft is in relation to the accumulation of leave.

132. Currently the majority of existing awards and NAPSA's provide an entitlement to have the full amount credited up front each anniversary year, rather than trickled in over a year. This is an extremely important and longstanding entitlement employees in retail have had. It is a significant increase over the NES standard.

133. This upfront crediting does not usually occur in the first year of employment and the SDA does not seek to change that practice. In the first year of employment, personal leave should accumulate on a monthly basis. However, if the Commission does not want to have two different standards of accumulation applying, then precedence should be given to the long term employees. The Commission should take notice that having two different accumulation methods has never been queried or challenged as being inconvenient in any way for employees.

134. Another issue the SDA sees as an important item to include as a standard above the NES, is the provision in most retail awards not to have compulsory

evidence for a limited number of days in a year. There are various forms and combinations this takes from only single days or a total number of days or other conditions. The SDA would see these being reflected in a single provision of no evidence for two days of personal leave in a year.

135. The final issue is one to assist the employers and employees. Most existing instruments give specific direction as to what is acceptable evidence. This type of notation gives clarity at the workplace for employers and employees. Given the nature of the workforce in retail such explicit direction is necessary. The SDA would seek the inclusion of the following provision:

Reasonable evidence shall include a medical certificate or a statutory declaration or other reasonable evidence

Compassionate Leave

136. The NES provides for only 2 paid days per occasion. The majority of Awards in retail provide for 3 days of paid leave.

137. The SDA seeks the inclusion of this additional day as it is a standard retail employees have been able to access as a right. It is a benefit that has given real practical relief to employees at their time of need.

138. Other provisions such as unpaid leave in recognition of travel (interstate or overseas) are also provisions retail employees have had access to but the SDA is not seeking to include these.

Jury Service

139. Current retail employees have no cap applied to make up pay whilst on jury service. There is no justification to reduce this entitlement in the modern award.

140. Given the nature of the work in the industry, retail employees cannot use their occupation as a reason to be excused from jury service (unlike other employees in critical industries).

141. It is not a common occurrence for jury service to be extensive but it does happen. Retail employees do not as individuals have bargaining power or the skills and knowledge, to be able to negotiate top up pay. Without the modern award providing protection they will be left out of pocket simply by performing a legislative requirement.

142. The inclusion to continue the current standard of no capping of jury service make up pay is required in the modern retail award.

Public Holidays

143. The public holiday clause that the SDA proposed in its award was a comprehensive clause that included the NES conditions with other conditions coming from the federal awards. The exposure draft lacks many necessary conditions that set the safety net in existing awards. Also, the provisions specified in the draft do not seem to have had a basis in existing retail awards.

144. The exposure draft clause 34.2 is a provision that does not exist from the SDA's knowledge in any retail award. It undermines any existing federal award. All the federal retail awards have the safety net established by the AIRC as their minimum.

145. Clause 34.2 gives an employer the right to unilaterally substitute any public holiday to another day the employer chooses. One can imagine that the Christmas sales will occur in December but an employer can decide that the public holidays for Christmas Day and Boxing Day will be on the 25th and 26th of July.

146. Also clause 34.3 does not give the standard provision that if an employee works on a public holiday they get paid the penalty for time worked. This payment requirement, as the safety net, is a reflection in part due to the large numbers of casuals in the industry. Both of these may also be drafting issues. The SDA would propose that the following sub clauses are inserted in lieu of 34.2 and 34.3:

34.2 If an employee elects to work on a public holiday they shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

34.3 Substitute days by agreement

34.3.1 An employer and their employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

34.3.2 An agreement pursuant to 34.3.1 shall be recorded in writing and be available to every affected employee.

34.4 Public Holiday Falling On Non-Working Day

If a public holiday falls on the non-working day of a full time employee or of a part time employee who works five days per week (or six days if they have so elected) they shall be entitled to receive by mutual agreement:

- Another day off in lieu; or
- An equivalent day's pay; or
- One extra day added to his or her annual leave.

34.5 Work on Christmas Day

In the case of Christmas Day where a State or Territory Government has substituted another day as the public holiday work on 25 December will attract an additional loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate and the employee will also be entitled to the benefit of the substitute public holiday.

147. These provisions reflect the current conditions of federal awards that apply in this industry. These conditions were based upon the Public Holiday Test Cases of the AIRC and the long standing conditions applied in the awards.

148. The proposed clause 34.2 makes the provision consistent with the way shift work deals with public holidays.
149. The major federal award Victorian Shops Award has a detailed history of having addressed public holiday issues over many years, addressing loading on public holidays, election to work, rate of pay, substitute days and non-working days. Attached to this submission is an overview of the history of public holidays in the Victorian Retail Award and the relevant decisions and determinations.
150. In brief, the Victorian award addressed the issue of voluntary work in 1972 when it examined tourist area trading where public holiday work was needed by employers. Initially, through arbitration, the concept of employees “electing to work” was introduced for tourist areas. This was extended by agreement of all parties in later years to apply to all employers.
151. This provision still currently applies in the Federal Victorian Retail Award. It allows employees to elect to work a full shift, a part shift or not to work.
152. It is also a protection that employees not normally rostered on a particular day cannot, by an allowable roster change, be required to work on a day that is a public holiday. For example, a permanent employee who is normally rostered to work Thursday to Sunday could, under the roster change provisions of the Award, have their roster changed to include a Tuesday which happens to be Melbourne Cup day. A further example is a shift on a public holiday being increased or reduced as part of a roster change by the employer.
153. The suggested clause 34.5 currently exists in the Victorian Retail Award. It arose from the Public Holidays Test Cases of the AIRC during the 1990’s. This addressed the concerns over 7 day trading operations and the special significance of the 25th December. It is only appropriate that the existing standard continues as the safety net. The 25th December remains just as significant today.
154. A public holiday falling on a non-working day is also addressed in retail awards. The Victorian Shops Award addressed equity issues in 1972 concerning public holidays falling on non-working days. At that time irregular rosters needed to be considered to ensure full time employees did not miss out on the benefit of a public holiday occurring on non-working days. This was later updated to

include 5 day part-timers and was also subsequently set as a safety net by the AIRC.

Other Significant Issues with Public Holidays

155. There are two States where the NES conditions remove entitlements to days that have been treated as special days but not full public holidays.

156. The first State is New South Wales. Under the various State retail awards, permanent employees have the right to a day off with pay on the first Tuesday in November (or a day added to annual leave). This forms part of the safety net applying to all retail workers in New South Wales and needs to be continued in the Modern Retail Award.

157. The second State with a special day is Western Australia. In Western Australia, under the State Legislation, Easter Saturday is not a public holiday. However, the Western Australian retail award has set a special rate for work on Easter Saturday (or Saturday, Easter Eve, as it is termed in the award). The rate set is time and a half.

158. This is a special day rate that the modern award needs to include.

Annual Leave

159. A definition of shiftworker has been placed in the annual leave clause. The SDA would seek that the definition of shiftworker be the same as that provided for in the draft retail award

160. The following provisions should also be included:

- (a) Annual Leave shall be taken by mutual agreement between the employer and the employee in varying periods of between 1 day and 4 weeks' duration, provided that one such period shall be of at least 2 weeks' duration. Where there is no agreement, Annual Leave shall be taken in one period of 4 weeks.**

Payment

- (b) The employer shall pay each employee in advance, before the commencement of the employee's annual leave, his or her ordinary pay for the leave period.

If the leave is less than one week than payment will be in the normal pay cycle.

- (c) Where an employee leaves the employer, the 17.5% loading will be paid on any leave accrued up until the employee's last anniversary date.

OVERTIME (CLAUSE 29)

161. The name of this clause should be Overtime and Penalty Rates or subclauses 29.2(b) (c) and (d) moved into a separate penalty rate clause.

162. The SDA notes that overtime only applies to hours in excess of clause 27.1. Clause 27.1 only deals with full time hours, being 38 hours in a week. This creates a very limited application, e.g. casuals do not get overtime.

163. It appears that this is a drafting issue due to the structure of the draft exposure.

164. To be applied appropriately, overtime needs to apply to all employees, to any hours worked outside the span of hours and to any hours worked outside the various roster conditions (e.g. maximum daily shift, maximum days per week etc). The SDA suggests that overtime applies for work outside of subclauses 26.2,26.3, 27.10-12.

HOURS AND ROSTERS

165. Clause 28, 38 hour week rosters, contains both 38 hour week conditions for full time employees plus general roster conditions that apply to all employees. The SDA suggests that as a drafting issue, either the clause title is changed to include "and rostering" or the clause is split with subclause 27.9 being the start of a separate roster clause.

BROKEN HILL MATTERS

Wage Rate and Locality Allowance

166. The Rate of pay for retail work in Broken Hill is set under the township award. Currently that rate includes the locality allowance (which was combined with the wage rates previously in about 1998). Under the modern retail Award the SDA proposes that the locality allowance is separated out again and placed in the Award as a locality allowance for Broken Hill

Annual Leave

167. Employees covered by the Broken Hill Consent Award currently receive 5 weeks annual leave per year.

168. We propose two alternatives in relation to dealing with this entitlement:

1. Include a clause which states that Broken Hill employees are entitled to 5 weeks annual leave in lieu of the 4 weeks set out in the NES (or the hour equivalent wording); or
2. Increase the Broken Hill Locality Allowance by the dollar amount equivalent to 1 week annual leave. This would be 1/52nd of a week which would be about \$11.60 per week

TRANSITIONAL AND PHASE IN AND SAVINGS ARRANGEMENTS

169. The SDA in its previous written and oral submissions on Award Modernisation noted that there would be a need for detailed consideration of the transition from the existing industrial regulation to the new Modern Award.

170. The SDA proposed a couple of clauses in its draft award that could be used to deal with some of the transition issues.
171. Whilst many of the issues that will arise in transitioning from the existing system to a new Modern Award may be appropriately dealt with by a transition arrangement in some instances the better approach will be to save existing conditions indefinitely.
172. The SDA notes the comments of the Full Bench in its Statement of 12th September, [2008] AIRCFB 717 at paragraph 31 concerning Transitional provisions.
173. The SDA agrees that any full and complete consideration of the details of transitional, savings or phasing in provisions must await the issuing of the final Modern Award for the Retail Industry.
174. It is only once the final version of the Modern Award for the Retail Industry is available that employers and the unions will be able to with any degree of certainty identify all the issues that need to be addressed in transiting from the old system to the new system.
175. Clearly not all issues will need to be subject to special transitional or savings or phasing in provisions.
176. Some issues will need to operate on commencement of the new system. Others may need to commence in full on a date later than 1 January 2010, whilst others will need to be dealt with through transitional, savings or phasing in arrangements.
177. The SDA notes the proposed savings provision at clause 35.1. The SDA understands the rate of pay includes casual loading but not penalty rates. This

would address some of the issues that will occur with employees moving onto the new classification structure and casual loading.

178. The proposed clause 35.2 should have a phrase like 'due to the introduction of the classification structure' inserted following the word 'employee'. This ensures it is the classification rates that are compared and adjusted.

179. The SDA has been considering various arrangements that could be applied in addressing the many other issues including penalties, rostering conditions, changes for part time employment, allowances etc.

180. This consideration has been extensive but by no means complete. There are many issues, some that apply nationwide, some which apply just to a state/territory and other issues that will apply to an occupation or an industry sector either on a state or national basis.

181. A further savings provision the SDA would propose is one to save employees who currently receive an allowance that has not been incorporated into the classification structure or included the modern award. Given the multitude of awards incorporated in the proposed modern retail award there are some existing allowances that employees may be receiving, eg ham hocks in delicatessens in Qld receive a small allowance which could be addressed by a general savings provision. Allowances such as 'in charge' would be ones addressed by the classification structure.

182. No simple generic solutions to all the problems could be found. The SDA has been able to develop some transitional arrangement that will address some issues of transitioning the multitude of state and federal awards to the modern retail award.

183. The first such transitioning provision is to deal with having an item such as rosters comply with the new Modern Award. Such a provision is necessary due to the fact there are many differences applying presently eg shift length. The SDA

proposal describes a consultative approach allowing a 6 month 'grace' period to allow an orderly transition for employers and employees.

184. The SDA proposal is:

General roster transition arrangement

Under the modern award some previous award provisions will no longer apply. In order to have employees' rosters adjusted to comply with the Modern Award the following transition shall be applied.

Any previous award arrangement may continue to apply until the 30th June 2010.

At each workplace the employer shall undertake a consultation process with all employees.

The consultation process should begin as soon as practicable after the 1st January 2010.

The consultation process will:

Explain any existing roster provision currently in use that is no longer available under the modern award.

Discuss possible alternatives that could be applied, including any alternatives suggested by employees

Roster changes required due to the operation of the modern award should in the first instance be by mutual agreement.

Where a change is not by agreement then 8 weeks notice of the change shall be given by the employer. (which may take the process beyond 30 June 2010)

Any grievance can be arbitrated by the Commission

An employee may volunteer to change their roster prior to 30th June 2010.

Any such roster change, where agreement is not reached, shall be similar to the existing roster. (eg A roster Wed to Sat should not be changed to a Sun to Thursday roster.)

185. The next couple of proposed transitioning arrangements deal with part time employees. Again depending on the instrument employees are moving from, there will be issues concerning minimum hours and rosters. Existing part time

employees in some States have guaranteed daily and weekly minimum and maximum hours of work. The Exposure Draft of the Modern Award for the Retail Industry does not provide for a minimum or maximum weekly engagement for part timers.

186. Also the existing work pattern of such part timers needs to be protected so that on commencement of the Modern Award such part time employees will not be subject to unilateral alteration of their existing pattern of hours, either through employers reducing the employees entitlement to hours or by the employer trying to force the employee to work additional hours or highly different patterns of work.

187. To address these issues the following clauses are proposed:

Part time hour transition

This provision applies to part time employees who were under an award (NAPSA etc) that gave a minimum entitlement of weekly hours.

Existing part time employees will have their minimum weekly hours (from either an award, NAPSA, or other form of contract) deemed to be the minimum hours that can be contracted under the modern award.

These minimum hours can be changed by agreement.

Part time transition

Part time employees not previously employed under a Federal Award, will have their existing roster and hours of work deemed to be the conditions that satisfy the modern award provision for :

A regular pattern of work, specifying at least:

the hours worked each day;

which days of the week the employee will work;

the actual starting and finishing times of each day;

188. These proposed provisions deal with items that can be described as non-monetary. They also can be applied everyone under the entire modern award.
- 189. The SDA proposes that the Full Bench specifically allocate a period over February and March 2009 to deal with all transition issues in relation to the Modern Retail award.**
- 190. Single day consultations should occur in each State and Territory so as to enable the specific transition issues in each State and Territory to be addressed by the employers, employees, employer organisations and unions with the best understanding of the nature of the transition issues that need to be addressed.**
- 191. The Full Bench should allocate the individual State and Territory consultations to a member or members of the Commission who have an in-depth understanding of the Retail Industry.**
192. The SDA would suggest that current allocation to the Retail Industry Panel within the Commission is not necessarily the sole criteria for undertaking the consultations. Some dual appointees from State Commissions may also have a good understanding of the transition issues that might arise in relation to the Retail Industry in their State.
193. Quite clearly the aim of such extensive consultation process would be to ensure that there was as smooth as possible transition from the old system to the new system.
194. Even though the majority of the work of developing specific transitional, savings and phase in provisions should occur at the consultations in February March 2009 there are a number of issues that can be drawn to the attention of the Full Bench which indicate both the nature of some of the issues and appropriate mechanisms for dealing with those issues.

195. An example of the type of transition/savings issue which will need to be subject to further detailed consideration is the translation of employees in SA currently employed on a Monday to Saturday rate. The current SA Monday to Saturday rate is higher than the new minimum rates set by the Commission. Therefore it would appear that the Commissions saving clause would operate to protect those employees from a reduction in their hourly rate of pay. This savings approach is fine in relation to the Monday to Friday work performed by these employees. However there are real question that then arise about how to treat Saturday work done by these employees. There are at least 4 possible options.
196. Option 1, the existing hourly rate is saved and is applied to Monday to Friday work. Saturday work is paid at the Modern Award Saturday penalty % of the Modern Awards base rate of pay.
197. Option 2, the existing hourly rate is saved and is applied to Monday to Friday work. Saturday work is paid at the Modern Award Saturday penalty % of the saved hourly rate of pay.
198. Option 3, the existing hourly rate is saved and is applied to all Monday to Saturday work until the Monday to Friday rate under the award equals the saved Monday to Saturday rate.
199. Option 4, the existing hourly rate is saved and is applied to all Monday to Saturday work until the employee would receive the same total pay whether they were paid the saved Monday to Saturday rate or the Modern Award rates and penalties.
200. Each of these 4 options give very different outcomes for both employers and employees.
201. The most effective way of dealing with the translation of the SA employees would be to have the matter dealt with in separate consultations in Adelaide involving the key stakeholders sometime in February or March 2009.

202. The SDA has also proposed transitioning arrangements for the Victorian Shops Award at Attachment 1.

203. On the issue of transitioning a higher penalty rate, e.g. Sunday rate increases, the SDA believes these could be phased in on an annual basis.

204. As the transition arrangements are different and varied across States and the various awards, that the SDA has considered, we believe that a State by State consultation process is required.

OTHER DRAFTING ISSUES

205. Clause 15.6(c) - delete "15.6" and substitute "14.3".

206. Clause 21

Add the following:

"In the case of full-time employees who work their hours over 19 days in a 4 week cycle, wages (other than penalty payments) shall be averaged over the 4 weekly cycle."

CONCLUSION

207. The SDA believes it has addressed the vast majority of issues that arise from the draft exposure of the modern retail award . The process of achieving a proper and comprehensive retail award is a task the SDA has throughout the process been seeking to achieve.

208. The SDA does believe that due to the nature of the proceedings so far in dealing with the retail award, some drafting issues may still exist after this round of consultations and would seek that the Commission consider either having a 'preview' of the finalised award before it is issued , to 'fix' any such issues or to allow drafting issues to be corrected in a simple manner next year.

**Attachment 1
Victorian Shops Award**

Detailed Calculations Re Savings Clauses

1. Saturday Loading For Permanent Employees

Unless there is a savings provision for the Saturday Loading for permanent employees (except 17 year olds) they will suffer a reduction in their take-home pay (see below):

Age/Classification	Existing Sat. hourly rate	New Sat. hourly rate
21 years & over	\$20.92	\$19.83
20 years	\$18.82	\$17.84
19 years	\$16.74	\$15.86
18 years	\$14.12	\$13.88
17 years	\$11.50	\$11.90
16 years	\$10.46	\$9.91
15 years under	\$10.46	\$8.92

If there is a savings provision for juniors until their next birthday as we propose then the outcome will be:

Existing Sat. hourly rate (T + 32%)				New Junior % & New Sat. Hourly Rate (T + 25%)		
20 years	90%	\$18.82	b'day occurs →	21 years & over		\$19.83
19 years	80%	\$16.74	b'day occurs →	20 years	90%	\$17.84
18 years	67.5%	\$14.12	b'day occurs →	19 years	80%	\$15.86
17 years	55%	\$11.50	b'day occurs →	18 years	70%	\$13.88
16 years	50%	\$10.46	b'day occurs →	17 years	60%	\$11.90

In the case of adults they need to be saved and absorbed in National Wage Case increases. We have assumed National Wage Case increases of \$20 per year:

Sat. Hourly Rate (T + 32%) (1 Oct. '09)	T+25% 1 x NWC (1 Oct 10)	T+25% 2 x NWC (1 Oct 11)
\$21.45	\$21.14	\$21.80

Under that assumption the rate will be absorbed in two National Wage Cases increases.

2. Casual Loading

Unless there is a savings provision for the casual rate (an effective time plus 33%) casual employees (except 17 year olds) will suffer a reduction in their rate of pay to time plus 25% (see below):

Age/Classification	Existing Weekday Hourly Rate	New Weekday Hourly Rate
21 years & over	\$21.15	\$19.83
20 years	\$19.03	\$17.84
19 years	\$16.92	\$15.86
18 years	\$14.28	\$13.88
17 years	\$11.63	\$11.90
16 years	\$10.57	\$9.91
15 years under	\$10.57	\$8.92

If there is a savings provision for juniors as we propose then the outcome will be:

Existing Casual Rate (T + 33%)				New Junior % & New Casual Rate (T + 25%)		
20 years	90%	\$19.03	b'day occurs →	21 years & over		\$19.83
19 years	80%	\$16.92	b'day occurs →	20 years	90%	\$17.84
18 years	67.5%	\$14.28	b'day occurs →	19 years	80%	\$15.86
17 years	55%	\$11.63	b'day occurs →	18 years	70%	\$13.88
16 years & under	50%	\$10.57	b'day occurs →	17 years	60%	\$11.90

In the case of adults they need to be saved and absorbed in National Wage Case increases. We have assumed National Wage Case increases of \$20 per year:

Casual Rate (T + 33%) (1 Oct. '09)	T+25% 1 x NWC (1 Oct 10)	T+25% 2 x NWC (1 Oct 11)
\$21.85	\$21.14	\$21.80

Under that assumption the rate will be all but absorbed in two National Wage Case increases.

3. Overnight Workers

(see Clause 29.4.3 of Victorian Shops Interim Award 2000)

Such workers are entitled to time and a half for the first two hours and double time thereafter.

They will have that rate saved and reduced in two steps to the shift work rate of time plus 30%. We have assumed National Wage Case increases of \$20 per year and calculated the weekly rate for a full time employee.

Weekly Rate (1 Oct. '09)	Weekly Rate (1 July 2010)	Weekly Rate (1 July 2011)
\$1163.43	\$934.02	\$835.48

Attachment 2

HISTORY PUBLIC HOLIDAYS WORK PROVISION IN VICTORIAN SHOPS INTERIM AWARD 2000

This report traces the history of the voluntary work provision and the payment of the public holidays penalty rates leading to the current provision in the Victorian Shops Interim Award 2000.

As general background it is worth being aware that in 1970 a range of Shops Wages Boards were amalgamated down to four shops Boards providing four separate Determinations - the Clothing & Footwear Shops Determination, the Electrical, Furniture & Hardware Shops Determination, the Food Shops Determination and the General Shops Determination. These Determinations which became Awards continued until their abolition in early 1993 by the Victorian Parliament. They are the predecessors to the Federal Awards made covering shop assistants in Victoria.

The voluntary work provision in the Shops Awards has been linked to changes in shop trading hours legislation. Prior to 1971 there was limited opening of shops on public holidays. At the time of the amalgamation down to four Shops Wages Boards in 1970 the only shops permitted to trade on public holidays were Fifth Schedule shops and shops in declared holiday resorts (introduced in 1965) and shops in declared tourist areas (introduced in 1969). The Shops Determinations of 1970 generally provided that employees other than casuals were entitled to public holidays as days off with pay, without providing any ability to employ permanent staff and without providing a penalty rate. They were simply days off with pay. There were exceptions to this. There were special provisions allowing the employment of permanent staff in newsagencies and in certain food shops provided for in the Fifth Schedule which were: bread shops, confectionary and pastry shops, fish and oyster shops, fruit and vegetable shops and cooked meat other than tinned meat shops. It should be noted that generally these shops were small shops. They were generally family-run businesses and in most instances the majority of the staff were family members. The number of staff employed was small, the number of permanent staff employed was even smaller. The Shops Awards provided the ability to require persons in such shops to work on public holidays if required with the payment of the appropriate public holiday penalty rate.

The only other exception provided was in respect of Easter Saturday. Shops were permitted to trade on Easter Saturday from 1971 onwards. However the tradition was that only food shops such as, for example, supermarkets opened on Easter Saturday. Non-food shops did not open on Easter Saturday. The Food Shops Wages Board in 1971 provided for work on Easter Saturday on a voluntary basis with the payment of the appropriate penalty rate. (See attachments 'A', 'B', 'C' and 'D' for the Determinations prior to 1972 as referred to.)

In 1971 shop trading hours were substantially de-regulated in Victoria from Monday through to one o'clock on Saturday. Restrictions remained in respect of Saturday afternoon, Sunday and most public holidays.

In 1972 when the Shops Determinations were amended to take into account the substantial changes in shop trading hours legislation they were also amended to reflect the fact that shops in a broad range of categories were able to open in

declared holiday resorts. All four Shops Determinations provided that employees could elect to work on public holidays in such declared holiday resorts with the payment of the appropriate public holiday penalty rate (i.e., working on the public holiday was voluntary). In addition the Food Shops Determination continued to provide such provision for Easter Saturday. The relevant Determinations are shown as attachments 'E', 'F', 'G' and 'H'.

In 1980 a number of retailers in the non-food area wished to commence opening on Easter Saturday. Realising that they were unable to employ permanent staff as the Determination stood, the employers took an application to the Shops Boards. Arising from that application provisions were inserted in the Clothing & Footwear Shops Determination, the Electrical, Furniture & Hardware Shops Determination and the General Shops Determination matching the provision which already existed in the Food Shops Determination that permanents could elect to work on Easter Saturday and be paid the appropriate penalty rate. The provisions were arbitrated (see attachment 'T'). (See such provisions as attachments 'I', 'J', and 'K').

By 1992 the number and type of exemptions permitting shops to trade on public holidays had increased. The number of holiday resorts declared by Governments had grown. St. Kilda had received its own exemption. There were exemptions for tourist precincts as well. So the number of shops able to trade on public holidays had increased. In the context of award modernisation at the time, the employer associations and the SDA agreed to extend out the provision relating to public holidays to provide in all four Awards that employees may elect to work on public holidays and be paid at the appropriate penalty rate. This would apply in shops that were permitted to open for trade and in shops that were not permitted to open for trade. The provision was of general application. (See extracts from the four Shops Awards as attachments 'L', 'M', 'N', 'O'.)

In 1994 the Federal Commission made an arbitrated decision creating three Federal Awards covering shop assistants in Victoria which carried over amongst other provisions the public holiday provisions including voluntary work from the predecessor State Shops Awards with one exception. The one exception is that the rate of pay for work on Easter Saturday was reduced from triple time to double time and a half.

Since that time the predecessors to the Victorian Shops Interim Award 2000 continued to contain a voluntary work provision which specified that employees may elect to work on a public holiday and receive the appropriate public holiday penalty rate. Since 1996 shop trading hours have been substantially deregulated in Victoria. Therefore shops may open on all public holidays except Christmas Day, Good Friday and ANZAC Day to 1.00 pm. The provisions relating to public holidays of employees electing to work and receiving payment of the appropriate public holiday penalty rate have applied generally and successfully over the last twelve years throughout Victoria.

It should be noted that the antiquated provisions which applied to a very small part of the industry as an historical hang over from newsagents and Fifth Schedule food shops have progressively been carried over to what are called the Class A Exempt Shops provisions. However these provisions have never been of general application to most retail workers and most shops in Victoria. The history shows that in respect of most shops in Victoria where shops are permitted to trade on public holidays, there has always been a voluntary work provision in the form that an employee may elect to work on a public holiday with the payment of the appropriate public holiday penalty rate.

The approach in the Exposure Draft is a massive reduction in the existing entitlements applying to public holidays under the Victorian Shops Interim Award 2000.

Other Voluntary Work Provisions

It should be noted that voluntary work provisions have gone into the predecessors of the federal award even when such days are not declared public holidays. See attachments 'P', 'Q', 'R'. Note similar clauses exist in the Electrical, Furniture & Hardware Shops Award, Food Shops Award and General Shops Award and it is possible to obtain extracts of those.

Public Holiday Falling On Non-Working Day

It should be noted that when retail workers won the 5-day week in 1972 with the advent of Friday night shopping, the Determinations were amended to ensure that employees on all different rosters received the benefit of all public holidays. Equity demanded that employees received some countervailing benefit when an employee's rostered day off fell on a public holiday. The provision inserted was as follows:

Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either –

- i. another day or half day off in lieu; or*
- ii. an equivalent day or half day's pay; or*
- iii. one extra day or half day, as the case may be, added to his annual leave.*

(Note that at this time before the introduction of the 38-hour week "rostered day off" referred to the two days in the week that the five-day a week employee was not rostered to work.)

It was extended out to cover the day or half day off arising from the 38-hour week.

Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under Clause 3A (b) (iii), (iv), (v) or (vi), he shall be entitled to receive by mutual agreement either –

- iv. another day or half day off in lieu; or*
- v. an equivalent day or half day's pay; or*
- vi. one extra day or half day, as the case may be, added to his annual leave.*

This provision carried through into the federal awards.

It should be noted that it is also consistent with the decision on this matter by the Federal Commission in respect of the Hospitality industry .

Following this decision the Federal shops awards were amended to include 5-day a week part timers as well as full-timers.

It is a long established entitlement to ensure fairness and equity to those on different rosters. E.g., it would be grossly unfair for an employee rostered Tuesday to Saturday to miss out on all the Monday public holidays.

Time In Lieu Of Public Holiday Payment

In the Commission's exposure draft it gave employers the opportunity of payment of 250%, "equivalent" time off or another day added to annual leave. This is apparently picking up the old and antiquated provision which originally applied to a limited number of food Fifth Schedule shops plus newsagencies covering a small number of mainly casual employees. The provision has been carried through to Class A Exempt Shops in the Victorian Shops Interim Award 2000 (Cl. 38.10.1 (a), (b), (c)).

However the vast bulk of employees under the award are not covered by those provisions but instead are covered by Cl. 38.1.3 which provides that employees may elect to work and have the absolute right to the payment of a rate of 250% for work on the day.

In 1990 as a part of the Structural Efficiency Principle and the achievement of one of the structural efficiency wage increases, the SDA agreed to a provision for time off in lieu of the penalty rate if an employee so elects. The SDA believed that the time off should equate to the penalty component. The RTA said it should be time for time. The Commission arbitrated in favour of the SDA proposal (see Decision as attachment 'S').

This is now contained in the award as Clause 38.9.1, 38.9.2, 38.9.3.

These are the provisions of general application in respect of time in lieu of public holiday payment.



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DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE CLOTHING AND FOOTWEAR SHOPS BOARD

(No. 1 of 1970.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of a seller by retail of :—

- (a) drapery, mercery, haberdashery, millinery, hosiery or manchester goods ;
- (b) any article of clothing, including headwear and articles made from fur ; and
- (c) boots, shoes or slippers.

2. DATE OF OPERATION : From the beginning of the first pay period to commence on or after the 14th May, 1970

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Certificate of Service	19	Posting of Determination	25
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares	22	Special Additional Amount for Saturday Morning Work	7
Explanatory Note	26	Sunday Work	15
First-Aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Meal Allowance	9	Time and Wages Records	24
Meal Break	8	Transfer of Employee	23
Ordinary Times of Beginning and Ending Work	5	Wages	4
Overtime	6		

exceeds the sum which the employer is required to pay to the worker under sub-clause (3) of this clause—
the employer shall not be liable to make any payment to the worker under sub-clause (3) of this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of the employment.

(5) (a) Where an employer intends temporarily to close (or reduce to nucleus) his establishment or a section thereof for the purpose (*inter alia*) of allowing annual leave to the workers concerned or a majority of them he may give in writing to such workers one month's notice (or, in the case of any worker engaged after giving of such notice, notice on the date of the worker's engagement) that he elects to apply the provisions of this sub-clause; and thereupon—

- (i) any such worker who at the date of closing is entitled to his annual holiday shall be given his annual holiday commencing as on and from the date of closing and, in addition, shall be paid three forty-ninths of his ordinary pay for any period of employment after the accrual of his right to the annual holiday and up to but excluding the date of closing;
- (ii) any such worker who at the date of closing is not entitled to his annual holiday shall be given leave without pay as on and from the date of closing and shall be paid three forty-ninths of his ordinary pay for the period of his employment since the commencement thereof or the accrual of his last annual holiday (whichever is the later) and up to but excluding the date of closing, together with pay for any holiday during such leave for which he is entitled to payment under this Determination or under his contract of employment; and
- (iii) the next twelve-monthly qualifying period of employment for every such worker shall commence as on and from the date of closing.

(b) In this sub-clause "date of closing" in relation to each worker means the first day of his annual holiday or leave pursuant to this sub-clause.

Clause C.

(1) For the purposes of the two last preceding clauses—

"Ordinary pay" in relation to any worker means remuneration for the worker's normal weekly number of hours of work calculated at the ordinary time rate of pay and where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

"Week" in relation to any worker means the worker's ordinary working week.

"Worker" means any person employed by any employer to do any work for hire or reward.

(2) For the purposes of the definition of the term "ordinary pay" in sub-clause (1) of this clause—

(a) where no ordinary time rate of pay is fixed for a worker's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues;

(b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues;

(c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

(3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

(a) any annual leave or long service leave taken therein;

(b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;

(c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

14.

HOLIDAYS.

(a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e. the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Melbourne Show Day.

(b) Employees who have been in the service of the same employer for at least twelve months shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within a radius of 30 miles from the General Post Office, Melbourne, employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

Outside a radius of 30 miles from the General Post Office, Melbourne, employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE ELECTRICAL, FURNITURE AND HARDWARE SHOPS BOARD.

(No. 2 of 1970.)

(This Determination, in replacing No. 1 of 1970, inserts a new clause numbered 14A.)

1. **SCOPE :** This Determination applies to the whole of Victoria to the trades of :—

- (a) a seller by retail of furniture or floor coverings ;
- (b) a seller by wholesale or retail of hardware but not including—
 - (i) persons employed in assembling ordered goods kept in a bulk store or yard ; or
 - (ii) persons employed as storemen, packers or sorters ;
- (c) a seller by retail of pictures, picture frames, paints, colours or wallpapers ;
- (d) a seller by retail of electrical goods or radio or television receivers, or parts or accessories therefor :—

2. **DATE OF OPERATION :** This Determination shall operate as from the 2nd October, 1970.

3.

ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Certificate of Service	19	Posting of Determination	25
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares	22	Special Additional Amount for Saturday Morning Work	7
Explanatory Note	28	Sunday Work	15
First-aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Meal Allowance	9	Time and Wages Records	24
Meal Break	8	Transfer of Employee	23
Ordinary Times of Beginning and Ending Work	5	Transport Allowance	26
Overtime	6	Wages	4
Payment of Rent	27		

(e) any absence on any other account not involving termination of employment— and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—
New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e. the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Melbourne Show Day.

(b) Employees who have been in the service of the same employer for at least twelve months shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within a radius of 30 miles from the General Post Office, Melbourne, employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or an additional day as annual leave.

Outside a radius of 30 miles from the General Post Office, Melbourne, employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

SATURDAY, 26TH DECEMBER, 1970.

14A. Weekly employees shall be entitled to be absent from work without loss of pay on Saturday 26th December, 1970, provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death with Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days' work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. All wages due shall be paid not later than Thursday in each week, and must be paid during working hours. When Friday is a public holiday wages shall be paid not later than Wednesday in that week.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee or an employer has been guilty of misconduct, or where an employee has been engaged temporarily for a period not exceeding six weeks in duration, seven days' notice of termination of employment shall be given by either party or one week's wages paid or forfeited, as the case may be, in lieu thereof.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

20. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees an adequate first-aid outfit.

CLOTHING.

21. Where any employee is required to wear any special uniform, dress, or clothing, it shall be supplied, paid for, and if necessary, except as provided hereunder, laundered by the employer. Any such garment shall remain the property of the employer.

Any employee working in a second-hand shop or used furniture department shall be provided with suitable protective clothing, such to be laundered at the employers' expense.

Where the employee is required to launder the garment an allowance of 45c per garment, in addition to the ordinary wage shall be paid.

EXCESS FARES.

22. Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional fares so incurred shall be paid by the employer.

TRANSFER OF EMPLOYEE.

23. Where any employer transfers an employee from one township to another the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges, for the employee and his family.



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DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE FOOD SHOPS BOARD.

(No. 3 of 1971.)

(This Determination, which replaces Determination No. 2 of 1971, amends clauses 14 and 18.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of :—

- (a) a retail grocer ;
- (b) a retail fruiterer and greengrocer ;
- (c) a seller by retail of dairy produce, cooked meat or delicatessen ;
- (d) a seller by retail of confectionery or pastry ; and
- (e) a seller by retail of uncooked fish or poultry or of cooked fish, poultry or other prepared food which is not to be consumed on the premises.

2. DATE OF OPERATION : As from the 7th September, 1971.

3. ARRANGEMENT.

Subject Matter	Clause No.	Subject Matter	Clause No.
Annual Leave	13	Payment of Wages	17
Bicycle Allowance	26	Posting of Determination	25
Certificate of Service	19	Rent of Residence	28
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares and Travelling Time	22	Special Additional Amount for Saturday Morning Work	7
Explanatory Notes	29	Sunday Work	15
First-aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Meal Allowance	9	Time and Wages Records	24
Meal Break	8	Transfer of Employee	23
Night Shift	6	Wages	4
Ordinary Times of Beginning and Ending Work	5	Writing Materials	27
Overtime	5		

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by 3/49ths of the appropriate ordinary hourly rate payable to a weekly employee.

HOLIDAYS.

14. (A) (*Other than persons employed in Fifth Schedule Shops.*)

(a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Melbourne Show Day.

(b) (1) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be :—

(i) given the day off without deduction of pay on Melbourne Show Day ; or in lieu

(ii) employees may be required to work until the hour of 12 o'clock noon in which case such employees shall be given the afternoon off without deduction of pay and shall be paid at the rate of double time for all time worked. Provided that an employee may elect to take a half day off at a time to be mutually agreed in lieu of the penalty rate prescribed.

(2) Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Show Day or in lieu shall be given some other day off or given an additional day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Easter Saturday.

(d) Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

(B) (*Fifth Schedule Shops.*)

Employees in Fifth Schedule shops, provided their services are not required, shall be granted the same holidays provided in sub-clauses (a), (b) (1) (i) and (2) and (c) of clause 14 (A) for other employees ; provided that an employee required to work on any holiday provided in sub-clauses (a), (b) (1) (i) and (2) and (c) shall be compensated in one of the following ways :—

(i) paid at the rate of double time for all time worked with a minimum payment equivalent to a normal day's or half day's work as the case may be ;

(ii) given some other day or half day off in lieu as the case may be ; or

(iii) given an additional day or half day as the case may be as annual leave.

(C) (*General.*)

(i) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(ii) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this clause 14 relating to such holiday shall apply only to the day so substituted.

(iii) For the purposes of this clause 14 a half day shall commence or cease at 12 o'clock noon.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary day's work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. (a) All wages due shall be paid not later than Wednesday in each week, and must be paid during working hours.

(b) Each employee shall be supplied on or before pay day with a statement in writing showing, or from which may be calculated, the amount of ordinary pay, overtime, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee has been guilty of misconduct, seven days' notice of termination of employment shall be given by either employer or employee. If such notice be not given, a week's wages shall be paid or forfeited, as the case may be, in lieu thereof. This clause shall not apply where the period of service is three weeks or less.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

NOTE 2.—The shops of the classes or kinds mentioned in the Fifth Schedule are—

Bread shops.
Confectionery and Pastry shops.
Eating-houses and Restaurants.
Fish and Oyster shops.
Shops for the sale of aviary and cage birds
Shops for the sale of aquarium fish.
Flower shops and retail plant nurseries.
Fruit and Vegetable shops.
Booksellers and Newsagents shops.
Lending Libraries.
Cooked Meat (other than tinned meat) shops.
Photographers' shops.
Undertakers' establishments.

NOTE 3.—The first complete Determination (No. 1 of 1970) of the Foods Shops Board was made on the 11th May, 1970. The Board was appointed by Order in Council dated the 30th September, 1969, and since the 1st October, 1969, has had the power to determine any industrial matter in relation to the trades set out in clause 1 of this Determination.

The Determination superseded the Determinations of the Shops Board No. 8 (Delicatessens), the Shops Board No. 15 (Grocers), the Shops Board No. 19 (Confectionery, Pastry, Fruit and Vegetables) and in part the Determination of the Shops Board No. 7 (Country Shop Assistants), (each of these Wages Boards having been abolished), and in addition in part the Determination of the Shops Board No. 10 (Fish and Poultry).

NOTE.—Copies of Wages Boards Determinations may be purchased from the Sales Branch, Government Printing Office, Macarthur-street, Melbourne, 3002. (Price 1 to 4 pages, 10 cents, others 30 cents per copy, plus postage).



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA

Labour and Industry Act.

DETERMINATION OF THE GENERAL SHOPS BOARD.

(No. 2 of 1970.)

(This Determination, in replacing No. 1 of 1970, amends clause 14 (c) and inserts a new clause numbered 14A.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of:—

(a) selling goods by retail, whether in a shop or elsewhere, other than any trade for which any of the following Wages Boards has been appointed—Boot Repairers, Butchers, Chemists Shops, Clothing and Footwear Shops, Electrical, Furniture and Hardware Shops, Food Shops, Fuel and Fodder, Motor Requisites ; and

(b) a wholesale or retail bookseller or newsagent or a lending library conducted for profit.

2. DATE OF OPERATION : This Determination shall operate from the 19th October, 1970.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Certificate of Service	19	Posting of Determination	25
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares	22	Special Additional Amount for Saturday Morning Work	7
Explanatory Note	27	Sunday Work	15
First-aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Meal Allowance	9	Time and Wages Records	24
Meal Break	8	Transfer of Employee	23
Ordinary Times of Beginning and Ending Work	5	Wages	4
Overtime	6		
Payment of Rent	26		

(4) Where the annual holiday under the last preceding clause or any part thereof has been taken in advance by a worker pursuant to sub-clause (3) of that clause and—

(a) the employment of the worker is terminated before he has completed the year of employment in respect of which such annual holiday or part was taken ; and

(b) the sum paid by the employer to the worker as ordinary pay for the annual holiday or part so taken in advance exceeds the sum which the employer is required to pay to the worker under sub-clause (3) of this clause—

the employer shall not be liable to make any payment to the worker under sub-clause (3) of this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of the employment.

(5) (a) Where an employer intends temporarily to close (or reduce to nucleus) his establishment or a section thereof for the purpose (*inter alia*) of allowing annual leave to the workers concerned or a majority of them he may give in writing to such workers one month's notice (or, in the case of any worker engaged after giving of such notice, notice on the date of the worker's engagement) that he elects to apply the provisions of this sub-clause ; and thereupon—

(i) any such worker who at the date of closing is entitled to his annual holiday shall be given his annual holiday commencing as on and from the date of closing and, in addition, shall be paid three forty-ninths of his ordinary pay for any period of employment after the accrual of his right to the annual holiday and up to but excluding the date of closing ;

(ii) any such worker who at the date of closing is not entitled to his annual holiday shall be given leave without pay as on and from the date of closing and shall be paid three forty-ninths of his ordinary pay for the period of his employment since the commencement thereof or the accrual of his last annual holiday (whichever is the later) and up to but excluding the date of closing, together with pay for any holiday during such leave for which he is entitled to payment under this Determination or under his contract of employment ; and

(iii) the next twelve-monthly qualifying period of employment for every such worker shall commence as on and from the date of closing.

(b) In this sub-clause "date of closing" in relation to each worker means the first day of his annual holiday or leave pursuant to this sub-clause.

Clause C.

(1) For the purposes of the two last preceding clauses—

"Ordinary pay" in relation to any worker means remuneration for the worker's normal weekly number of hours of work calculated at the ordinary time rate of pay and where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

"Week" in relation to any worker means the worker's ordinary working week.

"Worker" means any person employed by any employer to do any work for hire or reward.

(2) For the purposes of the definition of the term "ordinary pay" in sub-clause (1) of this clause—

(a) where no ordinary time rate of pay is fixed for a worker's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues ;

(b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues ;

(c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging ;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

(3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

(a) any annual leave or long service leave taken therein ;

(b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave ;

(c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident ;

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by 3/49ths of the appropriate ordinary hourly rate payable to a weekly employee.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e., the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day. Provided that employees of authorized newsagents may be required to work and if so required shall be paid at the rate of double time with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Melbourne Show Day.

(b) Employees who have been in the service of the same employer for at least twelve months shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* and within the Shires of Croydon and Diamond Valley employees in shops, other than Fifth Schedule shops, shall be given the day off without deduction of pay on Melbourne Cup Day.

Within such area employees in Fifth Schedule shops may be required to work and if so required shall be paid at the rate of double time with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

Saturday 26th December, 1970.

14A. (a) (Other than persons employed in Fifth Schedule Shops.) Weekly employees shall be entitled to be absent from work without loss of pay on Saturday 26th December, 1970, provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

(b) (Fifth Schedule Shops.) Weekly employees not required to work shall be entitled to be absent from work without loss of pay on Saturday 26th December, 1970, provided that if an employee is required to work on that day he or she shall be paid at the rate of double his or her ordinary hourly rate for all time worked with a minimum payment as for three hours at such rate.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days' work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. All wages due shall be paid not later than Thursday in each week, and must be paid during working hours. When Friday is a public holiday wages shall be paid not later than Wednesday in that week.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee or an employer has been guilty of misconduct, or where an employee has been engaged temporarily for a period not exceeding six weeks in duration, seven days' notice of termination of employment shall be given by either party or one week's wages paid or forfeited, as the case may be, in lieu thereof.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

20. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees an adequate first-aid outfit.

CLOTHING.

21. Where any employee is required to wear any special uniform, dress, or clothing, it shall be supplied, paid for, and if necessary, except as provided hereunder, laundered by the employer. Any such garment shall remain the property of the employer.

Where the employee is required to launder the garment an allowance of 45c per garment, in addition to the ordinary wage shall be paid.

EXCESS FARES.

22. Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional fares so incurred shall be paid by the employer.

TRANSFER OF EMPLOYEE.

23. Where any employer transfers an employee from one township to another the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges, for the employee and his family.

TIME AND WAGES RECORDS.

24. An employer shall keep time and wages records showing the name of each employee, the hours worked each week by, and the wages and overtime paid to each employee. Such record shall be open for inspection by a duly-accredited representative of the Shop Assistants and Warehouse Employees' Federation of Australia. Provided that an inspection shall not be demanded unless the Secretary or other paid official of the union suspects that a breach of the Determination has been committed.

POSTING OF DETERMINATION.

25. A copy of this Determination shall be kept displayed in some conspicuous place in all premises to which it applies.

PAYMENT OF RENT.

26. A shopkeeper shall not charge any employee who resides on the premises in connexion with the shop in which the business of such shopkeeper is carried on a greater sum as rent for such premises than \$2 per week.

J. C. THOMAS, Chairman.

J. B. O'CONNOR, Secretary.

Melbourne, 30th September and 19th October, 1970.

EXPLANATORY NOTE.

27. The first complete Determination (No. 1 of 1970) of the General Shops Board was made on the 29th April, 1970. The Board was appointed by Order-in-Council dated 30th September, 1969, and since the 1st October, 1969, has had the power to determine any industrial matter in relation to the trades set in clause 1 of this Determination.

The Determination superseded the Determinations of the Shops Board No. 17 (Tobacconists), the Shops Board No. 18 (Miscellaneous Shops), the Shops Board No. 21 (Booksellers and Newsagents) and in part the Determination of the Shops Board No. 7 (Country Shop Assistants), each of these Wages Boards having been abolished.

NOTE:—Copies of Wages Boards Determinations may be purchased from the Sales Branch, Government Printing Office, Macarthur-street, Melbourne, 3002. (Price, 1 and 2 pp., 10 cents, others, 20 cents per copy plus postage).



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DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE CLOTHING AND FOOTWEAR SHOPS BOARD

(No. 1 of 1972.)

(This Determination, which replaces Determination No. 3 of 1971, amends clauses 5 and 14.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of a seller by retail of :—

- (a) drapery, mercery, haberdashery, millinery, hosiery or manchester goods ;
- (b) any article of clothing, including headwear and articles made from fur ; and
- (c) boots, shoes or slippers.

2. DATE OF OPERATION : As from the 23rd March, 1972.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Certificate of Service	19	Posting of Determination	25
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares	22	Special Additional Amount for Evening and/ or Saturday Work	7
Explanatory Note	26	Sunday Work	15
First-Aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Hours of work and Rosters	5	Time and Wages Records	24
Meal Allowance	9	Transfer of Employee	23
Meal Break	8	Wages	4
Overtime	6		

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

- (3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—
- (a) any annual leave or long service leave taken therein ;
 - (b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave ;
 - (c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident ;
 - (d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;
 - (e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b)) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by $\frac{3}{49}$ ths of the appropriate ordinary hourly rate payable to a weekly employee.

14. HOLIDAYS.

- (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e. the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under Section 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of ordinary time for all time worked with a minimum payment as for three hours; provided further that where such holiday is the day after Good Friday, he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the amount payable under Clause 7 hereof, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

Melbourne Show Day.

- (b) Employees who have been in the service of the same employer for at least twelve months shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

- (c) Within the Municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

- (d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

- (f) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either :—

- (i) equal time off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days' work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words " wife " and " husband " shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. Where over the period of the roster the ordinary week's work is, on average, 40 hours per week, the employer may adopt an averaging method in determining and paying wages due for the ordinary week's work ; provided that all wages due shall be paid not later than Thursday in each week, and must be paid during working hours. When Friday is a holiday wages shall be paid not later than Wednesday in that week.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee or an employer has been guilty of misconduct, or where an employee has been engaged temporarily for a period not exceeding six weeks in duration, seven days' notice of termination of employment shall be given by either party or one week's wages paid or forfeited, as the case may be, in lieu thereof.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

20. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees an adequate first-aid outfit.

CLOTHING.

21. Where any employee is required by his employer to wear any special uniform, dress, or clothing, it shall be supplied, paid for, and, if necessary, laundered by the employer. Any such garment shall remain the property of the employer.

EXCESS FARES.

22. Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional fares so incurred shall be paid by the employer.



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE ELECTRICAL, FURNITURE AND HARDWARE SHOPS BOARD.

(No. 1 of 1972.)

(This Determination, which replaces Determination No. 3 of 1971, amends clauses 5 and 14.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of :—

- (a) a seller by retail of furniture or floor coverings ;
- (b) a seller by wholesale or retail of hardware but not including—
 - (i) persons employed in assembling ordered goods kept in a bulk store or yard ; or
 - (ii) persons employed as storemen, packers or sorters ;
- (c) a seller by retail of pictures, picture frames, paints, colours or wallpapers ;
- (d) a seller by retail of electrical goods or radio or television receivers, or parts or accessories therefor :—

2. DATE OF OPERATION : As from the 23rd March, 1972.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Certificate of Service	19	Posting of Determination	25
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares	22	Special Additional Amount for Evening and/or Saturday Work	7
Explanatory Note	28	Sunday Work	15
First-aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Hours of Work and Rosters	5	Time and Wages Records	24
Meal Allowance	9	Transfer of Employee	23
Meal Break	8	Transport Allowance	26
Overtime	6	Wages	4
Payment of Rent	27		

pursuant to sub-clause (3) of that clause and—

(a) the employment of the worker is terminated before he has completed the year of employment in respect of which such annual holiday or part was taken ; and

(b) the sum paid by the employer to the worker as ordinary pay for the annual holiday or part so taken in advance exceeds the sum which the employer is required to pay to the worker under sub-clause (3) of this clause—

the employer shall not be liable to make any payment to the worker under sub-clause (3) of this clause and shall be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of the employment.

(5) (a) Where an employer intends temporarily to close (or reduce to nucleus) his establishment or a section thereof for the purpose (*inter alia*) of allowing annual leave to the workers concerned or a majority of them he may give in writing to such workers one month's notice (or, in the case of any worker engaged after giving of such notice, notice on the date of the worker's engagement) that he elects to apply the provisions of this sub-clause ; and thereupon—

(i) any such worker who at the date of closing is entitled to his annual holiday shall be given his annual holiday commencing as on and from the date of closing and, in addition, shall be paid three forty-ninths of his ordinary pay for any period of employment after the accrual of his right to the annual holiday and up to but excluding the date of closing ;

(ii) any such worker who at the date of closing is not entitled to his annual holiday shall be given leave without pay as on and from the date of closing and shall be paid three forty-ninths of his ordinary pay for the period of his employment since the commencement thereof or the accrual of his last annual holiday (whichever is the later) and up to but excluding the date of closing, together with pay for any holiday during such leave for which he is entitled to payment under this Determination or under his contract of employment ; and

(iii) the next twelve-monthly qualifying period of employment for every such worker shall commence as on and from the date of closing.

(b) In this sub-clause " date of closing " in relation to each worker means the first day of his annual holiday or leave pursuant to this sub-clause.

Clause C.

(1) For the purposes of the two last preceding clauses—

" Ordinary pay " in relation to any worker means remuneration for the worker's normal weekly number of hours of work calculated at the ordinary time rate of pay and where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

" Week " in relation to any worker means the worker's ordinary working week.

" Worker " means any person employed by any employer to do any work for hire or reward.

(2) For the purposes of the definition of the term " ordinary pay " in sub-clause (1) of this clause—

(a) where no ordinary time rate of pay is fixed for a worker's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues ;

(b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues ;

(c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging ;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

(3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

(a) any annual leave or long service leave taken therein ;

(b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave ;

(c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident ;

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b), may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by 3/49ths of the appropriate ordinary hourly rate payable to a weekly employee.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e. the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the Labour and Industry Act 1958, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of ordinary time for all time worked with a minimum payment as for three hours ;

provided further that where such holiday is the day after Good Friday, he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the amount payable under Clause 7 hereof, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

Melbourne Show Day.

(b) Employees who have been in the service of the same employer for at least twelve months shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958*, employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(f) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either :—

- (i) equal time off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days' work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words " wife " and " husband " shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. Where over the period of the roster the ordinary week's work is, on average, 40 hours per week, the employer may adopt an averaging method in determining and paying wages due for the ordinary week's work ; provided that all wages due shall be paid not later than Thursday in each week, and must be paid during working hours. When Friday is a holiday wages shall be paid not later than Wednesday in that week.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee or an employer has been guilty of misconduct, or where an employee has been engaged temporarily for a period not exceeding six weeks in duration, seven days' notice of termination of employment shall be given by either party or one week's wages paid or forfeited, as the case may be in lieu thereof.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

20. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees, an adequate first-aid outfit.

CLOTHING.

21. Where any employee is required to wear any special uniform, dress, or clothing, it shall be supplied, paid for, and if necessary, except as provided hereunder, laundered by the employer. Any such garment shall remain the property of the employer.

Any employee working in a second-hand shop or used furniture department shall be provided with suitable protective clothing, such to be laundered at the employers' expense.

Where the employee is required to launder the garment an allowance of 45c per garment, in addition to the ordinary wage shall be paid.

EXCESS FARES.

22. Where an employee is required by his or her employer to move temporarily from one branch or shop to another for a period not exceeding three weeks all additional fares so incurred shall be paid by the employer.

TRANSFER OF EMPLOYEE.

23. Where any employer transfers an employee from one township to another the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges, for the employee and his family.

TIME AND WAGES RECORDS.

24. An employer shall keep time and wages records showing the name of each employee, the hours worked each week by, and the wages and overtime paid to each employee. Such record shall be open for inspection by a duly-accredited representative of the Shop Assistants and Warehouse Employees' Federation of Australia. Provided that an inspection shall not be demanded unless the Secretary or other paid official of the union suspects that a breach of the Determination has been committed,



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE FOOD SHOPS BOARD.

(No. 1 of 1972.)

(This Determination, which replaces Determination No. 5 of 1971, amends clauses 5 and 14.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of :—

- (a) a retail grocer ;
- (b) a retail fruiterer and greengrocer ;
- (c) a seller by retail of dairy produce, cooked meat or delicatessen ;
- (d) a seller by retail of confectionery or pastry ; and
- (e) a seller by retail of uncooked fish or poultry or of cooked fish, poultry or other prepared food which is not to be consumed on the premises.

2. DATE OF OPERATION : As from the 23rd March, 1972.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Wages	17
Bicycle Allowance	26	Posting of Determination	25
Certificate of Service	19	Rent of Residence	28
Clothing	21	Rest Period	10
Compassionate Leave	16	Scope	1
Date of Operation	2	Sick Leave	12
Excess Fares and Travelling Time	22	Special Additional Amount for Evening and/or Saturday Work	7
Explanatory Notes	29	Sunday Work	15
First-aid Outfit	20	Termination of Employment	18
Holidays	14	Terms of Employment	11
Hours of Work and Rosters—Day Workers	5	Time and Wages Records	24
Meal Allowance	9	Transfer of Employee	23
Meal Break	8	Wages	4
Night Shift	6A	Writing Materials	27
Overtime	6		

- (ii) any such worker who at the date of closing is not entitled to his annual holiday shall be given leave without pay as on and from the date of closing and shall be paid three forty-ninths of his ordinary pay for the period of his employment since the commencement thereof or the accrual of his last annual holiday (whichever is the later) and up to but excluding the date of closing, together with pay for any holiday during such leave for which he is entitled to payment under this Determination or under his contract of employment; and
- (iii) the next twelve-monthly qualifying period of employment for every such worker shall commence as on and from the date of closing.

(b) In this sub-clause "date of closing" in relation to each worker means the first day of his annual holiday or leave pursuant to this sub-clause.

Clause C.

- (1) For the purposes of the two last preceding clauses—

"Ordinary pay" in relation to any worker means remuneration for the worker's normal weekly number of hours of work calculated at the ordinary time rate of pay and where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

"Week" in relation to any worker means the worker's ordinary working week.

"Worker" means any person employed by any employer to do any work for hire or reward.

- (2) For the purposes of the definition of the term "ordinary pay" in sub-clause (1) of this clause—

(a) where no ordinary time rate of pay is fixed for a worker's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues;

(b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues;

(c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

- (3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

(a) any annual leave or long service leave taken therein;

(b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;

(c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by 3/49ths of the appropriate ordinary hourly rate payable to a weekly employee.

HOLIDAYS.

14. (A) (*Other than persons employed in Fifth Schedule Shops.*)

(a) Employees shall be granted the following holidays without deduction of pay:—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the *Labour Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of ordinary time for all time worked with a minimum payment as for three hours.

Melbourne Show Day.

- (b) (1) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be:—

(i) given the day off without deduction of pay on Melbourne Show Day; or in lieu

(ii) employees may be required to work until the hour of 12 o'clock noon in which case such employees shall be given the afternoon off without deduction of pay and shall be paid at the rate of double time for all time worked. Provided that an employee may elect to take a half day off at a time to be mutually agreed in lieu of the penalty rate prescribed.

- (2) Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Show Day or in lieu shall be given some other day off or given an additional day as annual leave.

Melbourne Cup Day.

- (c) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Easter Saturday.

- (d) Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

- (e) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either:—

(i) equal time off in lieu; or

(ii) an equivalent day or half day's pay; or

(iii) one extra day or half day, as the case may be, added to his annual leave.

(B) (*Fifth Schedule Shops.*)

Employees in Fifth Schedule shops, provided their services are not required, shall be granted the same holidays provided in sub-clauses (a), (b) (1) (i) and (2) and (c) of clause 14 (A) for other employees : provided that an employee required to work on any holiday provided in sub-clauses (a), (b) (1) (i) and (2) and (c) shall be compensated in one of the following ways :—

- (i) paid at the rate of double time for all time worked with a minimum payment equivalent to a normal day's or half day's work as the case may be ;
- (ii) given some other day or half day off in lieu as the case may be ; or
- (iii) given an additional day or half day as the case may be as annual leave.

(C) (*General.*)

- (i) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.
- (ii) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this clause 14 relating to such holiday shall apply only to the day so substituted.
- (iii) For the purposes of this clause 14 a half day shall commence or cease at 12 o'clock noon.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary day's work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words " wife " and " husband " shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

PAYMENT OF WAGES.

17. (a) Where over the period of the roster the ordinary week's work is, on average, 40 hours per week, the employer may adopt an averaging method in determining and paying wages due for the ordinary week's work ; provided that all wages due shall be paid not later than Wednesday in each week, and must be paid during working hours.

(b) Each employee shall be supplied on or before pay day with a statement in writing showing, or from which may be calculated, the amount of ordinary pay, overtime, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

TERMINATION OF EMPLOYMENT.

18. Except in a case where an employee has been guilty of misconduct, seven days' notice of termination of employment shall be given by either employer or employee. If such notice be not given, a week's wages shall be paid or forfeited, as the case may be, in lieu thereof. This clause shall not apply where the period of service is three weeks or less.

CERTIFICATE OF SERVICE.

19. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

20. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees, an adequate first-aid outfit.

CLOTHING.

21. Where any employee is required to wear any special uniform, dress, or clothing, it shall be supplied, paid for, and if necessary, except as provided hereunder, laundered by the employer. Any such garment shall remain the property of the employer.

Where the employee is required to launder the garment an allowance of 45c per garment in addition to the ordinary wage shall be paid.

EXCESS FARES AND TRAVELLING TIME.

22. (a) An employee who on any day is required to work at a place away from his usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from his home to his usual place of employment and returning), shall be paid travelling time and also any fares reasonably incurred in excess of those normally incurred in travelling between his home and his usual place of employment.

Where the employer provides transport from a pick up point, an employee shall be paid travelling time for all time spent travelling from such pick up point and return thereto.

(b) The rate of pay for travelling time shall be the ordinary time rate except on Sundays and holidays when it shall be time and a half.

TRANSFER OF EMPLOYEE.

23. Where any employer transfers an employee from one township to another, the employer shall be responsible for and shall pay the whole of the moving expenses, including fares and transport charges, for the employee and his family.

TIME AND WAGES RECORDS.

24. An employer shall keep time and wages records showing the name of each employee, the hours worked each week, and the wages and overtime paid to each employee. Such record shall be open for inspection by a duly-accredited representative of :—

- The Shop Assistants and Warehouse Employees' Federation of Australia.
- The Retail Confectionery and Mixed Business Association.
- The Master Grocers Association of Victoria Limited.
- The Victorian Retail Fruiterers and Greengrocers Association.
- The Victorian Master Pastrycooks Association.
- The Delicatessens Association of Victoria.
- The Victorian Employers Federation.
- The Federated Cold Storage and Meat Preserving Employees Union of Australasia.
- The Retail Traders' Association of Victoria.



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA.

Labour and Industry Act.

DETERMINATION OF THE GENERAL SHOPS BOARD.

(No. 1 of 1972.)

(This Determination, which replaces Determination No. 3 of 1971 amends clauses 5 and 14.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of:—

- (a) selling goods by retail, whether in a shop or elsewhere, other than any trade for which any of the following Wages Boards has been appointed—Boot Repairers, Butchers, Chemists Shops, Clothing and Footwear Shops, Electrical, Furniture and Hardware Shops, Food Shops, Fuel and Fodder, Motor Requisites ; and
- (b) a wholesale or retail bookseller or newsagent or a lending library conducted for profit.

2. DATE OF OPERATION : As from the 23rd March, 1972.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Annual Leave	13	Payment of Rent	26
Certificate of Service	19	Payment of Wages	17
Clothing	21	Posting of Determination	25
Compassionate Leave	16	Rest Period	10
Date of Operation	2	Scope	1
Excess Fares	22	Sick Leave	12
Explanatory Note.. .. .	27	Special Additional Amount for Evening and/or Saturday Work	7
First-aid Outfit	20	Sunday Work	15
Holidays	14	Termination of Employment	18
Hours of Work and Rosters	5	Terms of Employment	11
Meal Allowance	9	Time and Wages Records	24
Meal Break	8	Transfer of Employee	23
Overtime.. .. .	6	Wages	4

"Week" in relation to any worker means the worker's ordinary working week.

"Worker" means any person employed by any employer to do any work for hire or reward.

(2) For the purposes of the definition of the term "ordinary pay" in sub-clause (1) of this clause—

- (a) where no ordinary time rate of pay is fixed for a worker's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues ;
- (b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues ;
- (c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging ;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

(3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

- (a) any annual leave or long service leave taken therein ;
- (b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave ;
- (c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident ;
- (d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;
- (e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the worker as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by $\frac{3}{49}$ ths of the appropriate ordinary hourly rate payable to a weekly employee.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday (i.e., the day after Good Friday), Easter Monday, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of ordinary time for all time worked with a minimum payment as for three hours ;

Provided further that where such holiday is the day after Good Friday, he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the amount payable under Clause 7 hereof, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

Provided that employees of authorized newsgagents in any area may be required to work and if so required shall be paid at the rate of double time with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Melbourne Show Day.

(b) Employees who have been in the service of the same employer for at least twelve months shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fourth Schedule to the *Public Service Act 1958* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees in shops, other than Fifth Schedule shops, shall be given the day off without deduction of pay on Melbourne Cup Day.

Within such area employees in Fifth Schedule shops may be required to work and if so required shall be paid at the rate of double time with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Outside the area specified above employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Cup Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(d) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(e) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(f) Provided that if a holiday falls on an employees rostered day off he shall be entitled to receive by mutual agreement either :—

- (i) equal time off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. An employee shall on the death within Australia of a wife, husband, father, mother, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days' work. Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA

Labour and Industry Act

DETERMINATION OF THE CLOTHING AND FOOTWEAR SHOPS BOARD

(No. 3 of 1980)

(This Determination, which replaces No. 2 of 1980, amends clauses 4, 11 and 14.)

1. **SCOPE :** This Determination applies to the whole of Victoria to the trades of a seller by retail of :—
 - (a) drapery, mercery, haberdashery, millinery, hosiery or manchester goods ;
 - (b) any article of clothing, including headwear and articles made from fur ; and
 - (c) boots, shoes or slippers.
2. **DATE OF OPERATION:** This Determination shall operate from the first pay period to commence on or after 2 September, 1980.

3. ARRANGEMENT

Subject Matter	Clause No.	Subject Matter	Clause No.
Accident Pay	28	Meal Break	8
Annual Leave	13	Overtime	6
Bank Deposits and/or withdrawals	30	Payment of Wages	18
Blood Donors	29	Posting of Determination	27
Boiling Water	10A	Rest Period	10
Certificate of Service	20	Scope	1
Clothing	22	Sick Leave	12
Compassionate Leave	16	Special Additional Amount for Evening and/ or Saturday Work	7
Date of Operation	2	Sunday Work	15
Excess Fares	23	Termination of Employment	19
First-aid Outfit	21	Terms of Employment	11
Holidays	14	Time and Wages Records	26
Hours of Work and Rosters	5	Transfer of Employee	25
Jury Service	17	Transport Allowance	24
Maternity Leave	31	Wages	4
Meal Allowance	9		

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraph (a), (b) or (e) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the employee as part of his qualification for annual leave to serve such additional periods as equals the period of such absences.

Clause D.

The entitlement of a casual employee under Clause 13 (see B (3) (a) and (b)) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

Clause E.

During a period of annual leave an employee shall receive a loading of 17½ per cent. on the rate of wage prescribed in Clause 4 of this Determination.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

14.

HOLIDAYS.

(a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under section 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of time and a half for all time worked with a minimum payment as for three hours.

Melbourne Show Day.

(b) Employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

Easter Saturday

(d) Weekly employees shall be granted a holiday without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

General.

(e) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(f) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(g) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either—

(i) another day or half day off in lieu ; or

(ii) an equivalent day or half day's pay ; or

(iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. (a) An employee shall on the death of a wife, husband, father, mother, foster-father, foster-mother, mother-in-law, father-in-law, brother, sister, child or stepchild be entitled to compassionate leave.

(b) Compassionate leave shall be granted as follows—

(i) *Within Victoria*—An employee shall be granted leave of absence up to and including the day of the funeral of a relation as defined in (a) above. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary day's work.

(ii) *Outside Victoria*—An employee shall be granted leave of absence for 7 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside the State of Victoria.

(iii) *Outside Australia*—An employee shall be granted leave of absence for 30 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside Australia.

(c) Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words " wife " and " husband " shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

JURY SERVICE.

17. An employee on weekly hiring required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service.



DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA

Labour and Industry Act

DETERMINATION OF THE ELECTRICAL, FURNITURE AND HARDWARE SHOPS BOARD

(No. 3 of 1980)

(This Determination which replaces No. 2 of 1980, amends clauses 4, 11 and 14.)

1. SCOPE: This Determination applies to the whole of Victoria to the trades of:—

- (a) a seller by retail of furniture or floor coverings;
- (b) a seller by wholesale or retail of hardware but not including—
 - (i) persons employed in assembling ordered goods kept in a bulk store or yard; or
 - (ii) persons employed as storemen, packers or sorters;
- (c) a seller by retail of pictures, picture frames, paints, colours or wallpapers;
- (d) a seller by retail of electrical goods or radio or television receivers, or parts or accessories therefor.

2. DATE OF OPERATION: This Determination shall operate from the first pay period to commence on or after 2 September, 1980.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Accident Pay	29	Overtime	6
Annual Leave	13	Payment of Rent	28
Bank Deposits and/or Withdrawals	31	Payment of Wages	18
Blood Donors	30	Posting of Determination	26
Boiling Water	10A	Rest Period	10
Certificate of Service	20	Scope	1
Clothing	22	Sick Leave	12
Compassionate Leave	16	Special Additional Amount for Evening and/or Saturday Work	7
Date of Operation	2	Sunday Work	15
Excess Fares	23	Termination of Employment	19
First-aid Outfit	21	Terms of Employment	11
Holidays	14	Time and Wages Records	25
Hours of Work and Rosters	5	Transfer of Employee	24
Jury Service	17	Transport Allowance	27
Maternity Leave	32	Wages	4
Meal Allowance	9		
Meal Break	8		

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b)) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

Clause E.

During a period of annual leave an employee shall receive a loading of 17½ per cent. on the rate of wage prescribed in Clause 4 of this Determination.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of time and a half for all time worked with a minimum payment as for three hours.

Melbourne Show Day.

(b) Employees shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958*, employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as leave.

Easter Saturday.

(d) Weekly employees shall be granted a holiday without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

General.

(e) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(f) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(g) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either :—

- (i) another day or half day off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. (a) An employee shall on the death of a wife, husband, father, mother, foster-father, foster-mother, mother-in-law, father-in-law, brother, sister, child or stepchild be entitled to compassionate leave.

(b) Compassionate leave shall be granted as follows—

- (i) *Within Victoria*—An employee shall be granted leave of absence up to and including the day of the funeral of a relation as defined in (a) above. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary day's work.
- (ii) *Outside Victoria*—An employee shall be granted leave of absence for 7 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside the State of Victoria.
- (iii) *Outside Australia*—An employee shall be granted leave of absence for 30 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside Australia.

(c) Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

JURY SERVICE.

17. An employee on weekly hiring required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service.

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DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA

Labour and Industry Act

DETERMINATION OF THE GENERAL SHOPS BOARD

(No. 3 1980)

(This Determination which replaces No. 2 of 1980 amends clauses 4, 11, and 14.)

1. SCOPE : This Determination applies to the whole of Victoria to the trades of:—

- (a) selling goods by retail, whether in a shop or elsewhere, other than any trade for which any of the following Wages Boards has been appointed—Boot Repairers, Butchers, Chemists Shops, Clothing and Footwear Shops, Electrical, Furniture and Hardware Shops, Food Shops, Fuel and Fodder, Motor Requisites ; and
- (b) a wholesale or retail bookseller or newsagent or a lending library conducted for profit.

2. DATE OF OPERATION: This Determination shall operate from the first pay period to commence on or after 2 September 1980.

3. ARRANGEMENT.

Subject Matter.	Clause No.	Subject Matter.	Clause No.
Accident Pay	29	Overtime	6
Annual Leave	13	Payment of Rent	28
Bank Deposits and/or Withdrawals	31	Payment of Wages	18
Blood Donors	30	Posting of Determination	27
Boiling Water	10A	Rest Period	10
Certificate of Service	20	Scope	1
Clothing	22	Sick Leave	12
Compassionate Leave	16	Special Additional Amount for Evening and/or Saturday Work	7
Date of Operation	2	Sunday Work	15
Excess Fares	23	Termination of Employment	19
First-aid Outfit	21	Terms of Employment	11
Holidays	14	Time and Wages Records	26
Hours of Work and Rosters	5	Transfer of Employee	24
Jury Service	17	Transport Allowance	25
Maternity Leave	32	Wages	4
Meal Allowance	9		
Meal Break	8		

(5) (a) Where an employer intends temporarily to close (or reduce to nucleus) his establishment or a section thereof for the purpose (*inter alia*) of allowing annual leave to the employees concerned or a majority of them he may give in writing to such employees one month's notice (or, in the case of any employee engaged after giving of such notice, notice on the date of the employee's engagement) that he elects to apply the provisions of this sub-clause; and thereupon—

- (i) any such employee who at the date of closing is entitled to his annual leave shall be given his annual leave commencing as on and from the date of closing and shall be paid one twelfth of his ordinary pay for any period of employment after the accrual of his right to the annual leave and up to but excluding the date of closing;
- (ii) any such employee who at the date of closing is not entitled to his annual leave shall be given leave without pay as on and from the date of closing and shall be paid one twelfth of his ordinary pay for the period of his employment since the commencement thereof of the accrual of his last annual leave (whichever is the later) and up to but excluding the date of closing, together with pay for any holiday during such leave for which he is entitled to payment under this Determination or under his contract of employment; and
- (iii) the next twelve-monthly qualifying period of employment for every such employee shall commence as on and from the date of closing.

(b) In this sub-clause "date of closing" in relation to each employee means the first day of his annual leave or leave pursuant to this sub-clause.

Clause C.

(1) For the purposes of the two last preceding clauses—

"Ordinary pay" in relation to any employee means remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay and where the employee is provided with board or lodging by his employer, includes the cash value of that board or lodging.

"Week" in relation to any employee means the employee's ordinary working week.

"Employee" means any person employed by any employer to do any work for hire or reward.

(2) For the purposes of the definition of the term "ordinary pay" in sub-clause (1) of this clause—

- (a) where no ordinary time rate of pay is fixed for an employee's work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual leave accrues;
- (b) where no normal weekly number of hours is fixed for an employee under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual leave accrues;
- (c) the cash value of any board or lodging provided for an employee shall be deemed to be its cash value as fixed by or under the terms of the employee's employment or, if it is not so fixed, shall be computed at the rate of \$4 a week for board and \$2 a week for lodging;

Provided that the value of any board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided or the payment is made not as part of his ordinary pay, but because the work done by the employee is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence or because of any other special circumstances.

(3) For the purposes of this Determination a year of employment shall be deemed to be unbroken notwithstanding—

- (a) any annual leave or long service leave taken therein;
- (b) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of annual leave or long service leave;
- (c) any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;
- (d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer;
- (e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraphs (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the employee as part of his qualification for annual leave to serve such additional period as equals the period of such absences.

Clause D.

The entitlement of a casual employee under clause 13 (see B (3) (a) and (b)) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

Clause E.

During a period of annual leave, an employee shall receive a loading of 17½ per cent. on the rate of wage prescribed in Clause 4 of this Determination.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

HOLIDAYS.

14. (a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of time and a half for all time worked with a minimum payment as for three hours ;

Provided that employees of authorized newsagents in any area may be required to work and if so required shall be paid at the rate of double time and a half with a minimum payment (in the case of weekly employment only) as for four hours at that rate

Melbourne Show Day.

(b) Employees shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day, or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees in shops, other than Fifth Schedule shops, shall be given the day off without deduction of pay on Melbourne Cup Day.

Within such area employees in Fifth Schedule shops may be required to work and if so required shall be paid at the rate of double time and a half with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

Easter Saturday

(d) Weekly employees shall be granted a holiday without loss of pay on Easter Saturday provided that if an employee elects, to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

Anzac Day—Seventh Schedule Shops.

(e) Employees in *Seventh Schedule* shops may be required to work on Anzac Day and if so required shall be paid at the rate of double time and a half with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

General.

(f) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(g) If any other day be by Act of Parliament or Proclamation substituted for any of the abovenamed holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(h) Provided that if a holiday falls on an employees rostered day off he shall be entitled to receive by mutual agreement either :—

- (i) another day or half day off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. (a) An employee shall on the death of a wife, husband, father, mother, foster-father, foster-mother, mother-in-law, father-in-law, brother, sister, child or stepchild be entitled to compassionate leave.

(b) Compassionate leave shall be granted as follows—

- (i) *Within Victoria*—An employee shall be granted leave of absence up to and including the day of the funeral of a relation as defined in (a) above. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary day's work.
- (ii) *Outside Victoria*—An employee shall be granted leave of absence for 7 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside the State of Victoria.
- (iii) *Outside Australia*—An employee shall be granted leave of absence for 30 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside Australia.

(c) Proof of such death shall be furnished by the employee to the satisfaction of his employer. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a *de facto* wife or husband.

JURY SERVICE.

17. An employee on weekly hiring required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service.

An employee shall notify his employer as soon as possible of the date upon which he is required to attend for jury service. Further the employee shall give his employer proof of his attendance, the duration of such attendance and the amount received in respect of such jury service.

PAYMENT OF WAGES.

18. (a) Where over the period of the roster the ordinary week's work is, on average, 40 hours per week, the employer may adopt an averaging method in determining and paying wages due for the ordinary week's work ; provided that all wages due shall be paid not later than Thursday in each week, and must be paid during working hours. When Friday is a holiday, wages shall be paid not later than Wednesday in that week.

(b) Each employee shall be supplied on or before pay day with a statement in writing showing, or from which may be calculated, the amount of ordinary pay, overtime, penalty rates and allowances and the amount of deductions for any purposes in respect of the amount paid.

TERMINATION OF EMPLOYMENT.

19. Except in a case where an employee or an employer has been guilty of misconduct, or where an employee has been engaged temporarily for a period not exceeding six weeks in duration, seven days' notice of termination of employment shall be given by either party or one week's wages paid or forfeited, as the case may be, in lieu thereof.

CERTIFICATE OF SERVICE.

20. An employee, on severing his or her connexion with an employer, shall be entitled to and shall receive from such employer a certificate in writing, stating his or her period of service and qualifications. This provision shall only apply in the case of an employee who has been employed continuously for three months or more.

FIRST-AID OUTFIT.

21. In each shop where employees are regularly employed, the employer shall provide and continuously maintain, at a place or places reasonably accessible to all employees an adequate first-aid outfit.



Victoria

INDUSTRIAL RELATIONS ACT 1979

CLOTHING AND FOOTWEAR SHOPS AWARD

(No. 8 of 1992)

Award made by the Industrial Relations Commission of Victoria

TUESDAY, 20 OCTOBER 1992

Case No. 92/3919

This Award which replaces Award No. 2 of 1990, as amended, inserts a new Clause 22A—Dress Requirements.

DATE OF OPERATION: This Award shall operate on and from 20 October 1992.

1. ARRANGEMENT

<i>Subject Matter</i>	<i>Clause No.</i>	<i>Subject Matter</i>	<i>Clause No.</i>
Accident Pay	28	Jury Service	17
Additional Amount for Evening and/or Saturday Work	7	Meal Allowance	9
Annual Leave	13	Meal Break	8
Arrangement	1	Night Shift (Casual Employees)	6
Award Modernisation	37	Night Shift (Weekly Employees)	5
Bank Deposits and/or Withdrawals	30	No Extra Claims	41
Blood Donors	29	Overtime	4
Boiling Water	10A	Parental Leave	31
Certain Employees Not Required to Work Saturday Afternoon	34	Payment of Wages	18
Clothing	21	Posting of Award	27
Commitment	2A	Protective Clothing	22
Compassionate Leave	16	Redundancy	33
Definitions	39	Rest Periods	10
Disagreements Concerning Implementation of 38 Hour Week	3B	Sick Leave	12
Dress Requirements	22A	Summer Time	35
Enterprise Agreement	App. B	Sunday Work	15
Excess Fares	23	Superannuation	36
First-aid Outfit	20	Superannuation Exemptions	App. A
Grievance Procedure	40	Termination of Employment	19
Holidays	14	Terms of Employment	11
Hours of Work and Rosters	3c	Time and Wages Records	26
Implementation of 38 Hour Week	3A	Trade Union Training Leave	38
Incidence of Award	1A	Transfer of Employee	25
Introduction of Change	32	Transport Allowance	24
		Transport of Employees	24B
		Travelling Arrangements for December 1987	24A
		Wages	2

Clause E

During a period of annual leave an employee shall receive a loading of 17½ per cent., on the rate of wage prescribed in Clause 2 of this Award.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

14.

HOLIDAYS

(a) Employees shall be granted the following holidays without deduction of pay:

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that if an employee elects to work on any of the above holidays he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

(b) *Melbourne Show Day*

Employees shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(c) *Melbourne Cup Day*

Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Provided that if an employee elects to work on that day he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

(d) *Easter Saturday*

Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Additional Amount prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

(e) *Holiday on Rostered Day Off*

Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under sub-clause 3A (b) (iii), (iv), (v) or (vi) he or she shall be entitled to receive by mutual agreement either—

(i) another day or half day off in lieu; or

(ii) an equivalent day or half day's pay; or

(iii) one extra day or half day, as the case may be, added to his annual leave.

(f) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(g) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this Clause 14 relating to such holiday shall apply only to the day so substituted.

(h) Time off in lieu of payment of the penalty rate prescribed for work on a public holiday pursuant to this clause may be provided if an employee so elects and it is agreed by the employer.

Such time off in lieu must be taken at a mutually convenient time and within four weeks of the public holiday or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

Time off in lieu must equate to the penalty rate i.e. if the employee works three hours on a public holiday and the additional penalty rate is time and a half and the employee elects to take time off in lieu of payment the time off would equal 4.5 hours.

15.

SUNDAY WORK

The special rate for all work done on Sunday shall be as follows:

	Amount Per Hour
Manager (as defined)	
(a) in charge of two or more persons	22.77
(b) working singly or in charge of one person	22.36

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Victoria

INDUSTRIAL RELATIONS ACT 1979

ELECTRICAL, FURNITURE AND HARDWARE SHOPS AWARD

(No. 4 of 1992)

Award made by the Industrial Relations Commission of Victoria in Full Session

THURSDAY, 18 JUNE 1992

Case Nos 90/2681, 91/4355 and 91/4580

1. This Award follows Decision No. D92/0256 and amends Award No. 2 of 1990, as amended, as follows:

(i) Deletes sub-clause (a) of Clause 2 WAGES and inserts in lieu thereof:

2. (a) WAGES

ADULTS	Wages per week of 38 hours			Award Rate
	Base Rate	Supp. Payment	Min. Rate Adj.	
	\$	\$	\$	\$
MANAGER, i.e. the person for the time being entrusted with the control or superintendence of a shop notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such shop:				
(a) In charge of two or more persons	407.80	10.00	17.10	434.90
(b) Working singly or in charge of one person	399.40	10.00	17.10	426.50
DEPARTMENT MANAGER, i.e. the person for the time being entrusted with the control or superintendence of a department notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such department:				
(a) In charge of two or more persons	399.40	10.00	17.10	426.50
(b) Working singly or in charge of one person	391.10	10.00	17.10	418.20
RETAIL WORKER GRADE 2	400.10		17.10	417.20
CANVASSERS or collectors who are in any way concerned with the sale of goods	360.10	10.00	17.10	387.20
RETAIL WORKER GRADE 1	357.30	10.00	17.10	384.40

Definition:

RETAIL WORKER GRADE 2 means—

an employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week, or

period in respect of which the right to the annual leave accrues; provided that such rate shall not be less than the ordinary time rate of pay at the time of the taking of the leave.

(vi) Deletes Clause 14 Holidays and inserts in lieu thereof—

14.

HOLIDAYS

(a) Employees shall be granted the following holidays without deduction of pay:

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that if an employee elects to work on any of the above holidays he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

(b) Melbourne Show Day

Employees shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(c) Melbourne Cup Day

Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Provided that if an employee elects to work on that day he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

(d) Easter Saturday

Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Additional Amount prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

(e) Holiday on Rostered Day Off

Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under Clause 3A (b) (iii), (iv), (v) or (vi) he or she shall be entitled to receive by mutual agreement either—

(i) another day or half day off in lieu; or

(ii) an equivalent day or half day's pay; or

(iii) one extra day or half day, as the case may be, added to his annual leave.

(f) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(g) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this Clause 14 relating to such holiday shall apply only to the day so substituted.

(h) Time off in lieu of payment of the penalty rate prescribed for work on a public holiday pursuant to this clause may be provided if an employee so elects and it is agreed by the employer.

Such time off in lieu must be taken at a mutually convenient time and within four weeks of the public holiday or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

Time off in lieu must equate to the penalty rate i.e. if the employee works three hours on a public holiday and the additional penalty rate is time and a half and the employee elects to take time off in lieu of payment the time off would equal 4.5 hours.

(vii) Renumbers Clauses 38 No Extra Claims and 39 Trade Union Training Leave as Clauses 41 and 38 respectively and inserts new clauses 39 and 40 as follows:

39.

DEFINITIONS

"Class B Exempt Shop" means:

(a) A shop which is permitted to trade on a Sunday for 52 weeks of the year by virtue of the *Shop Trading Act No. 10 of 1987* and which is engaged in any of the following businesses:

(i) hardware shops within the meaning of section 3A of the *Shop Trading Act No. 10 of 1987*;

(ii) paint shops; and



Victoria

INDUSTRIAL RELATIONS ACT 1979

FOOD SHOPS AWARD

(No. 4 of 1992)

Award made by the Industrial Relations Commission of Victoria in Full Session

THURSDAY, 18 JUNE 1992

Case Nos 90/2681, 91/4356 and 91/4580

1. This Award follows Decision No. D92/0256 and amends Award No. 2 of 1990 as amended as follows:

(i) Deletes sub-clause (a) of Clause 2 WAGES and inserts in lieu thereof—

2. (a)

WAGES

ADULTS	Wages per week of 38 hours			
	Base Rate	Supp. Payment	Min. Rate Adj.	Award Rate
	\$	\$	\$	\$
MANAGER , i.e. the person for the time being entrusted with the control or superintendence of a shop notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such shop:				
(a) In charge of two or more persons	407.80	10.00	17.10	434.90
(b) Working singly or in charge of one person	399.40	10.00	17.10	426.50
DEPARTMENT MANAGER , i.e. the person for the time being entrusted with the control or superintendence of a department notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such department:				
(a) In charge of two or more persons	395.90	10.00	17.10	423.00
(b) Working singly or in charge of one person	387.00	10.00	17.10	414.10
RETAIL WORKER GRADE 2	400.10		17.10	417.20
CANVASSERS or collectors who are in any way concerned with the sale of goods				
	360.10	10.00	17.10	387.20
RETAIL WORKER GRADE 1	357.30	10.00	17.10	384.40

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- (d) Where an employee has been employed under the provisions of Clause 5 for the period of accrual of the leave the ordinary time rate of pay shall be deemed to be the rate applicable under sub-clause 5 (c);
- (e) Where an employee has been employed under the provisions of Clause 3C for a portion of the period of accrual of the leave and under the provisions of Clause 5 for the remainder of the period the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual leave accrues; provided that such rate shall not be less than the ordinary time rate of pay at the time of the taking of the leave.
- (vii) Deletes Clause 14 Holidays and inserts in lieu thereof:

14A. HOLIDAYS—OTHER THAN PERSONS EMPLOYED IN CLASS A EXEMPT SHOPS

- (a) Employees shall be granted the following holidays without deduction of pay:

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that if an employee elects to work on any of the above holidays he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

- (b) Melbourne Show Day

- (1) Within the municipal districts mentioned in the fifth schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be—

- (i) given the day off without deduction of pay on Melbourne Show Day; or in lieu

- (ii) employees may be required to work until the hour of 12 o'clock noon in which case such employees shall be given the afternoon off without deduction of pay and shall be paid at the rate of double time and a half for all time worked. Provided that an employee may elect to take the equivalent time off at a time to be mutually agreed in lieu of the penalty rate prescribed.

- (2) Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Show Day or in lieu shall be given some other day off or given an additional day as annual leave.

- (c) Melbourne Cup Day

Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Provided that if an employee elects to work on that day he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours. Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

- (d) Easter Saturday

Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Additional Amount prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

- (e) Holiday on Rostered Day Off

Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under sub-clause 3A (b) (iii), (iv), (v) or (vi) he or she shall be entitled to receive by mutual agreement either—

- (i) another day or half day off in lieu; or

- (ii) an equivalent day or half day's pay; or

- (iii) one extra day or half day, as the case may be, added to his annual leave.

- (f) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

- (g) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this Clause 14 relating to such holiday shall apply only to the day so substituted.

- (h) Time off in lieu of payment of the penalty rate prescribed for work on a public holiday pursuant to this clause may be provided if an employee so elects and it is agreed by the employer.

Such time off in lieu must be taken at a mutually convenient time and within four weeks of the public holiday or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

Time off in lieu must equate to the penalty rate i.e. if the employee works three hours on a public holiday and the additional penalty rate is time and a half and the employee elects to take time off in lieu of payment the time off would equal 4.5 hours.

14B. HOLIDAYS—PERSONS EMPLOYED IN CLASS A EXEMPT SHOPS

Employees in Class A Exempt Shops, provided their services are not required, shall be granted the same holidays provided in sub-clauses (a), (b), (1), (i) and (2), (c), (d) and (f) of Clause 14A for other employees; provided that an employee required to work on any holiday provided in sub-clauses (a), (b), (1), (i) and (2), (c), (d) and (f) shall be compensated in one of the following ways:

- (i) Paid at the rate of double time and a half for all time worked with a minimum payment equivalent to a normal day's or half day's work as the case may be.
- (ii) Given some other day or equivalent time off in lieu as the case may be at the penalty rate prescribed; or
- (iii) Given an additional day or equivalent time off as the case may be as annual leave.

Provided that if a holiday falls on a day or half day off which accrues under Clause 3A (b), (iii), (iv) or (v) or (vi) he shall be entitled to receive by mutual agreement either—

- (i) another day or half day off in lieu; or
 - (ii) an equivalent day or half day's pay; or
 - (iii) one extra day or half day, as the case may be, added to his annual leave.
- (viii) Deletes Clause 37 Definitions and inserts in lieu hereof:

37. DEFINITIONS

"Class A Exempt Shop" means a shop which qualifies as a exempt shop by virtue of Section 6 of the *Shop Trading Act No. 10 of 1987* and which is engaged in any of the following businesses:

- (a) Bread shops;
- (b) confectionery and pastry shops;
- (c) eating houses and restaurants;
- (d) fish and oyster shops;
- (e) fruit and vegetable shops;
- (f) shops for the sale of foodstuffs and groceries (except meat, other than poultry, cooked meat or sausages).

"Class B Exempt Shops" means a shop which is permitted to trade on a Sunday for 52 weeks of the year by virtue of section 8 (3) or section 28 of the *Shop Trading Act No. 10 of 1987*.

(ix) Renumbers Clause 42 No Extra Claims as 43, and inserts after Clause 41 Trade Union Training Leave the following:

42. GRIEVANCE PROCEDURE

In the event of a grievance arising in the workplace the procedure to be followed to resolve the matter shall be as follows:

- (i) Consultation shall take place within the particular establishment concerned.
- (ii) If the problem is unable to be resolved at establishment level, it may be referred to the State Secretary of the Union, or the nominated representative of the State Secretary, and to the relevant employer body at which level the issue shall be dealt with without delay.
- (iii) If the problem remains unresolved, the matter may be referred by either party to the Conciliation and Arbitration Board for resolution.

(x) Deletes Clause 7 ADDITIONAL AMOUNT FOR EVENING AND/OR SATURDAY WORK and inserts in lieu thereof—

7. ADDITIONAL AMOUNT FOR EVENING AND/OR SATURDAY WORK

(a) *Evening Work*

An additional amount shall be paid to all weekly employees for all time worked within ordinary hours between 6.00 pm and 9.00 pm on a week days as follows:

	Additional Amount Per Hour
	\$

MANAGER (as defined)

(a) in charge of two or more persons

2.86

	<i>Additional Amount Per Hour</i>
CANVASSERS or collectors who are in any way connected with the sale of goods	\$ 20.38
RETAIL WORKER GRADE 1	20.23
JUNIORS (excluding MANAGER and DEPARTMENT MANAGER)	
(a) 20 years	18.21
(b) 19 years	16.19
(c) 18 years	13.65
(d) 17 years	11.13
(e) 16 years and under	10.12

An employer shall not require any employee to work on a Sunday but an employee may elect to work on a Sunday.

2. DATE OF OPERATION: This Award shall operate from the beginning of the first pay period to commence on or after 1 July 1992.

JUSTICE A. J. BOULTON
President
(for the Commission)



Victoria

INDUSTRIAL RELATIONS ACT 1979

GENERAL SHOPS AWARD

(No. 3 of 1992)

Award made by the Industrial Relations Commission of Victoria in Full Session

THURSDAY, 18 JUNE 1992

Case Nos 90/2681, 91/4357 and 91/4580

1. This Award follows Decision No. D92/0256 and amends Award No. 2 of 1990 as amended as follows:

(i) Deletes sub-clause (a) of Clause 2 WAGES and inserts in lieu thereof:

2. (a)

WAGES

ADULTS	Wages per week of 38 hours			Award Rate
	Base Rate	Supp. Payment	Min. Rate Adj.	
	\$	\$	\$	\$

MANAGER, i.e. the person for the time being entrusted with the control or superintendance of a shop notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such shop:

(a) In charge of two or more persons	399.40	10.00	17.10	426.50
(b) Working singly or in charge of one person	391.10	10.00	17.10	418.20

DEPARTMENT MANAGER, i.e. the person for the time being entrusted with the control or superintendance of a department notwithstanding he or she may be under the orders of another person who does not devote his or her whole time to the management of such department:

(a) In charge of two or more persons	395.90	10.00	17.10	423.00
(b) Working singly or in charge of one person	387.00	10.00	17.10	414.10

Provided that a person employed as the principal employee in charge of a tobacco shop or department (including a tobacco kiosk or stall) shall be paid the rate prescribed herein for a Department Manager in charge of one another person.

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Any dispute arising out of this sub-clause may be referred to the General Shops Conciliation and Arbitration Board for determination.

(f) Training and Promotion

Part-time employees shall be entitled to equal access to all training and promotional opportunities.

(v) Deletes sub-clause (c) (A) of Clause 11 Terms of Employment and inserts in lieu thereof—

(A) Where a person is ready, willing and available to work the number of hours required by an employer, such being less than the number prescribed herein as a week's work, he or she shall be paid as follows—

- (i) in any week in which two or more holidays occur—at the ordinary wages rate plus 50 percent;
- (ii) in any other week- at the ordinary wages rate plus 25 percent.

An employee shall be entitled to a minimum payment as for two hours' work on any day.

(vi) Reletters paragraph (c) of sub-clause (2) of Clause C of Clause 13 Annual Leave as paragraph (f) and inserts after paragraph (b) the following:

- (c) Where an employee has been employed by the same employer under different contracts of employment prescribed in sub-clauses (a), (b) and (c) of Clause 11 during the period of accrual of the leave, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual leave accrues;
- (d) Where an employee has been employed under the provisions of Clause 5 for the period of accrual of the leave the ordinary time rate of pay shall be deemed to be the rate applicable under sub-clause 5 (c);
- (e) Where an employee has been employed under the provisions of Clause 3C for a portion of the period of accrual of the leave and under the provisions of Clause 5 for the remainder of the period the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual leave accrues; provided that such rate shall not be less than the ordinary time rate of pay at the time of the taking of the leave.

(vii) Deletes Clause 14 Holidays and inserts in lieu thereof—

14.

HOLIDAYS

(a) Employees shall be granted the following holidays without deduction of pay:

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that if an employee elects to work on any of the above holidays he or she shall be paid at the rate of double time and a half for all time worked with a minimum payment as for three hours.

(b) Melbourne Show Day

Employees shall be given the day off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

(c) Melbourne Cup Day

Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees in shops other than Class A Exempt Shops shall be given the day off without deduction of pay on Melbourne Cup Day.

Within such area employees in Class A Exempt Shops may be required to work and if so required shall be paid at the rate of double time and a half with a minimum payment (in the case of weekly employment only) as for four hours at that rate.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

(d) Easter Saturday

Weekly employees shall be entitled to be absent from work without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Additional Amount prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

(e) Holiday on Rostered Day Off

Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under sub-clause 3A (b) (iii), (iv), (v) or (vi) he or she shall be entitled to receive by mutual agreement either—

- (i) another day or half day off in lieu; or
- (ii) an equivalent day or half day's pay; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

(f) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(g) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this Clause 14 relating to such holiday shall apply only to the day so substituted.

(h) Time off in lieu of payment of the penalty rate prescribed for work on a public holiday pursuant to this clause may be provided if an employee so elects and it is agreed by the employer.

Such time off in lieu must be taken at a mutually convenient time and within four weeks of the public holiday or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.

Time off in lieu must equate to the penalty rate i.e. if the employee works three hours on a public holiday and the additional penalty rate is time and a half and the employee elects to take time off in lieu of payment the time off would equal 4.5 hours.

(viii) **Deletes Clause 34 Definitions and inserts in lieu thereof—**

34.

DEFINITIONS

"Class A Exempt Shop" means:

1. A shop which qualifies as an exempt shop by virtue of Section 6 of the Shop Trading Act No. 10 of 1987 and which is engaged in any of the following businesses:

- (a) booksellers and newsagents' shops;
 - (b) flower shops and retail plant nurseries;
 - (c) pet shops including shops for the sale of aviary and cage birds or aquarium fish;
 - (d) photographers' shops;
 - (e) saddlery shops;
 - (f) shops for the sale of boats, caravans or other trailers or spare parts or accessories;
 - (g) shops for the sale of old goods, being furniture, plate china, statuettes and other curiosities and odds and ends of an artistic or antiquarian interest;
 - (h) shops for the sale of swimming pools, swimming pool equipment or supplies for swimming pools;
 - (i) shops for the sale of works of art or handicraft;
 - (j) sporting goods shops located at sporting venues for the sale of goods appropriate for use at those venues;
 - (k) stamp and coin shops, and
2. (a) A lending library conducted for profit and;
- (b) A shop for the hiring of videos.

"Class B Exempt Shop" means:

(a) A shop which is permitted to trade on a Sunday for 52 weeks of the year by virtue of the *Shop Trading Act* No. 10 of 1987 and which is engaged in any of the following businesses:

- (i) shops for the sale of records, cassettes, tapes or video cassettes;
- (ii) souvenir shops; and

(b) A shop which is permitted to trade on a Sunday for 52 weeks of the year by virtue of section 8 (3) or Section 28 of the *Shop Trading Act* No. 10 of 1987.

(ix) Renumbers Clause 40 No Extra Claims as Clause 41 and inserts after Clause 39 Trade Union Training Leave the following:

40.

GRIEVANCE PROCEDURE

In the event of a grievance arising in the workplace the procedure to be followed to resolve the matter shall be as follows:

- (i) Consultation shall take place within the particular establishment concerned.
- (ii) If the problem is unable to be resolved at establishment level, it may be referred to the State Secretary of the Union, or the nominated representative of the State Secretary, and to the relevant employer body at which level the issue shall be dealt with without delay.
- (iii) If the problem remains unresolved, the matter may be referred by either party to the Conciliation and Arbitration Board for resolution.

(x) Deletes Clause 7 ADDITIONAL AMOUNT FOR EVENING AND/OR SATURDAY WORK and inserts in lieu thereof—

	<i>Additional Amount Per Hour</i>
	\$
(a) in charge of two or more persons	22.26
(b) working singly or in charge of one person	21.79
RETAIL WORKER GRADE 2	21.96
CANVASSERS or collectors who are in any way connected with the sale of goods	20.38
RETAIL WORKER GRADE 1	20.23
JUNIORS (excluding MANAGER and DEPARTMENT MANAGER)	
(a) 20 years	18.21
(b) 19 years	16.19
(c) 18 years	13.65
(d) 17 years	11.13
(e) 16 years and under	10.12

An employer shall not require any employee to work on a Sunday but an employee may elect to work on a Sunday.

2. DATE OF OPERATION: This Award shall operate from the beginning of the first pay period to commence on or after 1 July 1992.

JUSTICE A. J. BOULTON
President
(for the Commission)

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DEPARTMENT OF LABOUR AND INDUSTRY—VICTORIA

Labour and Industry Act

DETERMINATION OF THE CLOTHING AND FOOTWEAR SHOPS BOARD

(No. 4 of 1980)

1. This Determination varies No. 3 of 1980 in that the Wages Board has determined that:

- (a) In accordance with the provisions of clause 5(A) (c) (Substitute Late Night), Tuesday, 23rd December, 1980 shall be substituted for Friday, 26 December 1980 as the day on which the ordinary time of ending work is 9.00 p.m. ; and
- (b) (i) Full-time and part-time employees shall be entitled to be absent from work without loss of pay on Saturday 27 December 1980.
(ii) All work performed on Saturday 27 December 1980 shall be paid for at double the ordinary hourly rate applicable to such employees provided that the special additional amount payable for Saturday morning shall also be payable.

2. DATE OF OPERATION: This Determination shall operate from 19 December 1980.

Melbourne, 4 December 1980

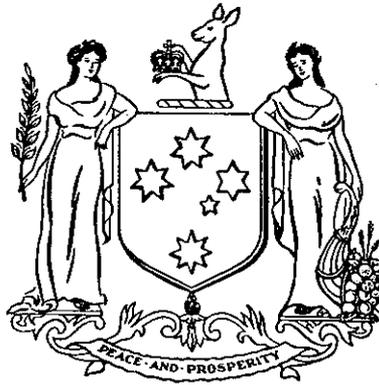
J. C. THOMAS, Chairman.

F. C. DORIAN, Secretary.

NOTE.—Copies of Wages Boards Determinations may be purchased from the Sales Branch, Government Printing Office, 7A Parliament Place, Melbourne, 3002. (Price: 1 to 4 pages 20 cents, others 60 cents per copy plus postage.)

31323/81—Price 20 cents

No. 45A



INDUSTRIAL RELATIONS COMMISSION OF VICTORIA

INDUSTRIAL RELATIONS ACT 1979

CLOTHING AND FOOTWEAR SHOPS AWARD

(No. 1 of 1982)

Award of the Clothing and Footwear Shops Conciliation and Arbitration Board

TUESDAY, 26 OCTOBER 1982

(This Award which replaces Award No. 6 of 1981, amends Clause 14A)

JURISDICTION: This Award Applies to the whole of Victoria to the trades of a seller by retail of—

- (a) drapery, mercery, haberdashery, millinery, hosiery or manchester goods;
- (b) any article of clothing, including headwear and articles made from fur; and
- (c) boots, shoes or slippers.

DATE OF OPERATION: This Award shall operate on and from 25 December 1982.

1. ARRANGEMENT

<i>Subject matter</i>	<i>Clause No.</i>	<i>Subject matter</i>	<i>Clause No.</i>
Accident Pay	28	Night Shift (Weekly Employees)	5
Annual Leave	13	Night Shift (Casual Employees)	6
Arrangement	1	Overtime	4
Bank Deposits and/or Withdrawals	30	Payment of Wages	18
Blood Donors	29	Posting of Determination	27
Boiling Water	10A	Protective Clothing	22
Certificate of Service	20	Rest Period	10
Clothing	22	Sick Leave	12
Compassionate Leave	16	Special Additional Amount for Evening and/or Saturday Work	7
Excess Fares	23	Sunday Work	15
First-aid Outfit	21	Termination of Employment	19
Holidays	14	Terms of Employment	11
Hours of Work and Rosters	3	Time and Wages Records	26
Jury Service	17	Transfer of Employee	25
Maternity Leave	31	Transport Allowance	24
Meal Allowance	9	Wages	2
Meal Break	8		

(d) any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer ;

(e) any absence on any other account not involving termination of employment—

and in calculating a year of employment any absence of a kind mentioned in paragraph (a), (b) or (c) of this sub-clause shall be counted as part of the year of employment but in respect of absences of a kind mentioned in paragraphs (d) and (e) of this sub-clause it will be necessary for the employee as part of his qualification for annual leave to serve such additional periods as equals the period of such absences.

Clause D.

The entitlement of a casual employee under Clause 13 (see B (3) (a) and (b)) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

Clause E.

During a period of annual leave an employee shall receive a loading of 17½ per cent. on the rate of wage prescribed in Clause 4 of this Award.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

14.

HOLIDAYS.

(a) Employees shall be granted the following holidays without deduction of pay :—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under section 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of time and a half for all time worked with a minimum payment as for three hours.

Melbourne Show Day.

(b) Employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day.

(c) Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

Easter Saturday

(d) Weekly employees shall be granted a holiday without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

General.

(e) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(f) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this clause relating to such holiday shall apply only to the day so substituted.

(g) Provided that if a holiday falls on an employee's rostered day off he shall be entitled to receive by mutual agreement either—

- (i) another day or half day off in lieu ; or
- (ii) an equivalent day or half day's pay ; or
- (iii) one extra day or half day, as the case may be, added to his annual leave.

Saturday, 25 December 1982 and Saturday, 1 January 1983

14A Weekly (including part-time) employees shall be entitled to be absent from work without loss of pay on Saturday, 25 December 1982 and Saturday, 1 January 1983 provided that if an employee elects to work on those days they shall be paid in addition to their ordinary weekly wage under their individual contract of service, including the Special Additional Rate prescribed in Clause 7 the rate of double time for all time worked with a minimum payment as for three hours at such rate.

Casual employees shall not be required to work on Saturday, 25 December 1982 or Saturday 1 January 1983, provided that if casual employees elect to work on those days they shall be paid at the rate of double the ordinary hourly rate with a minimum payments as for three hours at such rate.

SUNDAY WORK.

15. The special rate for all work done on Sunday shall be double time.

COMPASSIONATE LEAVE.

16. (a) An employee shall on the death of a wife, husband, father, mother, foster-father, foster-mother, mother-in-law, father-in-law, brother, sister, child or stepchild be entitled to compassionate leave.

(b) Compassionate leave shall be granted as follows—

- (i) *Within Victoria*—An employee shall be granted leave of absence up to and including the day of the funeral of a relation as defined in (a) above. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary day's work.
- (ii) *Outside Victoria*—An employee shall be granted leave of absence for 7 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside the State of Victoria.
- (iii) *Outside Australia*—An employee shall be granted leave of absence for 30 calendar days (of which only 3 days shall be paid) for the purpose of attending a funeral of a relation as defined in (a) above where such occurs outside Australia.

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Victoria

INDUSTRIAL RELATIONS ACT 1979

CLOTHING AND FOOTWEAR SHOPS AWARD

(No. 3 of 1986)

Award made by the Clothing and Footwear Shops Conciliation and Arbitration Board

FRIDAY, 19 SEPTEMBER 1986
TUESDAY, 25 NOVEMBER 1986
TUESDAY, 9 DECEMBER 1986

Case Nos. B861424, B861534 and B861985

This Award which replaces Award No. 2 of 1986, amends Clauses 5 (d), 6 (f), 11, 14 (i) and 24 A.

JURISDICTION of the Clothing and Footwear Shops Conciliation and Arbitration Board applies to the whole of Victoria to the trades of a seller by retail of—

- (a) drapery, mercery, haberdashery, millinery, hosiery or manchester goods;
- (b) any article of clothing, including headwear and articles made from fur; and
- (c) boots, shoes or slippers.

DATE OF OPERATION: This Award shall operate on and from 19 September 1986 EXCEPT THAT:

- (i) Clause 24A shall operate on and from 25 November 1986,
- (ii) Sub-Clauses 5 (d), 6 (f) and 14 (i) shall operate on and from 9 December 1986.

1. ARRANGEMENT			
Subject Matter	Clause No.	Subject Matter	Clause No.
Accident Pay	28	Night Shift (Casual Employees)	6
Adoption Leave	32	Night Shift (Weekly Employees)	5
Annual Leave	13	No Extra Claims	35
Arrangement	1	Overtime	4
Bank Deposits and/or Withdrawals	30	Payment of Wages	18
Blood Donors	29	Posting of Award	27
Boiling Water	10A	Protective Clothing	22
Clothing	21	Redundancy	34
Compassionate Leave	16	Rest Period	10
Disagreements Concerning Implementation of 38 Hour Week	3B	Sick Leave	12
Excess Fares	23	Special Additional Amount for Evening and/or Saturday Work	7
First-aid Outfit	20	Sunday Work	15
Holidays	14	Termination of Employment	19
Hours of Work and Rosters	3C	Terms of Employment	11
Implementation of 38 Hour Week	3A	Time and Wages Records	26
Introduction of Change	33	Transfer of Employee	25
Jury Service	17	Transport Allowance	24
Maternity Leave	31	Travelling Arrangements for 23 and 24 December 1985	24A
Meal Allowance	9	Wages	2
Meal Break	8		

Clause D

The entitlement of a casual employee under Clause 13 (see *B (3) (a) and (b)*) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

Clause E

During a period of annual leave an employee shall receive a loading of 17½ per cent., on the rate of wage prescribed in Clause 2 of this Award.

The loading prescribed in this Clause E shall not apply to proportionate leave on termination.

14.

HOLIDAYS

(a) Employees shall be granted the following holidays without deduction of pay:—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that in any holiday resort for which an Order of Exemption has been granted under S. 80A of the *Labour and Industry Act 1958*, if an employee elects to work on any of the above holidays which fall within the period specified in the Order he or she shall be paid in addition to his or her ordinary weekly wage, the rate of time and a half for all time worked with a minimum payment as for three hours.

Melbourne Show Day

(b) Employees shall be given the afternoon off without deduction of pay from 12 o'clock noon on Melbourne Show Day or in lieu shall be given some other half day off or given an additional half day as annual leave.

Melbourne Cup Day

(c) Within the municipal districts mentioned in the Fifth Schedule to the *Public Service Act 1974* as varied from time to time and within the boundaries of those districts as varied from time to time pursuant to the provisions of the *Local Government Act 1958* employees shall be given the day off without deduction of pay on Melbourne Cup Day.

Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave.

Easter Saturday

(d) Weekly employees shall be granted a holiday without loss of pay on Easter Saturday provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, including the Special Additional Rate prescribed by Clause 7, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

General

(e) An employee who without reasonable excuse fails to attend for work on the working day before and/or after a holiday shall not be entitled to be paid for such holiday.

(f) If any other day be by Act of Parliament or Proclamation substituted for any of the above-named holidays the provisions of this Clause relating to such holiday shall apply only to the day so substituted.

(g) Provided that if a holiday falls on an employee's rostered day off or on a day or half day off which accrues under Clause 3A (b) (iii), (iv), (v) or (vi), he shall be entitled to receive by mutual agreement either—

(i) another day or half day off in lieu; or

(ii) an equivalent day or half day's pay; or

(iii) one extra day or half day, as the case may be, added to his annual leave.

(h) Special Additional holiday — 150th Anniversary of Victoria — Monday 31 December 1984.

Weekly employees shall be entitled to be absent from work without loss of pay on the Special Additional Holiday — 150th Anniversary of Victoria, Monday, 31 December 1984 provided that if an employee elects to work on that day he or she shall be paid in addition to his or her ordinary weekly wage under his or her individual contract of service, the rate of time and a half for all time worked with a minimum payment as for three hours at such rate.

(i) Saturday, 27 December 1986

This clause applies to all shops in Victoria except shops in a municipal district granted an exemption under Section 80A of the *Labour and Industry Act 1958*:

(i) Full-time and part-time employees shall be entitled to be absent from work without loss of pay on Saturday, 27 December 1986.

(ii) All work performed on Saturday, 27 December 1986 shall be paid for at double the ordinary hourly rate applicable to such employees provided that the special additional amount payable for Saturday morning shall also be payable.

15.

SUNDAY WORK

The special rate for all work done on Sunday shall be double time.

16.

COMPASSIONATE LEAVE

(a) An employee shall on the death of a wife, husband, father, mother, foster-father, foster-mother, mother-in-law, father-in-law, brother, sister, child, or stepchild be entitled to compassionate leave—

(b) Compassionate leave shall be granted as follows—

(i) *Within Victoria*—An employee shall be granted leave of absence up to and including the day of the funeral of a relation as defined in (a) above. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary days' work.

INDUSTRIAL RELATIONS COMMISSION OF VICTORIA
IN FULL SESSION

" 5 "

Industrial Relations Act 1979

Referral of matters before the General Shops Conciliation and Arbitration Board, the Food Shops Conciliation and Arbitration Board, the Clothing and Footwear Shops Conciliation and Arbitration Board and the Electrical, Furniture and Hardware Shops Conciliation and Arbitration Board in relation to the State Wage Case, second structural efficiency adjustment, classifications of workers and other matters

Case No. 90/2681

Application by the Shop, Distributive and Allied Employees' Association for the abolition of the abovementioned Conciliation and Arbitration Boards and the appointment of a new Conciliation and Arbitration Board

Case No. 90/2416

Justice A.J. Boulton, President
B.D. Lawrence, Deputy President
P.R. Marsh, Deputy President
L.J. Eggington, Commissioner
J. Bornstein, Commissioner

25 JULY 1990

DECISION

These matters relate to applications by the Shop, Distributive and Allied Employees' Association ('the SDA')

- (i) to vary the General Shops Award, the Food Shops Award, the Clothing and Footwear Shops Award and the Electrical, Furniture and Hardware Shops Award ('the Awards') to provide for the payment of the second structural efficiency adjustment and minimum rates adjustments and to insert a new classification structure; and
- (ii) to abolish the General Shops Conciliation and Arbitration Board, the Food Shops Conciliation and Arbitration Board, the Clothing and Footwear Shops Conciliation and Arbitration Board and the Electrical, Furniture and Hardware Shops Conciliation and Arbitration Board ('the Boards') and to appoint a new Conciliation and Arbitration Board.

emergencies or unforeseen circumstances, we have decided that the roster may be changed by not less than forty-eight hours notice by the employer. We consider that the provision for roster changes should be monitored by the parties and that any difficulties arising from the new measures should be referred to the relevant Board.

In relation to the other matters raised by the RTAV with respect to hours of work and rosters, we have decided that these should be subject to further discussions between the parties. We note that the ACTU referred in its submissions to structural efficiency as a "continuing process" and that the SDA has accepted this. We consider that the agenda for the continuing structural efficiency exercise in the Awards should include the issues raised in these proceedings with respect to the ordinary hours of work including the option of a four day working week by agreement between the SDA and employers.

Finally we note the SDA's position regarding discussions with employers about roster flexibility and the progress that has been made with at least one major employer in reaching agreement with respect to new roster arrangements. We consider that there is considerable scope for discussions and agreements to be reached between employers and the union on roster flexibility having regard both to the SDA's undertaking and to the Award Modernisation clauses in the Awards.

(c) Time off in lieu

There is agreement between the parties that provision should be made in the Awards for time off to be taken by agreement between the employer and the employee concerned in lieu of payment for overtime worked or for work on a public holiday. The SDA proposed that the time off should be calculated having regard to the applicable penalty rates and must be taken within two weeks of the time worked. The employers proposed that the amount of time off to be taken should be equal to the hours worked and time off credits should be able to be accumulated and taken at a mutually convenient time. It was agreed between the parties that the time off provision should operate initially for a six month trial period.

We consider that, as agreed between the parties, a provision for time off in lieu should be included in the Awards. Having regard to the provisions in other awards and equity considerations, we have decided that the time off should be calculated according to the relevant penalty rates under the Awards for overtime or for work on a public holiday. We have also decided that the time off should be taken within four weeks of the time worked or, where agreed between the employer and the employee concerned, may be accumulated and taken as part of annual leave. In this regard, we note that adequate records will need to be kept by employers to allow the desired flexibility arrangements with respect to the accumulation of time off credits to operate.

The new provisions for time off in lieu shall, as agreed between the parties, operate on a trial basis for six months. The operation of the new provisions should be monitored by the parties and any problems should be referred to the relevant Board.

(d) Ratios

The RTAV sought the deletion of the following ratios prescribed in the Awards: the part-time ratio (e.g. "the proportion of part-time employees in any shop shall not exceed one for each full-time employee" - clause 11(b) General Shops Award); the junior : senior ratio (e.g. "One junior to each person receiving not less than the appropriate adult rate of pay" in any shop or place - clause 2 Food Shops Award); and the casuals (night shift) ratio (e.g. "the proportion of casual employees engaged on night shift in any shop or place shall not exceed three for each two weekly employees" - clause 6(d) General Shops Award). In support of its proposals, the RTAV pointed to the reference in the National Wage Case decision to "reviewing the incidence of, and terms and conditions for, part-time employment and casual employment" as part of structural efficiency exercises. The RTAV also referred to decisions and standards in relation to retail awards in other States.

The SDA opposed the deletion of the ratios. However the SDA proposed that the junior : senior ratio should be standardised across the Awards by adopting the provisions in the General Shops Award. It was submitted that the ratio in that Award is the most favourable from the employers' point of view. The Award provides that the proportion in any shop or place shall be

"Two juniors to one person, four juniors to two persons, and thereafter one additional junior to each additional person receiving not less than the appropriate adult rate of pay; provided that in assessing such proportion a working employer may be counted as a person receiving an adult rate of pay." (clause 2(a)).

On the material presented, we are not satisfied that it would be appropriate to delete or vary the existing ratios with respect to junior, part-time and night shift casual employees. We do not consider that sufficient material has been presented to allow the Commission to determine any fundamental change to the ratios at this stage. Further we do not consider that the need for and the implications of the changes proposed by the employers have been adequately examined by the parties. We consider that the issues raised should be the subject of further examination and discussion by the parties as part of the continuing structural efficiency exercise in the Awards. This should include consideration of the appropriate structure of employment in the Victorian retail industry and the relationship between part-time and casual employment under the Awards. It will also involve consideration of the SDA's proposal regarding payment for annual leave taken by employees who have changed between full time, part-time and casual employment in the course of a year.

Minutes of a meeting of the Combined Shops Wages Board held in Boardroom No. 3, 500 Bourke Street, Melbourne at 11.30a.m. on Thursday, 28 August 1980.

P R E S E N T

CHAIRMAN: J. C. Thomas

MEMBERS: Employer Representatives Employee Representatives

CLOTHING AND FOOTWEAR SHOPS

K. MacDonald	I. Blandthorn
F. Green	L. Walsh
K. Dolling	J. Maher
	M. Donovan
	J. Smith

FOOD SHOPS

K. MacDonald	M. Reed
L. McCoy	J. Maher
I. Stewart	M. Donovan
K. Billington	
I. Tozer	

GENERAL SHOPS

J. Holland	I. Blandthorn
I. Stewart	J. Maher
F. Green	M. Donovan
K. Dolling	J. Smith

ELECTRICAL, FURNITURE AND HARDWARE SHOPS

A. James	M. Reed
L. McCoy	L. Walsh
B. Fleiner	J. Maher
	M. Donovan

SECRETARY: R. G. Budd

BUSINESS

THE CHAIRMAN declared the meeting convened to continue consideration of the employee application relating to Cup Day and employer application relating to Easter Saturday.

CUP DAY:

MR. DONOVAN said that the employees wanted the day as a full public holiday, to be on Melbourne Cup Day or if in the country, on a day of some local significance. It is not important that it be held on the Cup Day.

The employees are not seeking to restrict trading hours, but rather that the day for the public holiday be either Melbourne Cup Day, the local Cup Day or other significant day.

The employees have proposed that the last paragraph of sub-clause (c) of clause 14 of the General Shops Board Determination (and equivalent clauses in the other Determinations) be amended as submitted at the previous meeting on the matter.

MR. GREEN said that the employers have been looking at this proposal and consider that Melbourne Cup Day could come and go and likewise with the local Cup Day and the shop assistant may still not have been given a public holiday. For the clarity of drafting it may be that the words "or some other day" could be added to the end of the clause proposed.

MR. DONOVAN said that the employees would like to see some wording added to the proposal submitted on 26 August, such as "or by agreement with the employee, some other day in lieu".

MR. GREEN said this was not agreeable to the employers as they considered their own proposal more definite in its intention.

MR. MacDONALD said that the intent is to give the public holiday regardless of where an employee may live. If there is no local Cup Day then some other day will be granted. The employers are conceding the full day as a public holiday.

MR. DONOVAN said that the employees would be looking for an undertaking as to how the employers grant the public holiday, should it be printed in this form.

MR. MacDONALD said that the employer representatives would undertake to the best of their ability to ensure that all employers understand the intent of the clause.

MR. McCOY said that there was always the position, where, if problems occur, the representative members can come back to the Board to sort it out.

MR. MacDONALD said that the employers are thinking of small country places where there is no local festivity. Mr. Green's proposal will take care of these places.

MR. DONOVAN said that the employer proposal of "any other day" defeats the purpose of a public holiday clause as any day could be chosen by an employer.

MR. GREEN said that in conceding a full day for the public holiday, the employers want to retain the terms of the existing provision as they currently apply for the half day.

MR. MAHER then explained to the Board the problem that existed in Geelong due to the actions of one particular trader. The vagueness of the employer proposal could result in employers granting the holiday at a day of convenience to themselves. There is a need for some kind of mandatory provision to protect the employee.

MR. McCOY then said that some wording could perhaps be added to the employee proposal. As a point for discussion he would suggest "In the event of there being no appropriate Local Day, employees shall be given some other day in lieu thereof".

MR. MAHER said that this would be acceptable as if there is no local day of importance then the employee would receive another day in lieu. The other day must get priority.

MR. GREEN said that employers wanted the right to decide what day should be granted as is the case at the moment.

The Board then adjourned briefly for private conference between the employers.

MR. GREEN then said that the employers agree with Mr. Maher in respect to a need for clarity in the proposal and the employers are prepared to support a motion for the four Determinations as per the document submitted by him today and amended. That is, the last paragraph of sub-clause (c) read as

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave."

CLOTHING AND FOOTWEAR SHOPS

MOTION:

MR. DONOVAN MOVED that in clause 14(c) the last paragraph be deleted and replaced by the following -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given an appropriate local day off such as a local Cup Day. In the event of there being no appropriate local day, employees shall be given some other day off in lieu thereof".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and four employee representatives voted for the Motion and the employer representatives voted against the Motion.

He declared the Motion LOST on his equalizing and casting vote with the employer representatives, against the Motion. He added he was prepared to support a Motion as indicated by Mr. Green.

MR. DONOVAN then MOVED the Motion that clause 14(c) be varied by deleting the last paragraph and inserting in lieu the wording:

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members.

OPERATIVE DATE:

MR. DONOVAN MOVED the Motion that the Determination made, operate from the same date as the increases in rates of pay determined on 26 August 1980. That is, from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members, and indicated he also voted for the Motion to ensure operative effect.

ELECTRICAL, FURNITURE AND HARDWARE SHOPSMOTION:

MR. DONOVAN MOVED that in clause 14(c) the last paragraph be deleted and replaced by the following -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given an appropriate local day off such as a local Cup Day. In the event of there being no appropriate local day, employees shall be given some other day off in lieu thereof".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and the employee representatives voted for the Motion and the employer representatives voted against the Motion.

He declared the Motion LOST on his equalizing and casting vote with the employer representatives, against the Motion. He added he was prepared to support a Motion as indicated by Mr. Green.

MR. DONOVAN then MOVED the Motion that clause 14(c) be varied by deleting the last paragraph and inserting in lieu the wording -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members.

OPERATIVE DATE:

MR. DONOVAN MOVED the Motion that the Determination made, operate from the same date as the increases in rates of pay determined on 26 August 1980. That is, from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members, and indicated he also voted for the Motion to ensure operative effect.

GENERAL SHOPSMOTION:

MR. DONOVAN MOVED that in clause 14(c) the last paragraph be deleted and replaced by the following -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given an appropriate local day off such as a local Cup Day. In the event of there being no appropriate local day, employees shall be given some other day off in lieu thereof".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and the employee representatives voted for the Motion and the employer representatives voted against the Motion.

He declared the Motion LOST on his casting vote with the employer

representatives, against the Motion. He added he was prepared to support a motion as indicated by Mr. Green.

MR. DONOVAN then MOVED the Motion that clause 14(c) be varied by deleting the last paragraph and inserting in lieu the wording -
"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members.

OPERATIVE DATE:

MR. DONOVAN MOVED the Motion that the Determination made, operate from the same date as the increases in rates of pay determined on 26 August 1980. That is, from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members, and indicated he also voted for the Motion to ensure operative effect.

FOOD SHOPS

MOTION:

MR. DONOVAN MOVED that in clause 14(c) the last paragraph be deleted and replaced by the following -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given an appropriate local day off such as a local Cup Day. In the event of there being no appropriate local day, employees shall be given some other day off in lieu thereof".

The Motion was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and the employee representatives voted for the Motion and four employer representatives voted against the Motion.

He declared the Motion LOST on his equalizing vote with the employee representatives and his casting vote with the employer representatives, against the Motion. He added he was prepared to support a Motion as indicated by Mr. Green.

MR. DONOVAN then MOVED the Motion that clause 14(c) be varied by deleting the last paragraph and inserting in lieu the wording -

"Outside the area specified above employees shall be given the day off without deduction of pay on Melbourne Cup Day or in lieu shall be given some other day off or given an additional day as annual leave".

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members.

OPERATIVE DATE:

MR. DONOVAN MOVED the Motion that the Determination made, operate from the same date as the increases in rates of pay determined on 26 August 1980.

That is, from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. MAHER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the representative members, and indicated he also voted for the Motion to ensure operative effect.

EASTER SATURDAY:

MR. DONOVAN then read to the Board the following document:

Mr. Chairman,

We are opposed to the employer application which seeks to insert the Food Shops provisions for Easter Saturday into the other three shop determinations.

When the provision was inserted in the Food Shops Determination for employees to work on Easter Saturday if they so elect, it was done in recognition of the special needs of the food industry. It was given as a concession by the Union.

The arguments which apply to the food industry are not valid in respect of the other three determinations. It is not so vital for people to be able to shop on Easter Saturday for clothes, colour televisions or postcards that employees must lose the right to a public holiday!

The introduction of regular work on Easter Saturday will destroy that day as a public holiday for shop assistants. It will also break up the holiday period. So that instead of shop assistants being able to have four clear days off, they will have one day off, go in to work, then have another two days off.

We are opposed to the destruction of one of the only twelve days (or half days) in the year when shop assistants are free to relax with their families and which enables them to go on a short holiday if they wish.

We have bent over backwards to give concessions to the employers. We have proposed as a compromise that managerial staff should be able to man the shops together with casuals. However this has not been accepted by the employers.

We believe that no case has been made out for the need to employ full-time and part-time shop assistants on Easter Saturday. Our members will be satisfied with nothing less than the maintenance of Easter Saturday as a public holiday. We, therefore, ask the boards to reject the employer application.

MR. GREEN said that for the reasons submitted by the employers on 21 February 1980, he would be moving the motion as follows, for variations to the Determinations.

MOTIONS:

CLOTHING AND FOOTWEAR SHOPS

MR. GREEN MOVED the Motion that the Determination be amended as per the proposals in document 2 submitted by Mr. Green on 26 August 1980.

THE MOTION was SECONDED by MR. MacDONALD.

THE CHAIRMAN PUT the Motion to the Board and four employee representatives voted against the Motion and the employer representatives voted for the Motion.

He used his equalizing vote with the employer representatives and declared the Motion CARRIED on his casting vote.

OPERATIVE DATE:

MR. MacDONALD MOVED the Motion that the Determination made operate from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. GREEN.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the Board members.

GENERAL SHOPS

MR. GREEN MOVED the Motion that the Determination be amended as per the proposals in document 2 submitted by Mr. Green on 26 August 1980.

THE MOTION was SECONDED by MR. DOLLING.

THE CHAIRMAN PUT the Motion to the Board and the employer representatives voted for the Motion and the employee representatives voted against the Motion.

THE CHAIRMAN declared the Motion CARRIED on his casting vote with the employer representatives.

OPERATIVE DATE:

MR. GREEN MOVED that the Determination made operate from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. DOLLING.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the Board members.

ELECTRICAL, FURNITURE AND HARDWARE SHOPS

MR. McCOY MOVED the Motion that the Determination be amended as per the proposals in document 2 submitted by Mr. Green on 26 August 1980.

THE MOTION was SECONDED by MR. FLEINER.

THE CHAIRMAN PUT the Motion to the Board and the employer representatives voted for the Motion and the employee representatives voted against the Motion.

He declared the Motion CARRIED on his equalizing and casting vote with the employer representatives.

OPERATIVE DATE:

MR. McCOY MOVED that the Determination made operate from the first pay period to commence on or after 2 September 1980.

THE MOTION was SECONDED by MR. FLEINER.

THE CHAIRMAN PUT the Motion to the Board and declared it CARRIED on the UNANIMOUS vote of the Board members.

He then stated that he approved the Determinations made, the matter of Cup Day corrects an anomolous situation where employees were treated differently according to their geographical situation, and the matter of Easter Saturday does not appear to concern the Principles of the Wage Fixation Guidelines.

He then declared the meeting closed.