

## **AN140198 – Optical Manufacturing Industry Employees' Award - State 2003**

This AIR consolidated award reproduces the former Queensland Industrial Relations Commission award Optical Manufacturing Industry Employees' Award - State 2003 as at 27 March 2006.

### **About this Award:**

Formerly award O0080 of the Queensland Industrial Relations Commission.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s. 130 - award review*

**OPTICAL MANUFACTURING INDUSTRY EMPLOYEES' AWARD - STATE**

(No. AR152 of 2002)

DEPUTY PRESIDENT SWAN  
COMMISSIONERS EDWARDS AND BECHLY

22 April 2003

AWARD REVIEW

After reviewing the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made, as from 23 June 2003.

**OPTICAL MANUFACTURING INDUSTRY EMPLOYEES' AWARD - STATE 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 TITLE**

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### **1.3 AWARD COVERAGE**

This Award shall apply to employees engaged in or in connection with the manufacture or repair of spectacles, optical lenses or optical instruments and to their employers throughout the State of Queensland.

### **1.4 AREA OF OPERATION**

For the purposes of this Award, the Divisions and Districts are as follows:

#### *1.4.1 Divisions*

Northern Division - That portion of the State along or north of a line commencing at the junction of the sea coast with the 21st parallel of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due south to 22 degrees 30 minutes of south latitude; from that latitude due west to the western border of the State.

Mackay Division - That portion of the State within the following boundaries: Commencing at the junction of the sea-coast with the 21st parallel of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due south to 22 degrees of south latitude; from that latitude due east to the sea coast; from the sea-coast northerly to the point of commencement.

Southern Division - That portion of the State not included in the Northern or Mackay Divisions.

#### *1.4.2 Districts*

(a) Northern Division:

Eastern District - That portion of the Northern Division along or east of 144 degrees 30 minutes of east longitude.

Western District - The remainder of the Northern Division.

(b) Southern Division:

Eastern District - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; from that longitude due north to 25 degrees of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due north to the southern boundary of the Mackay Division.

Western District - The remainder of the Southern Division.

### **1.5 DATE OF OPERATION**

This Award takes effect from 23 June 2003.

### **1.6 PARTIES BOUND**

This Award is legally binding upon the employees as prescribed by clause 1.3 and their employers, and the Union and its members.

### **1.7 DEFINITIONS**

1.7.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.

1.7.2 "Commission" means the Queensland Industrial Relations Commission.

1.7.3 "Union" means and the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

## **PART 2 - FLEXIBILITY**

### **2.1 ENTERPRISE FLEXIBILITY**

2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.

2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.

2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

## **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **3.1 CONSULTATION**

3.1.1 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries covered by this Award and to enhance the career opportunities and job security of employees in such industries.

3.1.2 At each plant or enterprise, the employer, the employees and their relevant industrial organisations commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure, and needs of that plant or enterprise. Measures raised by the employer, employees or Union for consideration consistent with the objectives of clause 3.1.1 shall be processed through the consultative mechanism and procedures.

### **3.2 GRIEVANCE AND DISPUTE SETTLING PROCEDURE**

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.

3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.

3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.

3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of the Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.

3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.

3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.

3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.

3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.

3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.

3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

## **PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

### **4.1 EMPLOYMENT CATEGORIES**

4.1.1 Employees (other than casual employees) covered by this Award shall be advised in writing of their employment category upon appointment. Employment categories are:

- (a) Full-time;
- (b) Part-time (as prescribed in clause 4.2); and
- (c) Casual (as prescribed in clause 4.3).

### **4.2 PART-TIME EMPLOYMENT**

Part-time employees may be engaged on the following terms:

4.2.1 A part-time employee means a weekly employee who is engaged with fixed starting and ceasing times, to work on predetermined days of the week for a regular number of hours, being more than 10 but less than 32 hours per week, such hours to be worked on not more than 5 days of the week within the ordinary hours prescribed in clause 6.1 (Hours of work). Except as hereinafter provided, all conditions provided for permanent full-time employees shall apply to part-time employees.

4.2.2 An employer is required to roster a part-time employee for a minimum of 3

consecutive hours on any shift.

4.2.3 Part-time employees shall be paid an hourly rate equal to 1/38th of the weekly rate prescribed by this Award for the classification under which they are engaged.

4.2.4 A part-time employees who works in excess of the ordinary daily or weekly hours prescribed in the contract of employment shall be paid overtime in accordance with clause 6.6 (Overtime).

4.2.5 Part-time employees shall be entitled to receive *pro rata* entitlements to annual leave, public holidays, sick leave, bereavement leave and long service leave in accordance with the clauses contained in this Award.

Where a public holiday falls on a day on which a part-time employee is normally rostered to work, that employee shall be paid at the appropriate rate for the number of hours so rostered.

4.2.6 Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and vice-versa, on a permanent basis or for a specified period of time. If such an employee transfers from full-time to part-time (or vice-versa), all accrued award and legislative entitlements shall be maintained. Following transfer to part-time employment accrual will occur in accordance with the clauses relevant to part-time employment.

4.2.7 An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 4.3 of this Award.

#### **4.3 CASUAL EMPLOYMENT**

4.3.1 A casual employer means an employee who is engaged by the hour and who may leave the employer's service or be discharged without notice.

4.3.2 The rate of payment to casual employees shall be 1/38th of the appropriate weekly wage for the class of work they are engaged upon plus a 23% loading.

4.3.3 A casual employee shall be engaged for a minimum period of 2 hours' work or receive a minimum payment of 2 hours per engagement.

#### **4.4 TRAINEES**

Trainees are engaged under this Award, except as amended from time to time by the Order for *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

#### **4.5 INCIDENTAL AND PERIPHERAL TASKS**

4.5.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.

4.5.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required:

Provided that the employee has been properly trained in the use of such tools and equipment (where relevant).

4.5.3 Any direction issued by an employer pursuant to clause 4.5.1 and 4.5.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

## **4.6 ANTI-DISCRIMINATION**

4.6.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

4.6.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.2, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.6.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.6.4 Nothing in clause 4.6 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
- (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

## **4.7 TERMINATION OF EMPLOYMENT**

### *4.7.1 Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

### *4.7.2 Termination by employer*

(a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.

(c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.



(d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

(e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

#### *4.7.3 Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.7.2(d) for a period of notice of one week.

#### *4.7.4 Time off during notice period*

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

### **4.8 INTRODUCTION OF CHANGES**

#### *4.8.1 Employer's duty to notify*

(a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.

(b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

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

#### *4.8.2 Employer's duty to consult over change*

(a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).

(b) The consultation must occur as soon as practicable after making the decision

referred to in clause 4.8.1.

(c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

## **4.9 REDUNDANCY**

### *4.9.1 Consultation before terminations*

(a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.

(b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.

(c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

### *4.9.2 Transfer to lower paid duties*

(a) Where an employee is transferred to lower paid duties for reasons set out clause 4.9.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.7.

(b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

(i) the ordinary working hours to be worked by the employee; and

(ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and

(iii) any other amounts payable under the employee's employment contract.

#### 4.9.3 *Transmission of business*

(a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:

(i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and

(ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(b) In clause 4.9.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

#### 4.9.4 *Time off during notice period*

(a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, the employee shall 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 shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.9.6 *Severance pay*

(a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13

Period of Continuous Service	Severance Pay (weeks' pay)
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

(b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

#### 4.9.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

(a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and

(b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

#### 4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

#### 4.9.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

#### 4.9.10 *Employees with less than one year's service*

Clause 4.9 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.9.11 *Employees exempted*

Clause 4.9 shall not apply:

(a) where employment is terminated as a consequence of misconduct on the part of the employee; or

(b) to employees engaged for a specific period or task(s); or

(c) to casual employees.

#### 4.9.12 *Employers exempted*

(a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

(b) A 'company' shall be defined as:

(i) a company and the entities it controls; or

(ii) a company and its related company or related companies; or

(iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

#### 4.9.13 *Exemption where transmission of business*

(a) The provisions of clause 4.9.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:

(i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or

(ii) where the employee rejects an offer of employment with the transmittee:

(A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

(B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

(b) The Commission may amend clause 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.9.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay.

### **4.10 CONTINUITY OF SERVICE - TRANSFER OF CALLING**

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act as amended from time to time.

### **4.11 MIXED FUNCTIONS**

An employee who is required to perform work on any day for which a higher rate of pay is prescribed in clause 5.3 shall be paid as follows:

(a) If more than 4 hours on any day the higher rate for the whole of such day.

(b) If 4 hour or less then payment of the higher rate for 4 hours.

## **PART 5 - WAGES AND WAGE RELATED MATTERS**

### **5.1 CLASSIFICATION DEFINITIONS**

5.1.1 "Mechanical Optician Grade I" means an employee holding the appropriate Trade Certificate who is capable and required to perform additional duties above those of a Tradesperson.

5.1.2 "Mechanical Optician Grade II" means an employee who holds the appropriate Trade Certificate.

5.1.3 "Optical Employee Grade I" means a non-trades employee who may perform the range of tasks as outline in clause 5.2.3

5.1.4 "Optical Employee Grade II" means a non-trades employee who may perform the additional range of tasks as outlined in clause 5.2.4 and who has completed 3 months of service with their employer.

5.1.5 "Optical Employee Grade III" means a non-trades employee who may perform the tasks as outlined in clause 5.2.5 and who has not yet completed 3 months of service with their employer.

5.1.6 "Trade Certificate" means the gaining of trades person status, formalised through a TAFE. College and by the issuing of a Certificate.

5.1.7 "Junior employee" means an un-apprenticed employee who has not yet attained the age of 21 years.

### **5.2 EMPLOYEES CLASSIFICATION STRUCTURE**

5.2.1 *Mechanical Optician Grade I* - (relativity to Mechanical Optician Grade II - 105%)

Agreed levels of additional skills/tasks capable of being undertaken by a Tradesperson. These tasks would include the following:

- quality control;
- supervision and training of employees;
- basic machine fault finding and rectification;
- job prescription problem solving, in both theoretical and practical application.

A Tradesperson engaged in the manufacture of spectacles, contact or corneal lenses and is capable of doing all of the processes involved in the making of such lenses and/or spectacles.

A Tradesperson engaged in the manufacture and/or repair of Optical precision instruments and/or lenses.

5.2.2 *Mechanical Optician Grade II* - An employee who holds the appropriate Trade Certificate and who is not required to perform added duties associated with that of a Mechanical Optician Grade I.

5.2.3 *Optical Employee Grade I* - (relativity to Mechanical Optician Grade II - 92.4%)

An employee who is under general supervision and who is required to perform the following tasks in a prescription workshop:

- blocking up of blanks or lenses;

- lens generation;
- cylindrical lens fining;
- cylindrical lens polishing;
- hand roughing of second side of semi-finished blanks;
- operation of Automatic edging stones;
- tinting of CR-39 plastic lenses.

5.2.4 *Optical Employee Grade II* - (relativity to Mechanical Optician grade II - 87.4%)

An employee who has completed 3 months of service. This employee works under routine supervision and may be required to perform the following additional tasks in a RX Workshop:

- spherical fining of lenses (Machine or hand fining);
- spherical polishing of lenses (Machine or hand polishing);
- roughing in of blanks (first side only);
- engaged in the mass manufacture of bifocal blanks;
- engaged in the manufacture of plastic and/or metal spectacle frames or mountings or sunglasses.

5.2.5 *Optical Employee Grade III* - (relativity to Mechanical Optician Grade II - 82%);

Indicative of the tasks an employee may perform at this level are:

- cleaning/painting/taping of blanks or lenses;
- An employee commencing with an employer - (Entry point) and who is under direct supervision.
- An employee who has not yet completed 3 months of service and who has been given a general understanding of the following principles:
- Occupational Health and Safety;
- Equal Employment Opportunity;
- lap selection;
- attaching fining and/or polishing pads;
- attaching adhesive pads on lenses prior to automatic edging.

**5.3 WAGES**

5.3.1 The minimum weekly wage to be paid to employees in the Eastern District of the Southern Division shall be as follows:

Classification	Award Rate Per Week \$
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Mechanical Opticians Grade I	599.10
Mechanical Opticians Grade II	578.20
Optical Employee Grade I	544.50*
Optical Employee Grade II	523.60
Optical Employee Grade III	501.10

\* Excess Payments - Employees employed in the classification of Optical Employee Grade I shall receive an excess payment of \$4.60 per week. Such amount is not to be adjusted.

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2005 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. [Disputed cases are to be referred to the Vice President.] This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Policy, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

#### 5.3.2 *Leading hands:*

	Per Week \$
(a) In charge of not less than 2 employees and not more than 10 employees	18.50
(b) In charge of not less than 10 employees and not more than 20 employees	28.10
(c) In charge of more than 20 employees	36.80

#### 5.3.3 *Juniors:*

(a) Un-apprenticed juniors shall be paid the following percentages of the total rate of pay prescribed by clause 5.3:

15 and Under 16 years	45%
16 and Under 17 years	50%
17 and Under 18 years	55%
18 and Under 19 years	65%
19 and Under 20 years	75%
20 and Under 21 years	85%

(Such rates shall be calculated to the nearest 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple).

(b) Notwithstanding clause 5.3.3(a), un-apprenticed juniors engaged in the manufacture of contact lenses shall be paid the adult rate.



#### 5.3.4 Divisional and District parities

Employees employed outside the Eastern District of the Southern Division shall be paid the following amounts in addition to the wage rates prescribed by clause 5.2.1 for the Division or District in which they are located:

	Adults Per Hour \$	Adults Per Week \$	Juniors Per Hour \$	Juniors Per Week \$
Northern Division, Eastern District	0.0275	1.05	0.0140	0.53
Northern Division, Western District	0.0855	3.25	0.0430	1.63
Mackay Division	0.0235	0.90	0.0120	0.45
Southern Division, Western District	0.0275	1.05	0.0140	0.53

#### 5.4 OCCUPATIONAL SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note – [Choice of Superannuation Funds and Award Provisions](#).

5.4.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees (as defined in clause 5.4.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.4.

##### 5.4.2 *Contributions*

(a) Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

(b) Regular payment - The employer shall pay such contributions to the credit of each eligible employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.

(c) Minimum level of earnings - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.

(d) Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.

(e) Other contributions - Nothing in clause 5.4 shall preclude an employee from making contributions to a fund in accordance with the provisions of the trust deed of the fund.

(f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.

(g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed in clause 5.4.

#### 5.4.3 Definitions

(a) "Approved fund" means a fund (as defined in clause 5.4.3(c)) approved for the purposes of clause 5.4 by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.4. Such approved fund may be individually named or may be identified by naming a particular class or category.

(b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.4.2 effective from the commencement of that qualifying period.

(c) "Fund" means a superannuation fund satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant Act. In the case of a newly established fund, the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

(d) "Ordinary time earnings" for the purposes of clause 5.4 means the actual ordinary time rate of pay the employee receives for ordinary hours of work including shift loading, skill allowances and leading hand allowances, where applicable. The term includes any over-award payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

5.4.4 For the purposes of this Award, an approved fund means:

(a) Sunsuper; or The Martin Wells Pty. Ltd. Employees Superannuation Plan;

(b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and as recorded in an approved Industrial Agreement.

(c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which has already had practical application to the majority of award employees of that employer.

(d) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship, any fund nominated by the employer and approved by the Brethren.

(e) Any fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of section 115 of the Act.

(f) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance

with clause 5.4.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contribution.

(g) The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.

(i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.

(ii) A person must not coerce someone else to make an agreement.

(iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.

(iv) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.2.

#### *5.4.5 Challenge of a fund*

(a) An eligible employee being a member or a potential member of a fund, as well as the Union, may by notification of a dispute to the Commission challenge a fund on the grounds that it does not meet the requirements of clause 5.4.

(b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.4, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause 5.4.2 up to and including the date of that determination.

(c) In the event of any dispute over whether any fund complies with the requirements of clause 5.4, the onus of proof shall rest upon the employer.

#### *5.4.6 Fund selection*

(a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses 5.4.4(c), (d), (e), (f) and (g) shall be determined by a majority decision of employees.

(b) Employees who are members of an established fund covered by clause 5.4.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.4.2 paid into a fund as provided for elsewhere in clause 5.4.4 in lieu of the established fund to which clause 5.4.4(f) has application.

(c) The initial selection of a fund recognised in clause 5.4.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.

(d) Where this provision has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation of this provision.

#### 5.4.7 Enrolment

(a) Each employer to whom clause 5.4 applies shall as soon as practicable as to both current and future eligible employees:

(i) Notify each employee of the employee's entitlement to occupational superannuation;

(ii) Consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.4.4;

(iii) Take all reasonable steps to ensure that upon the determination of an appropriate fund, each eligible employee receives, completes, signs and returns the necessary application form/s provided by the employer, to enable that employee to become a member of the fund; and

(iv) Submit completed application form/s and any other relevant material to the trustees of the fund.

(b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.4 shall:

(i) complete and sign the necessary application form/s to enable that employee to become a member of that fund; and

(ii) return such form/s to the employer within 28 days of receipt of the application form/s in order to be entitled to the benefit of the contributions prescribed in clause 5.4.2.

(c) Where an employer has complied with the requirements of clause 5.4.7(a) and an eligible employee fails to complete, sign and return the application form/s within 28 days of the receipt by the employee of that form/s, then that employer shall:

(i) Advise the eligible employee in writing of the non-receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.4.

(ii) In the event that the eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which the completed and signed application form/s is received by the employer.

(iii) In the event that the eligible employee fails to return a completed and signed application form/s within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form/s is a pre-requisite to the payment of any occupational superannuation contributions.

(iv) At the same time as advising the eligible employee pursuant to clause 5.4.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.4.7(c)(i) and 5.4.7(c)(iii).

(d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.4.7(a)(iii) the employer shall be obliged to make contributions as from the date the employee became an eligible employee provided that the eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where the

eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of clause 5.4.7(c) shall apply.

#### 5.4.8 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.4.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.4.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.4.5, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.4 excepting that resort to clause 5.4.8 shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

#### 5.4.9 *Exemptions*

(a) An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.4 in the following circumstances:

- (i) Incapacity to pay the costs associated with its implementation; or
- (ii) Any special or compelling circumstances peculiar to the business of the employer.

### **5.5 ALLOWANCES**

5.5.1 *First aid* - Wherever employees provided for in this Award are employed, there shall be kept an adequate supply of first aid material; such material to be supplied by the employer and readily accessible to the employees in case of accident.

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications, such as a certificate from the St John's Ambulance or a similar body, shall be paid an allowance of \$11.10 per week if the employee is appointed by the employer to perform first aid duty.

5.5.2 *Laundry allowance* - Employees who wear and launder their dustcoats or overalls shall be paid an allowance of \$2.00 per week. This allowance is to cover laundering once a week only.

## **PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK**

### **6.1 HOURS OF WORK**

#### 6.1.1 *Day workers:*

(a) Subject to clause 6.2 (Implementation of 38 Hour Week), and subject to the exceptions after provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following basis:

- (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (iv) 152 hour within a work cycle not exceeding 28 consecutive days.

(b) The ordinary hours of work prescribed for employees shall be worked continuously except for meal breaks. Ordinary hours shall be worked on any 5 consecutive days in the week between 7.00 a.m. and 7.00 p.m. Monday to Sunday inclusive subject to the following:

(i) Ordinary hours worked on a Saturday or Sunday shall be paid at the rate of time and a-half for all work on Saturdays and double time for all work on Sundays:

Provided that in retail outlets employees working on Saturday or Sunday shall be paid at the rate of time and a-half for Saturday and double time for Sunday.

(ii) Any arrangement of hours which includes a Saturday or Sunday as ordinary hours shall be subject to agreement between the employer and the majority of employees concerned.

(iii) In any arrangement of hours which includes a Saturday or Sunday as ordinary hours, the Union shall be notified in writing within 14 days of commencement of work under such arrangement.

(iv) Employees working in retail outlets may be required to work ordinary hours until 9.00 p.m. on late night trading nights. Employees working ordinary hours between the hours of 7.00 p.m. and 9.00 p.m. shall be paid at the rate of time and a-quarter for all hours so worked.

(c) The ordinary hours of work prescribed shall not exceed 10 hours on any day:

Provided that where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned:

Provided further that where any arrangement of ordinary hours exceeds 8 on any day, the relevant industrial organisation of employees shall be notified in writing within 14 days of commencement of work under such arrangement.

(d) The ordinary starting and finishing times of various groups of employees or individual employees, may be staggered, provided that there is agreement between the employer and the majority of employees concerned.

#### 6.1.2 *Shift workers:*

(a) Definitions - An employee whose ordinary hours fall wholly or mainly outside the spread of hours prescribed by clause 6.1.1(b) of this Award shall be deemed to be a shift worker:

Provided that an employee shall not be deemed to be a shift worker in circumstances where shifts are in operation for less than a full working week.

(b) Penalty - Shift workers shall receive a shift allowance of 15% in addition to their ordinary rate of pay.

(c) Hours of work - The ordinary working hours of shift workers shall be agreed between the employer and the majority of the employees concerned and shall not exceed an average of 38 per week to be worked in accordance with a roster prescribed by clause 6.1.1(a).

(d) Change of roster - Except by agreement between the employer and the employee, the employer must give at least one week's notice of change of roster.

(e) Crib breaks - Shift workers shall be entitled to a crib break of 30 minutes' duration

without loss of pay. Such crib break is to be taken not later than 6 hours after commencement of shift.

## **6.2 IMPLEMENTATION OF 38 HOUR WEEK**

6.2.1 The 38 hour week shall be implemented on one of the following bases, most suitable to the particular business, after the consultation with, and giving reasonable consideration to the wishes of the employees concerned:

- (a) by employees working less than 8 ordinary hours each day; or
- (b) by employees working less than 8 ordinary hours on one or more days each work cycle; or
- (c) by fixing one or more work days on which all employees will be off during a particular work cycle; or
- (d) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.

6.2.2 Subject to clause 6.1.1(c) employees may agree that the ordinary hours of work are to exceed 8 on day, thus enabling more than one work day to be taken off during a particular work cycle.

6.2.3 Where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned, may agree to accrue up to a maximum of 5 rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.

6.2.4 Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in the business concerned.

## **6.3 MEAL BREAKS**

6.3.1 Employees shall receive at least one-half hour and not more than one hour for a meal to be taken not later than 6 hours after the employee commences work, unless the employer and employee agree otherwise.

6.3.2 If the meal period prescribed by clause 6.3.1 is worked, it shall be paid for at the rate of double time and such double time payment shall continue until such time as the employee finishes work or is allowed their customary meal break for which no deduction of pay shall be made.

## **6.4 REST PAUSES**

6.4.1 Every employee covered by this Award shall be entitled to a rest pause of 10 minutes' duration in the employer's time in the first and second half of the working day. Such rest pauses shall be taken at such times as will not interfere with the continuity of work where continuity is necessary:

Provided that where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day, with such 20 minute rest pause and the meal break arranged in such a way that the ordinary working day is broken up into 3 approximately equal working periods.

6.4.2 Consent to combine the rest pauses shall not be unreasonably withheld by either party.

## **6.5 ROSTERED DAYS OFF**

6.5.1 Where a rostered day off falls on a public holiday as prescribed in clause 7.6 of this Award, the employee and the employer shall agree to an alternative day off in lieu thereof.

6.5.2 All employees will be given a fair spread of rostered days off, from Monday to Friday.

6.5.3 An employee shall be advised by the employer at least 7 days in advance of entitlement to a rostered day off.

6.5.4 In the event that an employee is rostered off duty on a day which coincides with pay day, such employee shall be paid not later than the working day immediately following pay day.

6.5.5 All time worked on an employee's rostered day off shall be paid for at the appropriate overtime rate (time and a-half for the first 3 hours, double time thereafter) with a minimum payment as for 2 hours work:

Provided that by mutually agreement the employer and the employee may agree to substitute another day in lieu of the rostered day off, in which case the day that had been rostered off will be regarded as an ordinary working day.

## **6.6 OVERTIME**

6.6.1 All work performed outside of or in excess of the hours prescribed in clause 6.1 of this Award shall be deemed to be overtime. Such overtime shall be paid for at the rate of time and one-half for the first 3 hours and double time thereafter:

Provided that all overtime worked on Sundays shall be paid for at the rate of double time:

Provided further that the minimum payment for Saturday overtime is for 2 hours and on Sunday 4 hours.

6.6.2 An employee, who is required to continue work after the usual ceasing time shall be supplied with a reasonable meal at the employer's expense, or be paid \$9.60 in lieu thereof, after more than 2 hours, or after more than one hour if overtime continues beyond 6.00 p.m.

## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **7.1 ANNUAL LEAVE**

7.1.1 Every employee (other than a casual employee) shall at the end of each year of their employment be entitled to annual leave on full pay as follows:

- (a) not less than 5 weeks if employed on shift work where 3 shifts per day are worked over a period of 7 days per week; and
- (b) not less than 4 weeks in any other case.

7.1.2 Such annual leave is exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.3) must be paid for by the employer in advance:

- (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary wages at a rate in excess of the ordinary wages payable under clause 5.3, at



that excess rate; and

(b) in every other case, at the ordinary time rate of pay payable under clause 5.3 to the employee concerned immediately prior to that leave.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall immediately pay to the employee, in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.5, for 4 or 5 weeks as the case may be and also their ordinary time rate of pay for any public holidays occurring during such period of 4 or 5 weeks.

7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due, an amount equal to 1/9th of their pay for the period of their employment in the case of a shift worker, and 1/12th of their pay for the period of their employment in the case of a day worker, calculated in accordance with clause 7.1.5.

#### *7.1.5 Calculation of annual leave pay*

In respect to annual leave entitlements to which clause 7.1 applies, annual leave pay (including any proportionate payments), shall be calculated as follows:

(a) Shift workers - Subject to clause 7.1.5(c), the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or public holiday shifts.

(b) Leading hands etc. - Subject to clause 7.1.5(c), leading hand allowances otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.

(c) All employees - Subject to the provisions of clause 7.1.5(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:

(i) the employee's ordinary wage rate as prescribed in clause 5.3 for the period of the annual leave (excluding shift premiums and weekend penalty rates);

(ii) leading hand allowance prescribed in clause 5.3.2;

(iii) a further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).

(d) Clause 7.1.5(c) does not apply to:

(i) any period or periods of annual leave:

- exceeding 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
- exceeding 4 weeks in any other case; or

(ii) employers who are already paying an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.6 Unless the employee agrees otherwise, the employer must give the employee at least 14 days' notice of the date from which the employee's annual leave will be taken.

7.1.7 Except as provided in clause 7.1.4, it is not lawful for the employer to give, or for the employee to receive, payment in lieu of annual leave.

7.1.8 An employee on annual leave shall be rostered off one day in each 4 week cycle and such rostered day off shall be exclusive of any annual leave entitlement.

## **7.2 LONG SERVICE LEAVE**

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, Sections 42-58 of the Act as amended from time to time.

## **7.3 FAMILY LEAVE**

The provisions of the Family Leave Award apply to and are deemed to form part of this Award.

7.3.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
- (b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.

7.3.2 The Family Leave Award also provides for the terms and conditions of leave associated with:

- (a) Maternity leave
- (b) Parental leave
- (c) Adoption leave
- (d) Special responsibility leave for the care and support of the employee's immediate family or household.

## **7.4 BEREAVEMENT LEAVE**

7.4.1 *Full-time and part-time employees*

Full-time and part-time employees shall, on the death of a member of their immediate family or household in Australia, be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7.4.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.4.2.

#### 7.4.3 "Immediate family" includes:

- (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) A child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

#### 7.4.4 Unpaid leave

An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household in Australia dies and the period of bereavement leave entitlement provided above is insufficient.

### **7.5 SICK LEAVE**

#### 7.5.1 Entitlement

(a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer:

Provided that part-time employees accrue sick leave on a proportional basis.

(b) This entitlement will accrue at the rate of 7.6 hours' sick leave for each 6 weeks of employment.

(c) Payment for sick leave will be made based on the number of hours which would have been worked if the employee were not absent on sick leave.

(d) Sick leave may be taken for part of a day.

(e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

#### 7.5.2 Employee must give notice

The payment of sick leave is subject to the employee promptly advising the employer of the employee's absence and its expected duration.

#### 7.5.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence about the nature and approximate duration of the illness.

#### 7.5.4 Accumulated sick leave

An employee's accumulated sick leave entitlements are preserved when:

- (a) The employee is absent from work on unpaid leave granted by the employer;
- (b) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the

interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

#### 7.5.5 Workers' compensation

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

## 7.6 PUBLIC HOLIDAYS

7.6.1 All work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

will be paid for at the rate of double time and a-half with a minimum of 4 hours.

#### 7.6.2 Labour Day

All employees covered by this Award are entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee will be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary time rate of pay prescribed for such work with a minimum of 4 hours.

#### 7.6.3 Annual show

All work done by employees in a district specified from time to time by the Minister by notification published in the *Industrial Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district will be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

#### 7.6.4 Double time and a-half

For the purposes of clause 7.6 "double time and a-half" means one and a-half day's wages in addition to the employee's ordinary time rate of pay or *pro rata* if there is more or less than a day.

### 7.6.5 Stand down

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and New Year's Day.

### 7.6.6 Employees who do not work Monday to Friday of each week

(a) A full-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day's leave.

(b) A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day's leave provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.

(c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.

(d) Where Christmas day falls on a Saturday or Sunday and the public holiday is observed on another day an employee required to work on Christmas day (i.e. 25 December) shall be paid at the rate of double time.

(e) Nothing in clause 7.6.6 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.

## 7.7 JURY SERVICE

(a) 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 ordinary pay the employee would have been paid if the employee was not absent on jury service.

(b) Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.

(c) Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.

(d) If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.

(e) "Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

## **PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

NOTE: No provisions inserted in this Award relevant to this Part.

## **PART 9 - TRAINING AND RELATED MATTERS**

### **9.1 TRAINING**

9.1.1 The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this award, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the use of skills acquired.

## **PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

### **10.1 SUPPLY OF TOWELS AND TOOLS**

10.1.1 Clean towels shall be supplied by the employer at least once a week.

10.1.2 All tools of trade necessary to carry out the work shall be supplied by the employer.

10.1.3 The employer shall supply to each employee engaged in hand edging a pair of properly fitted safety glasses.

### **10.2 PROTECTIVE CLOTHING**

Where employees are required to work under conditions which endanger their personal clothing they shall be provided with protective clothing appropriate to the type of work performed, in the form of dust coats - the employer to provide a maximum of 2 dust coats per annum per employee:

Provided that in circumstances where the employee omits or refuses to wear such protective clothing, the employer shall not be required to provide same.

## **PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **PREAMBLE**

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

### **11.1 RIGHT OF ENTRY**

11.1.1 *Authorised industrial officer*

(a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.

(b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

#### 11.1.2 *Entry procedure*

(a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:

(i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and

(ii) shows their authorisation upon request.

(b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.

(c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.

(d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

#### 11.1.3 *Inspection of records*

(a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.

(b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:

(i) is ineligible to become a member of the Union; or

(ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or

(iii) has made a written request to the employer that they do not want their record inspected.

(c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.

(d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

#### 11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

(a) matters under the Act during working or non-working time; and

(b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

#### 11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

## **11.2 TIME AND WAGES RECORD**

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

## **11.3 UNION ENCOURAGEMENT**

Clause 11.3 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.



#### 11.3.1 *Documentation to be provided by employer*

At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by each employee.

The document provided by the employer shall also identify the existence of a union encouragement clause in this Award.

#### 11.3.2 *Union delegates*

Union delegates and job representatives have a role to play within a workplace. The existence of accredited union delegates and/or job representatives is encouraged.

The employer shall not unnecessarily hinder accredited union delegates and/or job representatives in the reasonable and responsible performance of their duties.

#### 11.3.3 *Deduction of union fees*

Where arrangements can be entered into, employers are encouraged to provide facilities for the deduction and remittance of union fees for employees who signify in writing to their employer, their desire to have such membership fees deducted from their wages.

### **11.4 AWARD POSTING**

A true copy of this Award shall be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by employees.

### **11.5 TRADE UNION TRAINING LEAVE**

11.5.1 A Union delegate or duly elected or appointed Union representative shall, upon written application by the Union to the employer, such application being endorsed by the Union and given to the employer at least 2 months in advance (or such lesser period as mutually agreed between the Union and the employer/s), be granted up to 5 working days' leave (non-cumulative) on ordinary pay each calendar year to attend courses or seminars conducted by the Union or specific training courses approved by the Union. The scope, content and level of such courses or seminars shall be such as to contribute to a better understanding of industrial relations within the employer's operations.

Other courses mutually agreed between the Union and an employer, or employers, may be included under clause 11.5.1.

11.5.2 Any written application by a Union seeking release of a delegate or representative to attend a course shall include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted.

11.5.3 For the purposes of clause 11.5 'ordinary pay' means the ordinary time earnings paid to the employee exclusive of any allowances, penalty rates or travelling time and fares.

The granting of such leave shall be subject to the following conditions:

(a) The employee must have at least 12 months' continuous service with the employer prior to such leave being granted and be the elected Union delegate/representative.

(b) Unless otherwise agreed the maximum number of employees of one and the same employer attending a training course or seminar each year will be as follows:

Where the employer employs between 10 - 50 employees	1
Where the employer employs between 51-100 employees	2
Where the employer employs over 100 employees	4

(c) Where an employer has more than one place of employment in Queensland then the maximum number of employees entitled to attend a course at the same time shall be 2. This shall not prevent an employer from agreeing to release additional employees.

(d) The granting of such leave shall be subject to the convenience of the employer so that the operations of the Enterprise will not be adversely affected.

Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular Union delegate or representative at a particular time (including where the employer might have previously advised of its ability to release such Union delegate or representative) the Union will not unreasonably press its request for the release of that delegate/representative at that time. If the matter is not amicably resolved, it shall be processed in accordance with clause 3.2, Grievance and dispute settling procedure, contained in this Award.

(e) In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted by the employer to cover the absence of the employee.

(f) Leave granted to attend such training courses will not incur any additional payment or alternate time off if such course coincides with an employee's day off in a 19 day month working arrangement, or with any other concessional leave.

(g) Such paid leave will not affect other leave granted to employees under this Award.

(h) On completion of the course the employee shall, upon request, provide to the employer proof of their attendance at the course. Except in the case of sick leave or other authorised leave, non-attendance at a training course will result in the employee not being paid for such time.

\*\* end of text \*\*

## **AN150100 – Optical Employees Award**

This AIR consolidated award reproduces the former State award Optical Employees Award as at 27 March 2006.

### **About this Award:**

Former award of the Industrial Relations Commission of South Australia.

Printed by authority of the Commonwealth Government Printer.

### **Disclaimer:**

Please note that this consolidated former State award is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

**OPTICAL EMPLOYEES AWARD**

**PART 1 APPLICATION AND OPERATION OF AWARD**

**CLAUSE 1.1 TITLE**

OPDATE 22:12:2005 on and from

This Award shall be known as the Optical Employees Award.

**CLAUSE 1.2 ARRANGEMENT**

OPDATE 21:02:2006 on and from

**1.2.1 By clause number**

**Part 1 Application and operation of Award**

- 1.1 Title
- 1.2 Arrangement
- 1.3 Operation of Award
- 1.4 Locality
- 1.5 Scope and persons bound
- 1.6 Definitions
- 1.7 Continuous service

**Part 2 Award flexibility**

- 2.1 Enterprise flexibility

**Part 3 Communication, consultation and dispute resolution**

- 3.1 Introduction of change
- 3.2 Dispute settling procedure

**Part 4 Employer and employees duties, employment relationship and related arrangements**

- 4.1 Contract of hiring
- 4.2 Apprentices
- 4.3 Junior workers
- 4.4 Termination of employment
- 4.5 Redundancy
- 4.6 Transmission of business
- 4.7 Service provisions (termination, change and redundancy)
- 4.8 Superannuation
- 4.9 Anti-discrimination

**Part 5 Wages and related matters**

- 5.1 Wages
- 5.2 Payment of wages
- 5.3 Mixed functions

**Part 6 Hours of work, breaks, overtime, shift work, weekend work and public holiday work**

- 6.1 Hours
- 6.2 Shift work
- 6.3 Implementation of 38 hour week

- 6.4 Overtime
- 6.5 Meal allowances and crib breaks
- 6.6 Sundays and public holidays
- 6.7 Christmas day falling on a Saturday or Sunday

**Part 7 Leave of absence and public holidays**

- 7.1 Annual leave
- 7.2 Personal leave injury and sickness
- 7.3 Bereavement leave
- 7.4 Parental leave
- 7.5 Personal leave to care for a family member

**Part 8 Transfers, travelling and working away from usual place of work**

Vacant

**Part 9 Training and related matters**

- 9.1 Trade union training leave
- 9.2 Training wage arrangements

**Part 10 Occupational health and safety matters, equipment, tools and amenities**

- 10.1 First-aid attendant
- 10.2 Protective clothing
- 10.3 Tools

Part 11 Award compliance and association related matters

- 11.1 Right of entry
- 11.2 Job delegates

Schedules

- Sch. 1 Wages
- Sch. 2 Classification level criteria Sch. 3 Training wage arrangements Sch. 4 Supported wage provisions
- Sch. 5 Allowances

**1.2.2 Alphabetical order**

- Sch. 5 Allowances
- 7.1 Annual leave
- 4.9 Anti-discrimination
- 4.2 Apprentices
- 1.2 Arrangement
- 7.3 Bereavement leave
- 6.7 Christmas day falling on a Saturday or Sunday
- Sch. 2 Classification level criteria
- 1.7 Continuous service
- 4.1 Contract of hiring
- 1.6 Definitions
- 3.2 Dispute settling procedure
- 2.1 Enterprise flexibility
- 10.1 First aid attendant
- 6.1 Hours
- 6.3 Implementation of 38 hour week

- 3.1 Introduction of change
- 11.2 Job delegates
- 4.3 Junior workers
- 1.4 Locality
- 6.5 Meal allowances and crib breaks
- 5.3 Mixed functions
- 1.3 Operation of Award
- 6.4 Overtime
- 7.4 Parental leave
- 5.2 Payment of wages
- 7.2 Personal leave injury and sickness
- 7.5 Personal leave to care for a family member
- 10.2 Protective clothing
- 4.5 Redundancy
- 11.1 Right of entry
- 4.7 Service provisions (termination, change and redundancy)
- 1.5 Scope and persons bound
- 6.2 Shift work
- 6.6 Sundays and public holidays
- 4.8 Superannuation
- Sch. 4 Supported wage provisions
- 4.4 Termination of employment
- 1.1 Title
- 10.3 Tools
- 9.1 Trade union training leave
- Sch. 3 Training wage arrangements (also 9.2)
- 4.6 Transmission of business
- Sch. 1 Wages (also 5.1)

### **CLAUSE 1.3 OPERATION OF AWARD**

OPDATE 22:12:2005 on and from

The Award in this matter as amended following a review conducted pursuant to section 99 of the **Act** operates on and from 22 December 2005 and continues in force in accordance with section 96 of the **Act**.

### **CLAUSE 1.4 LOCALITY**

OPDATE 22:12:2005 on and from

This Award shall apply throughout the State of South Australia.

### **CLAUSE 1.5 SCOPE AND PERSONS BOUND**

OPDATE 22:12:2005 on and from

1.5.1 Except as provided in clause 1.5.2 this Award shall be binding on the occupation of persons employed in or in connection with the trades of businesses (except as clerks) of the manufacture and/or repair of optical and/or opticians wares.

1.5.2 The Award shall not be binding on those persons who already subject to an Enterprise Agreement under the **Act**.

### **CLAUSE 1.6 DEFINITIONS**

OPDATE 22:12:2005 on and from

1.6.1 **Act** means the *Fair Work Act 1994*.

1.6.2 **Commission** means the Industrial Relations Commission of South Australia.

1.6.3 **Optical instrument repairer** means a person engaged in the repair of optical instruments e.g. profile projectors, telescopes, survey instruments, turning and fitting axes, centring circles and verniers of theodolites.

1.6.4 **Optical mechanic** means an indentured trade person engaged in ophthalmic lens grinding, surfacing, polishing, centring, marking, cutting, edging, glazing rimless and supra type mounting, spectacle frame repairing and the manufacture of contact lens.

1.6.5 **Optical worker** means a person who is a non-trades person who performs work under the supervision of an **optical mechanic**.

1.6.6 **Process worker** means a person operating automatic machinery or any machine for which they are not responsible for adjustment or engaged on any task of a repetitive nature.

1.6.7 **Regularly rostered** for the purpose of clause 6.1 Hours, regularly rostered shall mean that a person works to a roster which includes not less than one (1) Saturday in any six (6) successive weeks for a continuous length of time being at least three (3) calendar months.

1.6.8 **Union** means the Liquor Hospitality and Miscellaneous Union.

1.6.9 **Continuous service** means service as described in clause 1.7.

1.6.10 **Spouse** includes a defacto spouse, but except in relation to parental leave, does not include a spouse from whom the employee is legally separated.

1.6.11 **Weeks Pay** means the ordinary time rate of pay as defined in Clause 4.5.1.

## **CLAUSE 1.7 CONTINUOUS SERVICE**

OPDATE 22:12:2005 on and from

### **1.7.1 Maintenance of continuous service**

Except as otherwise indicated, service is deemed to be continuous despite:

1.7.1.1 Absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.

1.7.1.2 Absence of the employee from work for any cause by leave of the employer.

1.7.1.3 Absence from work on account of illness, disease or injury.

1.7.1.4 Absence with reasonable cause. Proof of such reasonable cause lies with the employee.

1.7.1.5 Interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Award, the **Act** or the *Long Service Leave Act 1987*.

1.7.1.6 Interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute.

1.7.1.7 Transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transmittee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer.

1.7.1.8 Interruption or termination of the employee's service by the employer for any reason other than those referred to in this Clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated.

1.7.1.9 Any other absence from work for any reason other than those referred to in this clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than 14 days after the end of the period of absence.

#### 1.7.2 Calculation of period of service

Where an employee's service is deemed to be continuous under this clause, the period of absence from work is not to be taken into account in calculating the employee's period of time served with the employer except:

1.7.2.1 To the extent that the employee receives or is entitled to receive pay for the period; or

1.7.2.2 Where the absence results from a decision of the employer to stand the employee off without pay.

### PART 2 - AWARD FLEXIBILITY

#### CLAUSE 2.1 ENTERPRISE FLEXIBILITY

OPDATE 22:12:2005 on and from

2.1.1 In this clause a **relevant association** means an organisation of employees that:

(a) has an interest in this Award; and

(b) has one or more members employed by the employer to perform work in the relevant enterprise or workplace.

*[Note: The failure by an employer to give each **relevant association** an opportunity to be involved in the consultative process leading to the making of an agreement may result in the **Commission** adjourning or refusing the application to vary the award].*

2.1.2 At each enterprise or workplace, consultative mechanisms and procedures will be established comprising representatives of the employer and employees. Each **relevant association** will be entitled to be represented.

2.1.3 The particular consultative mechanisms and procedures will be appropriate to the size, structure and needs of the enterprise or workplace.

2.1.4 The purpose of the consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise or workplace according to its particular needs.

2.1.5 Where agreement is reached at an enterprise or workplace through such consultative mechanisms and procedures, and where giving effect to such agreement requires this Award, as it applies at the enterprise or workplace, to be varied, an application to vary will be made to the **Commission**. The agreement will be made available in writing, to all employees at the enterprise or workplace and to the **associations** with an interest in this Award.

2.1.6 When this Award is varied to give effect to an agreement made pursuant to this clause the variation will become a schedule to this Award and the variation will take precedence over any provision of this Award to the extent of any expressly identified inconsistency.



2.1.7 The agreement must meet the following requirements to enable the **Commission** to vary this Award to give effect to it:

2.1.7.1 That the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs.

2.1.7.2 That the majority of employees covered by the agreement genuinely agreed to it.

2.1.7.3 That the award variation necessitated by the agreement is consistent with the requirements of the **Act**.

## **PART 3 COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **CLAUSE 3.1 INTRODUCTION OF CHANGE**

OPDATE 22:12:2005 on and from

#### **3.1.1 Notification of intended changes**

3.1.1.1 Where an employer has made a firm decision to implement changes in production, program, organisation, structure or technology that are likely to have **significant effects** on employees, the employer must as soon as practicable notify the employees who may be affected by the proposed changes and their **Union**.

3.1.1.2 **Significant effects** include:

(a) termination of employment;

(b) major changes in the composition, operation or size of the employers workforce or in the skills required;

(c) the elimination or diminution of job opportunities, promotion opportunities or job tenure;

(d) the alteration of hours of work;

(e) the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

3.1.1.3 Where the Award makes provision for alteration of any of the matters in 3.1.1.2, an alteration will be deemed not to have **significant effect**.

#### **3.1.2 Consultation with employees and their union**

3.1.2.1 The employer must discuss with the employees affected and their **Union**, among other things:

(a) the introduction of the changes referred to in 3.1.1.1;

(b) the effects the changes are likely to have on employees;

(c) measures to avert or mitigate the adverse effects of such changes on employees.

The employer must give prompt consideration to matters raised by the employees and/or their **Union** in relation to the changes.

3.1.2.2 The discussions must commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in 3.1.1.1.

3.1.2.3 For the purposes of such discussion, the employer must provide in writing to the employees concerned and the **Union**:

(a) all relevant information about the changes, including the nature of the changes proposed; and

(b) the expected effects of the changes on employees and any other matters likely to affect them.

Employers are not required to disclose confidential information disclosure of which, when looked at objectively, would be against the employer's interests.

### **CLAUSE 3.2 DISPUTE SETTLING PROCEDURES**

OPDATE 22:12:2005 on and from

Any industrial dispute or claim arising out of or relating to this Award will be dealt with in the following manner:

3.2.1 As soon as is practicable after the dispute or claim has arisen, the employee concerned must take the matter up with the immediate supervisor affording the supervisor the opportunity to remedy the cause of the dispute or claim.

3.2.2 Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the employee and the immediate supervisor would be inappropriate, the employee will take the matter up with the next level of management, and may be represented by their **Union** representative or other representative of their choice if the employee so chooses.

3.2.3 If the matter is not settled it will be submitted to the **Commission** which will endeavour to resolve the issue(s) between the parties in accordance with the **Commissions** dispute settling powers, that is, firstly by conciliation and if necessary by arbitration.

3.2.4 Without prejudice to either party, work should continue in accordance with the Award while the matters in dispute are being dealt with in accordance with this clause.

## **PART 4 EMPLOYER AND EMPLOYEES DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

### **CLAUSE 4.1 CONTRACT OF HIRING**

OPDATE 21:02:2006 on and from

#### **4.1.1 Terms of the contract**

The contract of hiring of every employee bound by this Award shall, in the absence of an express contract to the contrary, be deemed to be a contract of hiring by the week or by the fortnight - such period to be indicated in writing by the employer to the employee at the time of hiring.

#### **4.1.2 Casual labour**

4.1.2.1 Casual employees may be employed pursuant to the following provisions.

4.1.2.2 A casual employee shall not be paid for less than 3 hours work on any one day.

4.1.2.3 A casual employee may not work more than 320 hours in any one calendar year.

4.1.2.4 Casual employees shall not constitute more than 1 employee for every 10 permanent full-time employees (or part thereof) employed by the employer.

4.1.2.5 A casual employee shall be paid one thirty eighth of the weekly wage prescribed for the classification of work being performed, plus 20 per cent for each hour worked.

4.1.2.6 A casual employee shall not be entitled to personal leave, annual leave, bereavement leave or payment for public holidays, however, other provisions of this Award shall apply.

4.1.2.7 The above prescriptions may be varied by agreement between an employer and the **Union**.

#### 4.1.3 **Part-time employees**

4.1.3.1 A part-time employee is a weekly hired employee not ready, willing and available to work a full week, but who works a specified lesser number of hours (which must be at least 19 hours in any one week).

4.1.3.2 Such employee shall be paid a proportion of the wages prescribed in Schedule 1 for a full week at the appropriate rate for ordinary hours according to the number of hours actually worked. Provided that any hours worked on Saturdays, Sundays or the public holidays named in the holiday clause shall incur the penalty elsewhere prescribed for those days.

4.1.3.3 Such employees shall be entitled to pro rata annual leave and personal leave as prescribed in the appropriate clauses.

4.1.3.4 If such employee usually works on a day of the week in which a public holiday falls and is not required to work on that day, the employee shall be paid for the hours which would normally have been worked on that day.

#### 4.1.4 **Duties of employers and employees**

4.1.4.1 An employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training consistent with the classification structure of this Award provided that such duties are not designed to promote deskilling.

4.1.4.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

4.1.4.3 Any direction issued by an employer pursuant to clause 4.1.4.1 and 4.1.4.2 shall be consistent with the employers responsibilities to provide a safe and healthy working environment.

### **CLAUSE 4.2 APPRENTICES**

OPDATE 22:12:2005 on and from

4.2.1 The number of apprentices that may be employed shall be one to every three or fraction of three adult employees receiving not less than the minimum wage.

4.2.2 Except as otherwise provided, minors may be engaged in any section or sections of the Industry covered by this Award under contract of apprenticeship or trainee apprenticeship framed in conformity with the declared vocations listed in the regulations of the *Training and Skills Development Act 2003*.

### **CLAUSE 4.3 JUNIOR WORKERS**

OPDATE 22:12:2005 on and from

The number of junior workers that may be employed shall be two to every one adult employee receiving not less than the minimum adult wage.

### **CLAUSE 4.4 TERMINATION OF EMPLOYMENT**

OPDATE 22:12:2005 on and from

#### 4.4.1 Notice of termination by employer

4.4.1.1 In order to terminate the employment of an employee, the employer must give the employee the following notice:

Period of continuous service	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

4.4.1.2 In addition to the notice in 4.4.1.1, employees over forty-five years of age at the time of the giving of notice, with not less than 2 years **continuous service**, are entitled to additional notice of one week.

4.4.1.3 Payment at the ordinary rate of pay, in lieu of the notice prescribed in 4.4.1.1 and/or 4.4.1.2 and/or 4.5.3, must be made if the appropriate notice period is not given. Employment may be terminated by part of the period of notice specified and part payment in lieu.

4.4.1.4 In calculating any payment in lieu of notice, the employer must pay the wages an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had the employee's employment not been terminated.

4.4.1.5 The period of notice in this clause does not apply in the case of:

- (a) dismissal for conduct that at common law justifies instant dismissal;
- (b) casual employees;
- (c) employees engaged for a specific period of time; or
- (d) employees engaged for a specific task or tasks.

#### 4.4.2 Time off during notice period

Where an employer has given notice of termination to an employee, the employee is entitled to up to 1 day of 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.

#### 4.4.3 Statement of employment

At the employee's request, the employer must provide to an employee whose employment has been terminated a written statement specifying the period of the employee's employment and the classification of, or the type of, work performed by the employee.

#### 4.4.4 Payment in lieu

If an employer makes payment in lieu for all or any of the period of notice prescribed, the period for which such payment is made must be treated as **service** with the employer for the purpose of computing any **service** related entitlement of the employee.

#### 4.4.5 Notice of termination by employee

In order to terminate employment an employee must give the employer the following notice:

Period of continuous service

Period of notice

Not more than 1 year

At least 1 week

More than 1 year

At least 2 weeks

## **CLAUSE 4.5 REDUNDANCY**

OPDATE 22:12:2005 on and from

### **4.5.1 Definitions**

**Redundancy** in this clause means the loss of employment due to the employer no longer requiring the job the employee has been doing to be performed by anyone, and **redundant** has a corresponding meaning.

**Small business** means an employer who employs fewer than 15 employees.

**Weeks pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

### **4.5.2 Discussions before terminations**

4.5.2.1 Where an employer has made a definite decision that the employer no longer wishes the job the employees have been doing done by anyone and that decision may lead to termination of employment, the employer shall have discussions as soon as practicable with the employees directly affected and with their union or unions. Discussions shall cover, among other things, the reasons for the proposed terminations, measures to avoid or minimize the terminations, and measures to mitigate the adverse effects of any terminations on the employees concerned.

4.5.2.2 For the purposes of discussion the employer shall as soon as practicable provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which when looked at objectively, would be against the employer's interests.

### **4.5.3 Period of notice of termination on redundancy**

4.5.3.1 If the services of an employee are to be terminated due to **redundancy** such employee shall be given notice of termination as prescribed by clause 4.4.

4.5.3.2 Employees to whom notification of termination of service is to be given on account of the introduction or proposed introduction by the employer of automation or other like technological changes in the industry in relation to which the employer is engaged shall be given not less than three months notice of termination.

4.5.3.3 Should the employer fail to give notice of termination as required in clauses 4.5.3.1 or 4.5.3.2 the employer shall pay to that employee an amount calculated in accordance with the ordinary rate of pay for a period being the difference between the notice given and that required to be given. The period of notice to be given shall be deemed to be

**service** with the employer for the purposes of the *Long Service Leave Act 1987*, as amended.

#### 4.5.4 Notification to centrelink

Where a decision has been made to terminate the employment of an employee, or of employees, on account of **redundancy** the employer shall notify Centrelink thereof as soon as possible, giving relevant information including a written statement of the reason(s) for the termination(s), the number and categories of the employees likely to be affected, and the period over which the termination(s) are intended to be carried out.

#### 4.5.5 Severance pay

4.5.5.1 Employees are entitled to severance pay as prescribed below in addition to the period of notice prescribed for termination in 4.5.3 and 4.4.

4.5.5.2 Severance pay - employees of a small business

An employee of a **small business** as defined in 4.5.1 whose employment is terminated by reason of **redundancy** is entitled to the following amount of severance pay in respect of a period of **continuous service**:

Period of continuous service	Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay*
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and over	8 weeks pay

\* **Weeks pay** is defined in 4.5.1.

4.5.5.3 Severance pay - other than employees of a small business

An employee, other than an employee of a **small business** as defined in 4.5.1, whose employment is terminated by reason of **redundancy**, is entitled to the following amount of severance pay in respect of a period of **continuous service**:

Period of continuous service	Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay*
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and less than 5 years	8 weeks pay
5 years and less than 6 years	10 weeks pay
6 years and less than 7 years	11 weeks pay
7 years and over	12 weeks pay

4.5.5.4 Additional severance pay for employees aged over 45 years with 10 years or more **continuous service** In addition to the severance pay in 4.5.5.3 an employee with not less than 10 years **continuous service**, who is over the age of 45 years, is entitled to an additional 4 weeks severance pay.

\* **Weeks pay** is defined in 4.5.1

4.5.5.5 Continuity of **service** will be calculated in the manner prescribed by clause 1.7.

4.5.5.6 The severance payment need not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's agreed date of retirement or the employee's eligibility date for social security benefits.

4.5.5.7 An employer may apply to the **Commission** for an order allowing the off-setting of all or part of an employee's entitlement to severance payment on the basis that such payment or part thereof is already provided for or included in the contributions which the employer has made to a superannuation scheme and which are paid or payable to the employee on **redundancy** occurring.

#### 4.5.6 Time off during notice period

During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

The time off during notice period entitlements under this clause 4.5.6 apply in lieu of the provisions of 4.4.2.

#### 4.5.7 Alternative employment

An employer in a particular redundancy case, may make application to the **Commission** to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

#### 4.5.8 Employee leaving during notice

An employee whose employment is terminated on account of **redundancy** may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. In such circumstances the employee shall not be entitled to payment in lieu of notice.

#### 4.5.9 Written notice

The employer shall, as soon as practicable but prior to the termination of the employee's employment, give to the employee a written notice containing, among other things, the following:

- (a) The date and time of the proposed termination of the employee's employment;
- (b) Details of the monetary entitlements of the employee upon the termination of his/her employment including the manner and method by which those entitlements have been calculated;
- (c) Advice as to the entitlement of the employee to assistance from the employer, including time off without loss of pay in seeking other employment, or arranging training or retraining for future employment; and
- (d) Advice as to the entitlements of the employee should he/she terminate his/her employment during the period of notice.

#### 4.5.10 Payment in lieu treated as service

If an employer make payment in lieu for all or any of the period of notice prescribed by clause 4.5.3, then the period for which such payment is made shall be treated as **service** for the purposes of computing any **service** related entitlements of the employee arising pursuant to this Award and shall be deemed to be **service** with the employer for the purposes of the *Long Service Leave Act 1987* as amended.

#### 4.5.11 **Transfer to lower paid duties**

Where an employee whose job has become **redundant** accepts an offer of alternative work by the employer the rate of pay for which is less than the rate of pay for the former position, the employee shall be entitled to the same period of notice of the date of commencement of work in the new position as if his/her employment has been terminated, and the employee may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

#### 4.5.12 **Employees with less than one year of service**

This clause shall not apply to employee with less than 1 year's **continuous service** and the general obligation of employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.5.13 **Employees exempted**

This clause shall not apply where employment is terminated as a consequence of conduct that at common law justifies instant dismissal or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks.

#### 4.5.14 **Incapacity to pay**

The **Commission** may vary the severance pay prescription on the basis of an employers incapacity to pay. An application for variation may be made by an employer or a group of employers.

#### 4.5.15 **Transmission of business**

The provisions of this clause are not applicable where a transmission of business occurs and the conditions of 4.6.2 and 4.6.3 are met.

#### 4.5.16 **Contrived arrangements**

Subject to an order of the **Commission**, where an employer contrives arrangements wholly or partly to deprive employees of the severance pay set out in 4.5.5.3 or 4.5.5.4, then the employees will be entitled to the severance pay set out in those clauses in lieu of that set out in 4.5.5.2.

### **CLAUSE 4.6 TRANSMISSION OF BUSINESS**

OPDATE 22:12:2005 on and from

#### 4.6.1 **Transmission of business**

This clause applies where a business, undertaking or establishment, or any part of it, has been transmitted from an employer (the **transmittor**) to another employer (the **transmittee**).

**Transmission** without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession, whether by agreement or operation of law. **Transmitted** has a corresponding meaning.



#### 4.6.2 Acceptance of employment with transmittee

Subject to further order of the **Commission**, where a person who at the time of the **transmission** was an employee of the **transmittor** in that business, undertaking, establishment, or part of it, becomes an employee of the **transmittee**:

4.6.2.1 The period of service that the employee has had with the **transmittor** or any prior **transmittor** will be deemed to be service of the employee with the **transmittee** for the purpose of calculating any entitlement of the employee to service-related periods of notice or severance payments; and

4.6.2.2 The provisions of clause 4.5 do not apply in respect of the termination of the employee's employment with the **transmittor**.

#### 4.6.3 Offer of employment with the transmittee

An employee is not entitled to benefits under clause 4.6 in respect of termination of employment resulting from **transmission** of the business, undertaking, establishment or part of it if:

4.6.3.1 The employee is offered employment by the **transmittee**;

4.6.3.2 The offer is made before the **transmission** of the business, undertaking, establishment or part of it;

4.6.3.3 The terms and conditions of the new employment offered:

(a) are not substantially different from those applying to the employment with the **transmittor**; or

(b) are substantially different, but the offer constitutes an offer of suitable employment in relation to the employee; and

4.6.3.4 The employee unreasonably refuses to accept the offer.

### CLAUSE 4.7 SERVICE PROVISIONS (TERMINATION, CHANGE AND REDUNDANCY)

OPDATE 22:12:2005 on and from

#### 4.7.1 Continuity of service

For the purpose of clauses 4.4 and 4.5 **service** means **continuous service** (as defined in clause 1.7).

#### 4.7.2 Service with two or more corporations

Where an employee has been employed by two or more corporations that are associated corporations, or by two or more corporations that are related to each other within the meaning of Section 50 of the Corporations Law, the service of the employee with each such corporation must be included in the calculation of the employee's **continuous service** for the purpose of determining the employee's entitlements according to clauses 4.4 and 4.5.

### CLAUSE 4.8 SUPERANNUATION

OPDATE 22:12:2005 on and from

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose

their own superannuation funds. For further information see the AIRC guidance note — [Choice of Superannuation Funds and Award Provisions](#).

#### 4.8.1 Definitions

4.8.1.1 Subject to 4.8.4, the **Fund** shall mean the Statewide Superannuation Trust (**S.S.T**), or any Approved Fund which complies with the relevant Superannuation legislation.

4.8.1.2 **Ordinary time earnings** shall mean the remuneration for the workers normally weekly number of hours work calculated at the ordinary time rate of pay including overaward payments, shift allowance and other work related allowances applicable to the working of ordinary hours.

#### 4.8.2 Superannuation legislation

The subject of superannuation contributions is dealt with extensively by legislations including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

#### 4.8.3 Employer contributions

The employer shall contribute to the **fund** in respect of each employee such contributions as required in accordance with 4.8.2.

#### 4.8.4 Exemptions

4.8.4.1 Employers who are bound by an Award or Enterprise Agreement of either the Australian Industrial Relations Commission or the South Australian Industrial Relations Commission, which prescribes the payment by employers of contributions on behalf of employees into a Superannuation fund that meets the standards prescribed for occupational superannuation schemes, and are no less favourable to the employee than the provisions of the **S.S.T.**, shall be exempted from the provisions of this Award.

4.8.4.2 The employers set out hereunder who, by agreement with the **Union**, provide Superannuation under an approved Company Fund to employees who elect not to join **S.S.T.** shall be exempted from the provisions of this clause.

Deane and Keen  
J Holland  
Laubman and Pank Holdings Pty Ltd  
Optical Wholesalers (SA) Pty Ltd

### CLAUSE 4.9 ANTI-DISCRIMINATION

OPDATE 22:12:2005 on and from

4.9.1 It is the intention of the parties to this Award to achieve the principal object in Section 3(m) of the **Act** by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

4.9.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavour to ensure that neither the Award provisions nor their operations are directly or indirectly discriminatory in their effects.

4.9.3 Nothing in this clause is to be taken to affect:

4.9.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation.

4.9.3.2 Until considered and determined further by the **Commission** the payment of different wages for employees who have not reached a particular age.

4.9.3.3 An employee, employer or registered organisation, pursuing matters of discrimination in the State or Federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

4.9.4 Nothing in this clause is to be taken to prevent:

4.9.4.1 A matter referred to in 4.9.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.

4.9.4.2 A matter referred to in 4.9.1 from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed.

## **PART 5 WAGES AND RELATED MATTERS**

### **CLAUSE 5.1 WAGES**

OPDATE 22:12:2005 on and from

The minimum weekly wages for work in ordinary time for employees covered by this Award are contained in Schedule 1 Wages.

### **CLAUSE 5.2 PAYMENT OF WAGES**

OPDATE 22:12:2005 on and from

5.2.1 Wages shall be paid during ordinary hours on Thursday or Friday of each week or fortnight as may correspond with the contract of employment.

5.2.2 Wages due may at the employers discretion be paid by electronic funds transferred directly into a bank, building society, credit union or other financial institution as authorised by the employee.

### **CLAUSE 5.3 MIXED FUNCTIONS**

OPDATE 22:12:2005 on and from

An employee engaged for more than 2 hours on duties carrying higher rate than his/her ordinary classification shall be paid the higher rate for the whole of such day. He/she shall in any case be paid the higher rate for the time so worked.

## **PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK AND PUBLIC HOLIDAY WORK**

### **CLAUSE 6.1 HOURS**

OPDATE 22:12:2005 on and from

6.1.1 Subject to Clause 6.3, the maximum number of ordinary hours of work shall be an average of 38 per week and not more than 8 hours per day, Monday to Friday inclusive except where any employee has to work with artificial light (excepting fluorescent light) all day, when the hours shall be 37 1/2 per week.

6.1.2 The ordinary hours of work, as fixed by this Award shall be worked between the hours of 6.00 a.m. and 6.00 p.m. Monday to Friday (inclusive).

6.1.3 Notwithstanding clauses 6.1.1 and 6.1.2 an employee may work ordinary hours on a Saturday subject to the following conditions:

- (a) the employee agrees; and
- (b) the hours are worked between 6.00 a.m. and 6.00 p.m.; and
- (c) the employer is directly involved in retail marketing during the hours when work is performed; and
- (d) the employee shall not work more than 2 Saturdays in any continuous 4 week period; and
- (e) the work of the employee directly arises from such retail activity; and
- (f) the employee is regularly rostered to so work.

6.1.4 An employee who is regularly rostered to work ordinary time on Saturdays shall, in addition to the appropriate rate of pay as set out in Schedule 1 - Wages, be paid a loading of fifty (50) per cent for all time worked on the Saturday.

## **CLAUSE 6.2 SHIFT WORK**

OPDATE 22:12:2005 on and from

### **6.2.1 Definitions**

For the purpose of this clause:

**Afternoon shift** means any shift finishing after 6.00 p.m. and at or before midnight.

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

**Night shift** means any shift finishing subsequent to midnight and at or before 8.00 a.m.

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

### **6.2.2 Hours - continuous work shifts**

This clause shall apply to shift workers on **continuous work** as defined. The ordinary hours of shift workers shall average 38 per week inclusive of crib time and shall not exceed 152 hours in twenty-eight consecutive days. Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days. Subject to the following conditions, such shift workers shall work at such times as the employer may require:

6.2.2.1 A shift shall consist of not more than 10 hours inclusive of crib time. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any shift the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned.

6.2.2.2 Except at the regular change-over of shifts, an employee shall not be required to work more than one shift in each twenty-four hours.

6.2.2.3 Twenty minutes shall be allowed to shift workers each shift for crib, which shall be counted as time worked.

### 6.2.3 Hours - other than continuous work

This clause shall apply to shift workers not upon **continuous work** as defined. Subject to Clause 6.3 Implementation of 38 Hour Week, the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

- (a) 38 hours within a period not exceeding seven consecutive days; or
- (b) 76 hours within a period not exceeding fourteen consecutive days; or
- (c) 114 hours within a period not exceeding twenty-one consecutive days; or
- (d) 152 hours within a period not exceeding twenty-eight consecutive days.

The ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. An employee shall not be required to work for more than five hours without a break for a meal. Except at regular change-over of shifts an employee shall not be required to work more than one shift in each twenty-four hours.

Provided that the ordinary hours of work prescribed herein shall not exceed 10 hours on any day. Provided further that in any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees concerned.

### 6.2.4 Rosters

Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

### 6.2.5 Variation by agreement

Subject to clauses 6.2.2 and 6.2.3 the method of working shifts may in any case be varied by agreement between the employer and the majority of employees concerned.

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by seven days' notice of alteration given by the employer to the employees.

### 6.2.6 Afternoon or night shift allowance

6.2.6.1 A shift worker whilst on **afternoon** or **night shift** shall be paid for such shift 20 per cent more than the ordinary rate.

6.2.6.2 A shift worker who works on an **afternoon** or **night shift** which does not continue:

- (a) for at least 5 successive afternoons or nights in a 5 day workshop or 6 successive afternoons or nights in a 6 day workshop; or
- (b) for at least the number of ordinary hours prescribed by one of the alternative arrangements in clauses 6.2.2 and 6.2.3,

shall be paid for each such shift 50 per cent for the first three hours thereof and 100 percent for the remaining hours thereof in addition to the ordinary rate.

6.2.6.3 An employee who:

- (a) during a period of engagement on shift, works **night shift** only; or

(b) remains on **night shift** for a longer period than four consecutive weeks; or

(c) works on a **night shift** which does not rotate or alternate with another shift or with day work so as to provide at least one-third of the working time off night shift in each shift cycle,

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

#### 6.2.7 **Saturday shift**

The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday shall be time and a half. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in clause 6.2.6.

#### 6.2.8 **Overtime**

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

(a) If employed on continuous work be paid at the rate of double time; or

(b) If employed on other shift work at the rate of time and a half for the first three hours and double time thereafter except in each case when the time is worked;

(c) By arrangement between the employees themselves;

(d) For the purpose of effecting the customary rotation of shifts; or

(e) On a shift to which an employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for a day in accordance with clause 6.2.5.

Provided that when not less than 7 hours 36 minutes notice has been given to the employer by a reliever of being absent from work and the employee to be relieved is not relieved and is required to continue to work on their rostered day off the unrelieved employee shall be paid double time.

#### 6.2.9 **Requirements to work reasonable overtime**

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

#### 6.2.10 **Sundays and holidays**

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

(a) Sundays - at the rate of double time;

(b) Holidays - as prescribed by clause 6.6 at the rate of double time.

Shift workers on other than **continuous work** for all time worked on a Sunday or Holiday shall be paid at the rates prescribed by clause 6.6 Holidays and Sunday Work. Where shifts commence between 11 pm and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on such Sunday or holiday.

Where shifts fall partly on a holiday, that shift the major portion of which falls on a Holiday shall be regarded as the holiday shift.

### **CLAUSE 6.3 IMPLEMENTATION OF 38 HOUR WEEK**

OPDATE 22:12:2005 on and from

6.3.1 The ordinary hours of work shall be an average of 38 per week as provided in Clause 6.1 Hours of Work.

6.3.2 The method of implementation of the 38 hour week may be:

(a) By employees working less than 8 ordinary hours each day; or

(b) By employees working less than 8 ordinary hours on one or more days each week; or

(c) By fixing one week day on which all employees will be off during a particular work cycle; or

(d) By rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.

6.3.3 In each plant, an assessment should be made as to which method of implementation 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.

6.3.4 In the absence of agreement at plant level, the matter shall be referred:

(a) To the secretary of the **Union** or his/her deputy at which level a conference of the parties shall be convened without delay.

(b) In the absence of agreement either party may refer the matter to the **Commission** for resolution.

6.3.5 Subject to the provisions of Clause 6.1 Hours of Work, the employer and the majority of employees in the plant or section or sections concerned may agree that the ordinary working hours are to exceed 8 on any day, thus enabling a weekday off to be taken more frequently than would otherwise apply.

6.3.6 Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or section of employees in the plant or establishment concerned.

#### **6.3.7 Notice of days off**

Except as provided in clause 6.3.8, in cases where, by virtue of the arrangement of his/her ordinary working hours an employee, in accordance with clauses 6.3.2(c) and (d), is entitled to a day off during his/her work cycle such employee shall be advised by the employer at least 4 weeks in advance of the weekday he/she is to take off.

#### **6.3.8 Substitute days**

6.3.8.1 An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with clause 6.3.2(c) and (d), for another day in the case of a break down 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.

6.3.8.2 An individual employee, with the agreement of his/her employer, may substitute the day he/she is to take off for another day.

### **6.3.9 Banking of rostered days off**

Where implementation of the 38 hour week is agreed to in accordance with paragraphs (c) or (d) of clause 6.3.2, an employer and the majority of the employees concerned may agree to a banking system of rostered days off provided that no more than 5 days may be banked for any employee in any one period. An employee will therefore work on what would normally have been his/her rostered day off and accrue an entitlement to bank a rostered day off to be taken at a mutually convenient time for both the employer and the employee.

No penalty payments shall be made to employees working on a day which would otherwise have been a rostered day off and in no circumstances will the employee lose his/her entitlements to the banked days off or, in the event of termination only, payment in lieu thereof.

### **CLAUSE 6.4 OVERTIME**

OPDATE 22:12:2005 on and from

6.4.1 Overtime shall be all time worked by any employee before the starting time and after the finishing time, or in excess of 38 hours in any one week, and for the purposes of calculating such overtime, each day shall stand alone, and shall be paid for at the rate of time and a half for the first three hours and double time thereafter. Provided, however, that if any employee loses time in any one working day through any cause other than by directions of the employer, the employee shall not, for that particular day, be entitled to claim overtime rates of payment for the equivalent of such time lost and worked outside the ordinary hours of work.

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

### **CLAUSE 6.5 MEAL ALLOWANCES AND CRIB BREAKS**

OPDATE 22:12:2005 on and from

If an employee is required to work overtime for more than one hour or more on any day the employee shall be paid a meal allowance of an amount set out in Schedule 5 provided the employee shall not be paid such allowance if, not later than the day proceeding that on which that overtime is worked, he/she was notified that he/she would be required to work such overtime. An employee who has been notified and has provided their own meal but is not required to work such overtime shall be paid an amount set out in Schedule 5 in respect of such meal.

### **CLAUSE 6.6 SUNDAYS AND PUBLIC HOLIDAYS**

OPDATE 22:12:2005 on and from

6.6.1 All employees on a weekly contract of hiring shall be entitled to the following public holidays without deduction of pay, namely:

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, The Adelaide Cup Day, Queen's Birthday, Labour Day, Christmas Day, Proclamation Day and any other day which by Act of Parliament or proclamation may be created a public holiday, or may be substituted for any of such holidays, provided that an employee who fails to attend for work on the working day before and/or after such public holiday without reasonable excuse shall not be entitled to be paid for such holiday.

6.6.2 An employee who works on any Sunday shall be paid at the rate of double the wages, determined for such employee.

6.6.3 An employee who works on any public holiday listed in clause 6.6.1, shall be paid at the rate of double time and a half the wages determined for such employee.



## **CLAUSE 6.7 CHRISTMAS DAY FALLING ON A SATURDAY OR SUNDAY**

OPDATE 22:12:2005 on and from

### **6.7.1 Applicability**

Despite any other provisions in the Award when Christmas Day falls on a Saturday or Sunday and the declared Christmas Day public holiday is a day other than the **actual day** (that is, the Christmas Day public holiday has been substituted for another day), the following arrangements will apply but only for weekly hired employees who do not work a standard Monday to Friday week. Employees employed to work the standard week of Monday to Friday, will be paid in accordance with the existing Public Holiday provisions of the Award.

6.7.1.1 **Actual day** means a Saturday or Sunday that is a Christmas Day but the declared public holiday for the Christmas Day has been gazetted for another day.

6.7.1.2 **Substitute day** means the day that is gazetted a public holiday in lieu of the public holiday for Christmas Day falling on a Saturday or Sunday.

### **6.7.2 Full-time employees**

6.7.2.1 An employee rostered and not required to work on the **actual day** will be paid for that day at ordinary rates but will not be entitled to the **substitute day**;

6.7.2.2 An employee rostered and required to work on the **actual day** will be entitled to:

6.7.2.2(a) In addition to the normal Saturday or Sunday payment (as appropriate), a Christmas Day loading of one half of an ordinary days pay; and

6.7.2.2(b) The **substitute day** as a holiday. However, where the **substitute day** falls on a non-working day, the employee is entitled to either an additional days pay or an additional days leave with pay.

6.7.2.3 An employee rostered and required to work both on the **actual day** and also on the **substitute day** will be entitled to:

6.7.2.3(a) For the **actual day**, the payment described in 6.7.2.2(a); and,

6.7.2.3(b) For the **substitute day**, either public holiday rates or be granted an additional days leave in lieu of the public holiday rates.

### **6.7.3 Part-time employees**

6.7.3.1 An employee rostered and not required to work on the **actual day** will be paid for that day at ordinary rates but will not be entitled to the **substitute day**.

6.7.3.2 An employee rostered and required to work on the **actual day** will be entitled to:

6.7.3.2(a) The payment described in 6.7.2.2(a); and

6.7.3.2(b) Another day, which may or may not be the **substitute day**, as a holiday, or payment at ordinary rates for an additional day of equal length.

6.7.3.3 If the benefits of 6.7.3.1 or 6.7.3.2 apply, an employee who works on the **substitute day**, will be paid at ordinary time rates for such day.

## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **CLAUSE 7.1 ANNUAL LEAVE**

OPDATE 21:02:2006 on and from

### **7.1.1 Period of leave**

A period of 28 consecutive days paid leave shall be allowed annually to every employee after 12 months continuous service (less the period of annual leave).

### **7.1.2 Annual leave exclusive of public holidays**

Subject to this clause the annual leave prescribed by this clause shall be exclusive of any public holiday prescribed by this Award and if any such holiday falls within an employees period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day for each such holiday falling as aforesaid.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him/her, to attend for work at his/her ordinary starting time of the working day immediately following the last day of the period of his/her annual leave he/she shall not be entitled to be paid for any such holiday.

### **7.1.3 Calculation of month**

For the purposes of this clause a month commences on the day of the month when employment of an employee commenced and ends one calendar month later. If there is no such day in the subsequent month it is the last day of the subsequent month.

### **7.1.4 Leave to be taken**

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by clause 7.1.10 payment shall not be made or accepted in lieu of annual leave.

### **7.1.5 Time of taking annual leave**

7.1.5.1 Annual leave is to be taken at a time or times agreed between the employer and the employee. Notwithstanding the provisions of this clause and without the intention of disrupting continuous period(s) of annual leave, by agreement between the employer and employee, a full-time employee may take annual leave in single day periods not exceeding 10 days in any calendar year for the purposes of personal leave to care for a family member as set out in 7.5.

7.1.5.2 If an employer and an employee fail to agree on the time (or times) for taking annual leave, or part of it, the employer may require the employee to take annual leave by giving the employee notice of the requirement at least 2 weeks before the period of annual leave is to begin.

If an employer determines the time for taking annual leave, the leave must be granted and must begin within 12 months after the entitlement to the leave accrues.

7.1.5.3 To assist employees in balancing their work and family responsibilities, an employee may elect with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date of the entitlement.

7.1.5.4 An employee who considers that the granting of his/her annual leave in two periods will cause him hardship or is unfair on any ground, may submit his/her case to the Industrial Registrar who shall have power to determine the matter, by disallowing the employee's claim or by directing that leave be given and taken in one period.

### **7.1.7 Leave allowed before due date**

An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the expiration of the 12 months in respect of which annual leave had been taken before it accrued.

Where leave has been granted to an employee pursuant to this clause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months continuous service in respect of which the leave was granted, the employer may for each complete month of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable upon the termination of the employment 1/12th of the amount of wage paid on account of the annual leave, which amount shall not include any sums paid for any public holidays.

#### **7.1.8 Payment for period of leave**

Each employee before going on leave shall be paid such wages as are payable in respect of the period of leave due to and being taken by the employee, including any days added pursuant to clause 7.1.2. For the purposes of this clause 7.1.8 and clause 7.1.9 wages shall be at the rate prescribed by clause 7.1.1 for the occupation in which the employee was ordinarily employed immediately prior to the commencement of his/her leave or the termination of his/her employment as the case may be.

During the period of leave an employee shall receive a loading of 17 1/2 per cent calculated on the rate of wage at the employee's shop going rate. The additional rate of 17 1/2 per cent shall not apply to proportionate leave on termination.

#### **7.1.9 Proportionate leave on termination**

If an employee leaves his/her employment or his/her employment is terminated by the employer the employee shall be paid at his/her ordinary rate of wage for 2.923 Hrs. of one weeks wage for each 38 hours worked in respect of which leave has been granted under this clause.

#### **7.1.10 Interpretation**

The days in period of leave shall be deemed to be consecutive even though any public holidays occur therein, provided that the necessary day or days are added as prescribed by clause 7.1.2.

### **CLAUSE 7.2 PERSONAL LEAVE INJURY AND SICKNESS**

OPDATE 21:02:2006 on and from

7.2.1 Every full-time and every part-time employee who is unable to attend or remain at his/her place of employment by reason of **illness** and who complies with the conditions prescribed in clause 7.2.2, shall be granted by his/her employer paid leave not exceeding the personal leave credit of that employee.

7.2.2 The personal leave shall be granted and the employee shall be entitled to pay in respect thereof on compliance with the following conditions:

7.2.2.1 The employee, as soon as reasonably practicable and during the first 2 hours of ordinary hours of the first day or shift of such absence, inform the employer of the inability to attend for duty, and as far as practicable, state the estimated duration of the absence. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day of shift of such absence the employee shall inform the employer within 24 hours of such absence.

7.2.2.2 If so required by their employer, the employee shall produce to the employer a medical certificate or other reasonable evidence to prove that the employee was unable to attend for duty on the days in respect of which personal leave is claimed.

7.2.3 For the purposes of this clause the word **illness** includes personal injury but does not include an injury for which compensation is payable under the *Workers Rehabilitation and Compensation Act 1986*.

7.2.4 An employee's personal leave accumulates from year to year and any personal leave taken by the employee is deducted from the employee's personal leave credit.

7.2.5 In respect of:

7.2.5.1 The first year of service with an employer a full-time employee shall be entitled to a grant of leave on full pay under this clause by that employer of 1.46 hours per week; and

7.2.5.2 The succeeding years of **continuous service** with that employer, such an employee shall, on or after the commencement of each year, be entitled to a grant of leave under this clause by that employer equal to 10 days on full pay.

7.2.6 A part-time employee who regularly works or has agreed to work on not less than five days per week shall be entitled to a grant of the same quantum of leave as is prescribed by clause in respect of a full-time employee.

7.2.6.1 A part-time employee who regularly works or has agreed to work on less than five days per week shall be entitled to the grant of a number of days leave under this clause calculated according to the following formula:

Number of days per week on which employee

$$10 \times \frac{\text{regularly works or has agreed regularly to work}}{15}$$

7.2.6.2 Payment in respect of each day of leave actually taken shall be made by the employer to the employee for the number of hours for that day equivalent to the daily average of the number of hours per week actually worked by the employee during the last full week or work prior to the commencement of each period of leave taken or the daily average of the normal number of hours per week agreed to be worked by him/her at the time of such commencement, whichever shall be the greater.

### **CLAUSE 7.3 BEREAVEMENT LEAVE**

OPDATE 21:02:2006 on and from

#### **7.3.1 Entitlement to leave**

An employee (other than a casual employee), on the death of a:

- spouse;
- parent;
- parent-in-law;
- sister or brother;
- child or step-child;
- household member,

is entitled, on reasonable notice, to leave up to and including the day of the funeral of the relative. This leave is without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days work. Proof of death must be furnished by the employee to the satisfaction of the employer, if requested.

### 7.3.2 Unpaid entitlement to leave

An employee may take unpaid bereavement leave by agreement with the employer.

### 7.3.3 Effect of other leave

This clause has no operation where the period of entitlement to this leave coincides with any other period of leave.

## CLAUSE 7.4 PARENTAL LEAVE

OPDATE 21:02:2006 on and from

### 7.4.1 Definitions

In this clause, unless the contrary intention appears:

7.4.1.1 **Adoption** includes the placement of a **child** with a person in anticipation of, or for the purposes of, adoption.

7.4.1.2 **Adoption leave** means adoption leave provided under 7.4.3.4.

7.4.1.3 **Child** means a child of the employee or the employees **spouse** under the age of one year; or

means a **child** under the age of school age who is placed with an employee for the purposes of **adoption**, other than a **child** or step-**child** of the employee, or of the **spouse** of the employee, who has previously lived with the employee for a continuous period of at least six months.

7.4.1.4 **Eligible casual employee** means a casual employee employed by an employer during a period of at least 12 months, either:

(a) on a regular and systematic basis for several periods of employment; or

(b) on a regular and systematic basis for an ongoing period of employment,

and who has, but for the pregnancy or the decision to **adopt**, a reasonable expectation of ongoing employment.

7.4.1.5 **Extended adoption leave** means **adoption leave** provided under 7.4.3.4(b).

7.4.1.6 **Extended paternity leave** means **paternity leave** provided under 7.4.3.3(b).

7.4.1.7 **Government authority** means a person or agency prescribed as a government authority for the purposes of this definition.

7.4.1.8 **Maternity leave** means maternity leave provided under 7.4.3.2.

7.4.1.9 **Medical certificate** means a certificate as prescribed in 7.4.5.1.

7.4.1.10 **Parental leave** means **adoption leave, maternity leave, paternity leave, extended adoption leave** or **extended paternity leave** as appropriate, and is unpaid leave.

7.4.1.11 **Paternity leave** means paternity leave provided under 7.4.3.3.

7.4.1.12 **Primary care-giver** means a person who assumes the principal role of providing care and attention to a **child**.

7.4.1.13 **Relative adoption** means the **adoption** of a **child** by a parent, a **spouse** of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

7.4.1.14 **Short adoption leave** means **adoption leave** provided under 7.4.3.4(a).

7.4.1.15 **Special adoption leave** means **adoption leave** provided under 7.4.10.

7.4.1.16 **Special maternity leave** means **maternity leave** provided under 7.4.9.1.

7.4.1.17 **Spouse** includes a defacto spouse or a former spouse.

#### 7.4.2 Employers responsibility to inform

7.4.2.1 On becoming aware that:

(a) an employee is pregnant; or

(b) an employees **spouse** is pregnant; or

(c) an employee is adopting a **child**,

an employer must inform the employee of:

(i) the employees entitlements under this clause; and

(ii) the employees responsibility to provide various notices under this clause.

#### 7.4.3 Eligibility for and entitlement to parental leave

7.4.3.1 Subject to the qualifications in 7.4.4, the provisions of this clause apply to full-time, part-time and **eligible casual employees** but do not apply to other employees.

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

7.4.3.1(b) An employer must not fail to re-engage a casual employee because:

(i) the employee or the employees spouse is pregnant; or

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

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

7.4.3.2 An employee who becomes pregnant is, on production of the required **medical certificate**, entitled to up to 52 weeks of **maternity leave**.

7.4.3.3 A male employee is, on production of the required **medical certificate**, entitled to one or two periods of **paternity leave**, the total of which must not exceed 52 weeks, as follows:

7.4.3.3(a) An unbroken period of up to one week at the time of the birth of the **child**.

7.4.3.3(b) A further unbroken period of up to 51 weeks in order to be the **primary care-giver** of the **child** (to be known as **extended paternity leave**).

7.4.3.4 An employee is entitled to one or two periods of **adoption leave**, the total of which must not exceed 52 weeks, as follows:

7.4.3.4(a) An unbroken period of up to three weeks at the time of the placement of the **child** (to be known as **short adoption leave**).

7.4.3.4(b) A further unbroken period of up to 49 weeks in order to be the **primary care-giver** of the **child** (to be known as **extended adoption leave**).

#### 7.4.4 Qualifications on entitlements and eligibility

7.4.4.1 An employee engaged upon casual or seasonal work is not entitled to **parental leave**.

7.4.4.2 An entitlement to **parental leave** is subject to the employee having at least 12 months of **continuous service** with the employer immediately preceding:

(a) in the case of **maternity leave**, the expected date of birth; or otherwise

(b) the date on which the leave is due to commence.

7.4.4.3 The entitlement to **parental leave** is reduced:

7.4.4.3(a) In the case of **maternity leave**, by any period of **extended paternity leave** taken by the employees **spouse** and/or by any period of **special maternity leave** taken by the employee.

7.4.4.3(b) In the case of **extended paternity leave**, by any period of **maternity leave** taken by the employees **spouse**.

7.4.4.3(c) In the case of **extended adoption leave**, by any period of **extended adoption leave** taken by the employees **spouse**.

#### 7.4.5 Certification required

7.4.5.1 An employee must, when applying for **maternity leave** or **paternity leave**, provide the employer with a **medical certificate** that:

(a) names the employee or the employees **spouse**, as appropriate;

(b) states that the employee or the employees **spouse** is pregnant; and

(c) states:

(i) the expected date of birth;

(ii) the expected date of termination of pregnancy; or

(iii) the date on which the birth took place, whichever is appropriate.

7.4.5.2 At the request of the employer, an employee must, in respect of the conferral of **parental leave**, produce to the employer within a reasonable time a statutory declaration which states:

7.4.5.2(a) Parental leave

(i) The particulars of any period of **parental leave** sought or taken by the employees **spouse**, and where appropriate;

(ii) That the employee is seeking the leave to become the **primary care-giver** of a **child**.

7.4.5.2(b) Adoption leave

- (i) In the case of **adoption leave**, a statement from a **Government authority** giving details of the date, or presumed date, of **adoption**; and
- (ii) That for the period of the leave the employee will not engage in any conduct inconsistent with the employees contract of employment.

#### 7.4.6 Notice requirements

##### 7.4.6.1 Maternity leave

7.4.6.1(a) An employee must:

- (i) Not less than 10 weeks before the expected date of birth of the **child**, give notice in writing to her employer stating the expected date of birth; and
- (ii) Give not less than four weeks notice in writing to her employer of the date of which she proposes to commence **maternity leave** stating the period of leave to be taken; and
- (iii) Notify the employer of any change in the information provided pursuant to 7.4.5 within two weeks after the change takes place.

7.4.6.1(b) An employer may, by not less than 14 days notice in writing to the employee, require her to commence **maternity leave** at any time within six weeks immediately before the expected date of birth. Such a notice may be given only if the employee has not given her employer the required notice.

##### 7.4.6.2 Paternity leave

An employee must:

7.4.6.2(a) Not less than 10 weeks prior to each proposed period of **paternity leave**, give the employer notice in writing stating the dates on which he proposes to start and finish the period(s) of **paternity leave**.

7.4.6.2(b) Notify the employer of any change in the information provided pursuant to 7.4.5 within two weeks after the change takes place.

##### 7.4.6.3 Adoption leave

An employee must:

7.4.6.3(a) On receiving notice of approval for **adoption** purposes, notify the employer of the approval and, within two months of the approval, further notify the employer of the period(s) of **adoption leave** the employee proposes to take.

7.4.6.3(b) In the case of a **relative adoption**, so notify the employer on deciding to take a **child** into custody pending an application for **adoption**.

7.4.6.3(c) As soon as the employee is aware of the expected date of placement of a **child** for **adoption** purposes, but not later than 14 days before the expected date of placement, give notice in writing to the employer of that date, and of the date of commencement of any period of **short adoption leave** to be taken.

7.4.6.3(d) At least 10 weeks before the proposed date of commencing any **extended adoption leave**, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

##### 7.4.6.4 Unforeseen circumstances



An employee is not in breach of any of these notice requirements if the employees failure to comply is caused by unforeseen or other compelling circumstances, including:

- (a) the birth occurring earlier than the expected date; or
  - (b) the death of the mother of the **child**; or
  - (c) the death of the employees **spouse**, or
  - (d) the requirement that the employee accept earlier or later placement of the **child**,
- so long as, where a living **child** is born, the notice is given not later than two weeks after the birth.

#### 7.4.7 Taking of parental leave

7.4.7.1 No employee may take **parental leave** concurrently with such leave taken by the employees **spouse**, apart from **paternity leave** of up to one week at the time of the birth of the **child** or **adoption leave** of up to 3 weeks at the time of the placement of the **child**.

7.4.7.2 Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with **parental leave**, take any annual leave or long service leave to which the employee is entitled.

7.4.7.3 Paid personal leave or other paid absences are not available to an employee during the employees absence on **parental leave**.

7.4.7.4 A period of **maternity leave** must be taken as one continuous period and must include, immediately following the birth of the **child**, a period of 6 weeks of compulsory leave.

7.4.7.5 Subject to 7.4.4 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.

7.4.7.6 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.

7.4.7.7 Where leave is granted under 7.4.7.5, 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.

7.4.7.8 **Maternity leave** and **paternity leave** cannot extend beyond the **childs** first birthday.

7.4.7.9 **Adoption leave** cannot extend beyond the **childs** fifth birthday.

7.4.7.10 **Extended adoption leave** cannot extend beyond the first anniversary of the initial placement of the **child**.

7.4.7.11 Notwithstanding the provisions of this clause, employees eligible for **parental leave** have the right to request **parental leave** as consistent with 7.4.15.

#### 7.4.8 Variation and cancellation of parental leave

7.4.8.1 Without extending an entitlement beyond the limit set by 7.4.3, **parental leave** may be varied as follows:

7.4.8.1(a) The leave may be lengthened once by the employee giving the employer at least 14 days notice in writing stating the period by which the employee requires the leave to be lengthened.

7.4.8.1(b) The leave may be lengthened or shortened by agreement between the employer and the employee.

7.4.8.2 **Parental leave**, if applied for but not commenced, is cancelled:

(a) should the pregnancy terminate other than by the birth of a living **child**; or

(b) should the placement of a **child** proposed for **adoption** not proceed.

7.4.8.3 If, after the commencement of any **parental leave**:

(a) the pregnancy is terminated other than by the birth of a living **child** or, in the case of **adoption leave**, the placement of the **child** ceases; and

(b) the employee gives the employer notice in writing stating that the employee desires to resume work,

the employer must allow the employee to resume work within four weeks of receipt of the notice.

7.4.8.4 **Parental leave** may be cancelled by agreement between the employer and the employee.

#### 7.4.9 **Special maternity leave and personal leave**

7.4.9.1 If:

(a) an employee not then on **maternity leave** suffers illness related to her pregnancy she is entitled to take leave under 7.2; or

(b) the pregnancy of an employee not then on **maternity leave** terminates after 28 weeks otherwise than by the birth of a living **child**,

she may take such paid personal leave as she is then entitled to and such further unpaid leave (to be known as **special maternity leave**) as a legally qualified medical practitioner certifies to be necessary before her return to work. Provided that the aggregate of paid personal leave, **special maternity leave** and **maternity leave** must not exceed the period to which the employee is entitled under 7.4.3.2 and she is entitled to take unpaid **special maternity leave** for such periods as a registered medical practitioner certifies as necessary.

7.4.9.2 Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, **special maternity leave**.

7.4.9.3 An employee who returns to work after the completion of a period of such leave is entitled to the position which she held immediately before commencing such leave, or in the case of an employee who was transferred to a safe job, to the position she held immediately before such transfer.

7.4.9.4 If that position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position, as nearly as possible, comparable in status and pay as that of her former position.

#### 7.4.10 **Special adoption leave**

7.4.10.1 An employee who has received approval to **adopt** a **child** who is overseas is entitled to such unpaid leave as is reasonably required by the employee to obtain custody of the **child**.

7.4.10.2 An employee who is seeking to **adopt** a **child** is entitled to such unpaid leave not exceeding five days as is required by the employee to attend such interviews, workshops, court attendances or examinations as are necessary as part of the **adoption** procedure.

7.4.10.3 The leave under this clause 7.4.10 is to be known as **special adoption leave** and does not affect any entitlement under 7.4.3.

7.4.10.4 **Special adoption leave** may be taken concurrently by an employee and the employees **spouse**.

7.4.10.5 Where paid leave is available to the employee, the employer may require the employee to take such leave instead of **special adoption leave**.

#### 7.4.11 **Transfer to a safe job - maternity leave**

7.4.11.1 If, in the opinion of a legally qualified medical practitioner:

(a) illness or risks arising out of the pregnancy; or

(b) hazards connected with the work assigned to the employee, make it inadvisable for the employee to continue her present work, the employee must, if the employer considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of **maternity leave**.

7.4.11.2 If the transfer to a safe job is not considered practicable, the employee is entitled, or the employer may require the employee, to take leave for such period as is certified necessary by a legally qualified medical practitioner.

7.4.11.3 Leave under this clause 7.4.11 will be treated as **maternity leave**.

#### 7.4.12 **Part-time work**

An employee who is pregnant or is entitled to **parental leave** may, by agreement with the employer, reduce the employees hours of employment to an agreed extent subject to the following conditions:

7.4.12.1 Where the employee is pregnant, and to do so is necessary or desirable because of the pregnancy; or

7.4.12.2 Where the employee is entitled to **parental leave**, by reducing the employees entitlement to **parental leave** for the period of such agreement.

#### 7.4.13 **Communication during parental leave**

7.4.13.1 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:

(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing **parental leave**; and

(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing **parental leave**.

7.4.13.2 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employees 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.

7.4.13.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employers capacity to comply with 7.4.13.1.

#### 7.4.14 Return to work after parental leave

7.4.14.1 An employee must confirm the employees intention to return to work, by notice in writing, to the employer given at least four weeks before the end of the period of **parental leave**.

7.4.14.2 On returning to work after **parental leave** an employee is entitled:

(a) to the position which the employee held immediately before commencing **parental leave**; or

(b) in the case of an employee who was transferred to a safe job, to the position which she held immediately before the transfer.

7.4.14.3 If the employees previous position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as comparable in status and pay to that of the employees former position.

7.4.14.4 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**.

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.

#### 7.4.15 Right to request

7.4.15.1 An employee entitled to **parental leave** pursuant to clause 7.4.3, may request the employer to allow the employee:

(a) to extend the period of simultaneous unpaid leave provided for in clause 7.4.3.3(a) and 7.4.3.4(a) up to a maximum of eight weeks;

(b) to extend the period of unpaid **parental leave** provided for in 7.4.3.2 by a further continuous period of leave not exceeding 12 months;

(c) to return to work 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.

7.4.15.2 The employer shall consider the request having regard to the employees circumstances and, provided the request is genuinely based on the employees parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employers business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

7.4.15.3 The employees request and the employers decision made under 7.4.15.1(b) and (c) must be recorded in writing.

7.4.15.4 Where an employee wishes to make a request under 7.4.15.1(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**.

#### 7.4.16 Termination of employment

7.4.16.1 An employee on **parental leave** may terminate their employment at any time during the period of leave by giving the required notice.

7.4.16.2 An employer must not terminate the employment of an employee on the ground of her pregnancy or an employees absence on **parental leave**. Otherwise the rights of an employer in relation to termination of employment are not affected by this clause.

#### 7.4.17 Replacement employees

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

7.4.17.2 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.

### CLAUSE 7.5 PERSONAL LEAVE TO CARE FOR A FAMILY MEMBER

OPDATE 21:02:2006 on and from

#### 7.5.1 Definitions

7.5.1.1 **Personal leave to care for a family member** means leave provided in accordance with this clause.

7.5.1.2 **Family** - the following are to be regarded as members of a person's family:

- (a) a **spouse**;
- (b) a child or step child;
- (c) a parent or parent in-law;
- (d) any other member of the person's household;
- (e) a grandparent or grandchild;
- (f) any other person who is dependent on the person's care.

7.5.1.3 **Personal leave** means leave provided for in accordance with clause 7.2.

#### 7.5.2 Paid personal leave to care for a family member

7.5.2.1 An employee (other than a casual employee) with responsibilities in relation to a member of the employees **family** who need the employees care and support:

- (a) due to personal injury; or
- (b) for the purposes of caring for a family member who is sick and requires the employees care and support or who requires care due to an unexpected emergency,

is entitled to up to 10 days or 76 hours in any completed year of **continuous service** (pro rata for part-time employees) to provide care and support for such persons when they are ill.

7.5.2.2 By agreement between the employer and an individual employee, the employee may access an additional amount of their accrued **personal leave** for the purposes set out in this clause. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

7.5.2.3 The entitlement to use **personal leave to care for a family member** is subject to the employee being responsible for the care of the person concerned.

7.5.2.4 The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

7.5.2.5 In normal circumstances an employee must not take **personal leave to care for a family member** where another person has taken leave to care for the same person.

7.5.2.6 The employee must, where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that persons relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of the absence.

7.5.2.7 The amount of **personal leave to care for a family member** taken is to be deducted from the amount of the employees **personal leave** credit.

### 7.5.3 Unpaid personal leave to care for a family member

7.5.3.1 Where an employee has exhausted all paid **personal leave** entitlements, an employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a **family** member who is ill or who requires care due to an unexpected emergency.

7.5.3.2 The employer and the employee shall agree upon the period of unpaid **personal leave to care for a family member** which may be taken.

7.5.3.3 In absence of the agreement between the employer and the employee, the employee is entitled to take up to two days (of a maximum of 16 hours) of unpaid leave per occasion, provided that notice and evidentiary requirements are met.

### 7.5.4 Single day absences

Single day absences may be taken for **personal leave to care for a family member** as provided for in Clause 7.1.5 Time of Taking Annual Leave.

### 7.5.5 Casual employees caring responsibilities

7.5.5.1 Casual employees are not entitled to **personal leave to care for a family member** or bereavement leave but subject to the notice and evidentiary requirements in 7.5 and 7.3, casuals are entitled to not be available to attend work, or to leave work:

(a) to care for a member of their **family** who is sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or

(b) upon the death of a **family** member.

7.5.5.2 The period for which the employee will be entitled to not be available to attend work for each occasion in clause 7.5.5.1 is:

- (a) the period agreed upon between the employer and the employee; or
- (b) up to 48 hours (or 2 days) per occasion.

7.5.5.3 The casual employee is not entitled to any payment for the period of non-attendance under this clause.

7.5.5.4 An employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for under this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

7.5.5.5 This clause does not intend to alter the nature of casual employment and is without prejudice to any parties arguments about the nature of casual employment.

## **PART 8 TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

Vacant

## **PART 9 TRAINING AND RELATED MATTERS**

### **CLAUSE 9.1 TRADE UNION TRAINING LEAVE**

OPDATE 22:12:2005 on and from

9.1.1 Employees who are members of the **Union** shall be allowed leave without loss of pay for ordinary working hours up to a maximum of five days per year to attend Trade Union Training Courses.

9.1.2 Employees who are recognised job delegates shall be allowed leave without loss of pay up to a maximum of five working days per year to attend Trade Union Training Courses. Provided further that in any one year no more than one employee of any employer shall be on leave pursuant to this clause. Provided that an employee who is granted such leave shall not also be entitled within the same year to leave pursuant to clause 9.1.1.

9.1.3 Clauses 9.1.1 and 9.1.2 shall be subject to the following conditions:

9.1.3.1 Not less than four weeks notice shall be given by the employee to the employer of the date of commencement of the training course and the period over which the course is to be conducted.

9.1.3.2 The employer must be able to make adequate staffing arrangements during the period of such leave.

9.1.3.3 An employee shall have completed a period of 12 months service with an employer before becoming eligible for the leave.

9.1.3.4 Provided further that at any one time no more than one employee of any employer covered by this Award shall be on leave pursuant to this clause.

9.1.3.5 Where an employer employs between 0 and 28 employees subject to this Award no more than one employee shall be allowed such leave in any one year.

9.1.3.6 Where an employer employs between 20 and 100 employees subject to this Award no more than two employees shall be allowed such leave in any one year.

9.1.3.7 Where an employer employs over 100 employees subject to this Award no more than three employees shall be allowed such leave in any one year.

9.1.3.8 For the purpose of calculating the number of employees employed, the total number of employees, whether casual, part-time or weekly hired employees, shall be taken into account.

9.1.4 The operation of the clause shall only apply to employees engaged on weekly contract of employment.

9.1.5 Leave taken pursuant to the clause shall be counted as **continuous service** for all purposes of the Award and the purpose of Long Service Leave entitlement.

## **CLAUSE 9.2 TRAINING WAGE ARRANGEMENTS**

OPDATE 22:12:2005 on and from

See Schedule 3.

## **PART 10 OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

### **CLAUSE 10.1 FIRST AID ATTENDANT**

OPDATE 22:12:2005 on and from

An employee holding a first-aid certificate, appointed by the employer to be a first-aid attendant, shall be paid an amount set out in Schedule 5 per week in addition to their usual weekly wage and shall also be paid for all time spent in attending lectures on first-aid during and outside working hours, provided such time is authorised by the employer.

### **CLAUSE 10.2 PROTECTIVE CLOTHING**

OPDATE 22:12:2005 on and from

All persons shall be supplied free by the employer with two pairs of overalls per year, such overalls to remain the property of the employer but to be laundered at the expense of the employee.

### **CLAUSE 10.3 TOOLS**

OPDATE 22:12:2005 on and from

The employer shall supply and/or provide all necessary tools.

## **PART 11 AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **CLAUSE 11.1 RIGHT OF ENTRY**

OPDATE 22:12:2005 on and from

11.1 An official of an association of employees may enter an employers premises at which one or more members of the association work and:

(a) inspect time books and wages records; and

(b) inspect the work carried out at the workplace and note the conditions under which the work is carried out; and

(c) if specific complaints of non-compliance with the award have been made, interview any person who works at the workplace about the complaints.

11.2 Before an official exercises these powers the official must give 24 hours notice in writing to the employer.



11.3 A person exercising these powers must not interrupt the performance of work at the workplace or:

- (a) harass an employer or employee; or
- (b) address offensive language to an employee or an employer; or
- (c) hinder or obstruct an employee in carrying out a duty of employment; or
- (d) use or threaten to use force in relation to an employer, an employee or any other person.

11.4 An employer may apply to the **Commission** seeking the withdrawal of the relevant powers from an official from an association in the event of abuse of any of these powers.

**CLAUSE 11.2 JOB DELEGATES**

OPDATE 22:12:2005 on and from

An employee appointed job delegate in the area in which the employee is employed shall upon notification thereof of their employer be recognised as the accredited representative of the **Union**.

## **SCHEDULE 1 - WAGES**

OPDATE 22:12:2005 on and from

This Schedule shall operate from the first pay period to commence on or after 14 July 2005.

<b>S1.1 Adult employees</b>	<b>Minimum rate \$ per week</b>
(a) Optical Worker Level 5	584.30
(b) Optical Worker Level 4	578.20
(c) Optical Worker Level 3 -	
1st year of service A	522.90
2nd year of service B	529.00
3rd year of service C	542.40
4th year of service D	559.50
(d) Optical Worker Level 2	501.00
(e) Optical Worker Level 1 - less than 3 months service	491.10

The wage relativities in this Award have been established via the structural efficiency and minimum rates adjustment processes in accordance with the September 1989 State Wage Case decision [Print I.69/1989].

### **S1.2 Apprentices - four year term**

The following rates are based on a percentage of the full time rate for Level 4 (\$578.20).

		<b>\$ per week</b>
1st year of experience	42%	242.80
2nd year of experience	55%	318.00
3rd year of experience	75%	433.70
4th year of experience	88%	508.80

### **S1.3 Junior workers**

The following rates are based on a percentage of the weekly wage for Level 2 above. Employees working above level 2 shall receive the appropriate adult rate for the level.

		<b>\$ per week</b>
16 years of age and under 17 years	55%	275.60
17 years of age and under 18 years	65%	325.70
18 years of age and under 19 years	77%	385.80
19 years of age and under 20 years	85%	425.90
20 years of age and under 21 years	100%	501.00

### **S1.4 Leading hands**

An employee who is appointed by management to supervise the work of other employees shall be paid the additional rates set out in Schedule 5 per week.

### **S1.5 Calculation of rates**

All the above rates are calculated to the nearest 10 cents per week, any fraction less than 5 cents to go to the lower multiple and 5 cents or more to go to the higher.

## **S1.6 Safety net adjustments**

S1.6.1 The rates of pay in this Award include the arbitrated safety net adjustment payable under the State Wage Case July 2005. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such above Award payments include wages payable pursuant to enterprise agreements, certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, Award variations to give effect to enterprise agreements and over Award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case principles or under the current Declaration, excepting those resulting from enterprise agreements, or Award variations to give effect to enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

S1.6.2 The rates of pay in this Award also contain safety net wage adjustments as determined by previous State Wage Case decisions. The absorption arrangements applying in relation to those adjustments continue to apply.

## **SCHEDULE 2 - CLASSIFICATION LEVEL CRITERIA**

OPDATE 22:12:2005 on and from

### **S2.1 Optical Instrument Repairer - Optical Industry Worker Level 5**

An optically trained tradesperson who works above and beyond the level of a worker at level 4 (Optical Tradesperson) and

- (a) Exercises the skills attained through satisfactory completion of the training prescribed for this classification.
- (b) Exercises discretion within the scope of this level.
- (c) Works under general supervision either individually or in a team environment.
- (d) Provides trade guidance and assistance as part of a work team.
- (e) Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Tradesperson Level 4.

Tasks which employees at this level may perform are subject to the employee having the appropriate Trade and Post Trade Training to enable them to perform particular tasks.

### **S2.2 Qualified Optical Mechanic - Optical Industry Worker Level 4**

Is an employee who holds a Trade Certificate or Tradespersons Rights Certificate or appropriate equivalent training and/or experience.

A qualified optical mechanic works above and beyond an employee at Level 3 and to the level of their training; and

- (a) Understands and applies quality control techniques.
- (b) Exercises good interpersonal and communications skills.
- (c) Exercises discretion within the scope of this level.
- (d) Performs work under limited supervision either individually or in a team environment.
- (e) Performs non-trade level tasks incidental to the employees work;
- (f) Performs work which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- (g) Inspects products and/or materials for conformity with established operational standards.

### **S2.3 Optical Worker - Optical Industry Worker Level 3**

An employee upon commencement at this level who performs work above and beyond the skills of an employee at level 2 and to the level of their training; and

- (a) Is responsible for the quality of their own work subject to routine supervision.
- (b) Works under routine supervision either individually or in a team environment.
- (c) Exercises discretion within their level of skills and training.

Indicative of the tasks which an employee at this level may perform are the following:

- operation of machinery and equipment requiring the exercise of skill and knowledge beyond that of an employee at level 2;
- basic tracing and sketching skills;
- receiving, despatching, distributing, sorting, checking, packing (other than repetitive packing in a standard container or containers in which such goods are ordinarily sold), documenting and recording of goods, materials and components;
- basic inventory control in the context of a production process;
- accurate measurement;
- assisting one or more tradespersons;
- assisting in the provision of on the job training in conjunction with tradespersons and supervisor/trainees.

By the third year of experience at this level, a worker should be able to perform work above and beyond the skills of an employee at level 2 and to the level of their training; and

(a) Work from complex instructions and procedures.

(b) Assist in the provision of on the job training to a limited degree.

(c) Co-ordinate work in a team environment or works individually under general supervision.

(d) Is responsible for assuring the quality of their own work.

Indicative of the tasks which an employee at this level may perform are the following:

- Use of precision measuring instruments;
- machine setting, loading and operation;
- inventory and store control including:
  - licensed operation of all appropriate materials handling equipment;
  - use of tools and equipment within the scope (basic non-trades) maintenance;
  - computer operation at a level higher than that of an employee at level 4;
- intermediate keyboard skills;
- basic quality checks on the work of others.

By the 4th year of experience, a worker will be able to do the following duties in addition (as relevant to their position) in addition to the above:

(a) Produce finished lens to the required standard by carrying out any/or all processes necessary to produce them from standard blanks or other forms of material as supplied.

(b) Work without direct supervision in the performance of their work.

(c) Keyboard and/or machine programming work consistent with product manufacture.

- (d) Fitting of lens to frame and/or alteration of frames ready for use.
- (e) Other incidental work of a skilled nature involved in finishing of saleable produce.
- (f) Repairs, as appropriate to optical and similar products.

#### **S2.4 Process Worker - Optical Industry Worker Level 2**

An employee who has received appropriate industry training so as to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at level 1 and to the level of their training; and

- (a) Works under direct supervision either individually or in a team environment.
- (b) Understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults.
- (c) Understands and utilises basic statistical process control procedures. Indicative of the tasks which an employee at this level may perform are the following:
  - repetition work on automatic, semi-automatic or single purpose machines or equipment;
  - use of selected hand tools;
  - maintenance of simple records;
  - use of hand trolleys and pallet trucks.

#### **S2.5 Process Worker in training - Optical Industry Worker Level 1 (less than three (3) months relevant experience)**

Undertakes up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance. An employee at this level will progress automatically to level 2 after 3 months service.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training; and

- (a) Performs general labouring and cleaning duties.
- (b) Exercises minimal judgement.
- (c) Works under direct supervision

OR

- (d) Is undertaking structured training so as to enable the employee to work at level 2.

## SCHEDULE 3 - TRAINING WAGE ARRANGEMENTS

OPDATE 22:12:2005 on and from

### CLAUSE S3.1 TITLE

This Schedule shall be known as Optical Employees Award Training Wage Arrangements Schedule.

### CLAUSE S3.2 ARRANGEMENT

Clause No.	Title
S3.1	Title
S3.2	Arrangement
S3.3	Application
S3.4	Period of operation
S3.5	Definitions
S3.6	Training conditions
S3.7	Employment conditions
S3.8	Wages
S3.9	Disputes settling procedures
S3.10	Dispute settlement over traineeship schemes
Section A	Allocation of traineeships to Wage Levels
Section B	Traineeship schemes excluded from this Award

### CLAUSE S3.3 APPLICATION

S3.3.1 This Schedule shall apply to persons:

- (a) who are undertaking a **traineeship** (as defined); and
- (b) whose employment is, or otherwise would be, covered by the Award.

S3.3.2 This Schedule does not apply to the apprenticeship system or any training programme, which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.

This Schedule only applies to AQF IV **Traineeships** when the AQF III **Traineeship** in the **training package** is listed in Section A. Further, this Schedule also does not apply to any certificate IV training qualification that is an extension of the competencies acquired under a certificate III qualification, which is excluded from this Schedule due to the operation of this clause S3.3.2.

S3.3.3 At the conclusion of the **traineeship**, this Schedule ceases to apply to the employment of the **trainee** and the Award shall apply to the former **trainee**.

S3.3.4 Nothing in this Schedule shall be taken to replace the prescription of training requirements in the Award.

### CLAUSE S3.4 OPERATION

This Schedule shall operate on and from 22 December 2005.

### CLAUSE S3.5 DEFINITIONS

S3.5.1 **Act** means the *Training and Skills Development Act 2003* or any successor legislation. S3.5.2 **Adult trainee** means for the purpose of this Schedule a **trainee** who would qualify for the highest wage rate in Wage Level A, B or C if covered by that wage level.

S3.5.3 **Approved training** means that training which is specified in the **training plan**, which is part of the **training agreement**, which is registered with the **T&SC**. It includes training undertaken both on and off-the-job in a **traineeship** and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a National **Training Package** or a **traineeship scheme** and leads to a qualification under the Australian Qualification Framework.

S3.5.4 **T&SC** means the Training and Skills Commission under the **Act**.

S3.5.5 **Award** means the Optical Employees Award.

S3.5.6 **Commission** means the Industrial Relations Commission of South Australia.

S3.5.7 **Trainee** is an individual who is a signatory to a **training agreement** registered with the **T&SC** and is involved in paid work and structured training, which may be on or off the job. **Trainee** does not include an individual who already has the competencies to which the **traineeship** is directed.

S3.5.8 **Traineeship** means a system of training which has been approved by the **T&SC**, which meets the requirements of a National **Training Package** developed by a National Industry Training Advisory Board and endorsed by the National Training Quality Council, which leads to an Australian Qualifications Framework qualification specified by that National **Training Package**, and includes full-time **traineeships** and part-time **traineeships** including school-based **traineeships**.

S3.5.9 **Training agreement** means a Contract of Training for a **traineeship** made between the employer and a **trainee**, which is registered with the **T&SC**.

S3.5.10 **Training package** means the competency standards, assessment guidelines and Australian Qualifications Framework qualification endorsed for an industry or enterprise by the National Training Quality Council and placed on the National Training Information Service with the approval of Commonwealth and State Ministers responsible for vocational education and training.

S3.5.11 **Training plan** means a programme of training which forms part of a **training agreement** registered with the **T&SC**.

S3.5.12 **Traineeship scheme** means an approved **traineeship** applicable to a group or class of employees or to an industry or sector of an industry or an enterprise, which has been approved by the **T&SC**.

S3.5.13 **Year 10** - for the purposes of this Schedule, any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

## **CLAUSE S3.6 TRAINING CONDITIONS**

S3.6.1 The **trainee** shall attend an **approved training** course or training program prescribed in the **training agreement** or as notified to the trainee by the **T&SC** in accredited and relevant **training schemes**.

S3.6.2 Employment as a **trainee** under this Schedule shall not commence until the relevant **training agreement**, made in accordance with a **training scheme**, has been signed by the employer and the **trainee** and lodged for registration with the **T&SC**, provided that if the **training agreement** is not in a standard format, employment as a **trainee** shall not commence until the **training agreement** has been registered with the **T&SC**. The employer shall ensure that the **trainee** is permitted to attend the training course or program provided for in the **training agreement** and shall ensure that the **trainee** receives the appropriate on-the-job training.



S3.6.3 The employer shall provide a level of supervision in accordance with the **traineeship agreement** during the **traineeship** period.

S3.6.4 The provisions of the **Act** dealing with the monitoring by officers of the **T&SC** and the use of training records or work books as part of this monitoring process shall apply to **traineeships** under this Schedule.

### **CLAUSE S3.7 EMPLOYMENT CONDITIONS**

S3.7.1 A full-time **trainee** shall be engaged for a maximum of one year's duration, except in respect of AQF III and AQF IV **Traineeships** which may extend up to two years full-time, provided that a **trainee** shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the **T&SC**, the Employer and the **trainee** may vary the duration of the **traineeship** and the extent of **approved training** provided that any agreement to vary is in accordance with the relevant **traineeship scheme**.

S3.7.2 Where the **trainee** completes the qualification in the **training agreement** earlier than the time specified in the **training agreement**, then the **traineeship** may be concluded by mutual agreement.

S3.7.3 Termination of employment of **Trainees** is dealt with in the **training agreement**, or the **Act**. An employer initiating such action shall give written notice to the **trainee** at the time the action is commenced and to the **T&SC** in accordance with the **Act**.

S3.7.4 The **trainee** shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the **approved training**.

S3.7.5 Where the employment of a **trainee** by the employer is continued after the completion of the **traineeship** period, such **traineeship** period shall be counted as service for the purposes of the Award or any other legislative entitlements.

#### **S3.7.6 Trainees working overtime**

S3.7.6.1 Reasonable overtime may be worked by the **trainee** provided that it does not affect the successful completion of the **approved training**.

S3.7.6.2 No **trainee** shall work overtime or shiftwork on their own unless consistent with the provisions of the Award.

S3.7.6.3 No **trainee** shall work shiftwork unless the shiftwork makes satisfactory provision for **approved training**. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork **trainees**.

S3.7.6.4 The **trainee** wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Award, unless the Award makes specific provision for a **trainee** to be paid at a higher rate, or the employer and **trainee** agree in writing that a **trainee** will be paid at a higher rate, in which case the higher rate shall apply.

S3.7.7 All other terms and conditions of the Award that are applicable to the **trainee** or would be applicable to the **trainee** but for this Schedule shall apply unless specifically varied by this Schedule.

S3.7.8 A **trainee** who fails to either complete the **traineeship**, or who cannot for any reason be placed in full-time employment with the employer on successful completion of the **traineeship**, shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions of the Award.

Note: It is not intended that existing employees shall be displaced from employment by **trainees**.

**CLAUSE S3.8 WAGES**

S3.8.1 The weekly wage payable to full-time **trainees** shall be provided in S3.8.4, S3.8.5 and S3.8.6 of this Schedule and in accordance with Clause S3.7 Employment Conditions.

S3.8.2 These wage rates will only apply to **trainees** while they are undertaking an **approved traineeship**, which includes **approved training** as defined in this Schedule.

S3.8.3 The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.

**S3.8.4 Wage Level A**

Where the accredited training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level A.

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	\$	\$	\$
School Leaver	173.00 (50%)*	216.00 (33%)	
	202.00 (33%)	243.00 (25%)	293.00
Plus 1 year out of school	243.00	293.00	340.00
Plus 2 years out of school	293.00	340.00	396.00
Plus 3 years out of school	340.00	396.00	453.00
Plus 4 years out of school	396.00	453.00	
Plus 5 or more years	453.00		

**S3.8.5 Wage Level B**

Where the accredited training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level B.

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	\$	\$	\$
School Leaver	173.00(50%)*	216.00(33%)	
	202.00(33%)	243.00(25%)	283.00
Plus 1 year out of school	243.00	283.00	325.00
Plus 2 years out of school	283.00	325.00	382.00
Plus 3 years out of school	325.00	382.00	435.00
Plus 4 years out of school	382.00	435.00	
Plus 5 or more years	435.00		

**S3.8.6 Wage Level C**

Where the accredited training course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level C.

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	\$	\$	\$
School Leaver	173.00(50%)*	216.00(33%)	
	202.00(33%)	243.00(25%)	278.00
Plus 1 year out of school	243.00	278.00	312.00
Plus 2 years out of school	278.00	312.00	349.00
Plus 3 years out of school	312.00	349.00	390.00
Plus 4 years out of school	349.00	390.00	
Plus 5 or more years	390.00		

### S3.8.7 Wage rates for Certificate IV Traineeships

S3.8.7.1 **Trainees** undertaking an AQF IV **Traineeship** shall receive the relevant weekly wage rate for AQF III **Trainees** at Wage Levels A, B or C as applicable with the addition of 3.8 per cent of that wage rate.

S3.8.7.2 An **adult trainee** who is undertaking a **traineeship** for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

Wage Level	First year of traineeship	Second Year of traineeship
Wage Level A	\$470	\$488
Wage Level B	\$452	\$469
Wage Level C	\$405	\$420

S3.8.8 Where a person was employed by the employer under the Award immediately prior to becoming an **adult trainee** with the employer, such person shall not suffer a reduction in the rate of pay by virtue of becoming a **Trainee**.

S3.8.9 Where a **traineeship** is converted from an AQF II to an AQF III **Traineeship**, or from an AQF III to an AQF IV **Traineeship**, the **trainee** shall move to the next higher rate provided in this Schedule, if a higher rate is provided for that new AQF level.

S3.8.10 Section A sets out the Wage Level of a **traineeship**.

S3.8.11 For the purposes of this provision, **out of school** shall refer only to periods out of school beyond **Year 10**, and shall be deemed to:

S3.8.11.1 Include any period of schooling beyond **Year 10**, which was not part of nor contributed to a completed year of schooling;

S3.8.11.2 Include any period during which a **trainee** repeats in whole or part of a year of schooling beyond **Year 10**;

S3.8.11.3 Not include any period during a calendar year in which a year of schooling is completed; and

S3.8.11.4 Have effect on an anniversary date being January 1 in each year.

S3.8.12 Despite any other clause in this Schedule, **trainees** may not be employed under this Schedule under the **traineeship schemes** and in the areas of employment listed in Section B.

### S3.8.13 Arbitrated safety net adjustment

S3.8.13.1 The rates of pay in this award include the arbitrated safety net adjustment payable under the State Wage Case July 2005. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Case principles or under the current Declaration, excepting those resulting from enterprise agreements, or award variations to give effect to enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

S3.8.13.2 The rates of pay in this award also contain safety net wage adjustments as determined by previous State Wage Case decisions. The absorption arrangements applying in relation to those adjustments continue to apply.

### CLAUSE S3.9 DISPUTE SETTLING PROCEDURES

For matters not dealt with in accordance with the **Act**, the procedures to avoid industrial disputation contained in the Award will apply to **trainees**.

### CLAUSE S3.10 DISPUTE SETTLEMENT OVER TRAINEESHIP SCHEMES

S3.10.1 A party may initiate this procedure when that party wishes to argue that this Schedule should not provide for employment under a particular **traineeship scheme** despite the allocation of the scheme to a Wage Level by Section A.

S3.10.2 The party shall:

S3.10.2.1 Notify the relevant parties of an intention to dispute the particular **traineeship scheme**, identifying the scheme.

S3.10.2.2 Request the parties with an interest in the scheme to meet with them at a mutually agreed location.

S3.10.2.3 If agreement cannot be reached the matter may be referred to the **Commission** for conciliation.

S3.10.2.4 If agreement is not reached during conciliation then an application may be made to include the **traineeship scheme** in Section B.

## SECTION A

### Allocation of Traineeships to Wage Levels

#### Part A, New Training Package Titles

Wage Levels that apply to Certificates under Training Packages

Training package

Certificate level

#### Wage Level A

Administration

I  
II  
III

Training package	Certificate level
Assessment and Workplace Training	III
Beauty (National)	III
Black Coal	II
	III
Business Services	I
	II
	III
Chemical, Hydrocarbons and Oil Refining	III
Civil Construction (This Schedule does not apply to these <b>Traineeships</b> where another Award already provides for the <b>Traineeship</b> )	III
Community Services	II
	III
Correctional Services	III
Financial Services	III
Floristry	III
Food Processing Industry	III
Forest & Forest Products	III
Gas Industries (Utilities)	
Hospitality Industry	III
Information Technology	II
	III
Laboratory Operations	III
Local Government (Environmental Health & Regulation)	II
	III
Local Government (General Construction)	III
Local Government (Governance & Administration)	I
	II
	III
Local Government (Government)	II
	III
Manufactured Mineral Products	III
Metal and Engineering Industry	
- Engineering Production Certificate	III
- Technical Traineeship	III
Museum and Library/Information Services	II
	III
National Public Services	II
	III
Plastics, Rubber and Cable-making	III
Public Services	II
	III
Retail	III
Telecommunications	II
	III
Textiles, Clothing and Footwear	III
Tourism	I
	II
	III
Transport and Distribution	III
Water Industries (Utilities)	
Wholesale Training	III
<b>Wage Level B</b>	
Aeroskills Industry - This Award does not apply to these <b>traineeships</b> where another Award already provides for the <b>traineeship</b>	II
Asset Maintenance	II
	III

Training package	Certificate level
Asset Security	I II III
Australian Meat Industry	I II III
Automotive Industry Manufacturing Film, TV, Radio and Multimedia	II III
Automotive Industry Retail Service and Repair	II
Beauty (National)	II
Caravan Industry	I II III
Civil Construction (This Schedule does not apply to these <b>Traineeships</b> where another award already provides for the <b>Traineeship</b> )	I  II
Entertainment Industry	I II III
Extractive Industry	II III
Floristry	II
Food Processing Industry	I II
Forest and Forest Products Industry	I II
Gas Industry (Utilities)	II
Hospitality Industry	I II
Local Government (General Construction)	I II
Manufactured Mineral Products	I II
Metal and Engineering Industry	I II
National Community Recreation Industry	II III
National Fitness Industry	II III
National Outdoor Recreation Industry	II III
National Sport Industry	I II III
Plastics, Rubber and Cablemaking	I II
Public Safety	II
Printing and Graphic Arts	II
Pulp & Paper Manufacturing Industries	I II
Retail	II
Textile, Clothing and Footwear	I II
Transport and Distribution	I II
Veterinary Nursing	I II

Training package	Certificate level
	III
Water Industry (Utilities)	II
Wholesale Training	II
<b>Wage Level C</b>	
Agriculture	I
	II
	III
Horticulture	I
	II
	III
Music	I
	II
	III
Racing Industry	II
	III
Seafood Industry	I
	II
	III

## **Part B, Old Traineeships Titles and Wage Levels**

### **Wage Level A**

Advanced Engineering Traineeship Level 3  
 Advanced Engineering - (A/B) Arts Administration  
 AVTS AIEW, (ATSI Education Worker) Traineeship Pilot Project  
 Bakers Delight - Store Management  
 Bank Officer  
 Banking ATS  
 Basic Horticulture  
 Basic Horticulture - Local Government (Tas) Building and Construction Administration Clerk  
 Certificate Vocational Studies Building and Construction Administration Assistant  
 Certificate III in Beauty  
 Certificate III in Care Support Services (Personal Assistant) Certificate III in Care Support  
 Services (Nursing Assistant) Certificate III in Floristry  
 Certificate III in Nail Technology/Small Business  
 Certificate III in Office Administration Certificate III in Retail Operations Child Care Worker  
 Child Care (NSW) Child Care (Qld)  
 Child Care (Tas)  
 Child Care - Local Govt  
 Clerical Processing (Health Practice) Communications - Cabling/Equipment Installation  
 Communications - Customer Support Streams: Telemarketing; Communications Operator  
 Construction Worker Grade 2, Fit Out & Finish  
 Construction Worker Grade 2, Structures  
 Dental Assistant  
 Disability  
 Education Industry Traineeships - all streams  
 Electrical/Electronics Office Admin  
 Health Ancillary Worker, Dental Assistant (Public Sector Only) Health Industry Office Skills  
 Health Office Skills  
 Home & Community Care  
 Integration Aide Stream  
 Language & Literacy Assistant Stream  
 Library Aide (Education) Library Assistant  
 Library Assistant Stream  
 Literacy Support (Education)

Local Government Maintenance & Construction (Tas) Marketing & Management (Cultural Industries)  
Media Journalism  
Medical Office Skills  
Medical Receptionist  
Municipal Administration/Local Government Office Library Assistant (Local Government)  
Municipal Works (Qld)/Local Government Works (NSW)  
Nursing - Division 2 (Enrolled Nurse) Office Support Stream  
Optical Dispensing  
Organising Works  
Patient Services Assistant (Public Sector Only) Personal Carer  
Real Estate - AVC Pilot  
Real Estate Office  
Residential Aged Care  
State Public Sector Clerical (All States) Therapy Assistant  
Tourism Traineeship - Streams  
Youth Worker

### **Wage Level B**

Aluminium Fabrication Air Freight Forwarding Automotive Drafting Baking  
Certificate II in Floristry Certificate II in Make-up Artistry Certificate II in Nail Technology  
Certificate II in Retail Cosmetic Assistant  
Certificate in Food Processing (Rice) - Level 1  
Certificate in Food Processing (Rice) - Level 2  
Certificate in Pharmaceutical Manufacturing - Level 1  
Certificate in Pharmaceutical Manufacturing - Level 2  
Certificate Vocational Studies - Electrical  
Certificate Vocational Studies - Municipal Maintenance (Vic, Tas) Certificate Vocational Studies - Municipal Works  
Certificate Level 2 Television Operations Techniques  
Chemical  
Clothing Production  
Communications Systems Installation  
Community Pharmacy (Operations) - Cert I in Retail  
Community Pharmacy (Operations) - Cert II in Retail  
Community Pharmacy (Operations - Marketing) - Cert III in Retail  
Community Pharmacy (Operations - Supervision) - Cert III in Retail  
Computer Assembly  
Concrete Worker  
Construction Worker Grade 1 - Fit Out & Finish  
Construction Worker Grade 1 - Structures  
Deckhands  
Electrical/Electronic Production CST Electrical/Electronic Production (non MIA) Electrical Wholesaling  
Electronics Auto Accessories Electronics Equipment Electronics Sales  
Electrotechnology Manufacturing  
Essential Services Operator  
Fast Food CST Fitness Instruction  
Food Preparation & Services CST Food Services (State PS)  
Forest Growing  
Forest Harvesting  
Furnishing Industry Sales (Product Knowledge) Furniture Production  
General & Commercial Waste Management/Resource Recovery  
Harvesting  
Heating & Cooling Industrial Blaster/Coater Lead Lighting  
Live Theatre (Technical) (APACA) Local Government Child Care  
Meat Preparation, Packaging & Sales  
Merchandising  
Millinery



Municipal & General Waste Management  
Municipal Works (Vic, SA)  
National Meat Processing - Meat Retailing  
National Multimedia Industry  
Panel Products  
Pharmaceutical Manufacturing  
Plastics  
Pulp & Paper Making  
Pulp & Paper Processing  
Retail Operations Certificate 2  
Retail Waste Management Sales/Marketing Sawmilling & Processing  
Security System Installation  
Support Worker  
Survey Assistant  
Survey Technical Assistant Television & Video Production Television Operations Techniques  
Television Operation Traineeship Textiles  
Timber Merchandising  
Vehicle Industry Certificate  
Vehicle Manufacturing (CST) Waste Management  
Waste Operation  
Water Management  
Wholesale Customer Services Sales Representative Traineeship

### **Wage Level C**

Aquaculture (Fin Fish & Shell Fish) Community Radio  
Community Radio Broadcasting Certificate 2  
Electro Communications  
Electro Trades  
Floristry  
Introductory Training Program - Fit Out & Finish  
Introductory Training Program - Structures  
Land Conservation & Restoration  
Municipal & General Waste Management  
Municipal & General Waste Management (Operations) Music Business  
Personal Carer - Assistant in Nursing/Personal Care worker  
Pulp & Paper CST  
Seafood Handling & Processing Stablehand/Track Rider Wardsperson

### **SECTION B**

#### **Traineeship schemes excluded from this Award**

Nil

## SCHEDULE 4 SUPPORTED WAGE PROVISIONS

OPDATE 22:12:2005 on and from

### CLAUSE S4.1 DEFINITIONS

This Schedule 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 Schedule, the following definitions will apply:

**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**.

**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**.

**Disability Support Pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

**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.

### CLAUSE S4.2 ELIGIBILITY CRITERIA

S4.2.1 Employees covered by this Schedule 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**.

S4.2.2 This Schedule 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.

S4.2.3 This Schedule does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a **Disability Support Pension**, except with respect of an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act 1986*, or if a part only has received recognition, that part.

### CLAUSE S4.3 SUPPORTED WAGE RATES

S4.3.1 Employees to whom this Schedule applies will 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 (clause S4.4)	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%

Assessed capacity (clause S4.4)	% of prescribed award rate
70%	70%
80%	80%
90%	90%

S4.3.2 Provided that the minimum amount payable will not be less than \$62 per week.

S4.3.3 Where a person's assessed capacity is 10% they will receive a high degree of assistance and support.

#### **CLAUSE S4.4 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:

S4.4.1 the employer and a Union party to the Award, in consultation with the employee or, if desired by any of these;

S4.4.2 the employer and an **accredited assessor** acceptable to the employee and the employees advisers and to the employer.

#### **CLAUSE S4.5 LODGEMENT OF ASSESSMENT INSTRUMENT**

S4.5.1 All **assessment instruments** under the conditions of this Schedule, including the appropriate percentage of the Award wage to be paid to the employee, will be lodged by the employer with the Registrar of the Commission.

S4.5.2 All **assessment instruments** will be agreed and signed by the parties to the assessment, provided that where a Union which is party to the Award, is not a party to the assessment, it will be referred by the Registrar to the Union by certified mail and will take effect unless an objection is notified to the Registrar within 10 working days.

#### **CLAUSE S4.6 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 will be in accordance with the procedures for assessing capacity under the **Supported Wage System**.

#### **CLAUSE S4.7 OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

Where an assessment has been made, the applicable percentage will apply to the wage rate only. Employees covered by the provisions of this Schedule 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.

#### **CLAUSE S4.8 WORKPLACE ADJUSTMENT**

An employer wishing to employ a person under the provisions of this Schedule will 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 job duties, working time arrangements and work organisation, in consultation with other workers in the area.

#### **CLAUSE S4.9 TRIAL PERIOD**

S4.9.1 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 Schedule for a trial period not

exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

S4.9.2 During the trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.

S4.9.3 The minimum amount payable to the employee during the trial period will not be less than \$62 per week.

S4.9.4 Work trials should include induction or training, as appropriate, to the job being trialled.

S4.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment must be entered into based on the outcome of assessment under clause S4.4.

**SCHEDULE 5 - ALLOWANCES**

OPDATE 22:12:2005 on and from

Clause no.	Description	Amount	Operative date
6.5	Meal allowance	\$8.05 Per meal	24:11:2005 1 <sup>st</sup> pp on or after
6.5	Meal allowance when overtime cancelled but previously notified	\$8.05	24:11:2005 1 <sup>st</sup> pp on or after
10.1	First aid attendant	\$10.80 Per week	14:07:2005 1 <sup>st</sup> pp on or after
S1.4	Leading hand supervising 3-10 employees	\$24.00 Per week	14:07:2005 1 <sup>st</sup> pp on or after
S1.4	Leading hand supervising 10-20 employees	\$34.50 Per week	14:07:2005 1 <sup>st</sup> pp on or after
S1.4	Leading hand supervising 20 or more employees	\$45.50 Per week	14:07:2005 1 <sup>st</sup> pp on or after

\*\* end of text \*\*

## **AN160237 – Optical Mechanics' Award, 1971**

This AIR consolidated award reproduces the former State award Optical Mechanics' Award, 1971 as at 27 March 2006.

### **About this Award:**

Formerly award OPT001 of the Western Australian Industrial Relations Commission.

Printed by authority of the Commonwealth Government Printer.

### **Disclaimer:**

Please note that this consolidated former State award is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

**Optical Mechanics' Award, 1971 No. 9 of 1970**

**1. - TITLE**

This award shall be known as the "Optical Mechanics' Award, 1971" and shall replace Award No. 13 of 1954, as amended.

**2. - ARRANGEMENT**

1. Title
2. Arrangement
3. Scope
4. Area
5. Term
6. Definitions
7. Hours
8. Overtime
9. Meal Hours
10. Record
11. Payment of Wages
12. Meal Money
13. Public Holidays
- 13A. Annual Leave
14. Absence Through Sickness
15. Under-Rate Workers
16. Contract of Service
17. Apprentices
18. Board of Reference
19. Representative Interviewing Workers
20. Breakdowns
21. Posting of Award
22. First Aid Kit
23. Union Notices
24. Wages
- 24A. Minimum Wage - Adult Males and Females
25. Higher Duties
26. Long Service Leave
27. Liberty to Apply
28. Junior Workers
30. Saturday Work
30. Bereavement Leave
31. Maternity Leave
32. Payment of Wages - 38 Hour Week.
33. Superannuation
34. Award Modernisation and Enterprise Consultation
35. Part-Time Employees

Appendix - Resolution of Disputes Requirement

Schedule A - Parties to the Award

Schedule B - Respondents

Appendix - S.49B - Inspection Of Records Requirements

**3. - SCOPE**

This award shall apply to workers employed as optical mechanics, optical workers and apprentices.

#### **4. - AREA**

This award shall operate over the area comprised within the South-West Land Division of the State of Western Australia and within an area of five miles from the Post Office, Kalgoorlie.

#### **5. - TERM**

The term of this award shall be for a period of one year from the beginning of the first pay period commencing after the date hereof.

#### **6. - DEFINITIONS**

- (1) "Optical Mechanic" shall mean an employee, other than an optical employee, employed in all or any one or more of the following branches of the industry, provided that it shall not include any person receiving practical training under the provisions of the Optometrists Act, 1940.
  - (a) The manufacturing and/or repairing of new and secondhand spectacles and/or the component parts thereof;
  - (b) the cutting, shaping, drilling, marking and modelling of spectacle and/or other lenses and/or optical glasses;
  - (c) the surfacing and/or polishing of spectacle and/or other lenses and/or optical glasses;
  - (d) the cleaning, repairing and/or adjusting of field glasses and/or binoculars;
  - (e) the maintenance of tools and machinery used in connection with the manufacture or repair of optical appliances.
- (2) "Casual Employee" shall mean an employee employed in accordance with Clause 16. - Contract of Service of this award.
- (3) "Optical Employee" shall mean an employee engaged in blocking up of blanks; in fining and polishing by machine including the attachment of pads; in cleaning lenses; in edging on an automatic machine but not in the setting-up of that machine; in the routine maintenance of machines and equipment upon which he may be engaged; in repairing and servicing sun glasses and on other non-prescription work or in cleaning up.

#### **7. - HOURS**

##### SECTION A - HOURS:

- (1) (a) The provisions of this clause apply to all employees to whom this award applies.
- (b) Subject to the provisions of this clause the ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:
  - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
  - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
  - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
  - (iv) 152 hours within a work cycle not exceeding 28 consecutive days.



(c) The ordinary hours of work shall be worked as follows:

(i) Grinders:

Between the hours of 7.30 a.m. and 5.30 p.m. or between such other hours as agreed between the employee and the employer, on Monday to Friday inclusive.

(ii) Others:

(aa) Between the hours of 7.30 a.m. and 5.30 p.m. or between such other hours as agreed between the employee and the employer, on Monday to Friday inclusive, and between 7.30 a.m. and 12 noon, or prior to 7.30 a.m. as agreed between the employee and the employer, on Saturday. Provided that the said 40 hours for 'others' may be worked in five days at the option of the employer. Provided further that in establishments working a five and one half day week, all 'others' shall be rostered off duty on one Saturday in every period of two consecutive weeks and the ordinary hours of duty in any or each of those weeks in that period may be increased by the ordinary hours usually worked by such employees on the Saturday on which they are so rostered off.

(bb) Where a holiday prescribed in Clause 13. - Holidays of this award falls on any day upon which an employee is required to work ordinary hours, the ordinary hours in that week shall be reduced by the number of hours ordinarily worked by that employee on the day on which the holiday occurs.

(cc) Notwithstanding the provisions of this award contained elsewhere than in this paragraph, when New Year's Day, Anzac Day, Christmas Day or Boxing Day falls on a Saturday an employee who does not work on that Saturday is nevertheless entitled to be paid for each of the two weeks preceding that Saturday his/her ordinary weekly wage and the starting and/or finishing time on any day or days in those two weeks may be varied by the employer so that the ordinary hours usually worked by an employee between Monday and Friday (both inclusive) may be increased in each of those weeks by the ordinary hours usually worked by that employee on Saturday.

(d) The ordinary hours of work shall not exceed 10 hours on any day.

Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to the agreement between the employer and the majority of employees in the plant or section or sections concerned.

(e) The ordinary hours of work shall be consecutive except for the meal interval as prescribed in Clause 9 of this award.

#### SECTION B - IMPLEMENTATION OF 38 HOUR WEEK:

(1) Except as provided in subclause (4) hereof, the method of implementation of the 38 hour week may be any one of the following:

(a) By employees engaged in retail sales working less than eight ordinary hours each day; or

- (b) By employees working less than eight ordinary hours on one or more days each week; or
  - (c) By fixing one day of ordinary working hours on which all employees will be off duty during a particular work cycle; or
  - (d) By rostering employees off duty on various days of the week during a particular work cycle so that each employee has one day of ordinary hours off duty during that cycle.
  - (e) Any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 13. - Public Holidays of this award.
- (2) In each plant, an assessment should be made as to which method of implementation 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 prior to 1st October 1987.
- (3) In the absence of an agreement at plant level, the procedure for resolving special, anomalous or extraordinary problems shall be as follows:
- (a) Consultation shall take place within the particular establishment concerned.
  - (b) If it is unable to be resolved at establishment level, the matter shall be referred to the Secretary of the Union or his/her deputy, at which level a conference of the parties shall be convened without delay.
  - (c) In the absence of agreement either party may refer the matter to the Western Australian Industrial Relations Commission.
- (4) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned.
- (5) Notice of Days Off Duty

Except as provided in subclause (6) hereof, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee in accordance with paragraphs (c) and (d) of subclause (1) hereof, is entitled to a day off duty during his/her work cycle, such employee shall be advised by the employer at least four weeks in advance of the day he/she is to take off duty.

- (6) (a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (c) and (d) of subclause (1) hereof, for another 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) An employer and employee may by agreement substitute the day the employee is to take off for another day.
- (c) Where Accrued Days Off are allowed to accumulate, the employer may require that they be taken within 12 months of the employee becoming entitled to an ADO.

## SECTION C - PROCEDURES FOR IN PLANT DISCUSSIONS:

- (1) Procedures shall be established for in plant discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with Section A - Hours and Section B - Implementation of 38 Hour Week of this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.
- (2) The procedure should allow for discussions to continue even though all matters may not be resolved by 1st October 1987.
- (3) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.
- (4) The procedures should allow for the monitoring of agreements and understandings reached in plant.
- (5) In cases where agreement cannot be reached in plant in the first instances or where problems arise after initial agreements or understandings have been achieved in plant, a formal monitoring procedure shall apply. The basic steps in this procedure shall be as applies with respect to special, anomalous or extraordinary problems as prescribed in subclause (3) of Section B - Implementation of 38 Hour Week of this clause.

## 8. - OVERTIME

- (1) The provisions of this clause apply to all employees.
- (2) (a) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.
  - (b) No organisation party to this award, or employee or employees covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.
- (3) (a) All time worked before the usual starting time or after the usual finishing time or in the case of establishments working a five day week, all time worked prior to 12.00 noon on Saturday, shall be deemed overtime and paid for at the rate of time and one half for the first two hours and double time thereafter. In the calculation of overtime, each day shall stand alone.

For the purposes of this subclause, usual starting or finishing time shall mean the hours of work fixed in an establishment in accordance with Sections A - Hours, B - Implementation of 38 Hour Week and C - Procedures for In Plant Discussions of Clause 7. - Hours.

  - (b) (i) Work done on Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time.
  - (ii) Work done on any day prescribed as a holiday under this award shall be paid for at the rate of double time and one half.
- (4) (a) By agreement between the employee and employer time off in lieu of payment for overtime may be granted proportionate to the payment to which the employee is entitled. Such time to be taken in unbroken periods according to each period of overtime worked unless otherwise agreed between the employee and employer concerned.

- (b) The actual period of time off may be accrued and taken at a time agreed between the employer and employee concerned.

## **9. - MEAL HOURS**

Each worker shall be allowed an interval of not less than forty-five nor more than sixty minutes for lunch between the hours of 12 noon and 2 p.m. on each working day unless the worker and the employer concerned otherwise mutually agree.

## **10. - RECORD**

- (1) The employer shall keep or cause to be kept a record showing:-
  - (a) the name and classification of each worker;
  - (b) the starting and finishing times on each day;
  - (c) the hours worked;
  - (d) the wages and overtime (if any) paid.
- (2) Such record shall be signed by the worker each week, and shall be open for inspection by the secretary or other duly accredited representative of the union during working hours and such person may take extracts therefrom.

Before exercising a power of inspection the representative shall give notice of not less than 24 hours to the employer.

- (3) A worker shall be responsible for the correct posting of any record actually made by him.

## **11. - PAYMENT OF WAGES**

- (1) All wages shall be paid not later than Friday in each week.
- (2) Where an obligation to pay a final amount contains a decimal figure of .5 of a cent or more, the amount to be paid shall be the next whole cent. Example - 5.5 cents becomes 6.0 cents. Where the amount to be paid contains a decimal figure of less than .5 of a cent, such decimal figure shall be disregarded. Example - 5.4 cents becomes 5.0 cents.
- (3) All wages shall be paid in the employer's time.
- (4) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

## **12. - MEAL MONEY**

- (1) Subject to the provisions of subclause (2) of this clause an employee, required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid \$7.75 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid \$5.30 for each meal so required.
- (2) The provisions of subclause (1) of this subclause do not apply:
  - (a) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he/she will be required; or

- (b) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which he/she can reasonably go home.
- (3) If an employee to whom paragraph (a) of subclause (2) of this clause applies has, as a consequence of the notification referred to in that paragraph, provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he shall be paid, for each meal provided and not required, the appropriate amount prescribed in subclause (1) of this clause.

### **13. - PUBLIC HOLIDAYS**

- (1) (a) The following days or the days observed in lieu shall, subject to clause 8 hereof, be allowed as holidays without deduction of pay, namely - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the subclause. Provided further that an employer may substitute Royal Show Day for Sovereign's Birthday in any year.
  - (b) When any of the days mentioned in subclause (1)(a) hereof falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday; in each such case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.
- (2) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed in which case a worker need not present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.
- (3) Where -
  - (a) a day is proclaimed as a whole holiday or as a half-holiday under section 7 of the Public and Bank Holidays Act 1972; and
  - (b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this award within the district or locality specified in the proclamation.
- (4) All work done on any day prescribed as a holiday under this clause shall be paid for at the rate of double time and a half.
- (5) Casual workers shall not be entitled to receive payment for public holidays prescribed by this clause unless required to work on those days.
- (6) Where an employee has additional leave granted pursuant to subclause (1) of this clause, the employer may require such leave to be taken within twelve months of falling due.

### **13A. - ANNUAL LEAVE**

- (1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by the employer after a period of 12 months' continuous service with that employer.

- (2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.
- (3) (a) In addition to his/her payment for annual leave a worker shall receive a loading of 17.5 percent calculated on his/her ordinary rate of wage. Provided that where the worker would have received any additional rates for the work performed in ordinary hours, as prescribed by this award, had he/she not been on leave during the relevant period and such additional rates would have entitled him/her to a greater amount than the loading of 17.5 percent, then such additional rates shall be added to his/her ordinary wage in lieu of the 17.5 percent loading. Provided further, that if the additional rates would have entitled him/her to a lesser amount than the loading of 17.5 percent, then such loading of 17.5 percent shall be added to his/her ordinary rate of wage in lieu of the additional rates.  
  
(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.
- (4) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.
- (5) Any time in respect of which a worker is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays or annual leave or long service leave as prescribed by this Award shall not count for the purpose of determining his/her right to annual leave.
- (6) If, after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall:
  - (a) If such termination occurs before 1st October 1987 be paid 3.08 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 40, in respect of each completed week of continuous service; or
  - (b) If termination occurs on or after 1st October 1987 be paid 2.923 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 38, in respect of each completed week of continuous service.
- (7) In the event of a worker being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (6) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers, he/she shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.
- (8) (a) A worker who is justifiably dismissed for misconduct shall not be entitled to the benefit of the provisions of this clause if the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.  
  
(b) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods, but neither of such periods shall be less than one week.
- (9) The provisions of this clause shall not apply to casual workers.
- (10) Annual leave shall be granted within two months of becoming due, except when mutually agreed between the employer and the worker and one month's notice of

commencement of annual leave shall be giving to each worker unless otherwise agreed.

- (11) An employer may specify a reasonable period during which annual leave may not be taken to meet production requirements at the workplace concerned.
- (12) An employer may require an employee to take annual leave within twelve months of such leave falling due.

#### 14. - ABSENCE THROUGH SICKNESS

- (1) (a) An employee who is unable to attend or remain at his/her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the provisions of this clause.

- (i) Employee who actually works 38 ordinary hours each week:

An employee whose ordinary hours of work are arranged in accordance with paragraph (a) or (b) of subclause (1) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours so that he/she actually works 38 ordinary hours each week shall be entitled to payment during such absence for the actual ordinary hours absent.

- (ii) Employee who works an average of 38 ordinary hours each week:

An employee whose ordinary hours of work are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours so that he/she works an average of 38 ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows:

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{appropriate weekly rate}}{5}$$

An employee shall not be entitled to claim payment for personal ill health or injury nor will his/her sick leave entitlement be reduced if such ill health or injury occurs on the week day he/she is to take off duty in accordance with paragraph (c) or (d) of subclause (1) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours.

- (b) Notwithstanding the provisions of paragraph (a) of this subclause an employee may adopt an alternative method of payment of sick leave entitlements where the employer and the majority of his/her employees so agree.
  - (c) Entitlement to payment shall accrue at the rate of 1/6th of a week for each completed month of service with the employer.
  - (d) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.
- (2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the

absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.

- (3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence.

Where practicable notification of absence due to sickness is to be given no later than two hours after the normal start time. In the case of shift workers, where practicable, the notification is to be given prior to the start of normal shift hours.

- (4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.
- (5)
  - (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and the employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.
  - (b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he/she is unable to attend for work on the working day next following his/her annual leave.
  - (c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a day.
  - (d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 13A. - Annual Leave.
  - (e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 13A. - Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the



Western Australian Industrial Gazette at pages 1 to 4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

- (7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Assistance Act nor to employees whose injury or illness is the result of the employee's own misconduct.
- (8) The provisions of this clause do not apply to casual employees.

#### **15. - UNDER-RATE WORKERS**

- (1) Any worker who by reason of old age or infirmity is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.
- (2) In the event of no agreement being arrived at the matter may be referred to the Board of Reference for determination.
- (3) After application has been made to the Board and pending the Board's decision the worker shall be entitled to work for the employer at the proposed lesser rate.

#### **16. - CONTRACT OF SERVICE**

- (1) On the first day of engagement an employee shall be notified by the employer or by the employers' representative, whether the duration of his/her employment is expected to exceed one month and, if the employee is hired as a casual employee she/he shall be advised accordingly.
- (2) Except for casual and probationary employees, one week's notice on either side shall be necessary to terminate the contract. In lieu of such notice being given then the payment or forfeiture of a week's wages will apply.
- (3) Provided this shall not affect the right of an employer to dismiss a worker without notice for misconduct in which case wages will be paid up to the time of dismissal.
- (4) (a) The period of notice of termination in the case of a casual employee shall be one hour.  
(b) If the required notice of termination is not given one hour's wages shall be paid by the employer or forfeited by the employee.
- (5) An employee shall for the purpose of this award be deemed to be a casual employee -
  - (a) if the expected duration of the employment is less than one month, or
  - (b) if the notification referred to in subclause (1) of this clause is not given and the employee is dismissed through no fault of his own within one month of commencing employment.
- (6) Any worker employed as a casual worker in accordance with subclause (5) of this clause shall receive twenty percent in addition to the rate specified for the class of work performed.
- (7) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

- (7) The employer may engage an employee on a probationary period for not longer than three months during which time it will be possible for either the employee or employer to end the contract with one days notice.

#### **17. - APPRENTICES**

- (1) The employment of apprentices shall be governed by the Apprenticeship Regulations 1972 but any person receiving practical training under the provisions of the Optometrists Act 1940 may be employed in an occupation to which apprentices may be taken.
- (2) (a) Apprentices may be taken to the trade of optical mechanic for a period of four years in the proportion of one apprentice to every two or fraction of two journeymen.
- (b) Where practicable each apprentice shall be taught the manufacturing and/or repairing of new and secondhand spectacles and/or the component parts thereof, the cutting, shaping, drilling, making and modelling of spectacle and/or other lenses and/or optical glasses, the surfacing and/or polishing of spectacle and/or other lenses and/or optical glasses and the cleaning, repairing and/or adjusting of field glasses and/or binoculars.

#### **18. - BOARD OF REFERENCE**

- (1) The Commission hereby appoints for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to regulation 80 of the Industrial Arbitration Act (Western Australian Industrial Commission) Regulations, 1964.
- (2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

#### **19. - REPRESENTATIVE INTERVIEWING WORKERS**

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.

- (1) On notifying the employer or his representative an accredited representative of the union shall be permitted to interview a worker during the recognised meal hour on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer more than once in any one week.
- (2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work the subject of any such disagreement, but shall not interfere in any way with the carrying out of such work.

## 20. - BREAKDOWNS

The employer shall be entitled to deduct payment for any day or portion of a day upon which the worker cannot be usefully employed because of any strike by the union or unions affiliated with it or by any other association or union, or through the breakdown of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.

## 21. - POSTING OF AWARD

A copy of this award shall be kept posted by the union in a place where it is accessible to the workers.

## 22. - FIRST AID KIT

An adequate first-aid kit shall be kept in a place easily accessible to workers.

## 23. - UNION NOTICES

Every employer shall allow union notices to be posted up in a place approved by the employer unless the employer shall, on reasonable grounds, consider such notice objectionable.

## 24. - WAGES.

- (1) The minimum weekly rate of wage payable to an employee covered by this award shall include the base rate plus the Arbitrated Safety Net Adjustment expressed hereunder:

	Base Rate \$	Arbitrated Safety Net Adjustments \$	Minimum Rate \$
Adults (total wage per week)			
(a) Optical Mechanic	397.60	159.00	556.60
(b) Optical Employee:			
First 3 months of experience	316.30	159.00	475.30
Thereafter	342.40	159.00	501.40

- (2) Apprentices (wage per week expressed as a percentage of the tradesperson's rate)

(a)	Five-year term -	%
	First year	40
	Second year	48
	Third year	55
	Fourth year	75
	Fifth year	88
(b)	Four-year term -	
	First year	42
	Second year	55
	Third year	75
	Fourth year	88

- (3) Junior Employees: Junior employees shall receive the prescribed percentage of the Optical Worker first three months of experience rate per week.

	%
Under 16 years of age	50
17 years of age	60
18 years of age	75
19 years of age	90
20 years of age	100

- (4) Leading Hands: In addition to the appropriate rate prescribed in subclause (1) of this clause a leading hand shall be paid:

	Per Week \$
(a) If placed in charge of not less than 3 and not more than 10 other employees	23.00
(b) If placed in charge of more than 10 and not more than 20 other employees	34.60
(c) If placed in charge of more than 20 other employees	45.55

- (5) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

**24A. - MINIMUM WAGE - ADULT MALES AND FEMALES**

- (1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.
- (2) The Minimum Adult Award Wage for full time adult employees is \$484.40 per week payable on and from 7th July 2005.
- (3) The Minimum Adult Award Wage of \$484.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.
- (4) Unless otherwise provided in this clause adults employed as casuals, part time employees or pieceworkers or employees who are remunerated wholly on the basis of payment by result shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.
- (5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award to the Minimum Adult Award Wage of \$484.40 per week.
- (6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskill placements or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall -

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the 2005 State Wage Case Decision. Any increase arising from the insertion of the minimum adult award wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum adult award wage.

(9) Adult Apprentices

(a) Notwithstanding the provisions of this clause, an apprentice, 21 years of age or over, shall not be paid less than \$406.70 per week.

(b) The rate paid in paragraph (a) above is payable on superannuation and during any period of paid leave prescribed by this Award.

(c) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.

(d) Nothing in this clause shall operate to reduce the rate of pay fixed by this award for an adult apprentice in force immediately prior to 5th June 2003.

## **25. - HIGHER DUTIES**

(1) A worker who performs duties which carry a higher minimum rate than that which such worker usually performs shall be entitled to the higher minimum rate while so employed.

(2) Where such worker is engaged in the higher grade of work for more than two hours in any one day, the worker shall be paid the higher rate for the whole day.

## **26. - LONG SERVICE LEAVE**

### **1. - Right to Leave**

A worker shall, as herein provided, be entitled to leave with pay in respect of long service.

## 2. - Long Service

- (1) The long service which shall entitle a worker to such leave shall, subject as herein provided, be continuous service with one and the same employer.
- (2) Such service shall include service prior to the first day of April, 1958, if it continued until such time but only to the extent of the last twenty completed years of continuous service.
- (3)
  - (a) Where a business has, whether before or after the coming into operation hereof, been transmitted from an employer (herein called "the transmittor") to another employer (herein called "the transmittee") and a worker who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee - the period of the continuous service which the worker has had the transmittor (including any such service with any prior transmittor) shall be deemed to be service of the worker with the transmittee.
  - (b) In this subclause "transmission" includes transfer, conveyance, assignment or succession whether voluntary or by agreement or by operation of law and "transmitted" has a corresponding meaning.
- (4) Where, over a continuous period, a worker has been employed by two or more companies each of which is related company within the meaning of Section 6 of the Companies Act 1961 the period of the continuous service which the worker has had with each of those companies shall be deemed to be service of the worker with the company by whom he is last employed.

(Section 6 reads) -

- "6. (1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation, if,
- (a) that other corporation -
    - (i) controls the composition of the board of directors of the first mentioned corporation;
    - (ii) controls more than half of the voting power in the first mentioned corporation; or
    - (iii) holds more than half of the issued share capital of the first mentioned corporation excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
  - (b) the first mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.
- (2) For the purpose of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if -
- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.
- (3) In determining whether one corporation is a subsidiary of another corporation -
  - (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable -
    - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
    - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity;shall be treated as held or exercisable by that other corporation;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
  - (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is so exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.
- (5) Where a corporation -
  - (a) is the holding company of another corporation;
  - (b) is a subsidiary of another corporation;
  - (c) is a subsidiary of the holding company of another corporation, that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other."
- (5) Such service shall include -
  - (a) any period of absence from duty on any annual leave or long service leave;
  - (b) any period of absence from duty necessitated by sickness of or injury to the worker but only to the extent of fifteen working days in any year of his employment;
  - (c) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding

obligations hereunder in respect of long service leave or obligations under any award in respect of annual leave;

- (d) any period during which the service of the worker was or is interrupted by service -
  - (i) as a member of the Naval, Military or Air forces of the Commonwealth of Australia other than as a member of the British Commonwealth Occupation Forces in Japan and other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in section 31 (2) of the Defence Act, 1903-1956, and except in Korea or Malaya after 26th June, 1950;
  - (ii) as a member of the Civil Construction Corps established under the National Security Act, 1939-1946;
  - (iii) in any of the Armed Forces under the National Service Act, 1951 (as amended).

Provided that the worker as soon as reasonably practicable on the completion of any such service resumed or resumes employment with the employer by whom he was employed immediately before the commencement of such service.

- (6) Service shall be deemed to be continuous notwithstanding -
  - (a) the transmission of a business as referred to in paragraph (3) of this subclause;
  - (b) the employment with related companies as referred to in paragraph (4) of this subclause;
  - (c) any interruption of a class referred to in paragraph (5) of this subclause;
  - (d) any absence from duty authorised by the employer;
  - (e) any standing-down of a worker in accordance with the provisions of an award, industrial agreement, order or determination under either Commonwealth or State law;
  - (f) any absence from duty arising directly or indirectly from an industrial dispute if the worker returns to work in accordance with the terms of settlement of the dispute;
  - (g) any termination of the employment by the employer on any ground other than slackness of trade if the worker be re-employed by the same employer within a period not exceeding two months from the date of such termination;
  - (h) any termination of the employment by the employer on the ground of slackness of trade if the worker is re-employed by the same employer within a period not exceeding six months from the date of such termination;
  - (i) any reasonable absence of the worker on legitimate union business in respect of which he has requested and been refused leave;
  - (j) any absence from duty after the coming into operation of this clause by reason of any cause not specified in this clause unless the employer, during the absence or within fourteen days of the termination of the absence notifies the worker in writing that such absence will be regarded as having broken the continuity of service, which notice may be given by delivery to the worker



personally or by posting it by registered mail to his last recorded address, in which case it shall be deemed to have reached him in due course of post.

Provided that the period of absence from duty or the period of any interruption referred to in placita (d) to (j) inclusive of this paragraph shall not (except as set out in paragraph (5) of this subclause) count as service.

### **3. - Period of Leave**

(1) The leave to which a worker shall be entitled or deemed to be entitled shall be as provided in this subclause.

(2) Subject to the provisions of paragraphs (5) and (6) of this subclause:-

Where a worker has completed at least fifteen years' service the amount of leave shall be -

(a) in respect of fifteen years' service so completed - thirteen weeks' leave;

(b) in respect of each ten years' service completed after such fifteen years - eight and two-thirds weeks' leave;

(c) on the termination of the worker's employment -

(i) by his death;

(ii) in any circumstances otherwise than by his employer for serious misconduct;

in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of thirteen weeks for fifteen years' service.

(3) Subject to the provisions of paragraph (6) of this subclause, where a worker has completed at least ten years' service but less than fifteen years' service since its commencement and his employment is terminated -

(i) by his death; or

(ii) in any circumstances, otherwise than by his employer for serious misconduct;

the amount of the leave shall be such proportion of thirteen weeks' leave as the number of completed years of such service bears to fifteen years.

(4) In the case to which paragraphs (2)(c) and (3) of this subclause apply the worker shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(5) A worker whose service with an employer commenced before 1st October, 1964, and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis:-

(a) For each completed year of service commencing before the 1st October, 1964, an amount of leave calculated on the basis of thirteen weeks' leave for twenty years' service; and

(b) for each completed year of service commencing on or after the 1st October, 1964, an amount of leave calculated on the basis of thirteen weeks' leave for fifteen years' service.

Provided that such worker shall not be entitled to long service leave until his completed years of service entitle him to the amount of long service leave prescribed in either paragraph (2)(a) or paragraph (2)(b) of this subclause as the case may be.

- (6) A worker to whom paragraphs (2)(c) and (3) of this subclause apply whose service with an employer commenced before 1st October, 1964, shall be entitled to an amount of long service leave calculated on the following basis:-
  - (a) For each completed year of service commencing before the 1st October, 1964, an amount of leave calculated on the basis of thirteen weeks' leave for twenty years' service; and
  - (b) for each completed year of service commencing on or after 1st October, 1964, an amount of leave calculated on the basis of thirteen weeks' leave for fifteen years' service.

#### **4. - Payment for Period of Leave**

- (1) A worker shall, subject to paragraph (3) of this subclause, be entitled to be paid for each week of leave to which he has become entitled or is deemed to have become entitled the rate of pay applicable to him at the date he commences such leave.
- (2) Such rate of pay shall be the rate applicable to him for the standard weekly hours which are prescribed by this award (or agreement), but in the case of casuals and part-time workers shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.
- (3) Where by agreement between the employer and the worker the commencement of the leave to which the worker is entitled or any portion thereof is postponed to meet the convenience of the worker, the rate of payment for such leave shall be at the rate of pay applicable to him at the date of accrual, or, if so agreed, at the rate of pay applicable at the date he commences such leave.
- (4) The rate of pay -
  - (a) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
  - (b) shall not include shift premiums, overtime, penalty rates, special rates, disability allowances, fares and travelling allowances or the like.
- (5) In the case of workers employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the worker's rate of pay for each week over the previous three monthly period.

#### **5. - Taking Leave**

- (1) In a case to which placita (a) and (b) of paragraph (2) of subclause (3) apply:-
  - (a) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the worker or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the workers' circumstances.
  - (b) Except where the time for taking leave is agreed to by the employer and the worker or determined the Special Board of Reference the employer shall give

to a worker at least one month's notice of the date from which his leave is to be taken.

- (c) Leave may be granted and taken in one continuous period or if the employer and the worker so agree in not more than three separate periods in respect of the first thirteen weeks' entitlement and in not more than two separate periods in respect of any subsequent period of entitlement.
  - (d) Any leave shall be inclusive of any public holidays specified in this award (or agreement) occurring during the period when the leave is taken but shall not be inclusive of any annual leave.
  - (e) Payment shall be made in one of the following ways:-
    - (i) In full before the worker goes on leave;
    - (ii) at the same time as his wages would have been paid to him if the worker had remained at work, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
    - (iii) in any other way agreed between the employer and the worker.
  - (f) No worker shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment from which he is on leave, and if a worker breaches this provision he shall thereupon forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.
- (2) In the case to which paragraph (2)(c) or paragraph (3) of subclause (3) applies and in any case in which the employment of the worker who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death pay to the worker, and upon termination of employment by death pay to the personal representative of the worker upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

## **6. - Granting Leave in Advance and Benefits to be Brought into Account**

- (1) Any employer may by agreement with a worker allow leave to such a worker before the right thereto has accrued due, but where leave is taken in such case the worker shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.
- (2) Where leave has been granted to a worker pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the worker has been granted long service leave to which he was not at the date of termination of his employment or prior thereto entitled.
- (3) Any leave in the nature of long service leave or payment in lieu thereof under a State Law or a long service leave scheme not under the provisions hereof granted to a worker by his employer in respect of any period of service with the employer

shall be taken into account whether the same is granted before or after the coming into operation hereof and shall be deemed to have been leave taken and granted hereunder in the case of leave with pay to the extent of the period of such leave and in the case of payment in lieu thereof to the extent of a period of leave with pay equivalent thereof of the entitlement of the worker hereunder.

## **7. - Records to be Kept**

- (1) Each employer shall, during the employment and for a period of twelve months thereafter, or in the case of termination by death of the worker for a period of three years thereafter, keep a record from which can be readily ascertained the name of each worker, and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made hereunder.
- (2) Such record shall be open for inspection in the manner and circumstances prescribed by this award (or agreement) with respect to the time and wages record.

## **8. - Special Board of Reference**

- (1) There shall be constituted a Special Board of Reference for the purpose hereof to which all disputes and matters arising hereunder shall be referred and the Board shall determine all such disputes and matters.
- (2) There shall be assigned to such Board the functions of -
  - (a) the settlement of disputes of any matters arising hereunder;
  - (b) the determination of such matters as are specifically assigned to it hereunder.
- (3) The Board of Reference shall consist of one representative or substitute therefore nominated from time to time by the Confederation of Western Australian Industry (Incorporated) and one representative or substitute nominated from time to time by the Trades and Labor Council of Western Australia together with a chairman to be mutually agreed upon by the organisations named in this paragraph.

## **9. - State Law**

- (1) The provisions of any State Law to the extent to which they have before the coming into operation hereof conferred an accrued right on a worker to be granted a period of long service leave in respect of a completed period of fifteen or more years' service or employment or an accrued right on a worker or his personal representative to payment in respect of long service leave shall not be affected hereby and shall not be deemed to be inconsistent with the provisions hereof.
- (2) The entitlement of any such worker to leave in respect of a period of service with the employer completed after the period in respect of which the long service leave referred to in paragraph (1) of this subclause accrued due shall be in accordance herewith.
- (3) Subject to paragraphs (1) and (2) of this subclause, the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the worker may be entitled in respect of employment of the worker by the employer.
- (4) An employer who under any State Law with regard to long service leave is exempted from the provisions of that law as at the first day of April, 1958, shall in

respect of the workers covered by such exemptions be exempt from the provisions hereof.

## **10. - Exemptions**

The Special Board of Reference may subject to such conditions as it thinks fit exempt any employer from the provisions hereof in respect of its employees where there is an existing or prospective long service scheme which, in its opinion, is, viewed as a whole, more favourable for the whole of the employees of that employer than the provision hereof.

## **27. - LIBERTY TO APPLY**

- (1) The insertion of a classification in clause 24 - Wages, to cover Optical Mechanics who are licensed to dispense spectacles and/or spectacle lenses;

Leave is reserved to either party to apply to vary the award during its term of operation in respect of the following -

- (2) Clause 24 - Wages;
- (3) Clause 7 - Hours;
- (4) Clause 8 - Overtime.

## **28. - JUNIOR WORKERS**

Junior workers may only be employed on work which falls within the definition of optical worker in Clause 6. - Definitions of this award.

## **30. - SATURDAY WORK**

Work performed in ordinary hours before 12 noon on Saturdays shall be paid for at the rate of time and one-half.

## **30. - BEREAVEMENT LEAVE**

A worker shall on the death within Australia of a spouse, de-facto spouse, parent, parent-in-law, brother, sister, child or stepchild, be entitled on notice of 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 worker in two ordinary working days. Proof of such death to be furnished by the worker to the satisfaction of the employer.

Provided that payment in respect of compassionate leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her roster or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

## **32. - MATERNITY LEAVE**

- (1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

- (a) Subject to subclauses (3) and (6) hereof the period of maternity leave shall be for an unbroken period of from twelve to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the worker make it inadvisable for the worker to continue at her present work, the worker shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.
- (b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be right of the worker to resume

work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then -
- (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
  - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work
- (b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

- (a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

- (a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of a worker on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

- (a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Workers

- (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- (b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.
- (c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- (e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

**32. - PAYMENT OF WAGES - 38 HOUR WEEK**

- (1) Each employee shall be paid the appropriate rate shown in Clause 24. - Wages of this award. Subject to subclause (2) of this clause payment shall be pro rata where less than the full week is worked.
- (2) From the date that a 38 hour week system is implemented by an employee wages shall be paid as follows:



(a) Actual 38 Ordinary Hours

In the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (a) or (b) of subclause (1) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours so that he/she works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.

(b) Average of 38 Ordinary Hours

Subject to subclauses (3) and (4) hereof, in the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours so that he/she works an average of 38 ordinary hours each week during a particular work 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 work cycle.

SPECIAL NOTE - EXPLANATION OF AVERAGING SYSTEM

As provided in paragraph (b) of this subclause an employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle, is to be paid his/her wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below:

- (i) Section B - Implementation of 38 Hour Week in Clause 7. - Hours in subclause (1), paragraphs (c) and (d), provides that in implementing a 38 hour week the ordinary hours of an employee may be arranged so that he/she is entitled to a day off, on a fixed day or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.
- (ii) If the 38 hour week is to be implemented so as to give an employee a day off in each work cycle this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks) the employees' ordinary hours were arranged on the basis that for three of the four weeks he/she worked 40 ordinary hours each week and in the fourth week he/she worked 32 ordinary hours. That is, he/she would work for eight ordinary hours each day, Monday to Friday inclusive, for three weeks and eight ordinary hours on four days only in the fourth week - a total of 19 days during the work cycle.
- (iii) In such case the averaging system applies and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in Clause 24. - Wages of this award and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

In effect, under the averaging system, the employee accrues a 'credit' each day he/she works actual ordinary hours in excess of the daily average which would otherwise be seven hours 36 minutes. This 'credit' is carried forward so that in the week of the cycle that he/she works on only four days, his/her actual pay would be for an average of 38 ordinary hours even though, that week, he/she works a total of 32 ordinary hours.

Consequently, for each day an employee works eight ordinary hours he/she accrues a 'credit' of 24 minutes (0.4 hours).

The maximum 'credit' the employee may accrue under this system is 0.4 hours on 19 days; that is, a total of seven hours and 36 minutes.

- (iv) As provided in subclause (3) of this clause, an employee will not accrue a 'credit' for each day he/she is absent from duty other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave.

(3) Absences From Duty

- (a) An employee whose ordinary hours are arranged in accordance with paragraph (c) or (d) of Section B - Implementation of 38 Hour Week of Clause 7. - Hours and who is paid wages in accordance with paragraph (a) of subclause (2) hereof and is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) shall, for each day he/she is so absent, lose average pay for that day calculated by dividing his/her average weekly wage rate by five.

An employee who is so absent from duty for part of a day shall lose average pay for each hour he/she is absent by dividing his/her average daily pay rate by eight.

- (b) Provided when such an employee is absent from duty for a whole day he/she will not accrue a 'credit' because he/she would not have worked ordinary hours that day in excess of seven hours 36 minutes for which he/she would otherwise have been paid. Consequently, during the week of the work cycle he/she is to work less than 38 ordinary hours he/she will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the 'credit' he/she does not accrue for each whole day during the work cycle he/she is absent.

The amount by which an employee's average weekly pay will be reduced when he/she is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) is to be calculated as follows:

$$\text{Total of 'credits' not accrued during cycle} \times \frac{\text{average weekly pay}}{38}$$

Examples:

(An employee's ordinary hours are arranged so that he/she works eight ordinary hours on five days of each week for three weeks and eight ordinary hours on four days of the fourth week).

- 1. Employee takes one day off without authorisation in first week of cycle.

Week of Cycle	Payment
1st week	= average weekly pay less one day's pay (ie. 1/5th)
2nd and 3rd weeks	= average weekly pay each week
4th week	= average pay less credit not accrued on day of absence = average pay less 0.4 hours x $\frac{\text{average weekly pay}}{38}$

2. Employee takes each of the four days off without authorisation in the 4th week.

Week of Cycle	Payment
1st, 2nd and 3rd weeks	= average pay each week
4th week	= average pay less 4/5ths of average pay for the four days absent less total of credits not accrued that week
	= 1/5th average pay less 0.4 hours x $\frac{\text{average weekly pay}}{38}$
	= 1/5th average pay less 1.6 hours x $\frac{\text{average weekly pay}}{38}$

(4) Alternative Method of Payment

An alternative method of paying wages to that prescribed by subclauses (2) and (3) of this clause may be agreed between the employer and the majority of the employees concerned.

(5) Day Off Coinciding with Pay Day

In the event that an employee, by virtue of the arrangement of his/her ordinary working hours, is to take a day off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(6) Method of Payment

- (a) The employee may be paid his/her wages by cheque or into his/her bank account.
- (b) Where the employer is paying wages into accounts of persons employed pursuant to this award spread across four or more financial institutions then the employer through discussion with the employees concerned may limit the number of financial institutions involved to a maximum of two or three.

(7) Termination of Employment

An employee who lawfully leaves his/her employment or is dismissed for reasons other than misconduct shall be paid all moneys due to him/her at the termination of his/her service with the employer.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with paragraph (c) or (d) of subclause (1) of Section B - Implementation of 38 Hour Week and who is paid average pay and who has not taken the day off due to him/her during the work cycle in which his/her employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle as detailed in the Special Note following paragraph (b) of subclause (2) of this clause.

Provided further, where the employee has taken a day off during the work cycle in which his/her employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(8) Details of Payments to be Given

Where an employee requests his/her employer to state in writing with respect to each week's wages the amount of wages to which he/she is entitled, the amount of deductions made therefrom, the net amount being paid to him/her, and the number of hours worked, the employer shall do so not less than two hours before the employee is paid.

(9) Calculation of Hourly Rate

Except as provided in subclause (3) of this clause the ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

### 33. - SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note — [Choice of Superannuation Funds and Award Provisions](#).

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled - Compliance, Nomination and Transition.

(1) Employer Contributions:

- (a) An employer shall contribute 9% of ordinary time earnings per eligible employee into one of the following Approved Superannuation Funds:
  - (i) Westscheme; or
  - (ii) an exempted Fund allowed by subclause (4) of this clause.
- (b) Except where the Trust Deed provides otherwise employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.
- (c) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers' compensation in excess of 52 weeks. No contributions shall be made in respect of annual leave paid out on termination or any other payments on terminations.

(2) Fund Membership:

- (a) Contributions in accordance with subclause (1) - Employer Contributions of this clause, shall be calculated by the employer on behalf of each employee from the date one month after the employee commences employment, unless the employee fails to return a completed application to join the Fund and the employer has complied with the following:
  - (i) the employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.
  - (ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant

superannuation information, the letter of denial set out in subclause (6) of this clause and an application to join the Fund.

- (iii) Where the employee completes and returns the letter of denial, no contribution need be made on that employee's behalf.
- (iv) Where the employee completes and returns neither the application to join the Fund nor the letter of denial within one week of postage, the employer shall advise either the Union or the Fund Administrator in writing of the employee's failure to return the completed form.
- (v) From two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

- (b) Part-time employees shall not be entitled to receive the employer contribution mentioned in subclause (1) - Employer Contributions of this clause, unless they work a minimum of 12 hours per week.
- (c) Casual employees who are employed for 32 consecutive working days or less shall not be entitled to the benefits of this clause.

(3) Definitions:

"Approved Fund" shall mean any Fund which complies with the Australian Government's Operational Standards for Occupational Superannuation.

"Ordinary time earnings" shall mean the salary, wage or other remuneration regularly received by the employee in respect of the time worked in ordinary hours and shall include shift work penalties, payments which are made for the purpose of District or Location Allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work. Provided that "ordinary time earnings" shall not include any payment which is for vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or bonus.

(4) Exemptions:

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Order:

- (a) was contributing to a Superannuation Fund, in accordance with an Order of an industrial tribunal; or
- (b) was contributing to a Superannuation Fund, in accordance with an Order or Award of an industrial tribunal, for a majority of employees and makes payment for employees covered by this award in accordance with that Order or Award; or
- (c) subject to notification to the Union, was contributing to a Superannuation Fund for employees covered by this award where such payments are not made pursuant to an Order of an industrial tribunal; or

- (d) was not contributing to a Superannuation Fund for employees covered by this award; and
  - (i) written notice of the proposed alternative Superannuation Fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative Superannuation Fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in paragraph (i) being given, the Union has not challenged the suitability of the proposed Fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Operative Date:

This clause shall operate from the beginning of the first pay period commencing on or after the 1st day of July, 1989.

(6) Letter of Denial:

The letter of denial shall be in the following form:

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

- (1) that should I sign such form you will make contributions on my behalf; and
- (2) that I am not required to make contributions of my own; and
- (3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have contributions made on my behalf.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Classification)

\_\_\_\_\_  
(Date)"

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998 -

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless -
    - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
    - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
  - (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
  - (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
  - (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
  - (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
  - (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;
- Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme -
- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### **34. - AWARD MODERNISATION AND ENTERPRISE CONSULTATION**

- (1) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry to enhance the career opportunities and job security of employees in the industry.
- (2) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their Union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise.
- (3) Where a consultative committee is established, it will be free to address any matter which is consistent with the objectives of subclause (1) of this clause.
- (4) Discussions that take place will have regard to the following requirements:

- (a) the changes sought shall not affect provisions reflecting State standards;
- (b) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;
- (c) any agreement shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the award and no employee shall have a lesser income as a result of the conditions provided for in such agreement;
- (d) the Union must be a party to any agreement which affects the wages and/or conditions of employment of employees;
- (e) the Union shall not unreasonably oppose any agreement;
- (f) any agreement relating to award matters shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency;
- (g) if agreement cannot be reached on a particular issue, then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

### **35. - PART-TIME EMPLOYEES**

- (1) A part-time worker may be engaged on weekly contract to work a regularly rostered number of hours each week less than 38. Provided that a part-time worker shall not be rostered to work less than two days per week.
- (2) A part-time worker shall be paid a weekly rate calculated pro-rata to the class of work on which the worker is engaged pursuant to Clause 24. - Wages of this award in the proportion which the worker's hour of work bear to 38.
- (3) Part-time workers shall be entitled to payment for annual leave, public holidays and sick leave on a pro-rata basis in the same proportion as the number of hours worked per week bears to 38.
- (4) The hours of part-time workers shall not be altered without their agreement or the giving of one week's notice of the change of rostered hours.



## **APPENDIX - RESOLUTION OF DISPUTES REQUIREMENT**

- (1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).
- (2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.
  - (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
  - (b)
    - (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
    - (ii) Discussions at this level will take place as soon as practicable.
- (3) The terms of any agreed settlement should be jointly recorded.
- (4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.
- (5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.
- (6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission provided that with effect from 22 November 1997 it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission..

## **SCHEDULE A - PARTIES TO THE AWARD**

The following organisation is a party to this award:

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch

## **SCHEDULE B - RESPONDENTS**

Laubman & Pank Optometrists (WA) Pty Ltd

O.P.S.M. Spectacle Makers Pty Ltd

Sainken & Sainken

Yeates & Yeates  
(No longer in business)

A. & K. Knapp

## **APPENDIX - S.49B - INSPECTION OF RECORDS REQUIREMENTS**

- (1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following:
  - (a) The employer may refuse the representative access to the records if: -
    - (i) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
    - (ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.
  - (b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.
  - (c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

\*\* end of text \*\*

## **AN170074 – Optical Industries Award**

This AIR consolidated award reproduces the former State award Optical Industries Award as at 27 March 2006.

### **About this Award:**

Formerly P049 of the Tasmanian Industrial Commission.

Printed by authority of the Commonwealth Government Printer.

### **Disclaimer:**

Please note that this consolidated former State award is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

AN170074 [Notional AIR Consolidation]

## **TASMANIAN INDUSTRIAL COMMISSION**

### **Industrial Relations Act 1984**

s23 application for award or variation of award

#### **Tasmanian Trades and Labor Council**

(T12144 of 2005)

Private Sector Awards

#### **Tasmanian Trades and Labor Council**

(T12156 of 2005)

Private Sector Awards

#### **Tasmanian Trades and Labor Council**

(T12157 of 2005)

Private and Public Sector Awards

#### **The Australian Workers' Union, Tasmania Branch**

(T12163 of 2005)

Private Sector Awards

### **FULL BENCH:**

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

**Wage Rates – State Wage Case July 2005 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print [PR002005](#) – Safety Net Review – Award rates to be increased by \$17 per week – Wage related allowances increased by 3% - Meal allowances increased to \$13.10 – Operative date ffpp 1 August 2005 – State Minimum Wage determined at \$484.40 – s.35(1)(b)**

Optical Industries Award

**ORDER BY CONSENT**

**No. 2 of 2005  
(Consolidated)**

CLAUSES 4 AND 6 OF PART I, CLAUSES 2 AND 5 OF PART III AND CLAUSES 1 AND 3 OF PART IV ARE VARIED AND THE AWARD IS CONSOLIDATED  
Includes Order No. 1 of 2006 – T12444 – personal leave o/d 15/3/06

**PART I – APPLICATION AND OPERATION OF THE AWARD**

**1. TITLE**

This award shall be known as the “Optical Industries Award”.

**2. INDEX**

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### **3. SCOPE**

This award is established in respect of optometrists or makers, repairers or wholesale distributors of optical goods or supplies.

### **4. DATE OF OPERATION**

This award shall come into operation from the first full pay period to commence on or after 1 August 2005.

## **5. AWARD INTEREST**

- (a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- (i) The Australian Municipal, Administrative, Clerical and Services Union;
  - (ii) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;
  - (iii) The Australian Workers' Union, Tasmania Branch;
- (b) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:
- (i) The Tasmanian Chamber of Commerce and Industry Limited.
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:
- (i) The Tasmanian Trades and Labor Council.

## **6. SUPERSESION**

This award incorporates and supersedes Optical Industries Award No. 1 of 2004 (Consolidated) and 1 of 2005.

## **PART II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS**

### **1. DEFINITIONS**

**'Casual employee'** means any person who is employed on a casual basis and includes any person who is employed for a period not exceeding five days at any one time.

**PROVIDED** that a casual employee may be employed for a period exceeding five days where the extension of hours does not reduce the ordinary hours of existing full-time and part-time staff. Where a casual employee does work for a period in excess of five days that arrangement shall not exceed a period of three months and the employee shall be given consideration for either part-time or full time work based on the needs of the business and merits of the employees.

### **2. CONTRACT OF EMPLOYMENT**

- (a) Except as hereinafter provided employment shall be by the week. Any employee not specifically engaged as a casual employee (as defined) shall be deemed to be employed by the week.
- (b) Employment shall be determined by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the



case may be. This shall not affect the right of the employer to dismiss any employee without notice for neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only, or to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.

- (c) (i) An employer may direct an employee to carry out such duties as are within the limit of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (ii) An employer may direct an employee to carry out such duties and use tools and equipment that may be required provided that the employee has been properly trained in the use of such tools and equipment.
- (iii) Any direction issued by an employer pursuant to subclauses (i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

### **3. EMPLOYMENT CATEGORIES**

#### **(a) Casual Employees**

A casual employee (as defined) for working ordinary time shall be paid per hour 1/38th of the weekly wage rates prescribed for the work which he or she performs. In addition thereto a casual employee (as defined) shall receive 20 percent of the ordinary hourly rate in respect of each hour for which he or she is paid, such additional amount to be payment in lieu of annual leave, personal leave and holidays with pay as prescribed in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 1 - Annual Leave, Clause 4 - Holidays with Pay and Clause 6 - Personal Leave of this award.

An employee who is not engaged (in writing) as a casual employee (as defined) shall be deemed to be on weekly hire.

#### **(b) Part-Time Employees**

- (i) Part-time employees engaged to work 20 or more hours per week shall be entitled to the annual leave, holidays with pay and personal leave as prescribed in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 1 - Annual Leave, Clause 4 - Holidays with Pay and Clause 6 - Personal Leave of this award.

PROVIDED that payment therefor shall be made at the rate normally paid to such employee for a similar period of time worked.

The wage rates payable per hour shall be 1/38th of the relevant rate above set out.

- (ii) Part-time employees engaged to work less than 20 hours per week shall be paid per hour 1/38th of the relevant rate set out, plus an additional 20 percent, such payment being in lieu of annual leave, holidays with pay

and personal leave as prescribed in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 1 - Annual Leave, Clause 4 - Holidays with Pay and Clause 6 - Personal Leave of this award.

### **PART III – WAGES AND RELATED MATTERS**

#### **1. CLASSIFICATION DESCRIPTORS**

**'Adult Entry'** shall mean the entry point for adult employees (21 years and over) with less than 12 months clerical experience either as a junior or adult, and on completion of 12 months clerical experience (whether with one employer or more) such adult employees shall be advanced to a graded position dependent on skills held and position requirement.

Wage relativity to Clerical Officer, Grade 3, more than 12 months experience

80% first 6 months  
85% second 6 months)

#### **'Clerical Structure'**

'Clerical Officer - Grade 1'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience

1 - 12 months 87%  
more than 12 months 90%

##### (a) Grading

Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the following:

- (i) The exercise of the 'General Requirements' specified in 'B' hereunder and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in '(c)' hereunder.

##### (b) General Requirements

- (i) 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.
- (ii) Employees in this grade shall be able to acquire and apply a limited knowledge of office procedures and requirements.

##### (c) Skill Requirements

###### (i) Technical Skills

Machine Operation - Skill Level 1:

Employees at this level are able to operate telephone/intercom systems, telephone answering machines; facsimile machines, photocopiers, franking machines, guillotines.

(ii) Information Handling Skills - Skill Level 1:

Employees at this level are able to receive, sort, open, distribute incoming mail, process outgoing mail, receive incoming and despatch 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. Ability to generate invoices and receipts from sales transactions.

'Clerical Officer - Grade 2'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience

1 - 12 months 92%

more than 12 months 95%

(a) Grading

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following.

- (i) The exercise of the 'General Requirements' specified in 'B' hereunder and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in 'C' hereunder.

(b) General Requirements

- (i) 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 Grade 1. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.
- (ii) Employees in this grade shall be able to 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 enquiries at first instance, locate appropriate staff in different sections, relay internal information, respond to or redirect enquiries, greet visitors. Perform reception and retail work involving a knowledge of optical work. Impart knowledge of employer products and services to clients.

(c) Skill Requirements

(i) Technical Skills

Machine Operation - Skill Level 2:

Employees at this level are able to operate adding machines, switchboard, paging system, typewriter and calculator.

Computer - Skill Level 1:

Employees at this level are able to use knowledge of keyboard and function keys to enter and retrieve data through computer terminal.

Keyboard Typing - Skill Level 1:

Employees at this level are able to type at 25 words per minute with 98% accuracy. Utilise basic word processing skills.

Note: Technical skills herein specified are to be read as a whole, ie. an employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Information Handling Skills - Skill Level 2:

Employees at this level are able to 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.

(iii) Business/Financial Skills - Skill Level 1:

Employees at this level are able to keep appropriate records; prepare and record petty cash transactions; undertake bank transactions (deposits and withdrawals).

'Clerical Officer - Grade 3'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience

1 - 12 months 97%

more than 12 months 100%

(a) Grading

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following.

- (i) The exercise of the 'General Requirements' specified in '(b)' hereunder and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in '(c)' hereunder.

OR ARE:

- (iii) Employees holding a Certificate of Commercial Studies (TAFE) or accredited equivalent, and who are required to use skills and perform tasks within the range of Grade 3.

(b) General Requirements

- (i) 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 Grade 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.
- (ii) They must be able to acquire a working knowledge of the organisation's products/services, functions, locations and clients; respond to, and act upon most internal/external enquiries in own function area.

(c) Skill Requirements

(i) Technical Skills

Machine Operation - Skill Level 3:

Employees at this level are able to operate micro/personal computer, printing devices attached to a personal computer.

Keyboard - Typing - Skill Level 2:

Employees at this level are able to produce documents and correspondence using knowledge of standard formats, touch type at 40 words per minute with 98 percent accuracy, audio type.

Computer - Skill Level 2:

Employees at this level are able to use one software application package developed for a micro-personal computer to create:

a database file structure, or  
a spreadsheet/worksheet, or  
a graphic, or  
an accounting/payroll file following standard procedures and using existing models/fields of information; or  
use a central computer resource to an equivalent standard.

Word Processing - Skill Level 1:

Employees at this level are able to use ONE software package to create, format, edit, proof read, correct, print and save text documents, eg. standard correspondence and business documents.

Note: Technical skills herein specified are to be read as a whole. ie. An employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Secretarial - Skill Level 1:

Employees at this level are able to take shorthand notes at 70 words per minute and transcribe with 95 percent accuracy.

(iii) Information Handling - Skill Level 3:

Employees at this level are able to use computer-based record management systems to file and retrieve records such as accounts, stock inventory, finance and personnel records.

(iv) Business/Financial - Skill Level 2:

Employees at this level are able to maintain records and journals, sort, process and record transactions such as incoming/outgoing cheques, invoices, debit/credit items, payroll data, establish petty cash imprest system.

'Clerical Officer - Grade 4'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience  
105%

(a) Grading

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the 'General Requirements' specified in '(b)' hereunder and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in '(c)' hereunder.

(b) General Requirements

- (i) 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 Grade 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.
- (ii) Employees in this grade are able to provide detailed advice and information on the organisation's products and services; respond to client/public/supplier problems within own function area, using such techniques as personal interview and liaison; explain organisation's viewpoint to clients and appropriate persons related to own function area.
- (iii) Employees in this grade shall be capable of guiding employees graded at a lower level by means of personal instruction and demonstration.
- (iv) Employees in this grade shall be capable of acquiring and using specialist vocabulary, ie. technical, medical, legal etc. within the scope of this grade.

(c) Skills Requirements

(i) Technical Skills

Keyboard - Typing - Skill Level 3:

Employees at this level are able to format complex documents including technical data, technical language, tables, graphs, text design, indexing, variable type face; produce documents requiring specified legal form or to comply with regulations or standards.

Computer - Skill Level 3:

Employees at this level are able to use TWO application software packages developed for a micro/personal computer at a standard equal to Skill Level 2 in each, eg. database, communications, accounting, payroll/personnel, spreadsheets, graphics, other applications; or

able to use a central computer resource to an equivalent standard.

Word Processing - Skill Level 2:

Employees at this level are able to use TWO software packages at a standard equal to Skill Level 1; or

are able to apply additional functions such as search and replace, variable fonts, moving and merging across documents, text columns, money columns, tables, eg. to produce financial statements, printed forms.

Note: Technical skills herein specified are to be read as a whole. ie. An employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Secretarial Skills - Skill Level 2:

Employees at this level are able to arrange travel bookings and itineraries; make appointments; screen telephone calls; follow visitor protocol procedures; establish telephone contact on behalf of executive.

Take shorthand notes at 90 words per minute and transcribe with 95 percent accuracy.

(iii) Information Handling - Skill Level 4:

Employees at this level are able to maintain a computer based records management system;

identify, access and extract information from internal sources.

(iv) Business/Financial - Skill Level 3:

Employees at this level are able to prepare cash payment summaries, banking reports and bank statements; maintain wage and salary records;

follow credit referral procedures; apply purchasing and inventory control requirements; post journals to ledger.

'Clerical Officer - Grade 5'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience

110%

(a) Grading

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the 'General Requirements' specified in '(b)' hereunder and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in '(c)' hereunder.

(b) General Requirements

- (i) 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 Grade 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. Accountable to Senior Management.
- (ii) Employees in this grade must be able to acquire a detailed knowledge of enterprise operations and structures and a sound knowledge of the industry. Respond to and act upon complex issues/arrangements in such areas as consumer/client services, special products/service knowledge, production and planning schedules, material supply, transport/freight arrangements.
- (iii) Employees in this grade shall be capable of guiding employees in lower grades by means of personal instruction and demonstration.

(c) Skill Requirements

(i) Technical Skills

Computer - Skill Level 4:

Employees at this level are able to use THREE application software packages developed for a micro/personal computer at a standard equal to Skill Level 2 in each; or

use a central computer resource to an equivalent standard; or

apply knowledge of advanced functions of a SINGLE application software package to manipulate data, ie. modify fields of information, develop new database or spreadsheets models; or graph previously prepared spreadsheets, or perform reconciliation;



and/or

Word Processing - Skill Level 3:

Employees at this level are able to apply advanced functions including Macros, Sorting and Maths functions, boxes, thesaurus using ONE software package; or

apply knowledge of additional functions defined in Skill Level 2 using TWO software packages.

(ii) Secretarial Skills - Skill Level 3:

Employees at this level are able to write shorthand notes at 100 words per minute and transcribe at 95 percent accuracy; maintain executive diary; respond to invitations; organise internal meetings on behalf of executive; establish and maintain reference lists/personal contact systems for executives; maintain current working and personal filing systems for executive.

(iii) Information Handling - Skill Level 5:

Employees at this level are able to create new forms of files and records as required using computer-based records systems; access, identify, and extract information as required from external sources, eg. databases, libraries, local authorities; maintain subscriptions for required technical, trade and other publication systems, maintain circulation, indexing and filing systems for publications; review/close files, archive files.

(iv) Business/Financial - Skill Level 4:

Employees at this level are able to reconcile accounts to balance; follow-up unpaid accounts; calculate wage and salary requirements; calculate work valuations; prepare bank reconciliations.

(v) Supervisory - Skill Level 1:

Employees at this level are able to allocate work tasks to individuals, check work progress and correct errors.

(vi) Specialist Skills - Skill Level 1:

Employees at this level are able to apply knowledge of export and customs documentation requirements and procedures;

apply knowledge of separate relevant industrial award rates of pay and conditions, occupational health and safety requirements.

'Clerical Officer - Grade 6'

Wage relativity to Clerical Officer, Grade 3, more than 12 months' experience

115%

(a) Grading

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following;

- (i) The exercise of the 'General Requirements' specified in '(b)' hereunder; and
- (ii) In addition to the 'General Requirements' are required to exercise any one or more of the broad skill levels set out in '(c)' hereunder.

(b) General Requirements

- (i) 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 Grade 5. They are responsible and accountable for their own work, and may have limited 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 officers as required.
- (ii) Employees in this grade are able to apply knowledge of the organisation's objectives, performance, projected areas of growth, product trends; and general industry conditions, eg. knowledge of competitors and major clients market structure in the performance of own responsibilities.
- (iii) Employees in this grade shall be capable of guiding employees graded at a lower level by means of personal instruction and demonstration.

(c) Skill Requirements

(i) Technical Skills

Computer - Skill Level 5:

Employees at this level are able to use TWO application software packages on a micro/personal computer to a standard equal to Skill Level 4 in each; or

use a central computer resource to an equivalent standard; or

assist in operating a mainframe computer

and/or

Word Processing - Skill Level 4:

Employees at this level are able to use complex functions such as moving columns, creating displays of charts or graphs, booklet or report format on ONE software package; or

apply knowledge of advanced functions defined in Skill Level 3 using TWO software packages.

(ii) Secretarial Skills - Skill Level 4:

Employees at this level are able to write shorthand notes at 120 words per minute and transcribe at 95 percent accuracy; attend executive/organisational meetings and take minutes; establish current working and personal executive filing system, answer correspondence from verbal or rough handwritten instructions; organise teleconferences.

(iii) Information Handling - Skill Level 6:

Employees at this level are able to establish 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 area;

compose original business correspondence from minimal instructions.

(iv) Business/Financial - Skill Level 5:

Employees at this level are able to post transactions to ledger and prepare a trial balance; prepare financial/tax schedules; calculate costings, stock pricing; complete personnel/payroll data for authorisation.

(v) Supervisory - Skill Level 2:

Employees at this level are able to assist in the development of work quality and performance in a team environment; solve operational problems in own work functional area and resolve operational problems for staff in lower grades; co-ordinate work flow within a section or unit and counsel and advise staff who are under direct supervision.

(vi) Specialist Skills - Skill Level 2:

Employees at this level are able to apply working knowledge of industrial/employment law, equal opportunity, workers compensation procedures and superannuation requirements.

**'Optical Worker Grade 1'** - Proposed wage relativity to Optical Tradesperson Grade 1 at the completion of the minimum rates adjustment process = 78%)

Means an adult employee not engaged as a tradesman, but engaged in blocking up on blanks, cleaning of lenses, attaching fining and/or polishing pads, fining polishing and all other work performed in a prescription workshop other than that performed by a tradesman.

**'Optical Worker Grade 2'** - Proposed wage relativity to Optical Tradesperson Grade 1 at the completion of the minimum rates adjustment process = 92%)

Means an adult employee whose duties will include the interpretation and selection of grinding materials. Ordering of grinding materials and prescription computer calculations.

**'Optical Tradesperson Grade 1'** - (Proposed wage relativity at the completion of the minimum rates adjustment process = 100%)

Means an employee who has completed a four year apprenticeship an optical mechanic or an adult employee who holds qualifications deemed equivalent by the employer and who is engaged to perform one or more of the following tasks in

- (a) grinding angles or prisms using an auto collimator or similar checking instrument in hand finishing of highly accurate work, including localising and figuring, and in making of testplates; and
- (b) computation of lens curves, marking up for frame fitting and final checking; and
- (c) fitting, marking up, generating and/or edging and lap section; and
- (d) prescription interpretation and selection of lenses; and
- (e) maintenance of optical equipment and machines; and
- (f) assists in the training of apprentices and optical workers.

**'Optical Tradesperson Grade 2'** - (Proposed wage relativity to Optical Tradesperson Grade 1 at the completion of the minimum rates adjustment process = 105%)

Means an optical tradesperson with responsibilities for final checking and quality control related to prescription interpretations.

**'Optical Tradesperson Grade 3'** - (Proposed wage relativity to Optical Tradesperson Grade 1 at the completion of the minimum rates adjustment process = 110%)

Means an optical tradesperson performing Grade 2 duties and who has additional responsibilities in one or more of the following areas:

- (a) supervision of the work of two or more employees; and
- (b) customer relations.

## **2. WAGE RATES**

- (a) Optical Workers
  - (i) Adults

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate assigned opposite that classification.

Classification:	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
1.Optical Worker Grade 1	78	325.40	159.00	484.40
2.Optical Worker Grade 2	92	383.80	159.00	542.80
3. Optical Tradesperson Grade 1	100	417.20	161.00	578.20
4.Optical Tradesperson Grade 2	105	438.10	161.00	599.10
5.Optical Tradesperson Grade 3	110	458.90	161.00	619.90

(ii) Apprentices

Apprentices shall be paid the undermentioned percentages of the weekly wage rate prescribed for an 'Optical Tradesperson Grade 1'.

	%
First year	42
Second year	55
Third year	75
Fourth year	88

The said minimum rates shall be calculated to the nearest 10 cents, any fraction of 10 cents not exceeding five cents to be disregarded.

(b) Clerical Employees

(i) Adults

Except as prescribed in Clause 5 - Minimum Wage hereof, adult employees of a classification hereunder mentioned shall be paid the weekly wage rate assigned opposite that classification.

	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
Clerical Officer Entry Level				
1st 6 months	80	333.80	159.00	492.80
2nd 6 months	85	354.60	159.00	513.60
Clerical Officer Grade 1				
1-12 months	87	363.00	159.00	522.00

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Thereafter	90	375.50	159.00	534.50
Clerical Officer Grade 2				
1-12 months	92	383.80	159.00	542.80
Thereafter	95	396.30	159.00	555.30
Clerical Officer Grade 3				
1-12 months	97	404.70	159.00	563.70
Thereafter	100	417.20	161.00	578.20
Clerical Officer Grade 4	105	438.10	161.00	599.10
Clerical Officer Grade 5	110	458.90	161.00	619.90
Clerical Officer Grade 6	115	479.80	159.00	638.80

(ii) Ratio of Juniors to Adult Employees

The maximum number of junior employees to be employed shall not exceed the ratio of two junior employees to every one adult. These ratio provisions shall not apply to trainee clerks.

(c) Junior Employees

(i) Junior optical employees

The minimum weekly wage rate payable to junior employees shall be the undermentioned percentage of the total weekly wage rate prescribed for an 'Optical Worker Grade 1'.

	%
17 years of age and under	55
18 years of age	65
19 years of age	78
20 years of age	93

(ii) Junior clerical employees

The minimum weekly wage rate that shall be paid to junior clerical employees shall be the undermentioned percentages of the weekly wage rate for Clerical Officer, Grade 1, 1st 12 months service, adjusted to the nearest 10 cents.

	%
Under 16 years of age	40
16 to 17 years of age	45

17 to 18 years of age	55
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

PROVIDED that when determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission relating to private industry employees are established, experience obtained after reaching the age of 19 years shall be counted as adult experience.

(d) Adult Apprentice

(i) Contract of Indenture

- (1) A suitable contract of indenture shall be drawn up between the adult apprentice and the employer.
- (2) The training to be completed by an adult apprentice under a contract of indenture will be determined by the relevant State Training Authority through its approved agencies based upon training credits being granted for the relevant working experience and educational standard obtained by the apprentice.

(ii) Wage Rate

Where a person is employed by an employer in the optical industry immediately prior to becoming an adult apprentice with that employer such person shall not suffer a reduction in the rate of pay by virtue of becoming indentured. For the purpose only of fixing a rate of pay the adult apprentice shall continue to receive the rate of pay that is from time to time applicable to the classification or class of work specified in the relevant clause of this award and in which the adult apprentice was engaged immediately prior to entering into the contract of indenture.

(iii) Preference

- (1) Preference of employment as an adult apprentice should be given to an applicant who is currently employed by the employer so as to provide for genuine career path development.
- (2) Adult apprentices shall not be employed at the expense of other apprentices.

**3. MIXED FUNCTIONS**

Any employee who is required so to do and does on any one day work for which a higher rate is prescribed, shall, if engaged on such work for two hours or more, be paid the higher rate for the whole of that day. If for less than two hours he or she shall be paid the higher rate for the time so worked.

#### **4. SUPPORTED WAGE SYSTEM**

(a) Eligibility criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) of this subclause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this subclause 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.

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this subclause:

'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

'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.

'Disability Support Pension' means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

'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.

(c) Supported wage rates

Employees to whom this subclause 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 (paragraph (d))
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 \$62 per week.

(d) Assessment of capacity

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

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

(e) Lodgement of assessment instrument

- (i) All assessment instruments under the conditions of this subclause, 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 Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of assessment

The assessment of the applicable percentage shall 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.

(g) 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 supported wage provisions of

this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace adjustment

An employer wishing to employ a person under the provisions of this subclause 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 job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$62 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

**5. MINIMUM WAGE**

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Clause 4 Supported Wage System is \$484.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in paragraph (b)(i).

- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in paragraph (b)(i) according to the number of hours worked.
- (c) How the Minimum Wage Applies to Juniors
- (i) The wage rates provided for juniors by this award continue to apply unless the amount determined under paragraph (c)(ii) is greater.
  - (ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in paragraph (b)(i).
- (d) Application of Minimum Wage to Certain Employees
- Due to existing applicable award wage rates being greater than the relevant proportionate minimum wage, this clause will not apply to employees falling within the scope of the National Training Wage (Tasmanian Private sector) Award and Trainees undertaking an apprenticeship.
- (e) Application of Minimum Wage to Award Rates Calculation
- The minimum wage:
- (i) applies to all work in ordinary hours;
  - (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
  - (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2005 State Wage Case Decision (T12144 of 2005) and all previous safety net and state wage case adjustments.

## **6. PAYMENT OF WAGES**

- (a) Wages shall be paid weekly and not later than Thursday each week by one of the following methods:
- cash (in employer's time);
  - cheque; or
  - electronic funds transfer
- PROVIDED that:
- (i) Where the method of payment is electronic funds transfer this shall be at no cost to the employee.

- (ii) By agreement with the majority of employees at an establishment the interval of payment may be fortnightly.
- (b) On each pay day an employee shall be issued a statement setting out the amount of wages to which he/she is entitled, the amount of deductions made therefrom and the net amount being paid.

## **7. SUPERANNUATION**

Note: The Superannuation Legislation *Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note — [Choice of Superannuation Funds and Award Provisions](#)

### (a) Fund

For the purpose of this award, contributions by employers in accordance with the provisions of subclause (b) - Contributions shall be paid into one of the following nominated approved funds:-

- (i) TASPLAN
- (ii) CARE

### (b) Contributions

- (i) Employers shall make contributions in respect of each eligible employee in accordance with the requirements of the relevant Federal Legislation.
- (ii) An employer shall not be required to contribute during any period of unpaid leave or unauthorised absence. Further, an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.
- (iii) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

### (c) Exemptions

- (i) An employer may make application to the Tasmanian Industrial Commission by 31 March 1990 to be exempt from the provisions of this award.

PROVIDED that such exemption shall only be granted to employers who:-

- (1) provide superannuation into a Company fund in existence at 1 January 1990, which satisfies Commonwealth Operational Standards;

- (2) can demonstrate genuine hardship and incapacity to pay in accordance with the Wage Fixing Guidelines.
- (ii) An employer who commences a new business after 1 April 1990, may make application for exemption in accordance with paragraph (i) above. Such application must be made within one month of the commencement of operation of the new business.
- (iii) For the purposes of this clause, the following companies are exempt from contributing to either TASPLAN or CARE as nominated in subclause (a) - Fund and contributions shall be made in accordance with subclause (b) - Contributions into the Approved Funds set out below:

Company	Fund
Corbett and Wilson	Tasmanian Chamber of Commerce Industry Super Fund
Tasmanian Optical Company Ltd	Employees may choose between: TASPLAN; CARE; or ARF; or AXA

(d) Definitions

'CARE' means the Clerical and Retail Employees Superannuation Fund.

'Eligible employee' means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis.

In accordance with the *Superannuation Guarantee Act*, employees shall not be eligible for superannuation contributions where:

- (i) an employee earns less than \$450 per month;
- (ii) an employee works less than 30 hours per week and is under 18 years of age.
- (iii) an employee is over 65 years of age.

'Ordinary Time Earnings' shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowances but shall exclude overtime and call back payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

'Tasplan' means the superannuation fund established by Trust Deed and Articles on 16 March 1987.

## **PART IV – ALLOWANCES**

### **1. FIRST AID ALLOWANCE**

An employee who is the holder of a current St. John First Aid Certificate shall if required to act as a first aid attendant, be paid \$6.40 per week extra

## **2. LOCOMOTION**

All means of locomotion required shall be provided and maintained by the employer, but where employees by arrangement with the employer, provide their own car they shall be paid in addition to the weekly rate prescribed in Part III – WAGES AND RELATED MATTERS, Clause 2 – Wage Rates an amount of 14.7 cents per kilometre per vehicle 16 hp. or over, for vehicles under 16 hp. 12.7 cents per kilometre travelled.

## **3. TEA MONEY**

- (a) An employee required to work overtime for more than one and a half hours shall either be supplied with an adequate meal by the employer or be paid \$13.10 meal money.
- (b) The payment prescribed in subclause (a) shall be made on the day on which overtime is worked or, on the next pay day.

## **4. TOOL ALLOWANCE**

All employees engaged in classifications that are proclaimed as trades under the *Vocational Education and Training Act 1994* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.30 per week.

PROVIDED that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

## **PART V – HOURS OF WORK, PENALTY PAYMENTS & OVERTIME**

### **1. HOURS OF WORK**

- (a) Definitions

For the purposes of this clause:

'Retail Services' means a business involved in the sale of optical products (eg frames, lenses, sunglasses and associated products) at retail to the public.

- (b) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:
  - (i) seven hours 36 minutes per day; or
  - (ii) eight hours per day or four days and six hours on one day in each week;  
or

- (iii) eight hours per day or nine days and four hours on one day in each fortnight; or
- (iv) eight hours per day on nineteen days with an accumulated rostered day off; or
- (v) eight hours per day with an accumulation of rostered days off up to a maximum of five.

The method of implementation shall be determined following discussion between the employer and the employees.

PROVIDED that in the absence of agreement between the employer and employees concerned, the method adopted shall be (i) above.

- (c) For operations not involved in retail services (as defined) the ordinary hours shall be worked between the hours of 7.00 am and 6.30 pm Monday to Friday inclusive.
- (d) For operations involved in retail services (as defined) the ordinary hours shall be worked between the following hours:
  - (i) Monday, Tuesday and Wednesday 7.00 am - 6.30 pm
  - (ii) Thursday and Friday 7.00 am - 9.30 pm
  - (iii) Saturday 7.00 am - 6.30 pm
- (e) The hours of work prescribed by this clause shall, excepting for a meal break of not less than 30 minutes nor more than 60 minutes be continuous on each day. Such meal break shall be taken between the hours of 11.00 am and 3.00 pm.
- (f) Meal Periods
  - (i) An employee shall not be required to work for more than five hours without a break for a meal.

PROVIDED that by agreement between an employer and the majority of employees in the plant, work section or sections concerned, an employee or employees may be required to work in excess of five hours but not more six hours at ordinary rates of pay without a meal break to meet operational needs where extraordinary circumstances arise.

- (ii) The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.
- (iii) An employer may stagger the time of taking a meal and rest break to meet operational requirements.
- (iv) Subject to the provisions of paragraph (i) hereof, an employee employed as a regular maintenance person shall work during meal breaks at ordinary rates of pay whenever instructed to do so for the purpose of

making good breakdown of plant or upon routine maintenance of plant which can only be done while such plant is idle.

- (v) Except as provided in paragraphs (i) and (iv) hereof, and except where any alternative arrangement is entered into as a result of in-plant discussions, time and a half rates shall be paid for all work done during meal hours and thereafter until a meal break is taken.
- (g) The ordinary hours of work prescribed herein shall not exceed 10 on any day provided that:
  - (i) in any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees in the plant or work section or sections concerned; and
  - (ii) by arrangement between the employer, the union or unions concerned and the majority of employees in the plant or work section or sections concerned, ordinary hours not exceeding twelve on any day may be worked subject to:
    - (1) the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on twelve hour shifts;
    - (2) proper health monitoring procedures being introduced;
    - (3) suitable roster arrangements being made; and
    - (4) proper supervision being provided.
  - (iii) No clerical employee shall be required to work in excess of 10 hours in any one day.

(h) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work 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, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.



- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
  - (v) An employer shall record make up time arrangements in the relevant time and wages book, as prescribed in Part IX – AWARD COMPLIANCE AND UNION RELATED MATTERS, Clause 4 - Time and Wages Book of the award at each time this provision is used.
- (i) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record Rostered Days Off arrangements in the relevant time and wages book, as prescribed in Part IX – AWARD COMPLIANCE AND UNION RELATED MATTERS, Clause 4 - Time and Wages Book of the award at each time this provision is used.

## **2. OVERTIME AND CALL BACK**

- (a) For all time of duty in excess of ordinary hours or before the time fixed for commencing work or after the time fixed for ceasing work, payment shall be made at the rate of time and one half for the first two hours and double time thereafter.
- (b) An employee who is recalled to work overtime after leaving his/her employer's premises, whether or not he/she has been notified before ceasing work, shall receive a minimum payment as for four hours worked.

- (c) In computing overtime, each day's work shall stand alone.
- (d) Where an employer and employee agree, time off at the penalty equivalent may be allowed in lieu of payment for overtime.

PROVIDED that such time off shall be paid at the ordinary rate.

- (e) For the purpose of determining overtime entitlements of an employee, an employee who works 10 minutes or more past the time fixed for ceasing work shall be paid overtime at the appropriate overtime rate for all time worked after the time fixed for ceasing work.

PROVIDED that this subclause shall not be used to obtain unpaid work from employees on a regular basis.

- (f) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

### **3. REST PERIOD**

Employees shall be allowed a rest period of 10 minutes duration between the start of work and the midday meal break. The rest period shall be taken at such time as may be mutually arranged between the employer and employees.

### **4. SATURDAY, SUNDAY AND HOLIDAY WORK FOR RETAIL SERVICES**

Employees engaged to work in retail services (as defined) during the undermentioned periods shall be paid as follows:

- (a) Saturday between 7.00 am to 6.30 pm:

Ordinary time plus 25 percent loading for first two hours and 75 percent loading thereafter.

- (b) Sunday and Holiday Work:

Sundays: ordinary time plus 100 percent loading  
Holiday work: ordinary time plus 150 percent loading

### **5. SATURDAY, SUNDAY AND HOLIDAY WORK (ESTABLISHMENTS NOT PROVIDING RETAIL SERVICES, (AS DEFINED))**

For all time worked on a Saturday, payment shall be made at the rate of one and one half times the ordinary rate for the first two hours and double time thereafter.

For all time of work performed on a Sunday, payment shall be made at the rate of double time.

For all time of work performed on a holiday mentioned in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay, payment shall be made at the rate of double time and one half.

## **PART VI – LEAVE AND HOLIDAYS WITH PAY**

### **1. ANNUAL LEAVE**

#### (a) Period of Leave

Except as hereinafter provided a period of 28 consecutive days' leave shall be allowed annually to an employee (other than a casual employee or a part-time employee engaged to work less than 20 hours per week) after 12 months' continuous service, less the period of annual leave.

#### (b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in one of the following methods:

(i) in two separate periods, the lesser of which shall be not less than seven consecutive days, ie. five working days;

(ii) in any combination, provided one period shall be not less than seven consecutive days, ie. five working days.

#### (c) Leave to be Exclusive of Public Holidays

If any of the holidays prescribed by Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay fall within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that leave one day for each such holiday so occurring.

#### (d) Payment in Lieu Prohibited

Except as provided in subclause (h) payment shall not be made or accepted in lieu of annual leave.

#### (e) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued, and after not less than 2 weeks' notice to the employee.

#### (f) Payment for Period of Leave

All employees before going on leave shall be paid the amount of wages they would have received in respect of the ordinary time which they would have worked had they not been on leave during the relevant period.

In addition all employees entitled to paid annual leave shall receive a loading of 17 ½ percent on the payment made for annual leave. Such loading shall not apply to proportionate leave on termination of service.

(g) Leave Allowed before due Date

An employer may allow annual leave to an employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave shall not commence to accrue until after the expiration of the 12 months in respect of which annual leave had been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each complete month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable to the employee upon the termination of the employment, one-twelfth of the amount of wages paid on account of annual leave, which amount shall not include any sums paid for any of the holidays prescribed by Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 4 - Holidays with Pay.

(h) Proportionate Leave on Termination of Service

If after one completed month of service in any 12 monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid twelve and two thirds hours for each completed month of continuous service.

This service is in respect of which leave has not been granted.

### **3. BEREAVEMENT LEAVE**

- (a) An employee shall, on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days.

PROVIDED that no payment shall be made in respect of an employee's rostered days off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore 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 purpose 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.

An employee who is required to travel outside the State of Tasmania (including King Island and Flinders Island) shall, if necessitated by the unavailability of transport, be allowed one day after the funeral as travelling time with pay.

(b) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

(c) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave

(i) Subject to the evidentiary requirements in subclause (a), casual employees and employees in receipt of a loading in lieu of paid leave are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.

(ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.

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

#### **4. HOLIDAYS WITH PAY**

'Show Day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

(a) All employees other than those engaged as casual employees (as defined) or part-time employees engaged to work for less than 20 hours per week shall be allowed the following days as paid holidays:-

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, ANZAC Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day, or such other day as may be observed in the locality in lieu of any of the abovementioned holidays.

(b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the

employee concerned, when if it were not for such holiday, he/she had been at work.

- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.

## 5. 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.

### (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
  - (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or
  - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

### (b) Entitlement

- (i) 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 mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
  - (ii) Subject to subclause (c) (vi), 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:
    - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
    - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
  - (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) 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;
    - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
  - (ii) Where the employee gives notice under (d) (i) 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.
  - (iii) 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 or other compelling circumstances.
  - (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
  - (v) 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.

(vi) Special Maternity Leave

- (1) 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.
- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal 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 personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

- (1) Where an employee is pregnant and, in the opinion of a registered medical 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 a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

- (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
  - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
  - (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
  - (3) a statutory declaration stating:
    - (A) that period of paternity leave will be taken to become the primary care-giver of a child;



- (B) particulars of any period of maternity leave sought or taken by the mother, and
    - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
  - (4) The employee will not be in breach of this subclause 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.
- (e) Adoption leave
- (i) The employee will notify the employer at least ten 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.
  - (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
    - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
    - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
  - (iv) 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.
  - (v) An employee will not be in breach of this subclause 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 an adoptive parent or other compelling circumstances.
  - (vi) 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.

(f) 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.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(iii) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with this subclause, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.  
  
(B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
  - (A) that the employee may work part-time;
  - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
  - (C) upon the classification applying to the work to be performed; and
  - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (vi).

(ix) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(x) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (4) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.

- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c) (vii) clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) 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.

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:
  - (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
  - (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;

- (3) 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.

- (ii) 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.
- (l) Communication During Parental Leave
    - (i) 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:
      - (1) 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
      - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
    - (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
    - (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

## **6. PERSONAL LEAVE**

The provisions of this clause apply to an employee, other than one engaged as a casual or part-time employee in receipt of a loading in lieu of an entitlement to paid leave as specified in PART II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS Clause 3 – Employment Categories. The entitlements of casual employees and employees in receipt of a loading in lieu of an entitlement to paid leave are set out in subclause (j) – Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities.

### **(a) Definitions**

The term 'immediate family' includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the

opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
  - (1) due to personal illness or injury; or
  - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) the employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
- (iii) the employee shall not be entitled in any year to personal leave credit in excess of 76 hours of ordinary working time.

**PROVIDED** that during the first three months of employment, personal leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

(c) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

- (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

- (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

the employee shall, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the

employer of his/her inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.

(f) Evidence Supporting Claim

(i) the employee shall prove to the satisfaction of the employer that he/she was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed;

(ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(g) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (b) (iii) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year;

(h) An employer shall not be required to make any payment in respect of accumulated personal leave credits to an employee who is discharged or leaves his/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

(i) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(j) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f), casual employees and employees in receipt of a loading in lieu of paid leave, are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in



receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.

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

## **PART VII – CONSULTATION**

### **1. TRAINING**

- (a) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled and flexible workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.
- (b) Following proper consultation in accordance with the clause relating to enterprise agreements, or through the establishment of a training committee, an employer shall develop a training programme consistent with:
  - (i) the current and future skill needs of the enterprise;
  - (ii) the size, structure and nature of the operations of the enterprise;
  - (iii) the need to develop specific vocational skills relevant to the enterprise and/or broad based knowledge of the optical industry through courses conducted by accredited educational institutions and providers.
- (c) Where it is agreed a training committee be established, that training committee should be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example:
  - (i) the formulation of a training programme and availability of training courses and career opportunities to employees;
  - (ii) dissemination of information on the training programmes and availability of training courses and career opportunities to employees;
  - (iii) the recommendation of individual employees for training and reclassification;
  - (iv) monitoring and advising management and employees on the ongoing effectiveness of the training.

- (d) (i) Where as a result of consultation in accordance with subclause (b) or through a training committee and with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to subclause (b) should be undertaken by an employee, that training may be undertaken either on or off the job.

PROVIDED that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

- (ii) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure.

PROVIDED that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress and attendance.

- (iii) Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.

## **PART VIII– OCCUPATIONAL HEALTH AND SAFETY, TOOLS AND AMENITIES**

### **1. PROTECTIVE CLOTHING**

All protective clothing and safety equipment shall be supplied free of cost by the employer and any such property shall remain the property of the employer.

No employee shall be required to perform work in protective clothing which is not adequate and suitable and which has been previously used by other persons, unless properly sterilised and/or fumigated.

The loss of such clothing due to any cause arising out of the neglect or misuse by the employee shall be a charge against the wages of the employee.

PROVIDED that no charge shall be made in respect of reasonable wear and tear.

## **PART IX – AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. NOTICE BOARD**

The employer shall permit a notice board of reasonable dimensions to be erected in a prominent position in the plant or in separate buildings in each plant so that it will be reasonably accessible to all his/her employees working under this award.

Accredited union representatives shall be permitted to put on the notice board or notice boards, union notices, signed or counter signed by the representative posting it.

Any notices posted on such board not signed or counter signed may be removed by an accredited union representative or by the employer.

## **2. POSTING OF AWARD**

Each employer shall cause a copy of this award to be posted or hung in a conspicuous and accessible place in each store or other premises where employees are employed and such posting shall be maintained during the term of this award.

## **3. SHOP STEWARDS**

- (a) An employee appointed shop steward in the shop or department in which he is employed shall upon notification thereof to his/her employer, be recognised as the accredited representative of the union to which he/she belongs. An accredited shop steward shall be allowed the necessary time during working hours to interview the employer or the employers representative on matters affecting employees whom he/she represents.
- (b) Subject to the prior approval of the employer an accredited shop steward shall be allowed at a place designated by the employer a reasonable period of time during working hours to interview a duly accredited union official of the union to which he/she belongs on legitimate union business.

## **4. TIME AND WAGES BOOK**

- (a) Each employer shall keep a record from which can be readily ascertained the name of each employee and his/her occupation, the hours worked each day and the wages and allowances paid each week.
- (b) Any time occupied by an employee in filling in any time record or card or in the making of records shall be treated as time of duty but this does not apply to checking in or out when entering or leaving the employer's premises.
- (c) The time and wages record shall be open for inspection to duly accredited union officials during usual office hours at the employer's office or other convenient place.

PROVIDED that inspection shall not be demanded unless the Secretary of a union or the District Secretary or Organiser of any division suspects that a breach of this award has been committed.

PROVIDED FURTHER that not more than one demand for such inspection shall be made in any week at the same establishment.

- (d) The official making such inspection shall be entitled to take a copy of entries in a time and wages record relating to the suspected breach of this award.

\*\* end of text \*\*

**AT811334 - Shop Distributive and Allied Employees' Association/Paris Miki Pty Ltd  
Optical Shop Associates Award 2001 [Transitional]**

This AIR consolidated award incorporates all amendments up to and including 24 March 2006 (variations [PR967724](#) and [PR970504](#)).

Clauses affected by the most recent amendment(s) are:

- [2. Arrangement](#)
- [7. Terms of engagement](#)
- [19. Holidays](#)
- [20. Personal leave](#)
- [20A. Bereavement leave](#)
- [26. Parental leave](#)
- [27. Annual leave](#)

**About this Award:**

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**Disclaimer:**

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the  
*Workplace Relations and Other Legislation Amendment Act 1996*  
(C No. 00710 of 1998)

**OPTICAL SHOP ASSOCIATES (VISION EXPRESS) AWARD 1993**  
(ODN C No. 30900 of 1993)  
[Print L0287 [O0061]]

Various employees

Wholesale and retail trade

COMMISSIONER RAFFAELLI

SYDNEY, 7 NOVEMBER 2001

*Award simplification.*

**ORDER**

A. The Commission issues the above award varied as follows:

By deleting all clauses, schedules and appendices and inserting the following:

**1. TITLE**

This award shall be known as the Shop Distributive and Allied Employees' Association/Paris Miki Pty Ltd Optical Shop Associates Award 2001.

## 2. ARRANGEMENT

[2 amended by [PR967724](#)]

This award is arranged as follows:

1. [Title](#)
2. [Arrangement](#) [[PR967724](#)]
3. [Anti-discrimination](#)
4. [Incidence of award](#)
5. [Definitions](#)
6. [Commencement date of award and period of operation](#)
7. [Terms of engagement](#) [[PR967724](#)]
8. [Termination of employment](#) [[PR952342](#)]
9. [Redundancy](#) [[PR952342](#)]
10. [Hours](#)
11. [Special provisions for substituted late shopping nights](#)
12. [Sunday work](#)
13. [Wages](#) [[PR959771](#)]
14. [Interim additional rates and allowances](#) [[PR959771](#)]
15. [Penalty rates for certain ordinary hours](#)
16. [Overtime](#)
17. [Meal times](#)
18. [Rest pause](#)
19. [Holidays](#) [[PR970504](#)]
20. [Personal leave](#) [[PR967724](#)]
- 20A. [Bereavement leave](#) [[PR967724](#)]
21. [Jury service](#)
22. [Allowances](#) [[PR959771](#)]
23. [Notice boards](#)
24. [Posting of award](#)
25. [Cleaning duties](#)
26. [Parental leave](#) [[PR967724](#)]
27. [Annual leave](#) [[PR967724](#)]
28. [Annual leave loading](#)
29. [Superannuation](#)
30. [Accident pay](#)
31. [Dispute settlement procedure](#)
32. [Consultative mechanism](#)
33. [Savings clause](#)
34. [Supported wage system](#) [[PR963356](#)]

### **3. ANTI-DISCRIMINATION**

- 3.1** It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.2** Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 3.3** Nothing in this clause is taken to affect:
- 3.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
  - 3.3.2** junior rates of pay;
  - 3.3.3** an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
  - 3.3.4** the exemptions in s.170CK(3) and (4) of the Act.



#### **4. INCIDENCE OF AWARD**

This award shall be binding on Paris Miki Australia Pty. Ltd. and the Shop Distributive and Allied Employees' Association and all employees who are members of the union engaged by the company in the classifications set out in clauses 5 - Definitions, 13 - Wages and 14 - Interim additional rates and allowances of the award in the States of New South Wales and Victoria and the Australian Capital Territory.

## 5. DEFINITIONS

5.1 The **company** shall mean Paris Miki Australia Pty Limited.

### 5.2 Optical shop associate

5.2.1 For the purpose of this award an **optical shop associate** shall mean an employee whose primary function is to ensure complete customer satisfaction at all times. To achieve this end, the optical shop associate may be required to perform functions of: frame stylist, stock person, cashier, receptionist, laboratory technician, optical dispenser in training, optical mechanic in training, optical dispenser, optical mechanic.

5.2.2 Multiskilling is an integral part of the optical shop associate classification and the company will institute as necessary, individual training programs to enable a person to perform the various functions within the classification.

5.3 **Qualified first aid attendant** shall mean that person who is a fully functional optical shop associate and who is also qualified as a qualified first aid attendant and is designated by management as such.

5.4 The **Commission** shall mean the Australian Industrial Relations Commission.

5.5 The **union** shall mean the Shop, Distributive and Allied Employees Association.

5.6 **Full-time employee** means an employee who regularly works more than 30 hours per week.

5.7 **Part-time employee** means an employee who regularly works 30 hours or less per week and who has reasonably predictable hours of work.

5.8 **Casual employee** means an employee who does not have reasonably predictable hours of work.

**6. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION**

This award shall come into force from the beginning of the first pay period to commence on or after 7 November 2001 and shall continue in force for a period of twelve months.

## **7. TERMS OF ENGAGEMENT**

### **7.1 Engagement**

An employee may be employed as a full-time, part-time or a casual employee.

### **7.2 Proof of age**

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

### **7.3 Time and payment of wages**

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

- 7.3.1** Overtime shall be paid not later than the next regular pay date succeeding the day on which it was earned.
- 7.3.2** Where employment is terminated an employee shall be paid forthwith all ordinary wages due and shall be paid all overtime and other moneys due within seven days of the date of the termination of employment.
- 7.3.3** In the event of the company not paying the said overtime and other moneys due at the time on which it has undertaken to pay, then the company shall reimburse the employee all expenses he/she has incurred in attending to collect the amounts due to him/her.
- 7.3.4** Casual employees and part-time employees may elect to be paid on a Friday, Saturday or Sunday, should they so wish.
- 7.3.5** When an employee is required by the company to wait beyond the ordinary ceasing times of the employee for payment of ordinary wages, or when an employee is terminated, to wait for payment of ordinary wages after the period of the termination for a period of more than fifteen minutes, he/she shall be paid his/her ordinary wages for the period during which he/she is so required to wait.

**7.3.6** Wages may be paid by electronic funds transfer. Provided that where wages are paid by electronic funds transfer additional costs associated with the introduction and operation of electronic funds transfer shall be paid by the company.

#### **7.4 Casual employment caring responsibilities**

[7.4 inserted by [PR967724](#) ppc 09Dec05]

**7.4.1** Subject to the evidentiary and notice requirements in clause 20.4 casual employees are entitled to not be available to attend work, or to leave work:

- if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
- upon the death in Australia of an immediate family or household member.

**7.4.2** The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

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

## 8. TERMINATION OF EMPLOYMENT

[8 substituted by [PR952342](#) ppc 30Sep04]

### 8.1 Notice of termination by employer

**8.1.1** In order to terminate the employment of an employee the employer must give to the employee the period of notice specified in the table below:

<b>Period of continuous service</b>	<b>Period of notice</b>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

**8.1.2** In addition to the notice in 8.1.1, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

**8.1.3** Payment in lieu of the prescribed notice in 8.1.1 and 8.1.2 must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

**8.1.4** The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

**8.1.4(a)** the employee's ordinary hours of work (even if not standard hours); and

**8.1.4(b)** the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

**8.1.4(c)** any other amounts payable under the employee's contract of employment.

**8.1.5** The period of notice in this clause does not apply:

**8.1.5(a)** in the case of dismissal for serious misconduct;

**8.1.5(b)** to apprentices;

**8.1.5(c)** to employees engaged for a specific period of time or for a specific task or tasks;

**8.1.5(d)** to casual employees.

**8.1.6** Continuous service is defined in clause 27.3.4.

## **8.2 Notice of termination by an employee**

**8.2.1** The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.

**8.2.2** If an employee fails to give the notice specified in 8.1.1 the employer has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 8.1.4.

## **8.3 Job search entitlement**

Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

**8.4** An employee whose employment is terminated by the company on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holidays or holidays but this provision shall not apply to an employee employed for two weeks or less.

**8.5** In the event of Christmas Eve falling on a Saturday or a Sunday any employee, other than those employed for two weeks or less, whose employment is terminated by the company on the preceding Friday, otherwise than for misconduct, shall be paid for the Christmas holidays. Should an employee be transferred from the regular to the casual staff during the week preceding the Christmas holidays he/she shall be paid for such holidays, provided that an employee engaged on or after 1 December in any year whose employment finishes before Christmas day and who is not re-employed within 4 weeks of Christmas Day by the company is not entitled to payment for the Christmas holidays.

## **8.6 Transmission of business**

Where a business is transmitted from one employer to another, as set out in clause 9 - Redundancy, the period of continuous service that the employee had with the transmittor or any prior transmittor is deemed to be service with the transmittee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## 9. REDUNDANCY

[9 substituted by [PR952342](#) ppc 30Sep04]

### 9.1 Definitions

**9.1.1 Business** includes trade, process, business or occupation and includes part of any such business.

**9.1.2 Redundancy** occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

**9.1.3 Small employer** means an employer who employs fewer than 15 employees.

**9.1.4 Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.

**9.1.5 Week's pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

### 9.2 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 in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

### 9.3 Severance pay

#### 9.3.1 Severance pay - other than employees of a small employer

In addition to the period of notice prescribed for ordinary termination in clause 8 - Termination of employment, an employee, other than an employee of a small employer as defined in 9.1, whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:



<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

\* **Week's pay** is defined in 9.1.

### **9.3.2 Severance pay - employees of a small employer**

In addition to the period of notice prescribed for ordinary termination in clause 8 - Termination of employment, an employee of a small employer as defined in 9.1 whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

\* **Week's pay** is defined in 9.1.

**9.3.3** Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

**9.3.4** Continuity of service shall be calculated in the manner prescribed by clause 27.3.4. Provided that service prior to 30 September 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 9.3.2.

**9.3.5** Application may be made for variation of the severance pay provided for in this clause in a particular redundancy situation in accordance with the *Redundancy Case Decision* [[PR032004](#), 26 March 2004] and the *Redundancy Case Supplementary Decision* [[PR062004](#), 8 June 2004].

### **9.4 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 8.1 - Notice of termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

## **9.5 Alternative employment**

**9.5.1** An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

**9.5.2** This provision does not apply in circumstances involving transmission of business as set in 9.7.

## **9.6 Job search entitlement**

**9.6.1** During the period of notice of termination given by the employer in accordance with 10.1, an employee shall 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.

**9.6.2** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

**9.6.3** The job search entitlements under this subclause apply in lieu of the provisions of 8.3.

## **9.7 Transmission of business**

**9.7.1** The provisions of this clause are not applicable where a business is before or after the date of this award, transmitted from an employer (in this subclause called the **transmittor**) to another employer (in this subclause called the **transmittee**), in any of the following circumstances:

**9.7.1(a)** Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or

**9.7.1(b)** Where the employee rejects an offer of employment with the transmittee:

- in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
- which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

**9.7.2** The Commission may vary 9.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

## **9.8 Employees exempted**

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- apprentices;
- employees engaged for a specific period of time or for a specified task or tasks; or
- casual employees.

## **9.9 Incapacity to pay**

The Commission may vary the severance pay prescription on the basis of an employer's incapacity to pay. An application for variation may be made by an employer or a group of employers.

## **9.10 Redundancy disputes procedure**

**9.10.1** Sub-clauses 9.10.2 and 9.10.3 impose additional obligations on an employer where an employer contemplates termination of employment due to redundancy and a dispute arises ('a redundancy dispute'). These additional obligations do not apply to employers who employ fewer than 15 employees.

**9.10.2** Where a redundancy dispute arises, and if it has not already done so, an employer must provide affected employees and the relevant union or unions (if requested by an affected employee) in good time, with relevant information including:

**9.10.2(a)** the reasons for any proposed redundancy;

**9.10.2(b)** the number and categories of workers likely to be affected; and

**9.10.2(c)** the period over which any proposed redundancies are intended to be carried out.

**9.10.3** Where a redundancy dispute arises and discussions occur in accordance with this clause the employer will, as early as possible, consult on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse affects of any proposed redundancies on the employees concerned.

## **10. HOURS**

### **10.1 Weekly hours**

The ordinary hours of work of employees in shops shall not exceed 38 hours per week to be worked in accordance with 10.9, Monday to Saturday (Monday to Sunday in shops which may lawfully trade on Sunday), both days inclusive and, save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

### **10.2 Commencing times**

The commencing time of the ordinary hours of work shall be:

7.00 a.m.	Monday to Saturday
8.00 a.m.	Sunday (in shops which may lawfully trade on a Sunday)

### **10.3 Ceasing times**

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

6.00 p.m.	Monday, Tuesday, Wednesday, Saturday
9.00 p.m.	Thursday, Friday
5.00 p.m.	Sunday (in shops which may lawfully trade on a Sunday)

### **10.4** Within the commencing and ceasing time prescribed respectively in 10.2 and 10.3 hereof, full-time and part-time employees on engagement shall be notified of:

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

### **10.5** The provisions in 10.4 shall not be changed except:

- upon not less than seven days notice;
- by agreement between the employee and the company; and
- in the event of an emergency, the quantum of ordinary hours to be worked and/or the days of the week on which such work is to be performed may be changed provided that the quantum of hours may be increased but not decreased.

### **10.6** Where it is alleged by the union that a change in rosters is contrary to the wishes of the majority of the employees or operates unfairly or to the disadvantage of employees, the company shall give in lieu of seven days notice, fourteen days notice, during which time there shall be discussions with the union and where practicable agreement reached with the majority of employees.

### **10.7** Notwithstanding 10.5 hereof where a full-time or part-time employee is requested to work:

- before the employee's prescribed commencing time on any day;
- after the employee's prescribed ceasing time on any day; and
- on a day in substitution for another work day,

and for which seven days notice, or where appropriate fourteen days notice, has not been given and if there is no clear emergency existing to require the extra work, then such extra/other hours of work shall be paid for at overtime rates, unless the employee has expressly agreed to work those extra/other hours as part of a roster change and be paid at ordinary rates of pay.

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

### **10.9 Rosters for a five day week**

All full-time and part-time employees shall be rostered their ordinary hours of work on any five days of the week, Monday to Saturday inclusive (Monday to Sunday in shops which may lawfully trade on a Sunday), on the following basis:

- 10.9.1** At least once every two weeks an employee shall be granted two consecutive days off which shall not include the Rostered Day Off.
- 10.9.2** Where specific written agreement exists between the company and an employee, the two days off may be non-consecutive days. In any case where such an agreement is reached between the company and an employee, the union shall be notified no less than seven days prior to the implementation of such agreement. Any dispute as to such agreement shall be referred to the Commission.
- 10.9.3** There shall not be more than one long day in any week. A long day is defined as a day exceeding nine ordinary hours of work. Provided that by mutual agreement additional long days may apply.
- 10.9.4** The maximum number of ordinary hours which may be worked on any one day shall be eleven hours.
- 10.9.5** Ordinary hours shall be worked on not more than five days in each week, provided that ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days.

**10.10** The following provisions shall apply in shops which may lawfully trade on a Sunday:

- 10.10.1** Once every four weeks, an employee who works ordinary hours on a Sunday shall be given three consecutive days off (not including the 19 day month RDO) which shall include Saturday and Sunday. By mutual agreement alternative arrangements may apply.

- 10.10.2** Where an employee transfers at his/her own request to a shop where Sunday trading is already lawful, the employee will not have the right to refuse to work on Sundays at the new shop.
- 10.10.3** Where an employee transfers at the employer's request to another store where Sunday trading is already lawful, the employee will retain the right to refuse to work on Sundays at the new shop.
- 10.11** Each full-time employee shall be rostered so that the maximum number of hours that shall constitute an ordinary weeks work without the payment of overtime shall not exceed on average 38 per week and may be worked in any of the following forms:
- 38 hours in one week;
  - 76 hours in two consecutive weeks;
  - 114 hours in three consecutive weeks or
  - 152 hours in four consecutive weeks,
- 10.12** Unless specific agreement exists to the contrary between the company and employee, the employee shall not be required to work ordinary hours on more than nineteen days in each four week cycle.
- 10.13** Where specific agreement exists between the employer and employee, the employee may be worked on the basis of:
- not more than four hours work on one day in each two week cycle;
  - not more than six hours work on one day in each week, or
  - not more than 7.6 hours work on any day.
- 10.14** With respect to any case where agreement is reached between an employee and employer, the union shall be notified seven days prior to the implementation of such agreement. Any dispute as to such agreement shall be settled in accordance with clause 31 - Dispute settlement procedure.
- 10.15** There shall be not less than a ten hour break between finishing work (including overtime) on one day and the commencement of work on the next day.
- 10.16** The company shall, by legible notice which shall bear the date when it is fixed, exhibit and keep exhibited in a place accessible to employees the current starting and finishing times for each employee for each day of the week. The company shall retain superseded notices for twelve months.

**11. SPECIAL PROVISIONS FOR SUBSTITUTED LATE SHOPPING NIGHTS**

- 11.1** During any week in which late shopping nights of Thursday and/or Friday are changed to another specified day, such specified day shall be deemed to be a Thursday and/or Friday, and Thursday and/or Friday shall be deemed to be the specified day for the purposes of this award, except as to clause 16 - Overtime, of this award.
- 11.2** Provided that where a public holiday falls on a Thursday and/or Friday and Thursday and/or Friday is deemed to be another day, employees shall not receive less time off than they might otherwise have received had the substitution not been made.

## **12. SUNDAY WORK**

- 12.1** An employee employed on a Sunday in a shop which may lawfully trade on that day in New South Wales and the Australian Capital Territory, shall be paid at the rate of time and one-half in respect of ordinary hours of work and at the rate of double time in respect of overtime with a minimum payment for four hours.
- 12.2** An employee employed on a Sunday in a shop which may lawfully trade on that day in Victoria, shall be paid at the rate of double time in respect of ordinary hours of work and at the rate of double time in respect of overtime with a minimum payment of four hours.



## 13. WAGES

### 13.1 Adults

[13.1.1 varied by [PR920187](#); substituted by [PR932588](#); [PR947096](#) ppc 02Jun04; varied by [PR959771](#) ppc 30Jun05]

**13.1.1** No adult employee shall be paid a weekly rate inclusive of commissions less than \$544.00

[13.1.2 substituted by [PR932588](#) [PR947096](#); [PR959771](#) ppc 30Jun05]

**13.1.2** The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review—Wages June 2005* decision [[PR002005](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

[13.1.3 substituted by [PR932588](#) [PR947096](#); [PR959771](#) ppc 30Jun05]

**13.1.3** Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

### 13.2 Juniors

Junior employees shall receive the following percentages of the appropriate adult rate:

Age	Percentage
at 16 years and under	50
at 17 years	60
at 18 years	70
at 19 years	80
at 20 years	90

Rates shall be calculated to the nearest five cents.

### 13.3 Part-time employees

**13.3.1** Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not in any case be less than three hours of work per day. Provided that where an employee's regular rostered work is in excess of 30 hours per week then such an employee shall be deemed to be a full-time employee and paid as such.

- 13.3.2** Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
- 13.3.3** Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.
- 13.3.4** The provisions of this award with respect to sick leave, holidays, bereavement leave, jury service, parental leave, shall apply to part-time employees on a proportional basis.
- 13.3.5** Notwithstanding the provisions of 13.3.1 to 13.3.5 hereof, an employee and a company may agree in writing to observe other conditions in order to meet special cases.

#### **13.4 Casual employees**

Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38 plus 15% in New South Wales and the Australian Capital Territory and 25% in Victoria calculated to the nearest half cent with a minimum payment on any one shift of three hours.

- 13.5** Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.

[13.6 substituted by [PR920187](#) ppc 02Jun02]

- 13.6** The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2002 decision* [[PR002002](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.
- 13.7** Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

#### **14. INTERIM ADDITIONAL RATES AND ALLOWANCES**

[14 substituted by [PR920187](#) [PR932588](#) [PR947096](#); [PR959771](#) ppc 30Jun05]

**14.1** The following rates shall be paid in the place of the appropriate weekly rate prescribed in clause 13 - Wages of this award:

An employee carrying out the duties and responsibilities of a class 1 optical shop associate and optical dispenser in training. \$580.50

An employee carrying out the duties and responsibilities of a class 2 optical shop associate. \$621.00

An employee carrying out the duties and responsibilities of a class 3 optical shop associate and optical dispenser. \$674.00

**15. PENALTY RATES FOR CERTAIN ORDINARY HOURS**

**15.1** All ordinary hours worked by full-time, part-time and casual employees on Thursday and Friday evenings between 5.00 p.m. and 9.00 p.m., shall be paid for at the rate of time and one-quarter.

**15.2** All ordinary hours worked by full-time, part-time and casual employees on Saturday shall be paid for at the rate of time and one-half.

## **16. OVERTIME**

**16.1** An employee shall be paid overtime for all work as follows:

**16.1.1** In excess of:

- 38 hours per week;
- an average of 38 hours per week in accordance with clause 10 - Hours of this award;
- five days per week or six days or four days pursuant to 10.9.5;
- eight hours on any one day for casual employees; or
- 30 hours per week for a part-time employee, where that work is not done on a regular basis.

**16.1.2** Before an employee's prescribed commencing time on any one day.

**16.1.3** After an employee's prescribed ceasing time on any one day.

**16.1.4** Outside the ordinary hours of work.

**16.1.5** Employees who work on their rostered day off or part-time employees who work on any day on which they would not normally work shall be paid at the rate of time and one half for the first two hours and at the rate of double time thereafter with a minimum payment of four hours at the overtime rate.

**16.1.6** As prescribed by 10.7 and 10.8.

**16.2** The rate of overtime shall be time and one-half for the first two hours on any one day and at the rate of double time thereafter.

**16.3** Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes and any portion of an hour over 30 minutes shall be reckoned as one hour except where an employee is required to work after closing time to attend to customers then in the shop, or in connection with closing the shop including the checking of cash received, when the time actually worked shall count.

**16.4** By mutual agreement the rate for overtime may be time off in lieu of overtime provided that:

**16.4.1** Time off shall be calculated at the penalty equivalent.

**16.4.2** The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.

**16.4.3** Time off must be taken within one calendar month of the working of the overtime, or it shall be paid out.

## **17. MEAL TIMES**

- 17.1** An employee who works more than five ordinary hours on any day shall be allowed on such day a meal break of one hour (45 minutes in any establishment in which a clean, well ventilated room, adequate table and seating accommodation and sufficient crockery, cutlery and hot water are provided for the employee). Provided that where agreement exists between the employee and the company a meal break of 30 minutes may apply.
- 17.2** Provided that the meal breaks referred to in 17.1 shall be given and taken so that no employee shall work more than five consecutive hours without a meal break.
- 17.3** An employee who is required to work on any day later than 6.30 p.m. (other than in shops which close at 7.30 p.m.) shall be allowed not less than 30 minutes nor more than one hour for any evening meal on that day between 4.30 p.m. and 6.30 p.m.
- 17.4** To meet special cases mutual agreements may be made between the company and employees regarding meal times, provided that in each case the union shall be advised of such arrangement.

## **18. REST PAUSE**

### **18.1 Full-time weekly employees**

- 18.1.1** All full-time employees shall be granted two rest periods on each day; the first of ten minutes to be allowed between the time of starting work and the usual meal interval and a second period of ten minutes to be granted between the usual meal interval and the time of ending work.
- 18.1.2** Provided that where such employee is required to work in excess of nine hours on any day, such rest periods shall be granted at times to be mutually agreed upon, but shall not exceed two rest periods for that day.

### **18.2 Part-time and casual employees**

- 18.2.1** All part-time and casual employees who work any period of four hours but less than seven hours on any day shall receive one rest period of ten 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 upon.
- 18.2.2** Provided that where the work period is of seven or more hours duration, two rest periods each of ten minutes duration shall be granted, one during the period of work before and one during the period of work after the meal break.
- 18.2.3** Provided further that where an employee is required to work in excess of nine hours on any day such rest periods shall be granted at times to be mutually agreed upon, but shall not exceed two rest periods for that day.
- 18.2.4** Provided further that where such employee is required to work any of his or her ordinary working hours between 8.00 a.m. and 9.00 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.

### **18.3 Rest periods - Saturdays**

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

- 18.4** All rest periods shall be counted as time worked.

## 19. HOLIDAYS

[19 substituted by [PR970504](#) ppc 24Mar06]

**19.1** Weekly employees shall be entitled without loss of pay to public holidays as observed in each State as follows:

- New Years Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Monday
- Anzac Day
- Queens Birthday (Birthday of Sovereign)
- Labour Day (Eight Hour Day)
- Christmas Day
- Boxing Day

**19.2** Weekly employees shall be entitled without loss of pay to an additional public holiday in a State or Territory or locality within a State or Territory, when such public holiday is proclaimed or gazetted, and is to be observed generally by persons throughout the State, Territory or locality.

**19.3** 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 in the metropolitan area, or another day outside the metropolitan area.
- **New South Wales** –in addition, the first Tuesday of November in any year, or on any other substitute day agreed to by the majority of employees.
- **Australian Capital Territory** – in addition, the first Monday of March in every year.

**19.4** When Christmas Day is a Saturday or a Sunday, a holiday in lieu shall be observed on 27 December. When Boxing Day is a Saturday or a Sunday, a holiday in lieu shall be observed on 28 December. When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu shall be observed on the next Monday.

**19.5** Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 19.2 and 19.3 and 19.4, those days shall constitute additional holidays for the purpose of this agreement.

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



- 19.7** Provided that any employee whose roster is changed with the intent of avoiding or reducing payment due or the benefit applicable under this clause and who would, but for the change of roster, have been entitled otherwise to a payment or benefit for a public holiday or holidays shall be paid for such holiday or holidays as if his/her roster had not been changed.
- 19.8** 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 19.6.
- 19.9** Work done on any of the public holidays prescribed in this clause shall be voluntary and shall be paid at the rate of double time and one half with a minimum payment as for three hours work.
- 19.10** A full-time employee whose non-working day falls on a public holiday shall receive either:
- 19.10.1** Another day off with pay to be taken within one calendar month of the holiday or during the two weeks prior to the holiday; or
  - 19.10.2** the addition of an equivalent day's pay; or
  - 19.10.3** one extra day added to annual leave to be determined by mutual agreement.
- 19.11** A part-time employee shall be entitled to the provisions of 19.11 where the employee works an alternating roster and the public holiday falls on a day on which the employee works, or occasionally works, as part of their roster cycle.
- 19.12** For the purpose of this clause **day** shall mean the averaged number of daily hours worked by the employee in the roster cycle immediately prior to the day on which the holiday falls.
- 19.13** An employee who fails to attend for a rostered shift on the day before or the day after any public holiday shall forfeit wages for the day of the absence as well as for the public holiday. Where the Company is satisfied that the employee's absence was caused through illness or other reason, wages shall not be forfeited for the holiday. An employee absent either before or after a group of holidays, shall forfeit wages for only one public holiday as well as the period of absence.
- 19.14** 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 company.
- 19.15** 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 company, may be accumulated and taken as part of annual leave.

**19.16** 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.

**19.17 Easter Saturday (Victoria)**

Full-time and part-time 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/she shall be paid in addition to his or her ordinary weekly wage under his/her individual contract of service, including the additional rates and allowances prescribed by clause 14 - Interim additional rates and allowances, the rate of double time for all time worked with a minimum payment as for three hours at such rate.

## 20. PERSONAL LEAVE

[20 substituted by [PR967724](#) ppc 09Dec05]

The provisions of this clause apply to full-time and regular part-time employees, but do not apply to casual employees. The entitlements of casual employees are set out in clause 7.4—Casual employment caring responsibilities.

### 20.1 Amount of paid personal leave

**20.1.1** Paid personal leave will be available to an employee when they are absent due to:

- personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or
- for the purposes of caring for members of their immediate family or members of their household who require care due to an unexpected emergency.

**20.1.2** The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

**20.1.2(a)** 38 hours will be available in the first year of service;

**20.1.2(b)** 61 hours will be available per annum in the second and subsequent years of service.

**20.1.3** In any year unused personal leave accrues by the lesser of:

**20.1.3(a)** 61 hours less the amount of sick leave and carer's leave taken during the year;  
or

**20.1.3(b)** the balance of that year's unused personal leave.

### 20.2 Immediate family or household

**20.2.1** The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:

**20.2.1(a)** a member of the employee's immediate family; or

**20.2.1(b)** a member of the employee's household.

**20.2.2** The term **immediate family** includes:

**20.2.2(a)** spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

**20.2.2(b)** child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

### **20.3 Personal leave for personal injury or illness**

**20.3.1** An employee who, subject to 20.3.4, is unable to attend for duty during his/her ordinary working hours by reason of personal illness or personal incapacity not due to his/her own serious and wilful misconduct, shall be entitled to be paid at ordinary time rates of pay for the time of such non-attendance subject to the following:

- he/she shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers compensation.

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

**20.3.3** The rights under this clause shall accumulate from year to year so long as his/her employment continues with the company whether under this or any other award so that any part of the entitlement prescribed in 20.1.2 which has not been allowed in any year may be claimed by the employee and shall be allowed by the company, subject to the conditions prescribed by this clause, in a subsequent year of such continued employment; provided that in any year an employee shall not be entitled to take more than 380 hours accumulated sick leave. Provided further that nothing in this subclause shall serve to reduce the entitlement of an employee who has accumulated pursuant to this subclause more than 380 hours sick leave.

**20.3.4** The payment for any absence on sick leave in accordance with this clause during the first three months of employment of any employee may be withheld by the company until the employee completes such three months of employment at which time the payments shall be made.

**20.3.5** The granting of sick leave shall be subject to the following conditions and limitations:

**20.3.5(a)** The employee shall, within 24 hours of the commencement of such absence inform the company of his/her inability to attend for duty and, as far as possible, state the nature of the illness or injury and the estimated duration of the absence.

**20.3.5(b)** The employee shall furnish to the company such evidence as the company reasonably may desire that he/she was unable by reason of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

**20.3.5(c)** For the purpose of this clause as it relates to part-time employees **day** shall mean the number of hours the employee would have worked on the day on which he/she was absent, had he/she not been sick.

**20.3.6** For the purpose of this clause continuous service shall be deemed not to have been broken by:

**20.3.6(a)** any absence from work on leave granted by the company; or

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

**20.3.7** For the purpose of this clause, the word **year** shall mean a period of twelve months commencing on the day on which the employment commenced.

**20.3.8** Notwithstanding anything to the contrary in this award, the company may agree with an employee to the payment in advance of sick leave at the ordinary rate of pay applicable to the employee at the time of such payment. No such payment in advance of sick leave shall exceed payment for 38 hours in any one year of employment and each such payment shall result in a corresponding reduction in accumulated sick leave available to the employee.

#### **20.4 Personal leave to care for an immediate family or household member**

**20.4.1** An employee is entitled to use up to 76 hours personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

**20.4.2** By agreement with the employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in 20.4.1. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

**20.4.3** The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

**20.4.4** When taking leave to care for members of their immediate family or household who require care due to illness, the employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

**20.4.5** When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

**20.4.6 Unpaid personal leave for immediate family or household members**

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided that notice and evidentiary requirements are met.

## 20A. BEREAVEMENT LEAVE

[20A inserted by [PR967724](#) ppc 09Dec05]

- 20A.1** A weekly employee shall on the death of a wife, husband, father, mother, step-father, step-mother, parent-in-law, grandparent, child, stepchild or grandchild, brother or sister, be entitled on notice to leave up to and including the day of the funeral of such relative and 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. Proof of such death shall be furnished by the employee to the satisfaction of the company together with proof of attendance in the case of a funeral outside Australia.
- 20A.2** Where the death of a named relative herein occurs outside Australia and the employee does not attend the funeral he/she shall be entitled to one day only, unless he/she can demonstrate to the company that additional time up to a period of three days is justified. 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** or **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** as the case may be.

## **21. JURY SERVICE**

- 21.1** A weekly employee on weekly hiring required to attend for jury service during his/her ordinary working hours shall be reimbursed by the company an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wage he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.
- 21.2** An employee shall notify the company as soon as possible of the date upon which he/she is required to attend for jury service. Further the employee shall give the company proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.



## 22. ALLOWANCES

### 22.1 Uniforms and protective clothing

22.1.1 It shall be a condition of employment of persons employed pursuant to this award to wear uniforms provided by the company.

[22.1.2 substituted by [PR920187](#); [PR932588](#) ppc 02Jun03; varied by [PR947096](#) ppc 02Jun04]

22.1.2 Such uniforms shall be provided by the company at the company's expense. Provided that, where by mutual agreement the laundering is done by the employee or the company having refused, neglected or failed to launder the uniforms and laundering is done by the employee, the employee shall be paid an allowance as follows:

#### Laundry allowance

Full-time employees	\$7.39 per week
Part-time and casual employees	\$2.47 per week
Maximum payment	\$7.39 per week

[22.1.3 substituted by [PR920187](#); [PR932588](#) ppc 02Jun03; varied by [PR947096](#) ppc 02Jun04]

22.1.3 Where articles laundered are made of nylon or other similar material which does not require ironing whereby the allowance shall be as follows:

#### Laundry allowance

Full-time employees	\$4.24 per week
Part-time and casual employees	\$1.40 per week
Maximum payment	\$4.24 per week

22.1.4 The company shall supply to each employee engaged in hand edging a pair of properly fitted safety glasses.

22.2 The company shall provide all tools necessary.

### 22.3 Travel allowance

[22.3.1 substituted by [PR920187](#); [PR932588](#) ppc 02Jun03; varied by [PR947096](#); [PR959771](#) ppc 30Jun05]

22.3.1 If, at the company's request, an employee is temporarily assigned to work at a company location other than the principal place of employment, the company shall pay a travel expense of 52 cents per kilometre for the distance travelled from the principal place of employment to the assigned location of return. Furthermore, the company shall pay at ordinary rates for any excess time occupied in travelling.

**22.3.2** Where an employee is required to work after the ordinary ceasing time prescribed by this award until it is too late to travel by train, omnibus, vessel or other regular conveyance to his or her place of residence, the company shall provide either proper conveyance or the fare for such conveyance to the employees usual place of residence.

**22.4** An employee who attends an appropriate course of training at a technical college at the request of the company shall be reimbursed at the successful completion of the course, the fees for such course.

**22.5 Meal allowances**

[22.5 varied by [PR920187](#) [PR932588](#) [PR947096](#); [PR959771](#) ppc 30Jun05]

An employee who works overtime after 6.30 p.m. shall be paid, on such day, \$9.59 as a meal allowance or with the prior agreement of the employee shall be provided with a suitable meal approved of by the employee, provided that the employee who is required to work on Sunday beyond 1.00 p.m. shall be paid, on that day, \$9.59 as a meal allowance and if required to work beyond 6.00 p.m., a further sum \$9.59.

### **23. NOTICE BOARDS**

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

## **24. POSTING OF AWARD**

A copy of this award, together with any variation made from time to time in connection therewith, shall be posted and kept posted by the company in a prominent place accessible to employees.

## **25. CLEANING DUTIES**

It shall be part of the employees functions to perform cleaning duties as incidental to their work. In particular, employees shall ensure that laboratories are maintained in a clean condition at all times.

## 26. PARENTAL LEAVE

[26 corrected by [PR919644](#) ; substituted by [PR967724](#) ppc 09Dec05]

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 purpose 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.”

### 26.1 Definitions

#### 26.1.1 Definitions

For the purpose of this clause **child** means a child of the employee under school age or 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.

**26.1.2** Subject to clause 26.1.3, in this clause, **spouse** includes a de facto or former spouse.

**26.1.3** In relation to clause 26.5, spouse includes a de facto spouse but does not include a former spouse.

## **26.2 Basic entitlement**

- 26.2.1** 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.
- 26.2.2** Subject to 26.3.6, 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:
- 26.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - 26.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

## **26.3 Maternity leave**

- 26.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 26.3.1(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;
  - 26.3.1(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.
- 26.3.2** When the employee gives notice under 26.3.1(a) 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.
- 26.3.3** 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.
- 26.3.4** Subject to clause 26.2.1 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.
- 26.3.5** 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.

### **26.3.6 Special maternity leave**

**26.3.6(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.

**26.3.6(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.

**26.3.6(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.

**26.3.7** Where leave is granted under clause 26.3.4, 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.

### **26.4 Paternity leave**

**26.4.1** An employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave, with:

**26.4.1(a)** a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

**26.4.1(b)** written notification of the dates on which he/she proposes to start and finish the period of paternity leave; and

**26.4.1(c)** except in relation to leave taken simultaneously with the child's mother under clauses 26.2 or 26.11, a statutory declaration stating:

**26.4.1(c)(i)** that he/she will take that period of paternity leave to become the primary care-giver of a child;

**26.4.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and

**26.4.1(c)(iii)** that for the period of paternity leave he/she will not engage in any conduct inconsistent with his contract of employment.



**26.4.2** The employee will not be in breach of clause 26.4.1 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.

## **26.5 Adoption leave**

**26.5.1** 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.

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

**26.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;

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

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

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

**26.5.4** 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.

**26.5.5** 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.

**26.5.6** 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.

## **26.6 Variation of period of parental leave**

Unless agreed otherwise between the employer and employee, 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 at least four weeks prior to the commencement of the changed arrangements.

## **26.7 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.

## **26.8 Transfer to a safe job**

**26.8.1** Where an employee is pregnant and, in the opinion of a registered medical 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 a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

**26.8.2** If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

## **26.9 Returning to work after a period of parental leave**

**26.9.1** 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.

**26.9.2** 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 clause 26.8, the employee will be entitled to return to the position they held immediately before such transfer.

**26.9.3** 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.

## **26.10 Replacement employees**

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

**26.10.2** 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.

## **26.11 Right to request**

**26.11.1** An employee entitled to parental leave pursuant to the provisions of clause 26.2 may request the employer to allow the employee:

**26.11.1(a)** to extend the period of simultaneous unpaid parental leave provided for in clauses 26.12.2(a) and 20.2.2(b) up to a maximum of eight weeks;

**26.11.1(b)** to extend the period of unpaid parental leave provided for in clause 26.2.1 by a further continuous period of leave not exceeding 12 months;

**26.11.1(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.

**26.11.2** 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.

**26.11.3 Employee's request and employer's decision to be in writing**

The employee's request and the employer's decision made under clauses 26.11.1(b) and 26.11.1(c) must be recorded in writing.

**26.11.4 Request to return to work part-time**

Where an employee wishes to make a request under clause 29.16.1(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.

**26.12 Communication during parental leave**

**26.12.1** 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:

**26.12.1(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

**26.12.1(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.

**26.12.2** 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.

**26.12.3** 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 26.12.1.

## **27. ANNUAL LEAVE**

The provisions of this clause shall apply only to employees in Victoria.

### **27.1 Entitlement**

**27.1.1** Except as otherwise provided in this award every employee shall at the end of each year of his employment by an employer become entitled to annual leave on ordinary pay. The quantum of annual leave each year shall be 152 hours for full-time employees and pro-rata for part-time and casual employees.

**27.1.2** By agreement between the employee and the employer annual leave shall be given and taken in four consecutive weeks.

**27.1.3** In the absence of such agreement the annual leave shall be given and taken in two separate periods one of which must be of at least three weeks' duration.

**27.1.4** Alternatively by agreement, but not otherwise, annual leave may be given and taken in two separate periods both of which are less than three weeks' duration.

[27.1.5 substituted by [PR967724](#) ppc 09Dec05]

**27.1.5** An employee may, with the consent of his or her employer take short-term annual leave, not exceeding 10 days in any calendar year, at a time or times separate from any of the periods determined in accordance with 27.1.2, 27.1.3 and 27.1.4.

**27.1.6** If the employee and the employer so agree the annual leave or either of such separate periods may be taken wholly or partly in advance before the employee has become entitled to the annual leave.

[27.1.7 substituted by [PR967724](#) ppc 09Dec05]

**27.1.7** The annual leave shall be given by the employer and shall be taken by the employee before the expiration of a period of six months after the date upon which the right to such leave accrues.

Provided that by agreement between an employer and an employee annual leave may be taken at any time within a period of two years from the date at which it falls due.

**27.1.8** Except as provided in the next succeeding clause payment shall not be made by an employer to an employee in lieu of any annual leave or part thereof to which the employee is entitled under this award nor shall any such payment be accepted by the employee.

**27.1.9** Except where the parties agree to a lesser period the employer shall give each employee at least one month's notice of the date from which his/her annual leave shall be taken.

- 27.1.10** The employer shall pay each employee in advance before the commencement of the employee's annual leave his/her ordinary pay for the leave period.
- 27.1.11** Where the annual leave or any part thereof has been taken before the right to the annual leave has accrued the right to a further annual leave shall not commence to accrue until after the expiration of the year of employment in respect of which the annual leave or part has been so taken.
- 27.1.12** Where any holiday for which the employee is entitled to payment under this award or under his/her contract of employment occurs during any period of annual leave taken by an employee under this clause the period of the leave shall be increased by one day in respect of that holiday.
- 27.1.13** The four weeks of annual leave shall be inclusive of two half days or one full day off which accrue under clause ?.

## **27.2 Annual leave on termination**

- 27.2.1** Where the employment of an employee who has become entitled to one or more periods of annual leave provided by this award is terminated, the employer shall be deemed to have given all of such leave (except so much, if any, as has already been taken) to the employee as from the date of the termination of the employment, and shall forthwith pay to the employee, in addition to all other amounts due to the employee, the employee's ordinary pay for the period of that leave.
- 27.2.2** Clause 27.2.1 applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the employee concerned continues to be entitled (apart from this clause) to take it, and so applies as if the employee's right to take it had accrued immediately before the date of the termination of the employee's employment.
- 27.2.3** Nothing in 27.2.1 or 27.2.2 affects the obligation of an employer to give or an employee to take, annual leave in accordance with this award.

### **27.2.4 Payment of annual leave on termination**

- 27.2.4(a)** This subclause applies with respect to every period of employment of an employee by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the employee has during the employment become entitled to any annual leave or holidays under the last preceding clause) computed from the date upon which he/she became entitled to that annual leave, or to the last annual leave as the case may be.

**27.2.4(b)** Where the employment of any employee by any employer is terminated at the end of a period of employment to which this subclause applies the employer shall forthwith pay to the employee, in addition to all other amounts due to him/her, an amount equal to one twelfth of his/her ordinary pay for that period of employment.

**27.2.5** Where the annual leave under 27.1 has been taken in advance by an employee pursuant to 27.2.4 and:

**27.2.5(a)** the employment of the employee is terminated before he/she has completed the year of employment in respect of which such annual leave or part was taken; and

**27.2.5(b)** the sum paid by the employer to the employee as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay to the employee under 27.2.4:

**27.2.5(b)(i)** the employer shall not be liable to make any payment to the employee under 27.2.4 and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon the termination of the employment.

**27.2.6** Where an employer intends temporarily to close (or reduce to nucleus) his/her establishment or a section thereof for the purpose of allowing annual leave to the employees concerned or a majority of them he/she 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/she elects to apply the provisions of this subclause, and thereupon:

**27.2.6(a)** any such employee who at the date of closing is entitled to his/her annual leave shall be given his/her annual leave commencing as on and from the date of closing, and in addition, shall be paid one-twelfth of his/her ordinary pay for any period of employment after the accrual of his/her right to the annual leave and up to but excluding the date of closing;

**27.2.6(b)** any such employee who at the date of closing is not entitled to his/her annual leave shall be given leave without pay as on and from the date of closing and shall be paid one-twelfth of his/her ordinary pay for the period of his/her employment since the commencement of the accrual of his/her 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/she is entitled to payment under this award or under his/her contract of employment; and

**27.2.6(c)** the next twelve-monthly qualifying period of employment for every such employee shall commence as on and from the date of closing.

- 27.2.7** Where the majority of employees concerned agree, an employer may close down the plant, work section or sections in one, two or three separate periods for the purpose of granting annual leave in accordance with this subclause. Provided that if an employer closes down the plant on more than one occasion, one of those periods shall be for a period of at least fourteen consecutive days including non-working days. In such cases, the employer shall advise the employees concerned of the proposed dates of each close down before asking them for their agreement.
- 27.2.8** By agreement with the majority of employees concerned, an employer may close down the plant for a period of at least fourteen consecutive days including non-working days and grant the balance of the annual leave due to an employee by mutual agreement.
- 27.2.9** In this subclause **date of closing** in relation to each employee means the first day of his/her annual leave or leave pursuant to this subclause.

### **27.3 Definitions**

For the purposes of this clause:

- 27.3.1 Ordinary pay** in relation to any employee means remuneration for the employee's normal average 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/her employer, includes the cash value of that board or lodging. For the purposes of this definition:
- 27.3.1(a)** Where no ordinary time rate of pay is fixed for an employee's work under the terms of his/her employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him/her during the period in respect of which the right to the annual leave accrues;
  - 27.3.1(b)** Where no normal weekly number of hours is fixed for an employee under the terms of his/her employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him/her during the period in respect of which the right to the annual leave accrues;
  - 27.3.1(c)** Where an employee has been employed by the same employer under different contracts of employment prescribed in 7.1 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/her during the period in respect of which the right to the annual leave accrues.
- 27.3.2 Week** in relation to any employee means the employee's ordinary working week.
- 27.3.3 Employee** means any person employed by any employer to do any work for hire or reward.

**27.3.4** For the purposes of this award a **year of employment** shall be deemed to be unbroken notwithstanding:

- 27.3.4(a)** any annual leave or long service leave taken therein;
- 27.3.4(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;
- 27.3.4(c)** any absence from work of not more than fourteen days in the year of employment on account of sickness or accident;
- 27.3.4(d)** any absence on account of leave (other than annual leave or long service leave) granted imposed or agreed to by the employer;
- 27.3.4(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 27.3.4(a), (b) or (c) shall be counted as part of the year of employment but in respect of absences of a kind mentioned in 27.3.4(d) or (e) it will be necessary for the employee as part of his/her qualification for annual leave to serve such additional period as equals the period of such absences.

#### **27.4 Casual employees**

[27.4 substituted by [PR967724](#) ppc 09Dec05]

The entitlement of a casual employee under 27.2.4 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. At the request of an employee annual leave may be carried forward to a maximum of 2 years.



## **28. ANNUAL LEAVE LOADING**

- 28.1** During a period of annual leave a full-time or part-time employee will receive a 17.5% loading calculated on the appropriate ordinary weekly time rate of pay prescribed by clause 13 - Wages. Such wage shall also include payments under clause 14 - Interim additional rates and allowances where applicable.
- 28.2** The loading will apply to proportionate leave on termination of employment where the employment is terminated by the employer but it will not apply when the reason for termination is misconduct or wilful disobedience or in circumstances where the employee resigns.

## 29. SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note — [Choice of Superannuation Funds and Award Provisions](#).

### 29.1 Definitions

- 29.1.1 Fund** shall mean the Retail Employees Superannuation Trust (REST) as amended from time to time, and includes any superannuation scheme which may be in succession thereto.
- 29.1.2 Eligible Employer** shall mean Vision Express of Australia Pty. Ltd. In this clause employer means eligible employer.
- 29.1.3 Eligible employee** in this clause means an employee employed under this award with six months' continuous service who works as a full-time employee, part-time employee or as an adult casual employee (working regularly twelve hours or more per week). In this clause employee means eligible employee.
- 29.1.4 Ordinary-time Earnings** in this clause means the employee's award rate of pay (as prescribed by the appropriate industrial award) including any overaward and/or merit payments, casual loadings, penalty rates and/or shift loadings (but excluding overtime, commission and occasional bonus payments).

### 29.2 Contributions

- 29.2.1** Paris Miki Australia Pty. Ltd. shall apply to the Trustees of the fund to become a participating employer in the fund.
- 29.2.2** Paris Miki Australia Pty. Ltd. shall enrol all eligible employees, who are not members of the fund, as members of the fund.
- 29.2.3** Paris Miki Australia Pty Ltd shall contribute to the fund in respect of each eligible employee an amount equal to 8% of that employee's ordinary time earnings each week.
- 29.2.4** Provided that the contribution amount shall increase as follows:
- |         |    |
|---------|----|
| 2001/02 | 8% |
| 2002/03 | 9% |
- 29.2.5** 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, for the period of unpaid absence.

- 29.2.6** Employees who may wish to make contributions to the fund additional to those being paid by the employer shall be entitled to authorise the employer to pay into the fund from the employee's wages amounts specified by the employee. Employee contributions to the fund requested under this subclause shall be made in accordance with the rules of the fund.
- 29.2.7** The obligation of the employer to contribute to the fund in respect of an employee shall cease on the last day of such employee's employment with the employer.
- 29.2.8** Vision Express of Australia Pty. Ltd. shall not cease participation in the fund whilst employing any employees.
- 29.2.9** Vision Express of Australia Pty Ltd shall pay such contributions together with any employee deductions to the fund on a monthly basis, by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee.
- 29.2.10** REST shall be the fund into which payments are to be made except where agreement is reached between Vision Express of Australia Pty. Ltd. and the majority of employees.

## 30. ACCIDENT PAY

The provisions of this clause shall apply only to employees in Victoria.

### 30.1 Definitions

#### 30.1.1 Accident pay

**30.1.1(a) Total incapacity** - In the case of an employee who is or deemed to be totally incapacitated within the meaning of the *Workers Compensation Act* (hereinafter referred to as the Act) and arising from an injury covered by this clause, means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(i) of the Act for the week in question and the total 38 hour weekly rate and weekly over-award payment for a day worker which would have been payable under this award for the employee's normal classification of work for the week in question if he/she had been performing his/her normal duties; provided that such latter rate shall exclude additional remuneration by way of attendance bonus payments, shift premiums, overtime payments, fares and travelling allowance, special rates or other similar payments.

**30.1.1(b) Partial incapacity** - In the case of an employee who is or deemed to be partially incapacitated within the meaning of the Workers Compensation Act and arising from an injury covered by this clause, means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(ii) of the Act for the period in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business (as determined expressly or by implication by the Workers Compensation Board or as agreed between the parties) and the total 38 hour weekly rate and weekly over-award payment for a day worker which would have been payable under this award for the employee's normal classification or work for the week in question if he/she had been performing his/her normal duties; provided that such latter rate shall exclude additional remuneration by way of attendance bonus payments, shift premiums, overtime payments, fares and travelling allowance, special rates or other similar payments.

The total 38 hour weekly award rate and weekly over-award payment abovementioned shall be the same as that applying for a total incapacity provided that where an employee receives a weekly payment under this Section and subsequently such payment is reduced pursuant to Section 9.6(1) of the Act, such reduction will not increase the liability of the employer to increase the amount of accident pay in respect of that injury.

**30.1.1(c)** For the purposes of the calculation of the total 38 hour weekly award rate and weekly over-award payment in 30.1.1(a) and (b) herein payments made to an employee arising from a production incentive earnings scheme (whether arising from a payment by result, task or bonus scheme or however titled) shall not be taken into account; provided that where an employee is not in receipt of any form of weekly over-award payment production incentive bonus payments will be taken into account and the form and amount of such payments to be included in the rate of accident pay shall in the absence of

agreement be determined in accordance with the provisions of 30.1.1(a) of this clause.

- 30.1.1(d) Payment for part of a week** - Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount shall be a direct pro-rata.

### **30.1.2 Injury**

Injury shall be given the same meaning and application as applying under the Workers Compensation Act, and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

### **30.1.3 Workers Compensation Act**

- 30.1.3(a)** Means the *Workers Compensation Act 1958* of the State of Victoria as amended from time to time.

- 30.1.3(b)** Where an entitlement to Accident Make-Up Pay arises under this award any reference to the *Workers Compensation Act 1958* shall be deemed to include a reference to the *Accident Compensation Act 1958* and any reference to the *Accident Compensation Act 1985* shall be deemed to include a reference to the *Workers Compensation Act 1958*.

### **30.1.4 Qualification for payment**

Always subject to the terms of this clause, an employee covered by this award shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by his/her employer who is liable to pay compensation under the Act, which said liability by the employer for accident pay may be discharged by another person on his/her behalf, provided that:

- 30.1.4(a)** Accident pay shall only be payable to an employee whilst such employee remains in the employment of the employer by whom he/she was employed at the time of the incapacity and then only for such period as he/she receives a weekly payment under the Act. Provided that if an employee on partial incapacity cannot obtain suitable employment from his/her employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.

- 30.1.4(b)** Provided further that in the case of the termination by an employer of an employee who is incapacitated and receiving accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where:

- 30.1.4(b)(i)** the termination is due to serious and/or wilful misconduct on the part of the employee; or

**30.1.4(b)(ii)** arises from a declaration of liquidation of the company in which case the employee's entitlement in the absence of agreement shall be referred to the Commission to determine.

**30.1.4(c)** In order to qualify for the continuance of accident pay on termination an employee shall if required provide evidence to his/her employer of the continuing payment of weekly workers compensation payments.

**30.2** Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then, subject to 30.4 and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.

**30.3** Provided that as to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as provided in Section 3 of the Act) such injuries or diseases shall not be subject to accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.

**30.4** Accident pay shall not apply in respect of any injury during the first seven consecutive days (including non working days) of incapacity.

**30.5** An employee on engagement may be required to declare all workers compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the employee to forfeit his/her entitlement to accident pay under this clause.

### **30.6 Maximum period of payment**

The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury as defined in 30.1.2.

### **30.7 Absences on other paid leave**

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

### **30.8 Notice of injury**

An employee upon receiving an injury for which he/she claims to be entitled to receive Accident Pay shall give notice in writing of the said injury to his/her employer as soon as reasonably practicable after the occurrence thereof; provided that such notice may be given by a representative of the employee.

### **30.9 Medical examination**

**30.9.1** In order to receive entitlement to accident pay an employee shall conform to the requirements of the Act as to medical examination.

**30.9.2** Where in accordance with the Act a medical referee gives a certificate as to the condition of the employee and his/her 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 pay shall cease from the date of such refusal or failure to commence the work.

### **30.10 Redemption of weekly payments**

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.

### **30.11 Civil damages claims**

**30.11.1** An employee receiving or who has received accident pay shall advise his/her employer of any action he/she may institute or any claim he/she may make for damages. Further the employee shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgement or settlement of that injury.

**30.11.2** Where an employee obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which he/she has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to his/her employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

**30.11.3** Where an employee obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which he/she has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the employee shall pay to his/her employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

### **30.12 Insurance against liability**

Nothing in the award shall require an employer to insure against his/her liability for accident pay.

### **30.13 Variation in compensation rates**

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

**30.14 Death of employee**

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

**30.15 Committee of review**

In the event of any dispute arising out of the provisions of this clause the matter shall be referred to the Commission to determine.



### **31. DISPUTE SETTLEMENT PROCEDURE**

- 31.1** The matter shall, where possible, first be discussed by the aggrieved employee with the appropriate company officer, or between an employee nominated representative and company officer within two working days of the issue arising (weekends and holidays excepted).
- 31.2** If agreement is not reached, the matter shall then be discussed between a representative of the company and the employee or employee nominated representative no later than three working days after 31.1 (weekends and holidays excepted).
- 31.3** If the matter is still not settled, it may be referred to the Commission for settlement by either party.
- 31.4** Until the matter is determined, work shall continue in accordance with the existing practices or such other agreed arrangements. No party shall be prejudiced as to the final settlement by the continuance or deferment of the work in accordance with this subclause.

## **32. CONSULTATIVE MECHANISM**

- 32.1** At each establishment, the employer, the employees and the Shop, Distributive and Allied Employees Association should establish a consultative mechanism and procedures appropriate to the size, structure and the needs of that establishment or enterprise. Measures raised by the employer, employees or the Shop, Distributive and Allied Employees Association for consideration consistent with the objectives of this clause shall be processed through that consultative mechanism and procedures.
- 32.2** Measures raised for consideration consistent with this clause may be related to implementation of the new classification structure and the facilitative provisions contained in this award.

### **33. SAVINGS CLAUSE**

No employee employed on or prior to 1 December 1993 shall be required to work their ordinary hours on a Sunday.

## 34. SUPPORTED WAGE SYSTEM

**34.1** 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:

- 34.1.1** **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*.
- 34.1.2** **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.
- 34.1.3** **Disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- 34.1.4** **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.

### 34.2 Eligibility criteria

- 34.2.1** 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.
- 34.2.2** This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.
- 34.2.3** This clause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act*, or if a part only has received recognition, that part.

### 34.3 Supported wage rates

34.3.1 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 the following schedule:

<b>Assessed capacity (clause 35.4)</b>	<b>Prescribed award rate</b>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

[34.3.2 varied by [PR920187](#); [PR963356](#) ppc 03Oct05]

34.3.2 Provided that the minimum amount payable shall be not less than \$62.00 per week.

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

### 34.4 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:

34.4.1 The employer and a union party to the award, in consultation with the employee or, if desired by any of these;

34.4.2 The employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

### 34.5 Lodgment of assessment instrument

34.5.1 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 Australian Industrial Relations Commission.

**34.5.2** All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

#### **34.6 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.

#### **34.7 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.

#### **34.8 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 job duties, working time arrangements and work organisation in consultation with other workers in the area.

#### **34.9 Trial period**

**34.9.1** 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.

**34.9.2** During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

[34.9.3 varied by [PR920187](#); [PR963356](#) ppc 03Oct05]

**34.9.3** The minimum amount payable to the employee during the trial period shall be no less than \$62.00 per week.

**34.9.4** Work trials should include induction or training as appropriate to the job being trialled.

**34.9.5** 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 35.4 hereof.

\*\* end of text \*\*

[2019] FWCFB 8538  
FAIR WORK COMMISSION

# DECISION

*Fair Work Act 2009*  
s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards – Health Professionals and Support Services Award 2010**  
(AM2016/31)

Health and welfare services

VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT BOOTH  
COMMISSIONER CAMBRIDGE

SYDNEY, 19 DECEMBER 2019

*4 yearly review of modern awards - Health Professionals and Support Services Award 2010 – further decision.*

[1] On 3 December 2018 we issued a decision (December Decision) [1](#) dealing with the substantive claims in relation to the *Health Professionals and Support Services Award 2010 (HPSS Award)*.

[2] In the December Decision at paragraphs 79 to 126 we dealt with submissions and evidence in relation to Schedule C of the *HPSS Award*. Schedule C is entitled ‘List of Common Health Professionals’. The controversy we were considering in the December Decision sprang from the HSU’s claim that Schedule A and B of the *HPSS Award* should be amended to clarify that the list of Common Health Professions contained in Schedule C is an indicative list and not an exhaustive list. After considering the submissions and evidence we said at paragraph 113:

“Our preliminary view is that it is undesirable to constrain the coverage by reference to an inflexible list of occupations, the names of which and/or work performed may change over time as advances in the health profession occur”

[3] Also at issue was the coverage of the occupation of Oral Health Therapist, and by implication the associated occupation of Dental Hygienist.

[4] We decided to defer consideration of these coverage questions and issue a timetable for submissions and a hearing date in 2019 to address the coverage of the *HPSS Award*. [2](#)

[5] On 22 May 2019 and 23 August 2019 directions hearings were held before Deputy President Booth. At the hearing of 23 August 2019, the Dental Hygienists Association of Australia (DHAA) submitted that the Full Bench ought to consider the question of Schedule C before considering the other coverage matters. The logic of this proposition was that if the Full Bench decided that Schedule C should be exhaustive it would not be necessary to further consider the coverage of the award as this finite list would spell out the coverage.

[6] The Full Bench acceded to this request and accordingly on 17 September 2019 the Full Bench issued directions for submissions and evidence and set a hearing date of 2 December 2019.

[7] This decision concerns the matters addressed at that hearing.

## Submissions

*Health Services Union (HSU)*

[8] HSU submits the List of Common Health Professionals (the List) in Schedule C of the *HPSS Award* is [3](#), and should be, indicative only.[4](#) They submit the broad term ‘Health Professionals’ is expanding and specialising.[5](#) For example, there are health professionals recognised and registered that did not exist 10-20 years ago.[6](#) HSU submits the *HPSS Award* should explicitly state that the List is indicative to prevent confusion[7](#) and to ensure that the List is not used by employers to resist award coverage.[8](#) They contend by treating the List as indicative, future employers will retain the capacity to persuade the Commission why a particular professional group should fall outside coverage.[9](#)

[9] In reply to opposing submissions from ABI and NSWBC, Ai Group, DHAA, ADA, ADPA and MIERG [10](#), HSU summarises their position that clause 4.1 of the *HPSS Award* defines its coverage of employees by reference to the classification list in clause 15.[11](#) They submit Schedule B.2 determines the classification levels of Health Professional Employees based on factors such as qualifications, experience and responsibility level[12](#); while Schedule C only provides a list of common health professionals covered.[13](#) Accordingly, HSU submits that an amendment to limit Schedule C to be an exhaustive list incorrectly suggests that this Schedule defines the *HPSS Award’s* coverage.[14](#)

[10] HSU proposes an amendment to the preamble to Schedule B.2 as follows:

**“B.2. Health Professional employees – definitions**

The List of Common Health Professionals is an indicative list and is not an exhaustive list of all the health professional occupations covered by this Award.” [15](#)

***Australian Business Industrial and New South Wales Business Council (ABI and NSWBC)***

[11] ABI and NSWBC maintain that the HSU draft determination is unnecessary. [16](#) They submit that the current List is already indicative,[17](#) not an all-inclusive guide of the types of health professionals covered.[18](#) They submit that inclusion in the List serves as an example of what may be included in a particular award classification[19](#); but that the List does not determine award coverage, which is determined by clause 4. Accordingly, any changes to the List should not result in change in coverage.[20](#)

[12] ABI and NSWBC then outline some limitations resulting from the List as currently drafted. They submit that if the List is indicative, then ‘users are left without an appropriate level of clarity as to which ‘specified employees’ mentioned in s. 143(2) of the *Fair Work Act 2009* are covered by the Award. [21](#) They submit that wording in Schedule B referring to ‘a list’ (as opposed to more conclusive wording such as ‘the list’) and ‘common’ (suggesting there might be other, less common professions) is not useful and introduces additional confusion to users when determining whether an occupation is included in the List.[22](#) However, they did not propose specific draft amendments.

***Australian Dental Association (ADA)***

[13] ADA claims that the HSU took ‘an overly pedantic reading to the ... Award focusing on technicality rather than substance’, [23](#) and submits that there is ‘nothing ambiguous’ about the ‘definitive language’[24](#) used in Schedule B of the *HPSS Award* that would mean the List ‘could be regarded as anything other than exhaustive.’[25](#) ADA submit their view that during award modernisation the HSU had originally intended the classification structure to cover all health professionals.[26](#)

***Australian Dental Prosthetists Association (ADPA)***

[14] ADPA submits that the List should be exhaustive, which would have the effect that dental prosthetists are not covered by the *HPSS Award* because the current list doesn’t specify this profession. [27](#) They maintain that in the private sector, dental prosthetists have always been award free.[28](#) They refer to their joint submission with ADA which highlights their unified views.[29](#)

***ADA AND ADPA***

[15] ADA and ADPA jointly submit the List is and should remain exhaustive [30](#), as the *HPSS Award* never intended to cover professions not on the List.[31](#) They submit there is no application to extend the coverage of the Award; no evidence to support such an extension; and most titles in Schedule C are static.[32](#) To achieve greater clarity, ADA and ADPA suggest including a preamble to Schedule C as follows:

“This Award applies to those health professionals whose duties and qualifications are the same or substantially the same as the common titles for those professionals in the following list.” [33](#)



### *Medical Imaging Employment Relations Group (MIERG)*

[16] MIERG submits that the List is exhaustive. [34](#) MIERG support ADA and ADPA's submissions. [35](#)

### *Dental Hygienists Association of Australia (DHAA)*

[17] DHAA submit the List is and should remain exhaustive for the sake of certainty, efficiency, ease and support for employers, small business owners and employees. [36](#) They submit other awards also contain exhaustive lists. [37](#) DHAA refute HSU's view that an exhaustive list would allow employers 'with a creative approach to job description' [38](#) to determine award coverage. [39](#) They state that the List is of occupations, not jobs: 'as such, incorrect assumptions about award coverage by employers are much more likely to be made if the List is indicative.' [40](#) DHAA submit that 'award variations are available to deal with any changes in occupational nomenclature in the usual way.' [41](#)

[18] DHAA submit that further clarity could be obtained by adding an exclusion clause. [42](#) It then submits as example a number of modern awards which contain exclusion clauses. [43](#) Regardless of how the Full Bench decides on the List, DHAA proposed the following amendment, which has an exclusion clause (at 4.4) [44](#):

#### “Coverage

4.1 This award covers the following employers and occupations:

- (a) Employers throughout Australia of employees in the health industry (as defined) in the classifications listed in this award and those employees to the exclusion of any modern award;
- (b) employers engaging a health professional employee falling within the classification listed in clause 15. **Clause 15 has application only to the occupations specified in Schedule B – List of Common Health Professionals. (emphasis added).**

4.2 This award does not cover an employee excluded from award coverage by the Act

4.3 This award covers health professionals engaged in the occupations set out in Schedule C of the Award.

4.4 The following occupations are not covered by this Award:

- a) Dental Hygienist;
- b) Oral Health Therapist.”

[19] In reply, should the Commission view that the list should be indicative, DHAA proposed the following variation:

#### “A.2 Health Professional employees – definitions

An indicative list of common health professionals which are covered by the definitions is contained in Schedule B – Indicative List of Common Practice Areas and Titles. This list does not include the award free occupations of Dental Hygienists or Oral Health Therapists.” [45](#)

### *Ai Group*

[20] Ai Group relies on decision [\[2009\] AIRCFB 948](#) to support its view that the List is exhaustive. [46](#) If the List is not exhaustive, then the effect of the AIRC's decision to remove dental hygienists from the List would arguably be superfluous. [47](#) Ai Group submits that the List 'does not, expressly or otherwise, state or suggest that the Award covers 'health professionals' generally. Rather ... it is the health professionals in Schedule C, and only those professionals that are covered by the Award.' [48](#) They submit that an indicative list would give rise to 'considerable uncertainty', and make it 'impossible to ascertain precisely where the coverage of the instrument starts and finishes.' [49](#) Ai Group submit that the coverage of Modern Awards is meant to remain relatively static unless a successful variation application is made. [50](#)

[21] Ai Group submit that if HSU's proposed amendment were granted, 'the Commission would effectively be expanding the coverage of the Award in an indefinite manner, without proper consideration being given to the additional health professionals that would subsequently be covered by it.' [51](#) They submit HSU's proposed amendment would not meet the modern awards objective. [52](#)

[22] Ai Group supports submissions of ABI and NSWBC, ADA and ADPA and DHAA barring certain points. [53](#) Ai Group oppose ABI and NSWBC's characterisation of the List as a non-exhaustive guide. [54](#) They submit wording to 'a list' as opposed to 'the list' suggests 'an intent the list merely reflects a number of common occupational names which may be used in reference to covered occupations.' [55](#) Ai Group submit ADA and ADPA's views on 'Child Life Therapists' should be dealt with as a discrete issue. [56](#) They oppose ADA and ADPA's proposed preamble and submit this would introduce further uncertainty. [57](#) They oppose DHAA's suggestion of an exclusionary list of health occupations because an exclusionary list is contradictory to not having an indicative list. [58](#) Ai Group submits if the Full Bench determines the List is exhaustive, then a note can be inserted to provide additional clarity. [59](#)

### *Aged Care Employers*

[23] In its 2017 submission, Aged Care Employers support the position of AIG on this matter. [60](#)

### *Business SA*

[24] Business SA submits that an indicative list would be confusing and ambiguous, and supports an exhaustive list. [61](#)

### *Private Hospital Industry Employers Association (PHIEA)*

[25] PHIEA submit that the List should be indicative due to the 'constant evolution of position titles and the introduction of variations to existing professional disciplines'. [62](#) However, after reading HSU's 2015 submission [63](#), and following discussion with other employer parties, they decided the List should be exhaustive. [64](#) PHIEA express concerns that positions which lack qualifications may be added to the List of professionals if the list is not exhaustive. [65](#) In its most recent submission, PHIEA support Ai Group's submissions. [66](#)

### **Consideration**

[26] We have decided to confirm our provisional view and determine that the List in Schedule C of the *HPSS Award* is indicative not exhaustive.

[27] We have done so for the following reasons:

- a) The roles of some health professionals are adjusting as technology, research and consumer demand are changing.
- b) The titles of some health professionals are changing as professional bodies prefer one title over another.
- c) It is not desirable for some health professionals to be covered by the HPSS Award and others to be award free simply because of a change in name or adjustment in role.
- d) It is inconsistent with the modern awards objective that "The FWC must ensure that modern awards, taken together with the NES, provide a fair and relevant minimum safety net of terms and conditions" to confine the coverage of the *HPSS Award* to a limited number of specific titles of health professionals.
- e) It is consistent with the modern awards objective and s.143 (2) of the *Fair Work Act 2009* (FW Act) that clause 4 Coverage of the *HPSS Award*, in conjunction with Schedule B2 Health Professional employees – definitions, governs the coverage of the HPSS Award, supplemented, rather than confined by Schedule C.

[28] We are mindful of s.143(7) of the FW Act that says:

(7) A modern award must not be expressed to cover classes of employees:

(a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under the laws of the Commonwealth or the States); or

(b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

[29] We note the proposal for a new preamble to Schedule C put forward by ADA and ADPA and the proposal from DHAA for formulations that specifically exclude the occupations of Dental Hygienists and Oral Health Therapists. We also note the submission of the ADA and the ADPA that dentists and dental prosthetists ought not be covered by the HPSS Award.

[30] We consider that those proposals are premature since our hearing was limited to the question of “whether the List of Common Health Professionals contained in Schedule C of the Award should be indicative or exhaustive” in accordance with the directions of 17 September 2019.

[31] In light of s.143 (7) of the FW Act, and the confined question being determined in the manner it has been, we will provide a timetable for submissions and set a hearing date for any interested party to further address the coverage of the HPSS Award.

[32] The HPSS Award will not be varied until we finalise the coverage of the *HPSS Award* so no determination accompanies this decision.

## Conclusion

[33] We have determined that the List in Schedule C of the *HPSS Award* is indicative.

[34] We have issued directions with this decision for the filing of submissions and evidence in relation to which Health Professional occupations should not be covered by the *HPSS Award*.

[35] As per the directions issued with this decision, the matter is:

- listed for mention on Tuesday 28 January 2020 at 10.00am (AEDT) by telephone; and
- provisionally listed for hearing on Monday 4 May 2020 – Friday 8 May 2020 at the Fair Work Commission in Sydney.



## VICE PRESIDENT

### *Appearances:*

*Ms R Liebhaber* and *Ms L Doust* for the HSU.  
*Mr H Harrington* for Ai Group.  
*Ms K Thomson* for Australian Business Lawyers and Advisors.  
*Ms K Murphy* and *Dr C Tran* for the DHAA.  
*Mr B Miles* and *Mr D Wilkinson* for the ADA.

### *Hearing details:*

2019.  
 2 December.  
 Sydney with videolink to Newcastle.

### *Final written submissions:*

Business SA's submissions dated 25 January 2015.  
 Aged Care Employer's submissions dated 9 June 2017.  
 PHIEA's submissions dated 13 August 2019.  
 ABI and NSWBC's submissions dated 14 October 2019.  
 ADA's submissions dated 14 October 2019.  
 ADPA's submissions dated 14 October 2019.  
 MIERG's submissions dated 14 October 2019.  
 HSU's submissions dated 15 November 2019.

Ai Group's submissions dated 25 November 2019.  
DHAA's submissions dated 25 November 2019.

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- 1 [\[2018\] FWCFB 7350](#).
- 2 [\[2018\] FWCFB 7350](#) at [126].
- 3 HSU [Submission](#), 28 January 2015.
- 4 HSU [Submission](#), 17 March 2017; HSU [Submission](#), 22 May 2017; HSU [Submission](#), 15 November 2019.
- 5 HSU [Submission](#), 4 March 2015 at [4]-[5].
- 6 HSU [Submission](#), 4 March 2015 at [6].
- 7 HSU [Submission](#), 17 March 2017.
- 8 HSU [Submission](#), 12 February 2018 at [52].
- 9 HSU [Submission](#), 17 March 2017.
- 10 HSU [Submission](#), 15 November 2019 at [10]; [Submission](#), 22 August 2019 at [5]-[8]; [Submission](#), 22 August 2019 at [12].
- 11 HSU [Submission in reply](#), 15 November 2019 at [10(a)-10(b)].
- 12 HSU [Submission in reply](#), 15 November 2019 at [10(d)].
- 13 HSU [Submission in reply](#), 15 November 2019 at [10(e)].
- 14 HSU [Submission in reply](#), 15 November 2019 at [10(f)-(g)].
- 15 HSU [Submission in reply](#), 15 November 2019 at [11(c)]. An earlier draft of this proposed Schedule can be found at HSU [Submission](#), 17 March 2017 at [23], [37].
- 16 ABI and NSWBC [Reply Submission](#), 21 August 2015 at [2.6]; ABI and NSWBC [Submission](#), 14 October 2019.
- 17 ABI and NSWBC [Submission](#), 14 October 2019 at [2.1] and [2.4]; [Submission](#), 2 February 2015 at [49]; [Submission](#), 5 March 2015; [Submission](#), 21 August 2015 at [2.2]-[2.3].
- 18 ABI and NSWBC [Submission](#), 14 October 2019 at [2.1] and [2.4]; [Submission](#), 2 February 2015 at [49]; [Submission](#), 21 August 2015 at [2.2]-[2.3].
- 19 ABI [Submission](#), 2 February 2015 at para [49].
- 20 ABI [Reply Submission](#), 21 August 2015 at [2.1]-[2.9].
- 21 ABI and NSWBC [Submission](#), 14 October 2019 at [3.3].
- 22 ABI and NSWBC [Submission](#), 14 October 2019 at [2.6] and [2.7].
- 23 ADA [Reply Submission](#), 9 June 2017 at [70].
- 24 ADA [Reply Submission](#), 9 June 2017 at [37].
- 25 ADA [Reply Submission](#), 9 June 2017 at [23].

- [26](#) ADA [Reply Submission](#), 9 June 2017 at [39]-[66].
- [27](#) ADPA cover letter to ADA and ADPA [Submission](#), 14 October 2019 at [12].
- [28](#) DPA cover letter to ADA and ADPA [Submission](#), 14 October 2019 at [8].
- [29](#) ADPA [Submission](#), 14 October 2019 at [13]-[14].
- [30](#) ADA and ADPA [Submission](#), 14 October 2019 at [9]; ADA [Reply Submission](#), 9 June 2017 at [66].
- [31](#) ADA and ADPA [Submission](#), 14 October 2019 at [9a] and [81].
- [32](#) ADA and ADPA [Submission](#), 14 October 2019 at [9b-9c].
- [33](#) ADA and ADPA [Submission](#), 14 October 2019 at [70].
- [34](#) MIERG [Submission](#), 14 October 2019.
- [35](#) MIERG [Submission](#), 14 October 2019.
- [36](#) DHAA [Submission](#), 14 October 2019 at [6] and [31]; DHAA [Submission](#), 21 August 2015 at [8]; [Correspondence](#), 4 July 2016; [Response to further report to the Full Bench](#), 29 April 2016; [Submission](#), 17 March 2017.
- [37](#) DHAA gave the examples of the Aboriginal Community Controlled Health Services Award 2010, the Ambulance and Patient Transport Industry Award 2010 and the Animal Care and Veterinary Services Award 2010: DHAA [Reply Submission](#), 22 May 2017 at p. 3.
- [38](#) HSU [Submission](#), 12 February 2018 at [60].
- [39](#) DHAA [Submission](#), 31 July 2019 at [19]-[20]; DHAA [Submission](#), 14 October 2019 at [15]-[16].
- [40](#) DHAA [Submission](#), 31 July 2019 at [20].
- [41](#) DHAA [Submission](#), 14 October 2019 at [33].
- [42](#) DHAA [Submission](#), 31 July 2019 at [21].
- [43](#) DHAA [Submission](#), 14 October 2019 at [21]-[29].
- [44](#) DHAA [Submission](#), 14 October 2019 at [7].
- [45](#) DHAA [Submission](#), 14 March 2018.
- [46](#) Ai Group [Reply Submission](#), 4 March 2015; [Submission](#), 31 July 2019; [Submission](#), 19 August 2019; [Submission](#), 11 November 2019; [Submission](#), 25 November 2019.
- [47](#) Ai Group [Reply Submission](#), 4 March 2015 at [74]-[75]; [Reply Submission](#), 28 August 2015 at [81]-[83]; [Submission](#), 31 July 2019 at [23]. ADA also use the example of AIRC's decision to remove dental hygienists from the List to support its claim that the list is intended to be exhaustive: ADA [Reply Submission](#), 9 June 2017 at [65].
- [48](#) Ai Group [Reply Submission](#), 8 June 2017 at [28]-[84].
- [49](#) Ai Group [Reply Submission](#), 8 June 2017 at [36], [46]-[50].
- [50](#) Ai Group [Submission](#), 31 July 2019 at [19].
- [51](#) Ai Group [Reply Submission](#), 8 June 2017 at [50].
- [52](#) Ai Group [Reply Submission](#), 8 June 2017 at [53]-[83].
- [53](#) Ai Group [Submission](#), 11 November 2019 at [8].

- [54](#) Ai Group [Submission](#), 11 November 2019 at [10].
- [55](#) Ai Group [Submission](#), 11 November 2019 at [14].
- [56](#) Ai Group [Submission](#), 11 November 2019 at [20].
- [57](#) Ai Group [Submission](#), 11 November 2019 at [21]-[24].
- [58](#) Ai Group [Submission](#), 11 November 2019 at [29].
- [59](#) Ai Group [Submission](#), 11 November 2019 at [26].
- [60](#) ACE [Reply Submission](#), 9 June 2017 at [3].
- [61](#) Business SA [Submission](#), 28 January 2015 at Item 2, p. 6.
- [62](#) PHIEA [Submission](#), 27 January 2015 at [8]; [Submission](#), 17 February 2015 p.3-4, p.8-9, p.10.
- [63](#) HSU [Submission](#), 28 January 2015.
- [64](#) PHIEA [Reply Submission](#), 17 February 2015 at pp. 3-4, 8-10; [Submission](#), 19 August 2015 at p.4; [Submission](#), 13 August 2019 at p.2.
- [65](#) PHIEA [Reply Submission](#), 18 August 2015 at p. 4.
- [66](#) PHIEA [Submission](#), 13 August 2019 at p.2.

[051V: Incorporates alterations of 23 May 2018 (R2018/48)]  
Replaces rulebook dated 2 October 2017

## **Health Services Union**

I CERTIFY under section 161 of the *Fair Work (Registered Organisations) Act 2009*  
that the pages herein numbered 1 to 101 both inclusive contain a true and  
correct copy of the registered rules of the Health Services Union.

DELEGATE OF THE GENERAL MANAGER  
FAIR WORK COMMISSION

# Rules of the HSU

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## **PART A - NAME, OBJECTS, MEMBERSHIP**

### **1 - NAME**

The name of the organisation shall be "Health Services Union" (hereinafter referred to as "the Union").

### **2 - INDUSTRY**

The industries in connection with which the Union is registered are the industries of -

- A. the employment of persons employed or usually employed -
- (a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;
    - (i) except in the State of Western Australia persons employed by the Crown in Right of the State of Western Australia or any state instrumentality or in private hospitals or undertakings in the said State as (i) dental therapists and (ii) professional, clerical, technical and administrative employees in radiology and pathology clinics;
    - (ii) provided that in relation to persons employed in or about or in connection with the carrying on of all benevolent homes and convalescent homes the following shall be excluded from membership:-
      - 1. in the State of Queensland, ancillary staff (other than at Eventide Homes), dentists, radiographers and pharmaceutical chemists;
      - 2. in the State of Western Australia all enrolled nurses and all other staff excepting registered nursing staff and professional, administrative, clerical and technical staff;
      - 3. in the State of South Australia, all staff other than non-psychiatric nurses and enrolled nurses;
      - 4. in the Northern Territory, all staff other than registered nurses;
    - (iii) except in the State of Victoria dentists employed by a public hospital and dental therapists employed by the school dental service.
- and/or
- (aa) (1) In the State of Victoria in or about or in connection with the carrying on of all community health centres being declared community health centres under Section 45 of the Health Services Act 1988 or in receipt of funds in accordance with Section 20 of the Act but not including a person so employed as a registered medical practitioner unless such a person is eligible for membership of the Union pursuant to other paragraphs of this Rule.

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Provided further that any person who is employed under the Victorian Public Service Act 1974 and who is located in a Community Health Centre shall be excluded from membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Also provided that persons engaged in social and/or welfare work other than social welfare work aides shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided that dentists employed by a community health centre, society or association in the State of Victoria shall not be eligible for membership.

- (2) In the State of Tasmania in or about or in connection with the carrying on of all community health centres being those conducted by the Tasmanian Department of Health Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule.
- (3) In the Australian Capital Territory in or about or in connection with the carrying on of all community health centres being those conducted by the A.C.T. Department of Health and Community Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule. Also provided that persons engaged in professional social work shall not be eligible for membership of the Union unless such person is eligible for membership of the Union pursuant to the other paragraphs of this Rule.
- (ab) In the States of Victoria, New South Wales and Queensland in or about or in connection with the following aboriginal health services:-

Victorian Aboriginal Health Service Co-operative Limited  
Rumbalara Aboriginal Co-operative Limited  
Aboriginal and Islander Community Health Service Incorporated Ipswich  
Dandenong and District Aboriginal Co-operative Society Limited  
Biripi Aboriginal Co-operative Medical Centre  
Darak Aboriginal Community Controlled Medical Services Co-operative Limited  
Brewarrina Aboriginal Health Service  
Gippsland and East Gippsland Aboriginal Co-operative Limited Bairnsdale  
Walgett Aboriginal Medical Service  
St. Pius X Aboriginal Corporation  
Bourke Aboriginal Health Service Limited  
Townsville Aboriginal and Islander Health Services Limited  
The Aboriginal and Islander Community Health Service Brisbane  
Tharawal Aboriginal Corporation  
South Coast Medical Service Aboriginal Corporation  
Durri Aboriginal Corporation Medical Service Kempsey  
Murray Valley Aboriginal Co-operative Limited  
Aboriginal and Islander Health Services Limited Mackay  
Cummeragunja Housing and Development Corporation  
Ballarat and District Aboriginal Co-operative  
Aboriginal Medical Services Co-operative Limited Redfern  
Awabakal Newcastle Aboriginal Co-operative Limited

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Central Gippsland Aboriginal Health and Housing Co-operative Limited  
Illawarra Aboriginal Medical Service Corporation  
National Aboriginal and Islander Health Organisation  
Wu-Chopperen Medical Service Limited  
Echuca Aboriginal Co-operative Society Limited  
Swan Hill and District Aboriginal Co-operative Limited

provided that persons engaged in social and/or welfare work shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this rule or is employed as a welfare aide in Victoria, by the Victorian Aboriginal Health Service, or as an employee delivering medical or paramedical care.

Provided further that this paragraph shall not exclude from membership of the Union persons otherwise eligible to be members of the Union pursuant to other paragraphs of this rule.

- (b) in the States of Victoria, Queensland, Tasmania and in the Australian Capital Territory, in the provision of care and training to the intellectually disabled and/or physically disabled and/or psychiatrically disabled and/or developmentally disabled and work ancillary thereto in hostels, day care centres, and homes (including dwellings) but excluding trained teachers employed as such and in the States of Victoria and Queensland and the Australian Capital Territory, teacher aides employed as such;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -

1. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
2. persons employed in the provision of home care services to persons in private homes and dwellings;
3. supervisors, administrators and community service officers as all defined in awards to which the Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);

- (ii) in the State of Tasmania -

1. cleaners employed in Government educational institutions or educational undertakings;
2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;

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(iii) in the State of Queensland, community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;

(iv) in the Australian Capital Territory, persons employed in the provision of home care services to persons in private homes or dwellings;

and/or

(c) in the State of Victoria, in the provision of child care services in day care centres and residential centres but excluding -

1. trained teachers and teacher aides employed as such;

2. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;

3. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;

4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, in any centre which is established after 8th October 1986 but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);

and/or

(d) (i) in the State of Tasmania, in or in connection with doctors and/or dental surgeries, clinics and practices;

(ii) in the Australian Capital Territory, radiographers and nursing staff in or in connection with doctors and/or dental surgeries, clinics and practices;

and/or

(e) in the States of Victoria, Queensland and Tasmania and in the Australian Capital Territory in or in connection with the provision of medical, paramedical and/or nursing care for aged persons in day care centres and/or homes (including dwellings) and work ancillary thereto;

Provided that the following persons shall be excluded from coverage:

(i) in the State of Victoria -

1. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;

- 
2. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);
- (ii) in the State of Queensland -
    1. radiographers, dentists, pharmaceutical chemists, ancillary staff (other than at Eventide Homes) and persons employed in the provision of home care services to aged persons in private homes or dwellings;
    2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iii) in the state of Tasmania, persons employed as community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iv) in the Australian Capital Territory in the provision of home care services to aged persons in private homes and dwellings, and,
- (f) Provided that persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.
  - (g) without limiting and without being limited by anything in the foregoing provisions of this Rule, in the State of Western Australia, persons engaged in professional, administrative, technical, supervisory or clerical capacities employed in the health industry:
    - (i) by any public or private hospital other than any hospital or institution established under the Mental Health Act, 1962 except for shift engineers employed at Royal Perth Hospital;
    - (ii) by the Hospital Laundry and Linen Service, except for persons employed in the callings of foreperson, laundrypersons, general hand, driver, gardener, security person, storeperson, press operator, seamstress, sorter, cook, tradesperson, drycleaner, presser, cutter in the Hospital Laundry and Linen Service or other persons employed as laundry workers;
    - (iii) by the Western Australian School of Nursing or any service ancillary to the practice of medicine, including institutions or facilities substantially engaged in providing medical laboratory services, radiological services, physiotherapy services, occupational therapy services, speech therapy services, social work services. Provided that any person who is employed as an officer under and within the meaning of the Public Service Act 1978-90 (W.A.), or who is employed in doctors' surgeries or any wholesale or retail distributing or manufacturing organisation, or who is employed by the St. John Ambulance Association for the purpose of operating first aid and/or ambulance services shall not by this paragraph be eligible for membership;

- 
- (iv) by the Western Australian Division of the Red Cross Society (except for any person employed as a clerk) in facilities or services other than those specified in (i) and (iii) above;
  - (v) by the Cerebral Palsy Association of Western Australia (Inc.) (except for tradespersons who perform the usual trades duties) in facilities or services other than those specified in (i) and (iii) above;
  - (vi) by the Silver Chain Nursing Association (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (vii) by the ACTIV Foundation (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (viii) by dentists as dental therapists;
  - (ix) by the Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. industries in facilities or services other than those specified in (i) and (iii) above. For the purposes of this paragraph only, the word "supervisory" appearing in the preamble to this sub-Rule (g) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law;
  - (x) by any non-government employer primarily engaged in health services, as audiologists, chiropodists, clinical psychologists, dietitians, occupational therapists, nucleographers, physiotherapists, psychologists, social workers, speech therapists and welfare workers, howsoever designated. Provided that such an employee who is solely or substantially engaged in providing his or her services to other employees of his or her employer and who is eligible for membership as at 30th April, 1985, of another registered state organisation within the meaning of the Industrial Relations Act 1979 (W.A.) shall not by this paragraph be eligible for membership.

Provided that nothing in this paragraph 2A(g) shall render eligible for membership persons who are not otherwise eligible for membership under this rule and who were eligible for membership of the Australian Nursing Federation as at 23 March 1993.

- (h) in the State of Victoria in classes or grades of employment which were within the jurisdiction of the Health and Community Services (Management and Administrative Staff) Conciliation Board established pursuant to the Industrial Relations Act 1979 (Vic) as at 28 February 1993.
- (j) in the State of Victoria, in or in connection with private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service excluding registered medical practitioners employed as such and excluding registered nurses eligible for membership of the Australian Nursing Federation.
- (k) provided that in the State of Victoria registered nurses eligible for membership of the Australian Nursing Federation employed in, or in connection with, private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service shall not be eligible for membership.

- 
- B. the employment of persons employed or usually employed in the State of New South Wales in connection with Hospitals, Mental Hospitals, Hospital Dispensaries, Medical Schools, Laboratories, Colleges, Industrial and other similar Homes, Public Charitable Institutions, Ambulance Work (including First Aid Work), General Nursing, Reception Houses, Sanatoriums, Rest Homes, which are wholly or partly controlled by the Board of Health, Special Schools and of an unlimited number of persons employed or usually employed in or in connection with the Universities in the State of New South Wales and of an unlimited number of persons (other than persons not employed in industry) employed or usually employed in or in connection with Universities and/or colleges of advanced education in the Australian Capital Territory and of an unlimited number of persons employed or usually employed as animal technicians and of an unlimited number of persons (other than persons not employed in industry) employed or usually employed in or in connection with Universities and/or colleges of advanced education in the States of Tasmania, Queensland, Victoria, South Australia, and Western Australia, except -

Persons who are eligible for membership of the Federated Miscellaneous Workers Union of Australia except those persons in New South Wales only, who are employed or usually employed in hospitals, mental hospitals, hospital dispensaries, industrial homes, ambulance work, general nursing, reception houses, sanatoriums, rest homes which are wholly or partly controlled by the Board of Health, where those persons are employed in or usually employed in or in connection with any of the following callings, namely watchmen, caretakers, cleaners, lift attendants, gardeners, photographers, commissionaires, dentists, dental technicians, dental assistants, and attendants or parking attendants or domestic staff, groundsmen and yardmen in denominational or educational schools, laundry workers, messengers, chemical workers and gatekeepers, and except those employed or usually employed by the University of Sydney, the University of New England, University of Tasmania (Hobart campus), University of Canberra, Australian National University, University of New South Wales Medical School, University of Newcastle Medical School, Southern Cross University and the Macquarie University; and

Persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.

### **3 - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP**

The Union shall consist of an unlimited number of persons -

- A. employed or usually employed -

- (a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;
- (i) except in the State of Western Australia persons employed by the Crown in Right of the State of Western Australia or any State instrumentality or in private hospitals or undertakings in the said State as (i) dental therapists and (ii) professional, clerical, technical and administrative employees in radiology and pathology clinics;
- (ii) provided that in relation to persons employed in or about or in connection with the carrying on of all benevolent homes and convalescent homes the following shall be excluded from membership:-



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1. in the State of Queensland ancillary staff (other than at Eventide Homes), dentists, radiographers and pharmaceutical chemists;
  2. in the State of Western Australia all enrolled nurses and all other staff excepting registered nursing staff and professional, administrative, clerical and technical staff;
  3. in the State of South Australia, all staff other than non-psychiatric nurses and enrolled nurses;
  4. in the Northern Territory, all staff other than registered nurses;

(iii) except in the State of Victoria dentists employed by a public hospital and dental therapists employed by the school dental service.

and/or

- (aa) (1) In the State of Victoria in or about or in connection with the carrying on of all community health centres being declared community health centres under Section 45 of the Health Services Act 1988 or in receipt of funds in accordance with Section 20 of the Act but not including a person so employed as a registered medical practitioner unless such a person is eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided further that any person who is employed under the Victorian Public Service Act 1974 and who is located in a Community Health Centre shall be excluded from membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Also provided that persons engaged in social and/or welfare work other than social welfare work aides shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided that dentists employed by a community health centre, society or association in the State of Victoria shall not be eligible for membership.

- (2) In the State of Tasmania in or about or in connection with the carrying on of all community health centres being those conducted by the Tasmanian Department of Health Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule.
- (3) In the Australian Capital Territory in or about or in connection with the carrying on of all community health centres being those conducted by the A.C.T. Department of Health and Community Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule. Also provided that persons engaged in professional social work shall not be eligible for membership of the Union unless such person is eligible for membership of the Union pursuant to the other paragraphs of this Rule.

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- (ab) In the States of Victoria, New South Wales and Queensland in or about or in connection with the following aboriginal health services:-

Victorian Aboriginal Health Service Co-operative Limited  
Rumbalara Aboriginal Co-operative Limited  
Aboriginal and Islander Community Health Service Incorporated Ipswich  
Dandenong and District Aboriginal Co-operative Society Limited  
Biripi Aboriginal Co-operative Medical Centre  
Darak Aboriginal Community Controlled Medical Services Co-operative Limited  
Brewarrina Aboriginal Health Service  
Gippsland and East Gippsland Aboriginal Co-operative Limited Bairnsdale  
Walgett Aboriginal Medical Service  
St. Pius X Aboriginal Corporation  
Bourke Aboriginal Health Service Limited  
Townsville Aboriginal and Islander Health Services Limited  
The Aboriginal and Islander Community Health Service Brisbane  
Tharawal Aboriginal Corporation  
South Coast Medical Service Aboriginal Corporation  
Durri Aboriginal Corporation Medical Service Kempsey  
Murray Valley Aboriginal Co-operative Limited  
Aboriginal and Islander Health Services Limited Mackay  
Cummeragunja Housing and Development Corporation  
Ballarat and District Aboriginal Co-operative  
Aboriginal Medical Services Co-operative Limited Redfern  
Awabakal Newcastle Aboriginal Co-operative Limited  
Central Gippsland Aboriginal Health and Housing Co-operative Limited  
Illawarra Aboriginal Medical Service Corporation  
National Aboriginal and Islander Health Organisation  
Wu-Chopperen Medical Service Limited  
Echuca Aboriginal Co-operative Society Limited  
Swan Hill and District Aboriginal Co-operative Limited

provided that persons engaged in social and/or welfare work shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this rule or is employed as a welfare aide in Victoria, by the Victorian Aboriginal Health Service, or as an employee delivering medical or paramedical care.

Provided further that this paragraph shall not exclude from membership of the Union persons otherwise eligible to be members of the Union pursuant to other paragraphs of this rule.

- (b) in the States of Victoria, Queensland, Tasmania and in the Australian Capital Territory, in the provision of care and training to the intellectually disabled and/or physically disabled and/or psychiatrically disabled and/or developmentally disabled and work ancillary thereto in hostels, day care centres, and homes (including dwellings) but excluding trained teachers employed as such and in the States of Victoria and Queensland and the Australian Capital Territory, teacher aides employed as such;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -

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1. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
  2. persons employed in the provision of home care services to persons in private homes and dwellings;
  3. supervisors, administrators and community service officers as all defined in awards to which the Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
  4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958(Vic.);
- (ii) in the State of Tasmania -
1. cleaners employed in Government educational institutions or educational undertakings;
  2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iii) in the State of Queensland, community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iv) in the Australian Capital Territory, persons employed in the provision of home care services to persons in private homes or dwellings;
- and/or
- (c) in the State of Victoria, in the provision of child care services in day care centres and residential centres but excluding -
- (i) trained teachers and teacher aides employed as such;
  - (ii) cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
  - (iii) supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
  - (iv) persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, in any centre which is established after 8th October 1986 but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958(Vic.);

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and/or

- (d) (i) in the State of Tasmania in or in connection with doctors and/or dental surgeries, clinics and practices;
- (ii) in the Australian Capital Territory, radiographers and nursing staff in or in connection with doctors and/or dental surgeries, clinics and practices;

and/or

- (e) in the States of Victoria, Queensland and Tasmania and in the Australian Capital Territory in or in connection with the provision of medical, paramedical and/or nursing care for aged persons in day care centres and/or homes (including dwellings) and work ancillary thereto;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -
    1. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
    2. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);
  - (ii) in the State of Queensland -
    1. radiographers, dentists, pharmaceutical chemists, ancillary staff (other than at Eventide Homes) and persons employed in the provision of home care services to aged persons in private homes or dwellings;
    2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iii) in the State of Tasmania, persons employed as community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iv) in the Australian Capital Territory, in the provision of home care services to aged persons in private homes and dwellings;
- (f) Provided that persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.

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- (g) without limiting and without being limited by anything in the foregoing provisions of this Rule, in the State of Western Australia, persons engaged in professional, administrative, technical, supervisory or clerical capacities employed in the health industry:
- (i) by any public or private hospital other than any hospital or institution established under the Mental Health Act, 1962 except for shift engineers employed at Royal Perth Hospital;
  - (ii) by the Hospital Laundry and Linen Service, except for persons employed in the callings of foreperson, laundrypersons, general hand, driver, gardener, security person, storeperson, press operator, seamstress, sorter, cook, tradesperson, drycleaner, presser, cutter in the Hospital Laundry and Linen Service or other persons employed as laundry workers;
  - (iii) by the Western Australian School of Nursing or any service ancillary to the practice of medicine, including institutions or facilities substantially engaged in providing medical laboratory services, radiological services, physiotherapy services, occupational therapy services, speech therapy services, social work services. Provided that any person who is employed as an officer under and within the meaning of the Public Service Act 1978-90 (W.A.), or who is employed in doctors' surgeries or any wholesale or retail distributing or manufacturing organisation, or who is employed by the St. John Ambulance Association for the purpose of operating first aid and/or ambulance services shall not by this paragraph be eligible for membership;
  - (iv) by the Western Australian Division of the Red Cross Society (except for any person employed as a clerk) in facilities or services other than those specified in (i) and (iii) above;
  - (v) by the Cerebral Palsy Association of Western Australia (Inc.) (except for tradespersons who perform the usual trades duties) in facilities or services other than those specified in (i) and (iii) above;
  - (vi) by the Silver Chain Nursing Association (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (vii) by the ACTIV Foundation (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (viii) by dentists as dental therapists;
  - (ix) by the Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. industries in facilities or services other than those specified in (i) and (iii) above. For the purposes of this paragraph only, the word "supervisory" appearing in the preamble to this sub-Rule (g) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law;

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- (x) by any non-government employer primarily engaged in health services, as audiologists, chiroprodists, clinical psychologists, dietitians, occupational therapists, nucleographers, physiotherapists, psychologists, social workers, speech therapists and welfare workers, howsoever designated. Provided that such an employee who is solely or substantially engaged in providing his or her services to other employees of his or her employer and who is eligible for membership as at 30th April, 1985, of another registered state organisation within the meaning of the Industrial Relations Act 1979 (W.A.) shall not by this paragraph be eligible for membership.

Provided that nothing in this paragraph 3A(g) shall render eligible for membership persons who are not otherwise eligible for membership under this rule and who were eligible for membership of the Australian Nursing Federation as at 23 March 1993.

- (h) in the State of Victoria in classes or grades of employment which were within the jurisdiction of the Health and Community Services (Management and Administrative Staff) Conciliation Board established pursuant to the Industrial Relations Act 1979 (Vic) as at 28 February 1993.
- (j) in the State of Victoria, in or in connection with private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service excluding registered medical practitioners employed as such and excluding registered nurses eligible for membership of the Australian Nursing Federation.
- (k) provided that in the State of Victoria registered nurses eligible for membership of the Australian Nursing Federation employed in, or in connection with, private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service shall not be eligible for membership.

B. employed or usually employed -

1. in the State of New South Wales in connection with Hospitals, Mental Hospitals, Hospital Dispensaries, Medical Schools, Laboratories, Colleges, Industrial and other similar Homes, Public Charitable Institutions, Ambulance Work (including First Aid Work), General Nursing, Reception Houses, Sanatoriums, Rest Homes which are wholly or partly controlled by the Board of Health, Special Schools;
2. in or in connection with Universities in the State of New South Wales;
3. in or in connection with Universities and/or colleges of advanced education in the Australian Capital Territory;
4. as animal technicians;
5. in or in connection with Universities and/or colleges of advanced education in the State of Tasmania;
6. in or in connection with Universities and/or colleges of advanced education in the State of Queensland.
7. in or in connection with Universities and/or colleges of advanced education in the State of Victoria;

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8. in or in connection with Universities and/or colleges of advanced education in the State of South Australia;
  9. in or in connection with Universities and/or colleges of advanced education in the State of Western Australia;

(EXCEPT Staff of Universities or Colleges of Advanced Education classified as Chancellors, Vice-Chancellors, Deputy Vice-Chancellors, Pro-Vice-Chancellors, Principal, Deputy Principal, Vice-Principal, Secretary Registrar, Associate Registrar and persons the major and substantial portion of whose employment is demonstrating to and/or instructing students);

Provided that:

- (a) Deleted
- (b) Deleted
- (c) persons employed in a University in the Australian Capital Territory as cooks, kitchen staff, dining room staff, house staff, or in the serving, mixing or dispensing of liquor;
- (d) persons employed in the Australian Public Service or in Australian Government Instrumentalities or Commissions but not including persons employed in Universities and/or colleges of advanced education in the Australian Capital Territory;
- (e) persons employed by the University of New South Wales or its colleges or any University which may be formed as a result of granting autonomy to such colleges or by the University of Newcastle or by the Australian National University within the scope of the Constitution Rule of the Amalgamated Metal Workers Union, or of the Australasian Society of Engineers;
- (f) persons employed as fitters in hospitals;
- (g) persons who are eligible for membership of the Transport Workers' Union of Australia, except drivers in the State of New South Wales of ambulances, drivers of motor cars and/or other vehicles with carrying capacity not exceeding 1 ton 5 cwt;
- (h) persons who are eligible for membership of The Federated Miscellaneous Workers Union of Australia except those persons in New South Wales only, who are employed or usually employed in hospitals, mental hospitals, hospital dispensaries, industrial homes, ambulance work, general nursing, reception houses, sanitariums, rest homes which are wholly or partly controlled by the Board of Health, where those persons are employed in or usually employed in or in connection with any of the following callings, namely, watchmen, caretakers, cleaners, lift attendants, gardeners, photographers, commissionaires, dentists, dental technicians, dental assistants, and attendants or parking attendants or domestic staff, groundsmen and yardmen in denominational or educational schools, laundry workers, messengers, chemical workers and gatekeepers, and except those employed or usually employed by the University of Sydney, The University of New England, University of Tasmania (Hobart campus), University of Canberra, Australian National University, University of New South Wales Medical School, University of Newcastle Medical School, Southern Cross University and the Macquarie University;

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- (i) persons employed or usually employed in or in connection with Universities and/or colleges of advanced education in the States of Queensland, Victoria and South Australia, who are eligible for membership in the Federated Clerks Union of Australia as at 1st April 1975;
  - (j) Deleted
  - (k) persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic), other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2;

shall not be eligible for membership of the Union pursuant to the foregoing provisions of Clause B of this Rule;

- C. such other persons, whether or not employees in the industries of the Union as have been elected or appointed full time National Officers or Branch Officers or organisers of the Union or any Branch thereof and admitted as members of the Union. For the purposes of this Clause C of this Rule, the full-time Officers of the Union and of any Branch thereof shall be the holders of any of the offices of National Officers or Branch Officers where the duties of such office are of a full-time nature; and,
- D. such persons, whether or not employees in the industries of the Union, who -
  - (i) are full time organisers or industrial officers of the Union or a Branch of the Union; and,
  - (ii) were, on the day immediately preceding the date fixed by the Industrial Registrar and notified by him in the Gazette pursuant to the Conciliation and Arbitration Act 1904 as amended from time to time as the day upon which the amalgamation of The Hospital Employees' Union of Australia and the Health and Research Employees' Association of Australia is to take effect full time organisers or industrial officers of the Health and Research Employees' Association of Australia or a Branch thereof and members of The Health and Research Employees' Association of Australia.
- E. such persons, whether or not employees in the industries of the Union who -
  - (i) were, at a time prior to 30th November, 1992, employees in or in connection with the industries of the Union and members of the Union; and,
  - (ii) were, on the 30th November, 1992, employees (other than clerical or administrative employees), or full-time elected officers, of the Victoria No. 1 or No. 2 Branches of the Union; and,
  - (iii) remain employees of the Union.
- F. (i) who are independent contractors who, if they were employees performing work of the kind they usually performed as independent contractors, would be employees eligible for membership of the union.



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- (ii) (other than employees) who:
- (a) are, or are able to become, members of an industrial union of employees within the meaning of the Industrial Arbitration Act, 1940 of New South Wales;
  - (b) are employees for the purposes of the Industrial Relations Act, 1961 of Queensland;
  - (c) are employees for the purposes of the Industrial Relations Act, 1979 of Western Australia; or
  - (d) are employees for the purposes of the Industrial Conciliation and Arbitration Act, 1972 of South Australia;

and who, if they were employees performing work of the kind which they usually perform, would be employees eligible for membership of the Union.

#### **4 - OBJECTS**

The objects of the Union shall be:

- (a) To uphold, foster, protect and improve the rights and interests of members and persons employed in the industries referred to in rule 2, industrially and otherwise, to the best possible conditions and just remuneration and to guard them against any hardship, oppression or injustice in connection with their work;
- (b) To uphold, foster, protect and improve the rights of members to freely associate and collectively bargain;
- (c) To take all necessary steps for the protection, health and safety of members;
- (d) To encourage and foster improvement of the status, training, advancement and qualifications of all members;
- (e) To obtain equal remuneration and employment and civil rights for members, regardless of the member's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin or any other unlawful basis of discrimination.
- (f) To ensure that members enjoy the same civil rights as are enjoyed by other citizens;
- (g) To improve the lives, including the working lives, of members and their families;
- (h) To promote industrial peace by all amicable means, such as conciliation, arbitration, or the establishment of permanent boards, to assist in their settlement by just and equitable methods;
- (i) To represent the Union and members in any court, body or tribunal dealing with matters of interest or concern to members;
- (j) To secure the participation of and influence of members in the administration, development and planning of industries referred to in rule 2;

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- (k) To encourage the democratic involvement of members in the Union;
  - (l) To establish Branches and sub-Branches throughout Australia, and to encourage the appointment of delegates and other representatives of members;
  - (m) To act as an agent for and on behalf of members or non-members in a manner consistent with these objects and the rules and consistently with the interest of members;
  - (n) To provide legal and financial assistance and other representation and support to members and their dependants in the pursuit of these objects;
  - (o) To co-operate with and assist other organisations, associations, institutions and groups in the pursuit of these and similar objects;
  - (p) To amalgamate, affiliate or in any manner associate with other organisations, associations, institutions and groups in the pursuit of these objects;
  - (r) To uphold the rights of labour and to represent members in the peak councils of the trade union movement and in international forums or organisations;
  - (s) To determine actions on matters of concern to members in relation to international affairs and to carry out these actions;
  - (t) To borrow or raise money, invest the funds of the Union, acquire or deal with land and other property real or personal, in such a manner as may be determined from time to time by the Union,
  - (u) To elect, appoint and employ officers and employees for the furtherance of the Union's objects and to remunerate such persons;
  - (v) To do all such things as the Union may from time to time deem incidental or conducive to the attainment of the above objects or any of them.

## **5 - DEFINITIONS**

In these rules, other than in rules 2 and 3, the following definitions are used:

- (a) board means a group of persons who supervise, govern or otherwise have oversight of a corporation, organisation, association or other like body including a Board of Directors.
- (b) Branch committee of management means:
  - (i) in relation to a Branch other than the NSW Branch, the Branch Committee established by rule 41;
  - (ii) in relation to the NSW Branch, the New South Wales Branch Council established by rule 42;
- (c) Branch officer means the officers referred to in rule 40(a).
- (d) child has the same meaning as that word in sections 6 and 7 of the Act.

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- (e) committee of management means:
- (iii) in relation to a Branch other than the NSW Branch, the Branch Committee established by rule 41;
  - (iv) in relation to the NSW Branch, the New South Wales Branch Council established by rule 42;
  - (v) in relation to the Union, the National Executive established by rule 20.
- (f) de facto partner has the same meaning as that phrase in section 6 of the Act.
- (g) declared person or body has the same meaning as that phrase in section 148C(5) of the Act.
- (h) disclosure period is the financial year ending on 30 June of each year.
- (i) funds and property of the Union means the funds and property of the Union that are not, under rule 53, the funds and property of a Branch.
- (j) National Officer means an officer referred to in rule 14.
- (k) non-cash benefit has the same meaning as that phrase in section 6 of the Act.
- (l) NORU means the National Office Reporting Unit, and is that part of the Union that is the subject of a certificate under s 245 of the Act that is not a branch referred to in rule 38(a) (other than the South Australia/Northern Territory Branch).
- (m) office has the same meaning as that word in section 9 of the Act.
- (n) officer has the same meaning as that word in section 6 of the Act.
- (o) parent has the same meaning as that word in section 6 of the Act.
- (p) peak council means a National, State, Regional or occupational council or federation that is effectively representative of a significant number of organisations (within the ordinary meaning of the term) representing employers or employees.
- (q) related party has the same meaning as that phrase in sections 6 and 9B of the Act.
- (r) relative in relation to a person, means:
- (i) a parent, step parent, child, stepchild, grandparent, grandchild, brother or sister of the person;  
or
  - (ii) the spouse of the first mentioned person.
- (s) relevant non-cash benefit has the same meaning as that phrase in section 148A of the Act.
- (t) relevant remuneration has the same meaning as that phrase in section 148A of the Act.
- (u) remuneration has the same meaning as that word in section 6 of the Act.
- (v) spouse has the same meaning as that word in section 6 of the Act.
- (w) stepchild has the same meaning as that word in section 6 of the Act.

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- (x) step-parent has the same meaning as that word in section 6 of the Act
  - (y) the Act shall mean the Fair Work (Registered Organisations) Act 2009 (Cth) or any statute enacted to replace that Act.

## **6 - ADMISSION TO MEMBERSHIP**

- (a) It is the responsibility of each Branch Secretary to encourage persons eligible for membership of the Branch to become members of the Union and to take steps, and direct other employees and officers of the Branch to take steps, necessary to facilitate easy admission to membership.
- (b) An applicant for membership of the Union shall direct an application to the Branch to which, pursuant to the provisions of rule 38, he or she would on becoming a member be attached ('the relevant Branch').
- (c) The application for membership may be made:
  - (i) In writing on a form approved by the relevant Branch Committee of Management and published and distributed by that Branch;
  - (ii) In writing by clearly evidencing an intention to apply for membership, such as by writing a letter seeking to join the Union;
  - (iii) By making an online application to the relevant Branch; or
  - (iv) By making a telephone application to the relevant Branch.
- (d) An application in writing may be addressed to the Union, National Officer, the relevant Branch, a Branch Officer or an employee of the Union. Each such application shall be forwarded to the Branch Secretary of the relevant Branch.
- (e) The relevant Branch Secretary shall provide all applicants for membership with the requisite information in writing. The requisite information consists of:
  - (i) The financial obligations arising from membership; and
  - (ii) The circumstances, and the manner, in which a member may resign from the Union.
- (f) The manner in which the Branch Secretary may comply with the requirements of rule 6(e) include:
  - (i) In the case of an application in writing, by providing the requisite information on an application for membership form;
  - (ii) In the case of an online application, by causing the requisite information to be contained within the online application form; or
  - (iii) In relation to a telephone application or an application received in writing other than on an application for membership form, by ensuring that the applicant for membership does not become a member until after he or she has been provided with the requisite information in writing.

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- (g) On receipt of the application for membership:
- (i) the Branch Secretary shall accept the application for membership, unless the Branch Secretary takes one of the steps referred to in this sub-rule within 14 days of receiving the application for membership;
  - (ii) where the Branch Secretary considers an applicant for membership to be eligible to be a member of the Union but ineligible for membership of the Branch, the Branch Secretary shall refer the application to the Branch where the applicant would, pursuant to the provisions of rule 38, be attached. An application so referred under this rule is treated as if it was an application made under rule 6(c);
  - (iii) where the Branch Secretary considers an applicant for membership to be ineligible for membership of the Union, and the applicant wishes to pursue the application, the Branch Secretary shall refer the application to the Branch Committee of Management;
  - (iv) where the applicant has been previously expelled by the Union, the Branch Secretary shall refer the application to the National Executive; or
  - (v) where the applicant has previously been a member of the Union and owes a debt to the Union, the Branch Secretary shall either accept the application unconditionally, or accept it on the condition that the applicant shall first pay the whole or part of the debt owed, or otherwise refer the matter to the Branch Committee of Management.
- (h) Where an application has been referred to the Branch Committee of Management it may accept, reject or defer the application or, in the case of a referral under rule 6(g)(v), it may accept the application subject to the condition that the applicant shall first pay the whole or part of the debt owed. When a person whose name has been purged from the register applies to rejoin, the Branch Committee of Management may accept the application subject to the condition that the applicant shall first pay the whole or part of the dues that would have been payable if they had not been purged from the register.
- (i) Where any application referred to the Branch Committee of Management is not accepted unconditionally within three months of its receipt by the Branch Committee of Management, the applicant may appeal to the National Executive whose decision shall be final.
- (j) Where the applicant has been previously expelled by the Union, the National Executive shall determine whether the person should be readmitted as a member. The National Executive may make readmission to membership subject to the condition that the applicant repay any debt owed.
- (k) Subject to rule 6(l), an applicant for membership becomes a member of the Union as from:
- (i) where the application is accepted unconditionally, the date of receipt of the application;
  - (ii) where the application is accepted subject to the condition that the applicant shall first pay the whole or part of the debt owed, the date of fulfilment of that condition;
  - (iii) in any other case where the application has not been rejected, the date of receipt of the application.

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- (l) Notwithstanding anything in this rule, an applicant for membership does not become a member:
- (i) if the Branch Committee of Management rejects the application, unless the National Executive overturns that decision;
  - (ii) if the member owes a debt to the Union and, pursuant to rule 6(g)(v) or 6(h) the Branch Secretary, the Branch Committee of Management or the National Executive has imposed a condition relating to the whole or partial repayment of that debt, and the applicant has not met that condition;
  - (iii) if the applicant has previously been expelled and National Executive has not passed a resolution accepting the application for readmission for membership.
- (m) Notwithstanding anything in this rule, no application for membership shall be void or ineffective only for the reason that the form of application is not fully completed, or that some other form of application is used, or any other procedure under the rules has not been complied with, provided that the applicant for membership intended to, and did in fact, in some way or other, apply for membership and the Union treated the person as a member. The payment of Union dues in whole or in part shall be taken to be, without limiting the generality of the foregoing, a method by which a person intended to, and did in fact, in some way or other, apply for membership and evidences an intention to be or become a member.

## **7 – CONSEQUENCES OF MEMBERSHIP**

- (a) By becoming or remaining a member of the Union each member agrees that he or she will be bound by these rules, as varied from time to time.
- (b) Not certified (see [2014] FWCD 3522)

## **8 - LIFE MEMBERS**

### **A. National Life Member**

- (a) The National Council, by a two thirds majority vote, upon a recommendation of the National Executive, may grant National life membership to a member or former member as a mark of appreciation for services rendered to the Union.
- (b) A National life member who is no longer in employment shall not be liable for payment of any Union dues.
- (c) Unless he or she continues to pay Union dues as they fall due, a National life member shall not be entitled to vote at any meeting, election or ballot and shall not be entitled to nominate for or hold any office.
- (d) A person may be granted National life membership where he or she has been a member for a minimum of fifteen years and has been an active member in the National affairs of the Union for a minimum of eight years. Being an active member for this purpose shall include, but is not limited to, serving as a member of National Council, a member of National Executive, a National Officer or a National Office employee. If special circumstances exist, a person may be granted National life membership notwithstanding the fact that he or she does not meet the criteria specified in this subrule.

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- (e) A person who was granted life membership of the Union pursuant to the rules in force prior to the certification of this rule shall be deemed to be a National life member.
  - (f) The National Council may cancel the grant of National life membership for any reason which to it seems proper, and shall forward written notice of such cancellation to the member concerned at his or her last known place of residence.
  - (g) Nothing in this rule shall prevent a National life member also being bestowed a Branch life membership.

**B. Branch Life Member**

- (a) A Branch Committee of Management, by a two thirds majority vote, may grant Branch life membership to a member or former member as a mark of appreciation for services rendered to the Union.
- (b) A Branch life member who is no longer in employment shall not be liable for payment of any Union dues.
- (c) A Branch life member:
  - (i) Shall be entitled to attend and speak at all general meetings of his or her Branch;
  - (ii) Unless he or she continues to pay Union dues as they fall due, a Branch life member shall not be entitled to vote at any meeting, election or ballot and shall not be entitled to nominate for or hold any office.
- (d) A member may be granted Branch life membership where he or she has been a member for a minimum of fifteen years and has been an active member in the affairs of the Branch for a minimum of eight years. Being an active member for this purpose shall include, but is not limited to, serving as a Sub-Branch Committee member, Sub-Branch representative, delegate, Councillor, member of the Branch Committee of Management, an employee or officer of the Branch. If special circumstances exist, a person may be granted Branch life membership notwithstanding the fact that he or she does not meet the criteria specified in this sub-rule.
- (e) The Branch Committee of Management may cancel the grant of Branch life membership for any reason which to it seems proper, and shall forward written notice of such cancellation to the member concerned at his or her last known place of residence.
- (f) Nothing in this rule shall prevent a Branch life member also being bestowed a National life membership.

**9 - REGISTER OF MEMBERS**

- (a) A register of members shall be kept and maintained by the Union in the form, and containing the information, required by statute.
- (b) The register of members must be arranged to record to which Branch each member belongs.

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## 10 - TERMINATION OF MEMBERSHIP

- (a) Membership of the Union shall be terminated:
- (i) by the death of the member;
  - (ii) by resignation in accordance with rule 10(b)-(h);
  - (iii) by the member ceasing to be eligible to become a member of the Union, subject to the conditions mentioned in rule 10(i)-(j);
  - (iv) by being purged from the register in accordance with rule 10(k)-(o);
  - (v) by expulsion in accordance with these rules 13 or 28.

### Termination by resignation

- (b) A member may resign from membership of the Union by notice in writing addressed and delivered to the Secretary of the member's Branch.
- (c) Where the member ceases to be eligible to become a member of the Union, the notice of resignation will take effect on the later of the following two dates:
- (i) on the day on which the notice is received; or
  - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceased to be eligible to become a member.
- (d) Where the member has not ceased to be eligible to become a member of the Union, the notice of resignation will take effect on the later of the following two dates:
- (i) at the end of two weeks after the notice is received by the Union; or
  - (ii) on the day specified in the notice.
- (e) A notice delivered to the Secretary of the member's Branch shall be taken to have been received by the Union when it was delivered.
- (f) A notice of resignation that has been received by the Union shall not be invalid because it was not addressed and delivered in accordance with rule 10(b).
- (g) A resignation from membership of the Union shall be valid even if it is not effected otherwise in accordance with these rules if the member is informed in writing by or on behalf of the Union that the resignation has been accepted.
- (h) Any dues payable but not paid by a former member, in relation to a period before the resignation took effect, shall be the amount owed by the member and may be recovered in accordance with rule 11.



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Termination because the member ceases to be eligible

(i) Membership terminates automatically when the member ceases to be eligible to be a member of the Union unless the person is a National or Branch life member, in which case the person shall continue to be a National or Branch life member.

(j) A person who is a member of the Union because the person is eligible for membership by virtue of rule 3C, 3D or 3E shall, unless otherwise eligible to become or remain a member of the Union, automatically cease to be a member of the Union when he or she ceases to hold the office or position referred to in that rule.

Termination as the result of purging the register

(k) Not certified (see [2014] FWCD 3522)

(l) Each Branch Secretary shall, from time to time, review the register of the Branch's members and identify the names of members of the Branch who have been unfinancial for more than three months. The Branch Secretary shall write to each such member to his or her last address shown on the register and give the member one month's written notice of the intention to strike his or her name off the register.

(m) If the member does not become financial within a month of the letter being sent, the member's name shall be purged from the register of members. The member shall cease to be a member when his or her name is purged from the register.

(n) A member who is unfinancial for more than two years automatically ceases to be a member and the name of the member shall be purged from the register. The process described in rule 10(l)-(m) need not be completed for a person has been unfinancial for more than two years.

(o) When a member whose name has been purged from the register applies to join the Union, the process referred to in rule 6(g)(v) shall apply.

## **11 – UNION DUES**

(a) Union dues describes the amounts payable by members to the Union and consist of:

(i) Annual contributions;

(ii) Levies; and

(iii) Fees.

Setting the level of Union dues

(b) The annual contributions payable by members shall be such amounts as may from time to time be determined by the Branch Committee of Management of the member's Branch.

(c) A Branch Committee of Management may impose levies on members of the Branch or on the members of any specific category of the membership of the Branch, provided that such a levy must not be oppressive, unreasonable or unjust.

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- (d) A Branch Committee of Management, or any officer authorised by the Branch Committee of Management, may, at the member's request, decide to waive a member's annual contribution or any levy imposed by the Committee, in whole or in part, for such time as it decides because of the member's special circumstances.
  - (e) A Branch Committee of Management may impose a fee on a member in such amount as the Committee determines.
  - (f) The National Council, by a two thirds majority vote, may impose a levy or levies upon any one or more Branches or on the members of any specific category of the membership of the Union, provided that such a levy must not be oppressive, unreasonable or unjust.

#### How union dues may be paid

- (g) Union dues shall be paid to and collected by the relevant Branch Secretary or a person acting on his or her behalf.
- (h) A member may pay Union dues by any one or more of the following methods:
  - (i) by payroll deductions;
  - (ii) by direct debit from a bank or financial institution or any other form of electronic funds transfer;
  - (iii) by a charge or credit card;
  - (iv) by cheque;
  - (v) by cash; or
  - (vi) any other method approved by Branch Committee of Management.

#### When dues are payable

- (i) Annual contributions shall be payable in advance. Annual contributions may be paid in equal instalments either fortnightly, monthly, quarterly (once every three months), or half-yearly (once every six months), or by such other periods as the Branch Committee of Management determines.
- (j) The committee of management setting the levy or fee under this rule may determine the time the levy or fee is payable and whether the levy or fee is payable by instalments. If no time is specified, the levy or fee is payable within 3 months of the date the levy or fee was established.

#### Non-payment of Union dues

- (k) Where a member's payment of Union dues has not been received by the Branch within one month of the date on which it is due, the Branch Secretary shall notify the member:
  - (i) The dues have not been received;
  - (ii) The amount of the balance of the member's dues owing;
  - (iii) That if the member does not pay the dues owing within three months of the due date then member shall be unfinancial.

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Recovery of Union dues

- (1) Each Branch Secretary is authorised to proceed against any member or former member attached to that Branch in the name of the Union for the recovery of any Union dues that are owed and may instruct any other person to take the necessary action for the recovery of such dues. This rule does not limit any other power in these rules to seek recovery of any Union dues that are owed.

## **12 – FINANCIAL AND UNFINANCIAL MEMBERS**

- (a) Where a member's payment of Union dues has not been received by the Branch within three months of the date on which it is due, the member shall be unfinancial. A member who is not an unfinancial member shall be a financial member for the purposes of this rule.
- (b) An unfinancial member shall not be entitled -
- (i) to any of the rights and privileges of membership;
  - (ii) to nominate for or hold any office in the Union or any Branch;
  - (iii) to participate in any ballot or election in the Union or any Branch;
  - (iv) to attend, speak at or vote in any meeting of the Union or Branch.
- (c) When the Branch Committee of Management has decided to waive a member's annual contribution or any levy, the member:
- (i) shall retain continuity of membership and be deemed financial for the period covered by the waiver;
  - (ii) Not certified (see [2014] FWCD 3522)
- (d) If a member of a Branch pays Union dues to an affiliated state registered organisation in an amount equivalent to or greater than the amount payable by that member as Union dues to the Branch under these rules, then:
- (i) He or she shall not be required to pay contributions to the Branch in respect of the periods of time to which such payments to the affiliated state registered organisation are referable; and
  - (ii) Shall be a financial member of the Union in respect of the periods of time to which such payments to the affiliated state registered organisation are referable.
- (e) For the purposes of sub-rule (d), the affiliated state registered organisations are Health Services Union NSW and the Health Services Union of WA (Union of Workers).

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### 13 - MISCONDUCT OF MEMBERS AND UNION OMBUDSMAN

- (a) The National Council by at least a two thirds majority shall appoint the Union Ombudsman. A person cannot be appointed to the position of Ombudsman where three or more Branches object to the appointment.
- (b) Any financial member of the Union may raise a complaint with the Ombudsman about the conduct of a member (including a Branch Officer). A complaint cannot be raised with the Ombudsman about a National Officer. Any allegations of misconduct about National Officers are dealt with under rule 28.
- (c) The Ombudsman shall investigate any complaint raised with him or her and report to the National Executive.
- (d) Such complaints alleging impropriety or misdemeanour committed by a member can include the following:
  - (i) divulging any of its confidential business to anyone not entitled to know the same; or,
  - (ii) refusing to obey any of the rules of the Union; or
  - (iii) refusing to abide by a resolution carried at any meeting of the National Council or National Executive, or of his or her Branch or of its Committee; or,
  - (iv) defrauding or attempting to defraud the funds of the Union or a Branch; or,
  - (v) making a false charge against a fellow member; or,
  - (vi) violating or attempting to violate the terms of any industrial award or agreement; or,
  - (vii) entering or attempting to enter into any agreement with any employer contrary to the provisions of any award or agreement secured by the Union and applicable to him or her; or,
  - (viii) obstructing the National Council, National Executive or Branch Committee or other lawful committee or body of the Union or Branch in any way in the performance of any of its functions; or,
  - (ix) obstructing any officer of the Union or a Branch in the course of his or her duties; or,
  - (x) wrongfully holding himself or herself out as occupying any office or position in the Union or any Branch of the Union or as being entitled to represent the Union or any Branch thereof in any capacity (to which charge it shall be a defence that the member believed bona fide and on reasonable grounds that he/she was entitled to so act); or,
  - (xi) behaving in a disorderly manner at any meeting held under these rules or in the office of the Union or any Branch thereof; or,
  - (xii) aiding or encouraging any other member or members in any offence under this rule.

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- (e) Referral of matters to the Union Ombudsman shall not occur until processes to deal with the matter at a Branch level have been exhausted.
  - (f) Any report to the National Executive by the Ombudsman shall include his or her conclusions as to the validity of any allegations, as well as recommendations for action to be taken by the National Executive if any action is deemed necessary by the Ombudsman.
  - (g) Any reports from the Ombudsman will be provided to the party alleging the impropriety and the party under investigation prior to the report being considered by National Executive. Where such a report recommends action be taken against any party, such party shall be afforded the opportunity to respond and put their case to the National Executive before action is considered by National Executive.
  - (h) Any allegations made against the Union Ombudsman shall be the subject of investigation by not less than three members of the National Executive.
  - (i) Where a member is unhappy with the decision of the National Executive, the matter can be referred to the National Council for consideration.

## **PART B - NATIONAL ORGANISATION**

### **14 - NATIONAL OFFICERS**

- (a) The National Officers of the Union are the National President, the National Senior Vice-President, National Junior Vice-President, the two National Trustees, the National Secretary, and the National Assistant Secretary ("National Officers").
- (b) The National Council shall determine from time to time whether any of the offices of the Union shall be paid offices provided that the status of an office as a paid office may not be varied during the term of office of an incumbent holder of that office without the consent in writing of that holder of the office.

### **15 - NATIONAL COUNCIL**

- (a) The National Council shall consist of -
  - (i) the National Officers, and,
  - (ii) delegates elected by and from each Branch on the basis of one delegate for every 1000 members or part thereof up until 10,000 members, and thereafter one delegate for every 2,000 members or part thereof..
- (b) For the purposes of this Rule, the membership of a Branch shall be the financial membership of that Branch certified as such by the Branch Secretary as at 31st December, in the year immediately preceding an ordinary election of delegates to National Council pursuant to subrule 23A of these rules; provided that:-
  - (i) Not certified (see [2014] FWCD 3522)
  - (ii) if, as at the 31st December, in any subsequent year prior to the year immediately preceding the next following ordinary election of delegates to National Council pursuant to subrule 23A of these rules, the membership of a Branch certified as such by the Branch Secretary decreases the number of delegates to which that Branch is entitled shall not thereby decrease.

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- (c) Where a delegate of a Branch becomes a National Officer, he or she shall cease to be and act as a delegate of that Branch and that Branch shall be entitled to elect or appoint a delegate in his or her place in accordance with rule subrule 23A(j)(i).
  - (d) The National Officers shall be ex-officio members of any committee or sub-committee of the National Council or National Executive.

## **16 - POWERS AND DUTIES OF NATIONAL COUNCIL.**

The National Council shall, subject to these rules and the control by the members, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power:-

- (a) to determine and direct the policy of the Union in all matters affecting the National Council or the Union as a whole;
- (b) to make, add to, amend, rescind and/or otherwise alter these rules;
- (c) to set the wages, conditions of employment and entitlements for any National Officers holding offices determined by the National Council to be paid offices pursuant to rule 14(b) and the entitlements of any other National Officers;
- (d) to fix the remuneration to be paid to any National Returning Officer;
- (e) to resolve that the Union affiliate with or amalgamate with or absorb any other organisation or body;
- (f) to hear and determine appeals from Branches and members;
- (g) to appoint any person to represent the Union before any Court, Commission, Board, Tribunal or other authority.
- (h) to exercise any other powers and perform any other functions conferred on it by these rules;
- (i) to delegate its authority on all routine or other matters to the National Executive;
- (j) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or sub-committee, shall not exercise any executive powers but shall have and exercise only advisory powers;
- (k) to interpret these rules; and
- (l) to direct National Executive in its control of the Union's funds, property and investments and the policies and procedures governing those matters;

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All decisions of the National Council shall be final and shall remain in force unless and until varied, amended or rescinded by it or by a plebiscite of members of the Union.

Provided that none of the powers conferred on the National Council by these rules shall enable the National Council to alter an Entrenched rule as defined herein.

### **17 - MEETINGS OF NATIONAL COUNCIL**

- (a) The National Council shall meet annually in the month of September, October or November on a date and time as is determined by the National Council or the National Executive or the National Secretary in conjunction with the National President.
- (b) Special meetings of the National Council shall be held by resolution of the National Council or National Executive or by decision of the National Secretary in conjunction with the National President.
- (c) The National Secretary shall give each Branch Secretary and each member of the National Council at least 21 days clear notice of the annual meeting of National Council and 14 days' clear notice of any special meeting of National Council.

### **18 - AGENDA FOR NATIONAL COUNCIL**

- (a) Not less than 60 days prior to an annual meeting of the National Council, the National Secretary shall invite Branches to submit items for the agenda, such items to be forwarded to the National Secretary not less than 28 days prior to the commencement of National Council.
- (b) The National Secretary shall, upon receipt of such items, prepare and forward to each Branch Secretary and each member of the National Council a copy of the agenda paper at least 21 days prior to the annual meeting of National Council.
- (c) National Executive shall have power to submit items for consideration by National Council and such items shall be included on the agenda paper referred to in sub-rule (b).
- (d) The agenda paper for a special meeting of National Council shall be forwarded with the notice of such meeting.
- (e) National Council may, at any of its meetings, deal with any matter whether or not that matter has appeared or appears on the agenda paper, provided that a two-thirds majority of the members of National Council present and voting vote in favour of the particular item being considered.

### **19 - MATTERS REQUIRING DECISION BETWEEN NATIONAL COUNCIL MEETINGS**

- (a) The National Executive or the National Secretary in conjunction with the National President may determine that any matter requires a decision of the National Council between annual meetings of the National Council and that such matter be submitted to the National Council for decision in accordance with either of the procedures prescribed by clauses (b) and (c).
- (b) (i) Where it is determined that the matter be submitted to the National Council for decision by ballot of the members of the National Council, such matter may be forwarded by post, email or such other communication device that provides a copy to each of the members of the National Council in such form as is determined by the National Executive.

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- (ii) The members of National Council shall record their vote of the matter so submitted by post, email or such other communication device that provides a written copy addressed to the National Secretary and the decision of the majority shall be binding as if such decision were obtained by vote at a regularly constituted meeting of the National Council.
  - (iii) All votes of their confirmation shall be signed by members of National Council recording the same. If any vote be recorded by means other than letter then such vote shall be confirmed by letter signed by the member of the National Council.
  - (c) (i) Where it is determined that the matter be submitted to the National Council for decision by a meeting of members of the National Council conducted by such telephonic or electronic means as may from time to time be available, the National Secretary shall as soon as is practicable arrange such a meeting.
  - (ii) The members of the National Council shall participate in such a meeting and the decision of the majority shall be binding as if such decision were obtained at a regularly constituted meeting of the National Council.
  - (d) If -
    - (i) in the course of a ballot conducted pursuant to sub-rule (b), a majority of members of the National Council notify the National Secretary, or,
    - (ii) in the course of a meeting conducted pursuant to sub-rule (c), a majority of the members of the National Council resolve, that the matter as submitted to them is of such importance as to require a special meeting of the National Council, then such special meeting of the National Council shall be convened forthwith by the National Secretary to meet at such time and place as the National Executive shall determine.
  - (e) If a special National Council meeting be held pursuant to sub-rule (d) such other matters as the National Executive or National Council shall determine may be submitted to the meeting.

## **20 - NATIONAL EXECUTIVE**

The National Executive shall consist of the National Officers and the Branch Secretary of each Branch.

## **21 - POWERS OF NATIONAL EXECUTIVE**

- (a) The National Executive shall have the power to manage, control and conduct the business and affairs of the Union and shall have the power to:
  - (i) to employ and terminate the employment of any National Office Staff who are not National Officers and to set the wages and conditions of employment of such staff;
  - (ii) to appoint a National Auditor;
  - (iii) to dispose of or transfer any of the funds of the Union or any securities in which the funds of the Union have been invested.



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- (b) The power referred to in sub-rule (a):
- (i) Includes each of the powers conferred by these rules on the National Council referred to in rule 16, except the power to change the rules referred to in sub-rule 16(b) and 67, for the avoidance of doubt, does not include a power to alter an Entrenched Rule;
  - (ii) Is in addition to any other power expressly or impliedly conferred on the National Executive by these rules;
  - (iii) For the avoidance of doubt, does not include the powers expressly conferred on National Council alone under the rules, such as the power of National Council to grant life membership under rule 8, impose a levy under rule 11, appoint the Union Ombudsman under rule 13, determine the paid offices under rule 14, appoint the National Returning Officer under rule 23, establish and change a Branch under rule 38, adopt Branch rules under rule 39, determine standing orders and rules of debate under rule 71, determine Branch capitation fees under rule 78, determine participation in National Council meetings under rule 80.
  - (iv) Is subject to any other limitation on National Executive's power in these rules;
  - (v) Is subject to the limitation that National Executive must comply with any direction given by National Council about any of the matters the subject of National Executive's powers, including how and when those powers are to be exercised.
  - (vi) Is subject to the limitation that National Executive must comply with any decision made as the result of a National Plebiscite under rule 36.
- (c) Where at a meeting of the National Executive, officers representing not fewer than four Branches so request, a decision of that meeting shall be referred to the Branch Committee of Management of each Branch for consideration.
- (d) If a decision is referred under sub-rule (c), during the 28 days after the making of the decision:
- (i) The decision of the National Executive shall not be implemented;
  - (ii) Neither the National Secretary, nor any other National Officer, has the power to implement the decision.
- (e) If a decision is referred under sub-rule (c) and within 28 days of the decision the Branch Committees of Management of five Branches or more write to the National Secretary objecting to the decision, then:
- (i) The decision of the National Executive shall not be implemented until National Council has determined the matter;
  - (ii) None of the National Officers of the Union have the power to implement the decision until National Council has determined the matter;
  - (iii) The matter the subject of the decision shall be referred to National Council under rule 19; and

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- (iv) Any decision of National Council on the matter has effect in the ordinary manner.
  - (f) For the avoidance of doubt, if within 28 days of the decision the Branch Committees of Management of five Branches or more do not write to the National Secretary objecting to the decision, then the decision of National Executive stands from the date the decision was originally made and may be implemented in the ordinary manner.
  - (g) The National Secretary, and any other National Officer, shall:
    - (i) Be subject to the direction and control of the National Executive in the performance of his or her duties and exercise of his or her powers;
    - (ii) Carry out such other duties, and comply with such directions, as the National Executive may from time to time assign or give to him or her; and
    - (iii) Provide such reports to National Executive as required by it concerning the performance of his or her duties, exercise of his or her powers or any other matter concerning the business and affairs of the Union.
  - (h) The National Council may review any act or decision of the National Executive.

## **22 - MEETINGS OF NATIONAL EXECUTIVE**

- (a) A meeting of the National Executive shall be held:
  - (i) when decided by the National Council or National Executive;
  - (ii) when requested in writing by any four members of the National Executive;
  - (iii) upon petition from any branch or Branch Committee; or,
  - (iv) if considered necessary by the National Secretary in conjunction with the National President;
  - (v) But at least four such meetings shall be held each calendar year.
- (b) If considered necessary, the National Secretary and the National President may determine that a meeting of the National Executive may be conducted by such telephonic or electronic means as may from time to time be available. Members of National Executive shall participate in such a meeting and the voting power at such a meeting shall be in accordance with sub-rule (d).
- (c) Out of Session Votes
  - (i) The President may determine that an Out of Session Vote of the National Executive be held on any matter with sufficient importance that it needed to be resolved before the next full meeting of the National Executive.
  - (ii) An out of session motion may be put to the vote of all members of the National Executive by either postal or electronic means.

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- (iii) Once the result of an Out of Session Vote is determined, having provided a reasonable period for a vote to be returned, the President must advise the National Executive of the result indicating the number who vote for, against or abstained and the number who did not vote.
  - (iv) If any five members of the National Executive object to the President to a matter being dealt with by way of an Out of Session Vote, the vote must not be taken and the matter must be referred to a meeting of the National Executive called in accordance with sub-rule (a).
  - (v) The outcome of an Out of Session Vote must be recorded as such in the minutes of the meeting immediately preceding the Out of Session Vote as if it was a vote of that meeting.
- (d) The voting power of the National Officers and other members of the National Executive shall be as follows:
- (i) the National Officers - one vote each; and
  - (ii) Each Branch Secretary - one vote for every 1000 financial members or part thereof of the Branch of that Branch Secretary.
- (e) For the purposes of this rule, the financial membership of a Branch shall be the financial membership of that Branch as calculated by reference to its last payment of capitation fees in accordance with rule 78.
- (f) Where a Branch has in excess of 5000 financial members, the Committee of Management of that Branch may nominate one member of the Branch for every 5000 financial members or part thereof in excess of the first 5000 members to attend meetings of National Executive as an Executive Advisor. Executive Advisors shall be entitled to attend and observe the proceedings at meetings of National Executive and National Executive may consult with and seek advice from Executive Advisors, and may invite Executive Advisors to speak at any meeting.
- (g) National Executive may allow any other person to observe or speak to its meetings.

## **23 – ELECTIONS**

### **A – Branch Elections**

Elections shall take place in 2010 and each four years thereafter for all Branch positions in all Branches.

(a) **General**

The provisions of this rule shall apply to all elections for the following positions in the Union -

- (i) Branch Officers;
- (ii) Ordinary members of a Branch Committee;
- (iii) Councillors of the New South Wales Branch Council; and

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- (iv) Branch delegates to the National Council.

This rule does not apply to ballots and elections in Sub-Branches or workplace committees.

(b) Tenure of Office

- (i) Elections for the positions set out in A(a) shall be conducted every four years by secret postal ballot of all financial members of their respective Branch. Persons declared elected shall hold office for four years or until such time as their successors have been elected or appointed and taken office.
- (ii) In the event that the taking of an office occurs beyond the time at which the term of office would ordinarily expire, for any reason including any caused by any election inquiry conducted by the Federal Court under the Fair Work (Registered Organisations) Act 2009, the person elected shall take office from the time of declaration of the ballot in which he or she is elected, and shall hold office for a period of four years less the period of the time between the time that the term of office would ordinarily expire and the taking of office, or until a successor has been elected and taken office.
- (iii) The purpose of sub-rule (ii) is to ensure that so far as possible elections are synchronised, in a four yearly cycle, with persons elected to office taking office from the time of declaration of the ballot in which he or she is elected and holding office for a period of four years, and, if there are any delays in the electoral process, returning elections to that synchronised cycle.

(c) Returning Officer

- (i) In accordance with Act, all elections for office must be conducted by a Returning Officer appointed by the Australian Electoral Commission, unless an exemption is in place at the time.
- (ii) The Branch Committee may appoint a Returning Officer for the conduct in the Branch of any ballots or plebiscites and, subject to the Act, any elections not conducted by a Returning Officer appointed by the Australian Electoral Commission as may be necessary provided that a duly appointed Returning Officer shall hold office until a successor thereto is duly appointed.
- (iii) A Returning Officer –
- a. May or may not be a member of the Union;
  - b. Shall not be the holder of any office in or an employee of the Union or any Branch of the Union. The Union Ombudsman is not eligible to be appointed as the Returning Officer.
  - c. Shall take such action and give such directions as are reasonably necessary to ensure that no irregularities occur in or in connection with any election, ballot or plebiscite or to remedy any procedural defects; and
  - d. No person shall refuse or fail to comply with any such direction or obstruct or hinder the Returning Officer in the conduct of the election, ballot or plebiscite or the taking of any such action or compliance with any such direction.
- (iv) In the event of a duly appointed Returning Officer being unable or unwilling to act as and when required, whether during the conduct of any election, ballot or plebiscite or not, the Branch Committee or the Australian Electoral Commission as the case may be, shall appoint another person to act as Returning Officer for that election, ballot or plebiscite..

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(d) Conduct of Elections

The Returning Officer shall conduct elections and ballots of the Union in the following manner.

- (i) Nominations for positions shall be called for in a national daily newspaper. In addition, nominations for positions in each Branch shall be called for on the Union website as well as any other separate website maintained by the relevant Branch.
- (ii) The opening date of nominations shall be no earlier than the 1st of June and shall remain open for a period of 14 days. In determining the dates, the Returning Officer should ensure that nominations will close no later than 30th of June.
- (iii) Nominations must be in writing signed by the member who is nominated, and endorsed by at least six financial members of the Union. In respect of nominations for positions of Councillors of the New South Wales Branch, the nomination must disclose the nominee's employer, location of employment, sub-branch (if any) and the local health district the nominee is employed in. Local health districts are defined in rule 43(b).
- (iv) Nominations must be forwarded to the Returning Officer by hand, by mail or by electronic means.
- (v) In respect of nominations for positions of Branch Officers, ordinary members of the Branch Committee and Branch Delegates to National Council, nominees may provide with their nomination a candidate statement in Word format containing a brief statement of experience, suitability for office and the objectives and policies intended to be pursued if elected. The candidate statement may also contain a photo of the nominee and brief information as to any group of candidates the nominee is aligned with. The candidate statement and photo shall be in the format notified in the Returning Officer's notice calling for nominations and shall be limited to a maximum of 300 words. Statements and photos shall be distributed by the Returning Officer with the ballot papers should the nominee's nomination be compliant and a ballot for the position required.
- (vi) At the closing hour of the nominations, the Returning Officer, in the presence of the Scrutineers (if present), shall proceed to open all nominations.
- (vii) The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event that he or she finds a defect in any nomination, the Returning Officer shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give the person the opportunity of remedying the defect where practicable within seven days of being notified.
- (vii) If the Returning Officer finds that a candidate statement or photo does not comply with the above requirements for publication, they shall notify the nominee concerned of the non-compliance; and provide the nominee the opportunity to remedy the matter within seven days of being notified, where practicable. If the nominee does not take the necessary steps to fix the non-compliance within the time provided, only the complying component/s will be distributed with the ballot material. Provided that no candidate statement or photo will be distributed if in the opinion of the Returning Officer, it is offensive, defamatory or misleading.

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- (ix) If there be no more nominations than the number to be elected for any position, the Returning Officer shall declare the nominated person/s to be elected to the position/s. If a ballot is required for any position then the names of the persons so declared elected by the Returning Officer will appear on the ballot paper with the words “declared elected” printed in a box next to his or her name. The person or persons shall take office in accordance with sub-rule 23A(b).
  - (x) A candidate who has been nominated in an election may, by notice in writing addressed to the Returning Officer, withdraw the nomination at any time before the close of nominations.
  - (xi) If there are two or more nominations for any position, the Returning Officer shall advise each of the candidates immediately after the close of nominations of the names of the other candidate or candidates.
  - (xii) The day on which the roll of voters for the ballot is to be closed shall be on the seventh day prior to the opening of nominations.
  - (xiii) Candidates shall have the right on request, to scrutinise the membership records of the Branch.
  - (xiv) If more than the required number of nominations are received for any position, the Returning Officer shall have ballot papers printed and delivered to their office containing the name of the candidates for each position in an order chosen in accordance with these rules, indicating the number to be elected to each position, the manner in which votes shall be recorded and the date and the time of closing of the ballot.
  - (xv) The ballot shall open as soon as practicable after the 1st of July and close no later than a date four weeks from the opening date.
  - (xvi) The Returning Officer shall, forward by prepaid post to every member entitled to vote a ballot paper which has been initialled by the Returning Officer together with a set of envelopes prescribed by the relevant legislation.
  - (xvii) Envelopes enclosing ballot papers shall be marked: “if not delivered within seven (7) days please return to P.O. Box No. ” (obtained for ballot).
  - (xviii) The Returning Officer shall secure a postal box and bag, in his or her name, at the mail exchange to which all ballot papers shall be returned.
  - (ixx) The Returning Officer shall clear the box and bag at the mail exchange on a regular basis and shall sign a receipt for the ballot papers on taking them from the mail exchange. The Returning Officer shall notify all scrutineers of their intention to clear the box and bag and their right to attend when that occurs. The Returning Officer shall provide a progressive total of ballots returned to any candidate on their request.
  - (xx) Immediately after the closing date of the ballot, the box and bag at the Mail Exchange shall be cleared by the Returning Officer for the last time. The Returning Officer shall then proceed to the place determined by them to begin the count. The Returning Officer shall notify all scrutineers of the time and place of the count and of their right to attend when that occurs.

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- (xxi) The Returning Officer shall be responsible for the safe custody of the ballot papers.
  - (xxii) On request of a member prior to the closing date of the ballot, his or her returned, undelivered ballot paper shall be readdressed. At the close of the ballot, the Returning Officer shall separate returned, undelivered ballot papers from returned votes, and the undelivered ballot papers shall be retained.
  - (xxiii) At the close of the issue of ballot papers, the number issued by the Returning Officer shall be checked with the ballot papers and business reply envelopes obtained from the printers, and the surplus shall be retained.
  - (xxiv) Upon completion of the count of the ballot, the Returning Officer shall;
    - a. Declare the election result and issue to the Branch and each candidate written advice of the election result.
    - b. The candidates declared elected will take office from the close of business on the day of the written declaration and shall hold office in accordance with subrule 23A(b).
  - (xxv) In the event of a tie occurring in any ballot, the result shall be determined by the Returning Officer drawing lots provided that if one of the tied candidates is a retiring office holder from the position subject of the ballot he or she shall be declared elected.
  - (xxvi) The Returning Officer will then notify all successful candidates by letter of their election.
  - (xxvii) This rule does not apply to ballots and elections in Sub-Branches or workplace committees.
- (e) Qualification for Office
- (i) Nominations for any position of paid Branch Officer shall have been a continuously financial member of the Union for not less than twelve months immediate preceding his or her nomination and shall be a financial member of the Union at the date of his or her nomination.
  - (ii) Nominations for any position other than that of paid Branch Officer shall have been a continuously financial member of the Union for not less than three months immediately preceding his or her nomination and shall be a financial member of the Union at the date of his or her nomination.
  - (iii) No member may nominate for more than one position at each election of Branch Officers and ordinary members of the Branch Committee of Management. In addition, in the case of the New South Wales Branch, no member may nominate for the positions of Branch Officer and Councillor of the Branch Council at any election. For the avoidance of doubt, any member of the New South Wales Branch may nominate for the position of Councillor of the Branch Council and ordinary member of the Branch Committee at any election.
  - (iv) If a member nominates for more than one position which is prohibited under this rule, such member must, within seven days after the close of nominations, advise the Returning Officer in writing which one of the positions the member wishes to stand for, and withdraw any nomination or nominations for the other positions for which said member was nominated. If the member fails to so notify the Returning Officer, the Returning Officer shall reject all the prohibited nominations for that member.
  - (v) In addition to the foregoing, no member may nominate for any position at any Branch election unless the member is attached to the relevant Branch.

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(f) Team Nominations

This subrule is to be construed as overriding any inconsistent provision of subrule 23A(d).

Candidates in an election of:

- (i) Officers of a Branch;
- (ii) Ordinary members of a Branch Committee;
- (iii) In the case of the NSW Branch, Branch Council;
- (iv) Branch delegates to the National Council;

may, subject to the following conditions, nominate as members of a “team nomination”:-

- a. Each candidate being nominated as a member of a team nomination must signify his or her acceptance of such nomination by signing the nomination to the Returning Officer.
- b. No member of a team nomination may nominate or be nominated as a member of another “team nomination” or as an individual candidate. The Returning Officer shall reject any subsequent nomination from a member once they have submitted a nomination as part of a Team. Further, if a member of a Team has previously submitted a nomination as an individual nominee, the Returning Officer shall reject the earlier nomination as an individual candidate.
- c. A “Team” nomination must be received by the Returning Officer within the nomination period and nominate a candidate (or the required number of candidates) for each position for which nominations have been called whereupon each candidate will be considered to have nominated for each position concerned.
- d. Each Team nomination must identify a Team Leader and their contact details. A Team Leader may nominate a substitute or replacement Team Leader. The Returning Officer will liaise with the Team Leader in all matters regarding the nominations contained within the Team.
- e. Each Team must identify a Team name which will be used on the ballot paper. The Team Leader may change the Team name up until the time that the Returning Officer conducts the draw for candidate positions on the ballot papers. The Team name shall not be offensive, defamatory or misleading. If the Returning Officer forms the view that a Team name does not comply with these requirements, the Team Leader must be provided an opportunity to submit a revised Team name. If the Team Leader does not provide an acceptable replacement Team name within the required time, the Returning Officer shall use the surname of the Team’s candidate for Secretary, or another distinguishing name, as the Team name.
- f. Once a candidate has nominated for a team nomination he or she cannot withdraw unless with the consent of all the members of that team. Where there is consent for a candidate to withdraw, the team nomination form may be amended to provide for a replacement nominee.



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- g. Notwithstanding anything else in these rules, where a member of a Team has withdrawn their nomination or has had their nomination rejected by the Returning Officer, the Returning Officer shall notify the Team Leader and provide the Team Leader with an opportunity to submit a nomination for a replacement nominee within seven days of being notified. A Team Leader may submit a nomination for a replacement nominee after the nomination period has closed.
  - h. The replacement nominee must satisfy the eligibility requirements for the relevant position. If the Team Leader does not provide eligible replacement nomination/s within the required time, or the Returning Officer finds one or more of the replacement nominees is ineligible for the position; the Team nomination will be rejected.
  - i. The Returning Officer shall notify the remaining team nominees that they are deemed to be eligible individual nominees despite not having met all the nomination requirements of subrule 23A(d). The nominees may within seven days of notification submit an individual candidate statement pursuant to subrule 23A(d)(v) and (vii) or if they so wish, they may withdraw their individual nomination.

(g) Team Statements

- (i) Notwithstanding anything else in these Rules, this sub-rule applies to members of a Team nomination. A Team may submit with the Team nomination, a Team statement and a photo which may contain one or more of the Team members, which shall be distributed with the ballot papers in any ballot.
- (ii) The Team statement shall contain a brief statement of experience, suitability for office and the objectives and policies of the Team. The statement and photo shall be in the format notified in the Returning Officer's notice calling for nominations and shall be limited to a maximum of 300 words. In addition, the Team Leader may also submit an individual statement of no more than 100 words and a photo on behalf of one or more of the Team members. Individual statements may contain information about the group or Team the nominee is aligned with. Statements and photos shall be distributed by the Returning Officer with the ballot papers should the nominee's nomination be compliant and a ballot for the position required.
- (iii) If one or more Teams submit a Team statement and photo, these will be published by the Returning Officer in the Team order as drawn for Team positions on the ballot paper. Team statements and photos will appear first in any publication. Individual statements and photos on behalf of Team members shall be published in draw order with other individual statements and photos.
- (iv) If the Returning Officer finds that a statement or photo does not comply with the above requirements for publication, they shall notify the Team Leader and the nominee concerned of the non-compliance; and provide the Team Leader/nominee the opportunity to remedy the matter within seven days of being notified, where practicable. The changes shall be restricted to the extent necessary to correct non-compliance. If the Team Leader/nominee does not take the necessary steps to fix the non-compliance within the time provided, only the complying component/s will be distributed with the ballot material. Provided that no candidate statement or photo will be distributed if it is in the opinion of the Returning Officer offensive, defamatory or misleading.

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- (v) Where a member of a Team has withdrawn their nomination, or had the nomination rejected, and the Team Leader submits a replacement nomination; the Team Leader may make the necessary changes to the Team statement and photo. These changes shall be restricted to including the biographical changes of the replacement nominee and a new team photo. An individual statement and photo in accordance with (ii) of this subrule may also be submitted by the Team Leader on behalf of each replacement nominee.

(h) Ballot Papers

- (i) Each ballot paper shall bear the initials of the Returning Officer, or a facsimile of those initials, but shall not bear any mark that would disclose the identity of the member voting. The ballot papers must contain the date and time of closing of the ballot, instructions on how to cast a vote and when to return the ballot paper to the Returning Officer.
- (ii) If there is at least one Team nomination the ballot paper must have two parts divided by a horizontal line. An above-the-line area for Team boxes and a below-the-line area for individual candidates to be listed.
- (iii) The order of candidates' names will be determined by lot, the drawing of which shall be conducted at a time that will be determined by the Returning Officer. The candidates will be notified of such date and time.
- (iv) The Returning Officer will ensure that the names of members of a Team nomination are printed on the ballot paper below-the-line in a manner which clearly identifies that the candidate is standing for election in the nominated position as part of a team, by printing the Team name next to, or below, the candidate name.
- (v) Where a person who has nominated as part of a Team nomination is declared elected unopposed to a position by the Returning Officer, that person's name and Team name, together with the words "declared elected", shall appear on the ballot paper.
- (vi) If there is at least one Team nomination, the Returning Officer shall ensure that the ballot paper makes provision for the recording of a vote for each member of a team nomination by way of marking one box above-the-line (a "team box").
- (vii) If there are two or more Team nominations, the order that the team boxes shall appear across the ballot paper above-the-line shall be determined by lot at the same time as the draw for individual candidates below-the-line.
- (viii) Where there is above-the-line and below-the-line voting, the Returning Officer shall ensure that the ballot paper contains clear instructions to the effect that a member voting may vote for individual candidates below-the-line, or, alternatively, vote for each member of a team by marking one team box above-the-line.
- (ix) If voting below-the-line, voters are required to mark the box next to the name of the candidate/s for whom they wish to vote with a cross ("X") or other mark provided the intention of the voter is clear. In any ballot, voters must not vote for more candidates than there are positions to be filled, but may vote for less candidates than the number of positions to be filled.

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- (x) If voting above-the-line, voters mark only the one box associated with the Team for whom they wish to vote with a cross (“X”) or other mark provided the intention of the voter is clear.
  - (xi) If there are not two parts to the ballot paper, ie no above-the-line voting, voters are to mark their vote as if they were voting below-the-line.
  - (xii) A vote in a team box counts as a vote for each member of the Team nomination remaining in the ballot/s.
  - (xiii) Where a valid above-the-line vote is recorded it is considered a vote for that Team notwithstanding any below-the-line votes indicated on the ballot paper. However, where an above-the-line vote is determined invalid then any below-the-line votes on that ballot paper will be counted.

(i) Scrutineers

- (i) Each candidate shall have the right to appoint a Scrutineer, who shall be entitled to be present at all stages of the ballot, without cost to the Union. The candidate appointing the scrutineer shall, before the closing of nominations, notify the Returning Officer in writing of the name of such scrutineer.
- (ii) Scrutineers may be present during the whole conduct of the ballot and at every operation from receipt of nominations to final count of the ballot.
- (iii) Scrutineers shall be entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count, but the Returning Officer shall have final determination of any vote so queried.
- (iv) Scrutineers shall not be entitled to remove, mark, alter or deface any ballot paper or other document used in connection with the election.
- (v) Scrutineers shall not interfere with or attempt to influence any member at the time such member is casting his or her vote.

(j) Extraordinary Vacancies of the Branch

- (i) Where an extraordinary or casual vacancy (howsoever occurring) in the office of any Officer of a Branch, ordinary member of a Branch Committee of Management, Branch delegate to the National Council or Councillor of the New South Wales Branch Council, the Branch Committee shall take immediate action to have such vacancy filled by an election conducted in accordance with the relevant terms of subrule 23A provided that:
  - a. where the unexpired portion of the term of office in which the vacancy occurs does not exceed three years, the Branch Committee may fill such vacancy by appointment of an eligible member of the Union and that member shall hold office until the expiration of the term of office of the person he or she replaces; and,
  - b. where the unexpired portion of the term of office in which the vacancy occurs exceeds three years the Branch Committee of Management may fill such vacancy by appointment of an eligible member of the Union until an election is held, provided that no person so appointed shall hold office for a period exceeding six months.

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- (ii) The Returning Officer appointed by the Australian Electoral Commission pursuant to subrule 23A(c)(i) shall conduct the election in accordance with the relevant terms of this subrule 23A as necessarily modified and shall determine the dates for the closing of nominations and the closing of the ballot to ensure that the vacancy is filled as soon as is practicable.
  - (iii) Any person so elected shall take office from the date of the declaration by the Returning Officer of his or her election and shall hold office until the expiration of the term of office of the person he or she replaces.
- (k) System of Voting
- (i) The system of voting in any election conducted pursuant to this rule shall be the first-past-the-post system.
  - (ii) A voter shall record his or her vote or votes (as the case may be) by placing a single 'X' or other mark provided the intention of the voter is clear opposite the name or names of all candidates for whom he or she desires to record a vote provided that he or she shall not record a vote for more candidates than are required to fill any particular position or office.
  - (iii) A ballot paper shall be rejected if it is not marked in a manner prescribed or allowed by this rule but in determining validity primacy shall be given to identifying the voter's clear intention.

#### B – National Officer Elections

- (a) Tenure of Office
- (i) Subject to sub-rules (ii) and (iii), the National Officers shall be elected at the annual meeting of the National Council (the said meeting) by secret ballot of the members of National Council being the National Officers and the delegates to National Council and shall take office from the completion of the annual meeting of National Council in the year of their election and shall hold office for a period of four years or until successors thereto have been elected and taken office.
  - (ii) In the event that there is any delay in an election for an office or the taking of office occurs beyond the time of the relevant annual meeting of National Council for any reason including any delay caused by any election inquiry, the person elected shall take office from the time of declaration of the ballot in which he or she is elected, and shall hold office for a period of four years less the period of the time of that delay, or until a successor has been elected and taken office.
  - (iii) Where the annual meeting of National Council held in accordance with Rule 17(a) occurs prior to the conclusion of all Branch Elections for National Council Delegates in the year of election, the Returning Officer shall conduct the election by post, applying these rules *mutatis mutandis*.

(b) Qualifications for Office

Any nominee for the position of a National Officer shall:

- (i) Be a member of the National Council at the time of his or her nomination;

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- (ii) Be a financial member of the Union at the time of the nomination;
  - (iii) Have been a financial member of the Union for the period of 12 months immediately preceding his or her nomination;
  - (iv) Be nominated by a member of the National Council (who shall be a financial member of the Union); and
  - (v) Not be nominated for more than one position.
- (c) Returning Officer
- (i) In accordance with the Act, all elections for office will be conducted by a Returning Officer appointed by the Australian Electoral Commission, unless an exemption is in place at the time.
  - (ii) The National Council may appoint a Returning Officer for the conduct of any elections, ballots or plebiscites not conducted by a Returning Officer appointed by the Australian Electoral Commission, as may be necessary throughout the ensuing year provided that a duly appointed Returning Officer shall hold office until a successor thereto is duly appointed.
  - (iii) A Returning Officers –
    - a. May or may not be a member of the Union;
    - b. Shall not be the holder of any office in or an employee of the Union or any Branch of the Union;
    - c. The Union Ombudsman is not eligible to be appointed as the Returning Officer;
    - d. Shall take such action and give such directions as are reasonably necessary to ensure that no irregularities occur in or in connection with any election, ballot or plebiscite or to remedy any procedural defects; and
    - e. No person shall refuse or fail to comply with any such direction or obstruct or hinder the Returning Officer in the conduct of the election, ballot or plebiscite or the taking of any such action or compliance with any such direction.
  - (iv) In the event of a duly appointed Returning Officer being unable or unwilling to act as and when required, whether during the conduct of any election, ballot or plebiscite or not, the National Executive or the Australian Electoral Commission as the case may be, shall appoint another person to act as Returning Officer for that election, ballot or plebiscite.
- (d) The Returning Officer shall conduct National Officer elections in the following manner:
- (i) The opening date of nominations shall not be any earlier than 14 days after the declaration of all Branch Elections held in accordance with subrule 23A and the closing date of nominations shall be at least 14 days after the opening.

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- (ii) At the closing hour of the nominations, the Returning Officer, in the presence of the Scrutineers (if present), shall proceed to open all nominations.
  - (iii) The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event that the Returning Officer finds a defect in any nomination, they shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give the nominee the opportunity of remedying the defect where practicable within seven days of being notified.
  - (iv) A candidate who has been nominated in an election may, by notice in writing addressed to the Returning Officer, withdraw the nomination at any time before the close of nominations.
  - (v) Prior to the opening date of nominations the Returning Officer shall call for nominations by notice in writing to each member of the National Council delivered by post at the address shown on the Union's membership register and/or by such other means as may be determined by the Returning Officer. The notice shall include advice on the rules relating to nominations and the address of the Returning Officer.
  - (vi) Nominations shall be in writing and signed by the nominee and nominator and shall be delivered to the Returning Officer prior to the close of nominations.
  - (vii) If there be no more nominations than there are vacancies for a position, the Returning Officer shall declare the nominated person or persons elected to the position.
  - (viii) If more nominations are received than there are vacancies for a position the Returning Officer shall:
    - a. have ballot papers printed and delivered to the Returning Officer containing the names of the candidates for each position in an order chosen by lot indicating the number to be elected to each position, and the manner in which votes shall be recorded;
    - b. be responsible for the safe custody of the ballot papers;
    - c. obtain from the printer a certificate of the number of ballot papers printed;
    - d. initial every ballot paper prior to its distribution;
    - e. attend the said meeting on the first day of the said meeting to conduct the ballot;
    - f. distribute a ballot paper to each Officer and delegate to National Council entitled to receive a ballot paper;
    - g. arrange for the use of a ballot box or other receptacle to which ballot papers may be returned;
    - h. after the closing of the ballot collect the ballot papers from such box or receptacle, and

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- i. in the presence of the scrutineers (if so requested), collect all the ballots, count all the votes cast and declare the result of the ballot.
  - (ix) In the event of a tie occurring the result shall be determined by the Returning Officer drawing lots provided that if one of the tied candidates is a retiring office holder from the position subject of the ballot he or she shall be declared elected.
  - (x) The Returning Officer shall report the result of the election to the said meeting and shall submit to the said meeting a full report of the ballot indicating the number of ballot papers printed, the number distributed, the number on hand and any other relevant matters.
- (e) Absentee Voting

Where a member of the National Council is unable to attend the said meeting or that part of it at which the ballot is conducted that member may so advise the Returning Officer in writing requesting that the member be provided with a ballot paper prior to the ballot at the said meeting. Upon receipt of that request the Returning Officer shall provide the member concerned with a ballot paper and a prepaid envelope or business replied paid envelope addressed to the Returning Officer together with a further blank envelope with instructions to the member that the ballot paper when completed should be inserted in the blank envelope which should then be sealed and further inserted in the prepaid or replied paid envelope and either given to the Returning Officer or posted to the Returning Officer in sufficient time for it to be able to be opened at that part of the said meeting where the ballot is conducted. The Returning Officer upon receiving any such vote is required to ensure its safe custody and that it not be opened before the collection and subsequent counting of votes cast at the said meeting as required by sub-rule (d). The Returning Officer shall be responsible to ensure the secrecy of the vote cast by the absent member and for the purpose of doing so shall open each of the envelopes in the presence of any scrutineers and without examining or revealing the contents of the ballot paper contained in those envelopes, include that ballot paper together with other ballot papers contained in the ballot box referred to in sub-rule (d) in such a way as to prevent anyone being able to identify in which way the absent member has voted.

A member of National Council may not authorise any person to exercise a member's vote at or before such meeting.

(f) Scrutineers

Any candidate may if he or she so desires appoint a scrutineer who is a financial member of the Union to represent him or her at the ballot. The candidate appointing the scrutineer shall, before the closing of nominations, notify the Returning Officer in writing of the name of such scrutineer, who -

- (i) Shall be entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count, but the Returning Officer, shall have final determination of any votes so queried.
- (ii) Shall not be entitled to remove, mark, alter or deface any ballot paper or other document used in connection with the election.
- (iii) Shall not interfere with or attempt to influence any member at the time such member is casting his or her vote.

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(g) Extraordinary Vacancies

- (i) Where an extraordinary or casual vacancy (howsoever occurring) occurs in the office of any National Officer, the National Executive shall take immediate action to have such vacancy filled by an election conducted in accordance with the relevant terms of subrule 23B provided that -
- (a) Where the unexpired portion of the term of office in which the vacancy occurs does not exceed three years, the National Council may fill such vacancy by appointment of a member of the Union who is eligible for that office and that member shall hold office until the expiration of the term of office of the person they are replacing; and,
- (b) Where the unexpired portion of the term of office in which the vacancy occurs exceeds three years the National Council may fill such vacancy by appointment of a member of the Union who is eligible for that office until an election is held provided that no persons so appointed shall hold office for a period exceeding six months.
- (ii) The Returning Officer appointed by the Australian Electoral Commission pursuant to subrule 23B(c)(i) shall conduct the election in accordance with the relevant terms of this subrule 23B as necessarily modified and shall determine the dates for the closing of nominations and the closing of the ballot to ensure that the vacancy is filled as soon as is practicable. Should a ballot be necessary it will be conducted by postal ballot.
- (iii) The Returning Officer shall forward by pre-paid post a ballot paper and a prepaid or business reply paid envelope addressed to the Returning Officer for the return of the ballot paper to each Officer and delegate to National Council entitled to receive a ballot paper.
- (iv) The Returning Officer shall arrange for the use of a postal office box or other receptacle to which ballot papers may be returned and after the closing of the ballot collect the ballot papers from such box or receptacle.
- (v) The Returning Officer shall notify the National Secretary and each candidate of the election result immediately following the conclusion of the count. As soon as practicable thereafter, the Returning Officer shall provide a written declaration of the election result to the National Secretary and each candidate. Any person so elected shall take office from the date of the declaration of the election and shall hold office until the expiration of the term of the person they are replacing.
- (vi) In all other respects the ballot shall be conducted in accordance with the foregoing provisions of this rule.

(h) System of Voting

- (i) The system of voting in any election conducted pursuant to this rule shall be the first-past-the-post system.
- (ii) A voter shall record his or her vote or votes (as the case may be) by placing a single 'X' or other mark provided the intention of the voter is clear opposite the name or names of all candidates for whom he or she desires to record a vote provided that he or she shall not record a vote for more candidates than are required to fill any particular position or office.



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- (iii) A ballot paper shall be rejected if it is not marked in a manner prescribed or allowed by this rule; but in determining validity primacy shall be given to identifying the voter's clear intention.

#### **24 - NATIONAL PRESIDENT**

- (a) The National President shall attend all meetings of the National Council and National Executive and any meeting in the Union held by decision of the National Council and National Executive and preside at these meetings, and may, if he or she desires, preside over any other meeting of the Union at which he or she is present. He or she shall preserve order so that the business may be conducted in due form and with propriety.
- (b) The National President shall, within 14 days of any minutes being confirmed, sign the minutes and the original will be kept in the minute folder.
- (c) He or she shall be impartial in all transactions and shall see that these rules are rigidly adhered to.

#### **25 - NATIONAL VICE-PRESIDENTS**

- (a) The National Vice-Presidents shall at all times assist the National President in the execution of his or her duties and when requested by the National President shall carry out such functions of the National President in his or her absence as the National President authorises in writing.
- (b) In the absence of the National President, the most senior National Vice-President present shall preside over a meeting of the National Council or the National Executive or any meeting held by decision of the National Council or National Executive and when so doing shall exercise all the powers and functions of the National President.
- (c) In the event of the National President and both Vice-Presidents being absent from a meeting of the National Council or the National Executive or any meeting held by decision of the National Council or National Executive, the members present shall appoint a Chair to preside over such meeting.

#### **26 - NATIONAL SECRETARY**

The National Secretary shall -

- (a) Be the registered officer of the Union to sue and be sued on its behalf;
- (b) Summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;
- (c) Blank
- (d) Answer and file all correspondence;
- (e) Keep and maintain, or cause to be kept and maintained, the records required by any statute to be kept and maintained by the Union in any form stipulated by any statute ;
- (f) Lodge, file with and furnish all documents as are required to be lodged, filed or furnished by the Union under any statute at the prescribed times and in the prescribed manner;

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- (g) Receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
  - (h) Draw up a report and balance sheet to be submitted to the National Council at its annual Meeting and forward a copy of the same to each Branch;
  - (i) Submit his or her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;
  - (j) Be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;
  - (k) Take all reasonable steps to increase the membership of the Union and foster a Branch of the Union in each State or Territory where members are employed;
  - (l) Supply Branches with information as to the proceedings of the National Council, National Executive and Branches;
  - (m) Confer with Branch Secretaries as often as is necessary in the interests of the Union and assist as best he or she is able all Branch Secretaries and Committees;
  - (n) Between meetings of the National Executive, control and conduct the business of the Union, but shall not have the powers specified in rule 16(e);
  - (o) Between meetings of the National Council and National Executive, have power to call any meeting in the Union which the National Council has power to call;
  - (p) Be ex-officio a member of all Committees of the National Council;
  - (q) Be indemnified from the funds of the Union;
  - (r) Provide the Returning Officer with such assistance as is necessary to enable him or her to conduct any election;
  - (s) Have the power to submit any industrial dispute in which members of the Union are involved to Conciliation and Arbitration;
  - (t) Be subject to the direction and control of the National Executive and National Council in the performance of his or her duties and exercise of his or her powers;
  - (u) Carry out such other duties, and comply with such directions, as the National Executive or National Council may from time to time assign or give to him or her;
  - (v) Provide such reports to National Executive or National Council as required by those bodies concerning the performance of his or her duties, exercise of his or her powers or any other matter concerning the business and affairs of the Union;
  - (w) Shall perform such other duties and functions as are conferred by these rules on the National Secretary;

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- (x) For the avoidance of doubt, where National Executive has adopted a policy or procedure then:
    - (i) the National Secretary has the obligation to comply with that policy or procedure, notwithstanding the powers conferred, and the duties imposed, by this rule; and
    - (ii) to the extent of any inconsistency between the terms of this rule and the obligations created by that policy or procedure, the terms of the policy or procedure prevail and are to be treated as a direction of the National Executive.

## **27 - NATIONAL ASSISTANT SECRETARY**

- (a) The National Assistant Secretary shall
  - (i) assist the National Secretary at all times in the execution of his or her duties; and,
  - (ii) be subject to the direction of the National Secretary and act in his or her stead whenever appointed to do so by the National Executive.

## **28 - MISCONDUCT OF NATIONAL OFFICERS**

- (a) A National Officer may be charged by any member with:
  - (i) misappropriation of the funds of the Union;
  - (ii) substantial breach of the Union's Rules;
  - (iii) gross misbehaviour in relation to his or her office; or
  - (iv) gross neglect of duty in the conduct of his or her office.
- (b) A National Officer is charged when he or she is given notice of the charge and a copy of that charge has been given to the National President.
- (c) National Executive may, in its discretion, suspend the person charged from office pending determination of the charge by the National Executive.
- (d) The National Executive shall meet to hear the charge. The charge will be heard at the National Executive meeting immediately following the date that a copy of the charge has been given to the National President, provided that:
  - (i) The National Officer charged must be given at least 21 days' notice in writing of the place and date of the National Executive meeting at which the charge is to be heard;
  - (ii) The National Officer charged must be given particulars in writing of the charge at least 21 days before the date of the National Executive meeting at which the charge is to be heard;
  - (iii) Where the National Officer has not been given the notice and particulars required by these rules, the National Executive shall determine when the charge will be heard consistent with the obligations to provide those particulars and that 21 days' notice.

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- (e) At the meeting to hear the charge, the National Executive:
- (i) Shall give the member bringing the charge the opportunity to be heard and may, in its discretion, give that member the opportunity to be heard through another person or in writing or both. It need not give the member bringing the charge an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the member bringing the charge the opportunity to provide written submissions;
  - (ii) Shall give the National Officer charged the opportunity to be heard personally at that meeting, but may determine the charge in the absence of the officer notified of the meeting;
  - (iii) May, in its discretion, give the National Officer charged the opportunity to be heard through another person or in writing or both. It need not give the National Officer charged an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the National Officer charged the opportunity to provide written submissions;
  - (iv) Shall, if it is satisfied on the balance of probabilities, that the charge is established, find the National Officer guilty of the charge, but shall otherwise dismiss the charge;
  - (v) Shall direct the National President to immediately notify the National Officer of the decision of the National Executive in writing giving reasons for the decision.
- (f) If the National Executive has found the National Officer guilty of a charge, the National Executive at that meeting (or such other meeting as the National Executive determines):
- (i) Shall give the National Officer the opportunity to be heard as to the penalty that shall be imposed on the National Officer, but may determine the charge in the absence of a National Officer notified of the meeting;
  - (ii) May, in its discretion, give the National Officer the opportunity to be heard through another person or in writing or both. It need not give the National Officer an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the National Officer the opportunity to provide written submissions;
  - (iii) After giving the National Officer an opportunity to be heard, may, in its discretion, warn, reprimand, remove from office or expel the National Officer from membership, provided that a National Officer cannot be removed from office or expelled from membership, except by a resolution of a majority of two thirds of the votes able to be cast by those present at the meeting.
  - (iv) May, in its discretion, suspend the National Officer from office (for a period not exceeding 2 months) until the National Executive has heard the National Officer as to the penalty to be imposed, provided that a National Officer cannot be suspended from office except by a resolution of a majority of two thirds of the votes able to be cast by those present at the meeting;
  - (v) Shall direct the National President to immediately notify the National Officer of the decision of the National Executive in writing giving reasons for the decision.

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- (g) The person who has made the charge and the National Officer charged shall not be entitled to cast a vote at the National Executive meeting concerning whether the charge is established, the penalty to be imposed or any procedural motions associated with the National Executive dealing with the charge.
  - (h) The National Executive may make any directions concerning the procedure governing the dealing with the charges that it sees fit.
  - (i) Where a National Officer is removed from office, or expelled from membership, under this rule then the office is vacant and there is an extraordinary vacancy in that office that may be filled under subrule 23 B.(g).
  - (j) A National Officer found guilty of a charge may appeal to the National Council concerning that finding of guilt, or the penalty imposed on the National Officer, or both, by giving to the National President notice of his or her intention to appeal within seven days of his or her being notified in writing of the decision of National Executive.
  - (k) Giving of a notice to appeal shall not operate to stay the decision of the National Executive.
  - (l) When dealing with any appeal the National Council:
    - (i) Shall give the National Officer the opportunity to be heard personally at that meeting, but may determine the charge in the absence of a National Officer notified of the meeting;
    - (ii) May, in its discretion, give the National Officer the opportunity to be heard through another person or in writing or both. It need not give the National Officer charged an opportunity to be heard in person so long as the opportunity to be heard is given by permitting the National Officer charged the opportunity to provide written submissions;
    - (iii) Shall, if it is satisfied on the balance of probabilities that the charge is established, dismiss the appeal, but shall otherwise dismiss the charge;
    - (iv) Shall vary the penalty if it is satisfied that the penalty imposed on the National Officer by National Executive was inappropriate, but shall otherwise dismiss any appeal concerning the penalty imposed;
    - (v) Shall direct the National President to immediately notify the National Officer of the decision of the National Council;
    - (vi) Shall, if it has determined that the National Officer should not be expelled from membership or removed from office, reinstate the National Officer to the National Officer's former office and thereby remove from office any person appointed or elected to fill the vacancy in that office;
    - (vii) May, in its discretion, set aside or vary any decision to suspend the National Officer.
  - (m) The person who has made the charge and the National Officer charged shall not be entitled to cast a vote at the National Council meeting concerning the appeal or any procedural motions associated with the National Council dealing with the appeal.

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- (n) The National Council may make any directions concerning the procedure governing the dealing with the appeal that it sees fit.
  - (o) Decisions of the National Executive and National Council made under this rule are final, and are not subject to the review processes stipulated in rules 21 and 36.
  - (p) Any National Officer expelled from membership by the National Executive pursuant to this rule shall not be re-admitted to membership except by a vote of the National Executive, except where the National Council has varied the penalty imposed by National Executive.
  - (q) Where the charge is made against the National President, then the functions and powers conferred by this rule on the National President shall be conferred on the National Secretary.
  - (r) Nothing in this rule concerning the right of a National Officer to be heard limits the ability of National Executive or National Council to conduct meetings electronically or to determine matters by post, email or other electronic means, provided that an opportunity to be heard, orally or in writing, is provided to the National Officer charged.
  - (s) For the purposes of this rule where a notice is required to be given to a person it shall be delivered personally or posted by registered mail to his or her last known address.

## **29 - NATIONAL INDUSTRIAL PROCEEDINGS**

- (a) The National Executive shall have power and authority:
  - (i) to make any claims or demands upon anybody and to lodge or file any claims, demands, disputes or any other matters including applications, notifications, declaration or returns with such Tribunal, Court or other body as may be necessary or desirable and to file or lodge same for determination, and
  - (ii) to initiate, participate in and conclude any process related to the terms and conditions of employment of persons who are members of, or eligible for membership of the Union including initiating periods for bargaining with any employer, giving notice of any intention to take industrial action, making agreements with any employers or acting under any statutory provision related to registered organisations. This sub-rule is intended to avoid doubt as to the meaning and application of sub-rule (i) above.
- (b) In the event that such matters impact upon a state Branch, the National Executive or its authorised officers shall be authorised to consult with and seek agreement with the affected Branch or Branches before such matters are lodged or filed;
- (c)
  - (i) Notwithstanding the foregoing and having regard to sub-rule (b), the National Secretary or in his or her absence, the National Assistant Secretary, shall have a discretionary power to do the things referred to in clause (a) above. The use of this power shall be reported to a meeting of the National Executive.
  - (ii) The National Secretary, or in his or her absence, the National Assistant Secretary, may in a particular matter delegate his or her power under this clause to a Branch Secretary when the matter concerns only the members of that Branch. The use of this power shall be reported to a meeting of the National Executive.

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- (d) For the purpose of this rule the National Secretary, or any other officer as the National Executive may decide, shall be the officer(s) authorised to sign any claims, demands, disputes or any other matters and to sign any document or instrument related to any aspect of the matters referred to in clause (a) and/or (c) on behalf of the National Executive.
  - (e) The Union may be represented at any hearing of any such claim, demand, dispute or any other dealing with any matter referred to in clause (a) by the National Secretary or by such other officers or persons as the National Executive or the National Secretary may decide.

### **30 - SEAL**

- (a) The Union shall have a common seal which shall be kept in the exclusive custody of the National Secretary.
- (b) Any document not required by law to be under seal may be executed by the National Secretary.
- (c) Any document required by law to be under seal shall be executed on behalf of the Union by affixing the seal of the Union thereto and by being signed by the National Secretary and the National President, or in the absence of the National Secretary or National President, the National Assistant Secretary and/or a National Vice-President.
- (d) Where a document has been executed under the seal of the Union, this shall be reported at the next National Executive meeting.
- (e) This rule does not confer authority on the National Officers named in sub-rule (c), but only regulates the means by which authority conferred by other rules on those officers may be exercised.

### **31 - INDUSTRIAL AGREEMENTS**

- (a) The National Executive shall have full power and authority to negotiate and enter into industrial agreements. Such agreements may be signed for or on behalf of the Union by the National Secretary.
- (b) A Branch Committee shall have power to negotiate and enter into industrial agreements affecting only the members of that Branch and such agreements may be signed for or on behalf of the Branch by the Branch Secretary. Claims shall be signed for and on behalf of the Branch by the Branch Secretary.

### **32 - NATIONAL VOTING**

This Rule does not apply to elections, ballots or plebiscites conducted pursuant to subrule 23B.

- (a) Voting at meeting of National Council and National Executive shall be by show of hands or by such other method as the meeting may decide. The Chair shall have a deliberative vote only and in the event of a tie, the question shall lapse.
- (b) In the event that a member of National Council shall for any reason or at any time be unable to be present at any meeting of National Council -
  - (i) in the case of a National Officer, he or she may appoint in writing another member of the National Council as his or her proxy to exercise his or her vote at such meeting; and,

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- (ii) in any other case, the Committee of the Branch concerned may appoint any other member of that Branch Committee as his or her proxy to exercise his or her vote at such meeting.
  - (c) In the event that a National Officer shall for any reason or at any time be unable to be present at any meeting of National Executive he or she may appoint in writing another National Officer as his or her proxy to exercise his or her vote at such meeting.
  - (d) In the event that a Branch Secretary shall for any reason or at any time be unable to be present at any meeting of National Executive he or she may appoint in writing another member of the relevant Branch Committee of Management as his or her proxy to exercise his or her vote at such meeting.

### **33 - NATIONAL QUORUMS**

- (a) The quorum at any meeting of National Council shall be eight excluding the National Officers but including delegates from at least three Branches.
- (b) The quorum at any meeting of National Executive shall be seven.
- (c) If no quorum be present at the expiration of thirty minutes after the time stated for the commencement of any meeting of National Council or National Executive, such meeting shall lapse, but without prejudice to another meeting being called for the same purpose as such meeting was called, at such other time and place as may be thought fit. In the event that any such other meeting has been called the business for which the same has been called may be transacted by those present, notwithstanding the fact that there is not a quorum present. Any resolutions passed at any such meeting shall be as binding and effectual as if a quorum were present. Seven days' notice of any such other meeting shall be given by the National Secretary to all members of the National Council or of the National Executive as the case may be.

### **34 - DISPUTES BETWEEN BRANCHES**

A Branch Secretary may report to the National Secretary any dispute, existing between his or her own and any other Branch.

### **35 - RIGHTS OF BRANCHES**

- (a) All Branches shall be completely and absolutely autonomous within the ambit of these rules, and shall be responsible for their own Government and administration. The Branch shall be the basic unit of the Union, and shall possess full and adequate powers to conduct its own affairs and to seek its objectives under the rules. The control of the Branch resides exclusively in the members of the Branch, who shall be bound by these Rules. This rule can never be altered except by a ballot of all financial members of the Union. Such alteration to be carried must receive a majority vote of two-thirds of the financial members of the Union.
- (b) Subject to the rules, or National Policy, nothing shall alienate the right of members assembled in the General Meeting to determine the policy of the Branch. The decision of properly constituted General Meetings shall be binding on all members of the Branch.
- (c) Where the National Council is satisfied that a Branch has failed to carry out these rules or the rules of the Branch or to comply with the requirements of any Industrial Law or of the General Manger of the Fair Work Commission, it shall have power to call a general meeting of financial members of that Branch and to take such steps as may be necessary to enforce due compliance with the rules and/or the law.



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### 36 - NATIONAL PLEBISCITE

- (a) Notwithstanding anything contained in these rules, a plebiscite of all members of the Union -
- (i) may be held for any purpose at the discretion of the National Council or the National Executive provided that the National Council and the National Executive shall not cause a plebiscite to be held about or in respect of an Entrenched Rule as defined herein; and,
  - (ii) shall be held if requested by resolution of special general meetings of three Branches or if requested by a requisition in writing and signed by not less than 5 per cent of the financial members of the Union. Such requisition to contain in block letters the name of each member signing same and the name of the establishment at which such member is employed.

Provided that no decision of the National Council or the National Executive shall be reviewed or referred to a plebiscite of members pursuant to sub-rule (ii) unless the appropriate request has been delivered to the National President or National Secretary within two months of the said decision.

Provided further that where a plebiscite has been held under sub-rule (i) or (ii), the subject matter which has been put to plebiscite may not be put to a further plebiscite under sub-rule (ii) for at least 18 months after the declaration of the outcome of the plebiscite that has been held.

- (b) Any such plebiscite shall be conducted by secret postal ballot and shall be under the absolute control and direction of a Returning Officer who shall -
- (i) prepare ballot papers which shall contain the question to be voted on;
  - (ii) issue a ballot paper to each member entitled to vote;
  - (iii) determine the time and date for the closure of the ballot, having consideration for the convenience of the voters;
  - (iv) take such steps as are necessary to ensure that a result is correctly ascertained; and,
  - (v) report the result of the plebiscite to the first meeting of the National Executive held after the conclusion of the counting of the votes cast.
- (c) The Returning Officer shall be appointed by the Australian Electoral Commission unless otherwise determined by the National Council and in such a case the Returning Officer shall be the person appointed pursuant to subrule 23B(c)(ii).
- (d) A simple majority decision of the members voting shall be final and shall prevail over any contrary decision of the National Council or National Executive.

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## 37 – STUDENT MEMBERS

- (a) Any person attending a course of study that upon graduation will enable them to seek employment in avocations covered by rule 2 and 3, Industry and Eligibility of these rules, shall be eligible to join the Union as a Student member.
- (b) The relevant Branch shall determine the conditions and benefits of student membership and any administration fee to be applied provided that student members shall not be deemed financial members for all purposes of these rules

## PART C - BRANCH ORGANISATION

### 38 - BRANCHES

- (a) The Union may establish such Branches as the National Council may from time to time decide and the existence of the following Branches is hereby confirmed:-

Victoria No. 1  
Victoria No. 2  
Victoria No. 3  
Victoria No. 4  
Tasmania  
New South Wales  
South Australia/Northern Territory  
Western Australia

- (b) The Victoria No. 1 Branch shall consist of all members of the Union employed in Victoria other than members:-
  - (i) employed under the provisions of the Public Administration Act 2004 (Vic) as amended from time to time; and/or
  - (ii) employed in or in connection with the provision of mental and/or mental retardation services; and/or
  - (iii) eligible to be members of the Victoria No.3 or Victoria No.4 Branches.

Note: The Public Administration Act 2004 (Vic) is a successor to the Public Service Act 1974 (Vic) due to the operation of Section 7(c) of Schedule 2 (Saving and Transitional Provisions) of the Public Administration Act 2004 (Vic).

- (c) The Victoria No. 2 Branch shall consist of all members of the Union employed in Victoria who are -
  - (i) employed under the provisions of the Public Administration Act 2004 (Vic) as amended from time to time; and/or,
  - (ii) employed in or in connection with the provisions of mental health and/or mental retardation services.

Note: The Public Administration Act 2004 (Vic) is a successor to the Public Service Act 1974 (Vic) due to the operation of Section 7(c) of Schedule 2 (Saving and Transitional Provisions) of the Public Administration Act 2004 (Vic).

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- (d) The Victoria No. 3 Branch shall consist of all members of the Union employed in Victoria who are employed in the following classifications, other than those eligible to be members of the Victoria No. 2 or Victoria No. 4 Branches:-

Research Technologist (employed at the Peter McCallum Institute)  
Medical Laboratory Technician  
Physiotherapist  
Radiographer/Medical Imaging Technologist  
Radiotherapy Technician/Radiation Therapy Technologist  
Hospital Librarian  
Occupational Therapist  
Orthoptist  
Speech Therapist/Speech Pathologist  
Medical Photographer  
Medical Illustrator  
Chiropodist/Podiatrist  
Nulceographer/Nuclear Medicine Technologist  
Orthotist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)  
Orthotist/Prosthetist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)  
Prosthetist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)  
Recreation Therapist  
Music Therapist  
Dentist  
Psycho-Therapist who would have been covered by the (Victorian) Health Professional Services Award as that award stood immediately before 1st March 1993  
Recreation Worker  
Welfare Worker  
Youth Worker  
Community Development Worker  
Social Planner  
Rehabilitation Counsellor  
Behavioural Scientist who would have been covered by the (Victorian) Health Professional Services Award as that Award stood immediately before 1st March 1993  
Orientation and Mobility Practitioners  
Medical Records Administrator  
Cardiac Technician  
Safety Officer  
Radiation Engineer

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- (e) (i) The Victoria No. 4 Branch shall comprise all person (other than those eligible to be a member of any other Branch of the Union) who would have been subject to or classified according to the (Victorian) Medical Scientists Award, the (Victorian) Psychologists Award or the (Victorian) Hospital Pharmacists Award immediately before 1st March 1993, including, but not limited to:

AUDIOLOGISTS: Without limiting the generality of the aforesaid classification, it shall include -

Otoneurologist

DIETITIAN

PHARMACIST

PSYCHOLOGIST: Without limiting the generality of the aforesaid classification, it shall include

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Behavioural Scientist

Psychotherapist other than a psychotherapist who would have been covered by the (Victorian) Health Professional Services Award as it stood immediately before 1st March 1993.

SCIENTIST: Without limiting the generality of the aforesaid classification, it shall include

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ANATOMICAL PATHOLOGY SCIENTIST

Histologist

Cytologist

BIOCHEMIST

Clinical Biochemist

Chemical Pathology Scientist

Enzymologist

CLINICAL PHARMACOLOGIST

Pharmacokineticist

ENDOCRINOLOGIST

GASTROENTEROLOGIST

GENETICIST

Cytogeneticist

Molecular Biologist

HAEMATOLOGIST

Immunohaematologist

Serologist

Blood Banking Scientist

Haemodialysis Technologist/Scientist

IMMUNOLOGIST

INTENSIVE CARE SCIENTIST/TECHNOLOGIST

LABORATORY MANAGER

MEDICAL SCIENTIST/TECHNOLOGIST

MICROBIOLOGIST

Virologist

Bacteriologist

NEUROPHYSIOLOGIST

EEG Scientist/Technologist

EMG Scientist/Technologist

PERFUSIONIST

Clinical Perfusionist

Cardiovascular Perfusionist

PHYSICAL SCIENTIST

Biophysicist

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Medical Physicist  
REPRODUCTIVE BIOLOGIST/TECHNOLOGIST  
Andrologist  
IVF Scientist  
RESPIRATORY SCIENTIST/TECHNOLOGIST  
STATISTICIAN  
TISSUE TYPING SCIENTIST  
TOXICOLOGIST  
VASCULAR SCIENTIST/TECHNOLOGIST.

Provided that Medical Officer shall not be eligible for membership of the Branch. All persons who were members of a relevant component association (i.e. the Medical Scientist Association of Victoria and the Victorian Psychologists Association) on the relevant day and who are eligible to be members of the Union, shall be eligible to be members of the Victoria No. 4 Branch.

(ii) Entrenching Provision

This rule 38(e) shall be an "Entrenched Rule", that is, notwithstanding any other provision of these rules, it shall not be altered except with the approval of the members of the Victoria No. 4 Branch assembled in general meeting. The requisite approval of the Victoria No. 4 Branch will only be obtained if, at a special general meeting (called in accordance with rule 55, a vote is held and a majority of the members present vote in favour of the alteration.

- (f) The Tasmanian Branch shall consist of all members of the Union in Tasmania.
- (g) The Western Australia Branch shall consist of all of the members of the Union in Western Australia.
- (h) The New South Wales Branch shall consist of all members of the Union employed in New South Wales and/or the Australian Capital Territory and/or Queensland.
- (i) The South Australia/Northern Territory Branch shall consist of all members of the Union in South Australia and the Northern Territory.
- (j) The National Council shall have the power to -
  - (i) alter the area embraced by any Branch with the consent of that Branch and any other Branch concerned, and;
  - (ii) amalgamate any Branch with another with the consent of the Branches concerned; and
  - (iii) constitute a new Branch or Branches in or within any State or Territory with the consent of any existing Branch concerned.

Provided that, where National Council is exercising or is seeking to exercise any of the powers conferred upon it by this clause for the purpose of or in the course of amalgamating the Union with any other organisation or Union of employees, the consent of any Branch or Branches shall not be required.

Provided that the powers conferred in sub-rule (j) shall not empower the National Council to alter an Entrenched Rule as defined herein.

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- (k) The registered office of each Branch shall be at such place as the Branch Committee may from time to time determine.
  - (l) Any member who is elected or appointed as a paid National Officer shall remain a member of the Branch of which he or she was a member immediately preceding his or her election or appointment to such office.

### **38A - VICTORIAN NUMBER 4 BRANCH TRANSITIONAL RULE**

#### **PART 1 - INTRODUCTION**

- (a) The provisions of this Rule shall operate notwithstanding anything elsewhere contained in these Rules.
- (b) The membership of the Branch reflects the membership of three existing component Associations in Victoria, namely, the Association of Hospital Pharmacists (AHP), the Medical Scientists Association of Victoria (MSAV) and the Victorian Psychologists Association (VPA Inc).
- (c) The Branch will be governed by the Rules of the Union, except to the extent where the words of this Rule clearly intend part of this Rule to have effect and/or govern the operations of the Branch.
- (d) For the purposes of this Rule:-
  - (i) blank
  - (ii) blank
  - (iii) "the Branch" shall mean the Victoria No. 4 Branch of the Union;
  - (iv) "component Association" means the AHP, MSAV or the VPA Inc.;
  - (v) "relevant component Association" means the component Association of which a person is entitled to be a member.

#### **PART 2 - MEMBERSHIP**

- (a) To the extent of any inconsistency, this Part of this Rule will prevail over Rule 6.
- (b) Any member of a component Association who is eligible for membership of the Union under the eligibility Rule of the Union shall, upon receipt by the President of the Branch of an application made on their behalf by the President of the relevant component Association, become and be deemed to be a member of the Union.
- (c) Any member of the relevant component Association who becomes a member of the Union shall be deemed to be a financial member of the Union to the extent that she or he is a financial member of the relevant component Association. To the extent of any inconsistency, this sub Rule prevails over Rule 8.
- (d) Any period of financial membership of a relevant component Association which co-incides with a period of membership of the Union shall be deemed to be a period of financial membership of the Union for all purposes of these Rules.

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### PART 3 - OFFICERS OF BRANCH

- (a) The Officers of the Branch shall consist of the Branch President, Branch Senior Vice-President, the Branch Junior Vice-President, the Branch Secretary, the Branch Assistant Secretary and the two Branch Trustees (“the Branch Officers”).
- (b) The Branch Committee of Management shall comprise the Officers of the Branch plus 6 ordinary committee members.
- (c) From the first election after the certification of this Rule the position of Branch Junior Vice President, one Trustee position and one ordinary committee position shall be elected from the members of the Branch who are eligible to be members of the Victorian Psychologists Association Inc; the position of Branch Senior Vice President and two ordinary committee positions shall be elected from members of the Branch who are eligible to be members of the Association of Hospital Pharmacists; the position of Branch President, one Trustee position and three ordinary committee positions shall be elected from members of the Branch who are eligible to be members of the Medical Scientists Association of Victoria. These positions shall be called respectively "Junior Vice President", "Trustee (Psychologist)", "Committee Member (Psychologist)", "Senior Vice President", "Committee Member (Pharmacist)", “President”, “Trustee (MSAV)”, and “Committee member (MSAV)”.
- (d) In the event of an appointment to fill a casual vacancy occurring on the Branch Committee, the Branch Committee may appoint any member of the Branch who would have been eligible to be a member of the relevant component association to which the departing Committee member was eligible to be a member of, to fill that vacancy.

### 39 - BRANCH MANAGEMENT

- (a) The Government, management and the control of the affairs of each Branch shall, subject to these rules and any proper direction of the National Council or the National Executive be vested in a Branch Committee.
- (b) It shall be competent for any one Branch or more than one Branch in any State or Territory to form a State Council or Conference, the rules of such Council or Conference to be drawn up by the participating Branches and submitted to National Council for adoption. Such State Council or Conference shall have no power other than that of recommendation.
- (c) Subject to clause (d) hereof each Branch shall be bound by these rules.
- (d) Each Branch may make rules from time to time for its own internal management and may therefore add to, amend, rescind or alter any of these rules insofar as they relate to the internal management of a Branch through its Branch Committee of management or by a special general meeting of its members.
- (e) Any rule or rules made by a Branch pursuant to clause (d) of this rule shall be forwarded to the National Secretary who, upon receipt of any information and documentation necessary for the purpose, shall forthwith apply to the General Manager of the Fair Work Commission for certification of the same and upon certification such rule or rules shall form part of the rules of the Union for all purposes other than Rule 67 but shall apply only to the Branch initiating the same.

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- (f) If at any time not less than 20 per cent of the members of the Branch petition the Committee of Management of the Branch requesting the withdrawal of the Branch from the Union the Committee shall hold a ballot of financial members to decide the question. Within 14 days from the receipt of the petition the Secretary of the Branch shall call a special meeting of members to appoint a returning officer and two assistants to conduct the ballot. The question shall be decided by a simple majority, and if the result of the ballot is in the affirmative, the Committee of Management of the Branch shall immediately take steps to effect the Branch's withdrawal from the Union. The funds and effects of the Branch shall be the absolute property of the Branch, except so far as the Branch is liable to National Council in respect, capitation fees and levies. No Officer or Servant of the National Council shall in any way seek to obstruct or disadvantage a Branch taking advantage of this rule. The returning Officer shall serve notice on the National Secretary in respect of the result of the ballot, and if the Branch has decided to withdraw, then this shall be communicated to all National Councillors by the National Secretary. The withdrawal of the Branch shall be final as from the 21st day after the returning Officer's announcement of the ballot results.

#### **40 - BRANCH OFFICERS**

- (a) The Officers of a Branch shall consist of the Branch President, the Branch Senior Vice-President, the Branch Junior Vice-President, the Branch Secretary, the Branch Assistant Secretary and the two Branch Trustees ("the Branch Officers"). Provided that in the New South Wales Branch and the South Australia/Northern Territory Branch there shall be no Branch Trustees. Provided further that in the South Australia/Northern Territory Branch there shall be no Branch Junior Vice-President.
- (b) In the New South Wales Branch, the offices of Branch Secretary and Branch Assistant Secretary (who shall be called the Branch Assistant Secretary-Treasurer) shall be paid offices. The offices of Branch Secretary in the Victoria No. 3 Branch and Branch Assistant Secretary shall be paid offices.
- (c) The Branch Officers shall be ex officio members of any sub-committee of the Branch. Provided that in the case of the New South Wales Branch and the Victoria No. 3 Branch the Branch Officers shall not be ex officio members of the Finance Committee established pursuant to rule 75.

#### **41 - BRANCH COMMITTEE**

- (a) A Branch Committee shall consist of the Officers of the Branch and not less than five and not more than fifteen ordinary members as the Branch may from time to time determine, provided that such decision must be endorsed by a Special General Meeting of the Branch convened for that purpose at which at least twenty-five financial members are present. Provided that for the purposes of the elections to be held in 2012 pursuant to the Scheme approved by the Federal Court of Australia on 21 June 2012, the number of ordinary members of the Victoria No. 1 Branch shall be eight and the number of ordinary members of the Victoria No. 3 Branch shall be five.

#### **42 - NEW SOUTH WALES BRANCH COMMITTEE**

- (a) Notwithstanding rule 41, the New South Wales Branch Committee shall consist of the Branch President, the Branch Senior Vice-President, the Branch Junior Vice-President, the Branch Secretary, the Branch Assistant Secretary-Treasurer and five (5) ordinary members.
- (b) The Branch Committee shall exercise all the powers as contained in rule 44 other than sub-rules 44(e) and 44(f) and shall be responsible for the management of the Branch's affairs, property and funds. The Branch Committee shall be the committee of management of the Branch.
- (c) Notwithstanding rule 45, the Branch Committee shall meet at least monthly,



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- (d) A special meeting of the Branch Committee may be called by the Branch Secretary if requested to do so by no less than four members of the Branch Committee.
  - (e) Meetings of the Branch Committee may be conducted by telephone or by such other electronic means as may be available from time to time.
  - (f) Notwithstanding rule 58(a)(ii), six members of the Branch Committee shall constitute a quorum.

### **43 - NEW SOUTH WALES BRANCH COUNCIL**

- (a) The supreme governing body of the New South Wales Branch, subject to these rules and to the control of the Branch members as hereinafter mentioned, shall be the Branch Council which shall meet annually at a place and on a date to be fixed by the Branch Committee. Provided that the Branch Committee may call meetings of the Branch Council at other times to deal specifically with matters arising under sub-rule (f)(C) hereof.
- (b) The Branch Council shall consist of:
  - (i) The Branch Officers;
  - (ii) Twenty five (25) Councillors constituted as follows:
    - (A) Twenty-one (21) Councillors with at least one (1) but not more than two (2) being drawn from hospitals or health services in each of the fifteen (15) local health districts (refer Note 1) provided that one (1) Councillor shall come from the Health Managers Sub-Branches;
    - (B) One (1) Councillor from a Private Hospital;
    - (C) One (1) Councillor from a non public sector aged care facility;
    - (D) One (1) Councillor from the NSW Ambulance Services; and
    - (E) One (1) Councillor from the Australian Capital Territory.

Note 1 - The fifteen (15) local health districts ("LHD") as constituted by section 17, and specified in Schedule 1 of the Health Services Act 1997 (NSW), as at the date of the certification of this rule, with these being Sydney LHD, South Western Sydney LHD, South Eastern Sydney LHD, Illawarra Shoalhaven LHD, Western Sydney LHD, Nepean Blue Mountain LHD, Northern Sydney LHD, Central Coast LHD, Hunter New England LHD, Murrumbidgee LHD, Southern NSW LHD, Western NSW LHD, Far West LHD, Mid North Coast LHD, and Northern NSW LHD.

- (c) Meetings of the Branch Council may be conducted by telephone or by such other electronic means as may be available from time to time.
- (d) In the event that a member of Branch Council shall for any reason or at any time be unable to be present at any meeting of Branch Council he or she may appoint in writing another member of the Branch Council as his or her proxy to exercise his or her vote at such meeting. A member of Branch Council may be appointed proxy for any number of members.
- (e) A special meeting of Branch Council shall be called by the Branch Committee if requested to do so by no less than fifteen members of the Branch Council.

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- (f) The Branch Council shall, subject to these rules and to the control of the Branch members as hereinafter mentioned, have power:
- (A) to generally watch the interests of the Union in the area where the Branch is established;
  - (B) to fix the remuneration and terms and conditions of employment of any officer or employee of the Branch;
  - (C) to suspend or remove from office in accordance with these rules any officer of the Branch;
  - (D) in addition to the powers of the Branch Committee to do so, to alter, amend, rescind or add to any rules insofar as they relate to the internal management of the Branch pursuant to rule 39(d);
  - (E) to develop and implement rule 90 Branch policies and procedures;
  - (F) to review decisions of the Branch Committee; and
  - (G) to take any action which in its opinion is in the interests of the Branch, provided that such action does not conflict with the policies and procedures of the Union.
- (g) The quorum for a meeting of the Branch Council shall be eighteen members of the Council.

#### **44 - POWERS AND DUTIES OF BRANCH COMMITTEE**

A Branch Committee shall, subject to these rules and to the control of the Branch members as hereinafter mentioned, have power -

- (a) to transact all the business of the Branch;
- (b) to supervise and pay all, lawful debts of the Branch;
- (c) to periodically review and attend to the collection of all fees, levies and dues payable by Branch members;
- (d) to generally watch the interests of the Union in the area in which the Branch is established;
- (e) to fix the remuneration and terms and conditions of employment of any officer or employee of the Branch;
- (f) to suspend or remove from office in accordance with these rules any officer of the Branch;
- (g) to direct the Branch Secretary and Branch Assistant Secretary in the performance of their duties;
- (h) to investigate grievances and disputes submitted by its members;
- (i) to appoint collectors and agents to collect moneys on behalf of the Union and/or Branch;
- (j) to instruct its delegates to the National Council how to vote on any matter;
- (k) to appoint a Branch Auditor;

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- (l) to take any action which in its opinion is in the interests of the Branch, provided that such action does not conflict with the policies of the Union; and,
  - (m) to exercise any other powers conferred upon it by these rules.
  - (n) Workplace committees (however named) may be established by branch committees at workplaces where fifteen or more are enrolled as members of the Branch, provided that workplaces where there is less than fifteen employees, these employees may be grouped conveniently by the Branch committee of management so as to form workplace committees and so that each workplace committee so formed shall comprise not less than fifteen members of the Branch. Provided further the Branch committee may from time to time authorise the establishment of more than one Sub-Branch in a workplace.

#### **45 - MEETINGS OF BRANCH COMMITTEE**

- (a) A Branch Committee shall meet at least quarterly and at such other times as it may determine provided that the Branch President or the Branch Secretary may, by notice in writing either by post, email or other communication method call a meeting of the Branch Committee and shall call such a meeting if requested to do so by not less than one-third of the members of such Committee.
- (b) The Branch President or the Branch Secretary may decide that a meeting of the Branch Committee of Management be conducted by such telephonic or electronic means as may from time to time be available. The members of the Committee shall participate in such a meeting and the decision of the majority shall be binding as if such decision were obtained at a regularly constituted meeting of the Committee.
- (c) Out of Session Votes
  - (i) The Branch President may determine that an Out of Session Vote of the Branch Committee be held on any matter with sufficient importance that it needed to be resolved before the next full meeting of the Branch Committee.
  - (ii) An out of session motion may be put to the vote of all members of the Branch Committee by either postal or electronic means. The results of the vote must be recorded.
  - (iii) Once the result of an Out of Session Vote is determined, having provided a reasonable period for a vote to be returned, the Branch President must advise the Branch Committee of the result indicating the number who vote for, against or abstained and the number who did not vote.
- (iv) If any five members of the Branch Committee object to the Branch President to a matter being dealt with by way of an Out of Session Vote, the vote must not be taken and the matter must be referred to a meeting of the Branch Committee called in accordance with rule 45(a).
- (v) The outcome of an Out of Session Vote must be recorded as such in the minutes of the meeting immediately preceding the Out of Session Vote as if it was a vote of that meeting.

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## **46 - BRANCH PRESIDENT**

The Branch President shall be the official head of the Branch and -

- (i) shall preside at all meetings of the Branch and Branch Committee (and the Branch Council in the case of the New South Wales Branch) and preserve order thereat so that business may be conducted in due form with propriety and in conformity with standing orders;
- (ii) shall sign all documents requiring his or her signature as official head of the branch and shall sign all minutes of the branch duly confirmed in the presence of the meeting confirming the same;
- (iii) shall instruct the Branch Secretary to call meetings of the Branch Committee and General or Special Meetings of members when necessary;
- (ii) shall generally ensure the well-being of the Union and its members and the carrying out of the objects of the Union within the area administered by his or her Branch.

## **47 - BRANCH VICE-PRESIDENTS**

- (a) The Branch Vice-Presidents shall at all times assist the Branch President in the execution of his or her duties and when requested by the Branch President shall carry out such functions of the Branch President in his or her absence as the Branch President authorises in writing.
- (b) In the absence of the Branch President, the Senior Vice-President (and in his or her absence also the Junior Vice-President) shall preside over a meeting of the Branch or the Branch Committee (or the Branch Council in the case of the New South Wales Branch) and when so doing shall exercise all the powers and functions of the Branch President.
- (c) In the event of the Branch President and all Vice-Presidents being absent from a meeting of a Branch or a Branch Committee (or the Branch Council in the case of the New South Wales Branch), the members present shall appoint a chair to preside over the meeting.

## **48 - BRANCH SECRETARY**

The Secretary shall be the chief executive officer of the Branch and subject to these rules, have charge of the general conduct, administration and business, of the Branch. He or she shall be the investigating and organising officer of the Branch and shall be the officer to sue and to be sued on behalf of the Branch. The Secretary shall be ex-officio, a member of all committees and Sub-Committees of the Branch.

The Branch Secretary shall -

- (a) call and attend all meetings of the Branch and Branch Committee unless excused and keep or cause to be kept minutes of the business transacted at such meetings;

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- (b) receive or cause to be received all moneys on behalf of the Branch and issue receipts and pay all moneys received by him or her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;
  - (c) have charge of the financial books and statements of his or her Branch;
  - (d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee, produce all relevant books;
  - (e) keep an up-to-date register of Branch members showing their names and their postal addresses so far as known and shall periodically notify the National Secretary of any changes in such list;
  - (f) conduct the business and correspondence on behalf of the Branch;
  - (g) forward to the National Secretary within fourteen days of the Annual General Meeting of his or her Branch a list of the full names and addresses of all office-holders in the Branch;
  - (h) provide the National Returning Officer and the Branch Returning Officer with such assistance as is necessary to enable them to conduct any elections.
  - (i) inform the Branch President whenever he or she will be absent from duty or from a meeting;
  - (j) hand to his or her successor, on the latter's election, all moneys, Branch records and property held by him or her on behalf of the Branch;
  - (k) subject to any direction of the Branch Committee appoint, engage, control and dismiss such clerical and other staff as may be necessary for the conduct of the affairs of the Branch;
  - (l) prepare returns required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;
  - (m) have the right to attend or appoint a member of the Branch to attend any meeting of members of the Branch and to speak and vote on any matter before such meeting provided that a person appointed to attend any such meeting by the Branch Secretary shall also have the right to speak and vote thereafter subject always to any directions given to him or her by the Secretary; and,
  - (n) carry out such other duties as the Branch Committee may from time to time assign to him or her or as may be conferred upon him or her by these rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;

Provided that in the case of the New South Wales Branch, the Branch Secretary shall not exercise the powers referred to in sub-rules (b), (c), (d) and (j) above. Provided further that the Branch Secretary of this Branch shall not exercise the power outlined in sub-rule (l) above in respect of financial and accounting returns required by the Fair Work (Registered Organisations) Act 2009.

#### **49 - BRANCH ASSISTANT SECRETARY**

The Branch Assistant Secretary shall -

- (a) assist the Branch Secretary at all times in the execution of his or her duties; and,

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- (b) be subject to the direction of the Branch Secretary and act in his or her stead whenever appointed to do so by the Branch Committee of Management.

## **50 - BRANCH ASSISTANT SECRETARY-TREASURER OF THE NEW SOUTH WALES BRANCH**

Notwithstanding rule 49, the Branch Assistant Secretary-Treasurer of the New South Wales Branch shall:

- (a) assist the Branch Secretary at all times in the execution of his or her duties;
- (b) receive or cause to be received all moneys on behalf of the Branch and issue receipts and pay all moneys received by him or her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;
- (c) have charge of the financial books and statements of his or her Branch;
- (d) prepare and present to each meeting of the Branch Committee an up to date financial statement and when called upon to do so by the Branch Committee;
- (e) hand to his or her successor, on the latter's election, all moneys and property held by him or her on behalf of the Branch;
- (f) prepare financial and accounting returns required by the Fair Work (Registered Organisations) Act 2009;
- (g) ensure that Branch Policies and Procedures are implemented in accordance with rule 90;
- (h) carry out such other duties of the Branch Committee as it may from time to time assign to him or her or as may be conferred upon him or her by these rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;
- (i) subject to the sub-rules (b)-(h) above, be subject to the direction of the Branch Secretary and act in his or her stead whenever appointed to do so by the Branch Committee.

## **51 - BRANCH TRUSTEES**

The Branch Trustees shall invest the funds of the Branch and otherwise deal with the property and funds of the Branch as they may from time to time be directed by the Branch Committee. Provided that the duties and functions of Branch Trustee in the New South Wales Branch shall be undertaken by the Branch Assistant Secretary-Treasurer as directed by the Branch Committee or as required by any Branch policy and procedure determined pursuant to rule 90. Provided further that in the South Australia/Northern Territory Branch the functions of Branch Trustees shall be undertaken by the National Trustees.

## **52 - BRANCH AUDITOR**

A Branch Auditor shall -

- (a) be appointed annually by the Branch Committee;
- (b) be a competent person within the meaning of the Fair Work (Registered Organisations) Act 2009 (the "Act") and the Fair Work (Registered Organisations) Regulations 2009 (the "Regulations");

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- (c) perform such functions and duties as are prescribed by the Act and the Regulations and such other functions and duties not inconsistent with the Act and the Regulations as are required by the Branch Committee;
  - (d) have access to and examine if desired all books, papers, deeds, documents and accounts of the Branch Committee and be empowered to question any office-bearer or officer or employee of the Branch with regard to the same and to obtain from any bank or other institution at which the funds of the Branch are deposited or invested such information as he or she may require; and,
  - (e) have power to place before Branch Committee any suggestion he or she may desire to make concerning the financial affairs of that Branch

### **53 - BRANCH FUNDS AND PROPERTY**

- (a) The funds and property of a Branch shall consist of -
  - (i) any real or personal property of which the Branch by these rules or by an established practice not inconsistent with these rules, has, or, in the absence of any limited term lease, bailment or arrangement would have, the right to custody, control or management;
  - (ii) the amounts of entrance fees, contributions, fees, and levies collected by the Branch less so much of those amounts as is payable to the National Council in accordance with these rules;
  - (iii) any interest, rents or dividends derived from the investment of the funds;
  - (iv) any long service leave fund operated or controlled by the Branch for the benefit of its officers or employees;
  - (v) any sick pay fund, accident pay fund, funeral fund or like fund operated or controlled by the Branch for the benefit of its members;
  - (vi) any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and,
- (b) The funds and property of a Branch shall be vested in the Trustees of the Branch who shall deal with the same as directed by the Branch Committee. Provided that, in the case of the New South Wales Branch there shall be no Branch Trustees.
- (c) All cheques and written authorisations for the transfer and/or disbursement of funds of a Branch shall be signed by the Branch Secretary (or in his or her absence the Branch Assistant Secretary) together with any two members of the Branch Committee. In the case of the New South Wales Branch all cheques and written authorisations for the transfer and/or disbursement of funds of the Branch shall be signed by the Branch Assistant Secretary-Treasurer (or in his or her absence the Branch Secretary) together with any two (2) members of the Branch Committee.
- (d) For the expenditure of the funds of a Branch on the general administration of the Branch and for purposes reasonably incidental to the general administration of the Branch, the prior approval of the Branch Committee shall not be necessary before such cheques or written authorisations for the transfer and/or disbursements of funds are signed or accounts paid.

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- (e) Subject always to clause (f) of this rule but notwithstanding anything elsewhere contained in these rules, a shall not make any loan, grant or donation of an amount exceeding \$1,000 unless the Committee of the Branch -
- (i) has satisfied itself -
    - (a) that the making of the loan, grant or donation would be in accordance with the other rules of the Union and the Branch; and,
    - (b) in relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and,
  - (ii) has approved the making of the loan, grant or donation.
- (f) The provisions of clause (e) of this rule shall not apply to or in relation to payments made by a Branch by way of provision for, or reimbursement of, out of pocket expenses incurred by persons for the benefit of the Union or the Branch.

#### **54 - REMOVAL OF BRANCH OFFICERS ETC.**

- (a) A Branch Officer, Branch Committee Member or Branch Delegate to National Council or a New South Wales Branch Councillor may be removed from his or her office if the Branch Committee (or in the case of the New South Wales Branch, by Branch Council) by majority resolution of members voting finds him or her guilty, in accordance with these rules, of misappropriation of the funds of the Union or any Branch thereof, a substantial breach of the rules of the Union, gross misbehaviour or gross neglect of duty or finds that he or she has ceased, according to these rules, to be eligible to hold his or her office.
- (b) Such person may be charged by any member under this rule and such a matter should in the first instance be dealt with by the Union's Ombudsman under rule 13. Any charge shall be in writing and shall be forwarded to the Branch President or the Branch Secretary, who shall notify the person charged of the details of the charge.
- (c) The person charged shall be given not less than fourteen days' notice in writing of the time and place of the meeting at which the charge is to be heard and determined and shall be entitled to attend such meeting and to be heard but not to vote thereat.
- (d) A member so removed by the Branch Committee (or in the case of the New South Wales Branch, by the Branch Council) shall have the right to appeal to the National Executive provided that he or she gives to the National Secretary notice of his or her intention to appeal within seven days of his or her being notified in writing of his or her removal, but the giving of such notice shall not operate to stay the decision of the Branch Committee (or in the case of the New South Wales Branch, the Branch Council).
- (e) Notwithstanding the foregoing, either the Branch President or the Branch Secretary may, in their discretion, suspend from office a person charged under this rule pending determination of the charge but in no event shall a person remain suspended for a period exceeding twenty-eight days. Provided that this sub-rule shall not apply to the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch.



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- (f) A person shall be ineligible to hold office as a Branch Officer, Branch Committee member, Branch Delegate to National Council or a New South Wales Branch Councillor if
    - (i) he or she becomes of unsound mind; or,
    - (ii) he or she ceases to be a financial member of the Union.

## **55 - BRANCH GENERAL MEETINGS**

- (a) An Ordinary General Meeting of the Branch may be called at any time on a resolution of the Branch Committee being carried that such a meeting be held.
- (b) A Special General Meeting of the Branch shall be called by the Branch President or the Branch Secretary upon receipt by him or her of a request signed by not less than 200 financial members or five per cent of the members of the Branch, whichever is the lesser amount. Such request shall state the business to be discussed at the meeting and shall contain the signature and name written in block letters of each petitioner and shall also contain a statement that the petitioner has read and understood the request prior to attaching his or her signature.
- (c) Not less than one month's written notice of the time, place and agenda of all General Meetings shall be given to each shop steward of the Branch. Providing that when a matter requires immediate attention such lesser notice of a Special General Meeting as may be determined by the Branch Committee may be given.
- (d) A Special General Meeting shall not be competent to deal with any matter other than the reason set out by the petition of members or the notification of such meeting as has been given by the Branch Committee.
- (e) Any Ordinary General Meeting or Special General Meeting shall be held at such time and place as shall be determined by the Branch Committee of the Branch, but should such Special General Meeting be called under the provisions of sub-rule (b) it shall be held not later than 35 days following the receipt of the petition by the President or Secretary of the Branch.
- (f) No General Meeting of members of a Branch shall have power to direct a Branch Committee or in the case of the New South Wales Branch, the Branch Council or reject or review a decision of a Branch Committee or in the case of the New South Wales Branch, the Branch Council unless at least 200 members or five per cent of the financial members of the Branch (whichever amount is the lesser) are present at the meeting.
- (g) This sub-rule shall apply to the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch.
  - (i) Each Branch may call a general meeting of members by way of a series of general meetings of members at different locations.
  - (ii) For the convenience of facilitating member attendance, video conferencing or any other electronic means as may be available from time to time may be used for the series of general meetings.

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- (iii) At the series of general meetings, the Branch President or a Branch Vice-President shall preside. All members of the Branch shall be entitled to attend and vote.
  - (iv) The general meeting is taken to have occurred at the time of the last of the meetings in the series.
  - (v) Quorum shall be calculated by reference to the total number of members attending the series of general meetings. Voting shall be decided by the majority of those members present at the series of general meetings.

## **56 – WORKPLACE COMMITTEES (SUB BRANCHES) AND REPRESENTATIVES**

- (a) Workplace Committees (however named) may be established by Branch Committees at workplaces where fifteen or more are enrolled as members of this Union provided that workplaces where less than fifteen employees are enrolled shall be grouped conveniently by the Branch committee so as to form workplace committees and so that each workplace committee so formed shall not comprise less than fifteen members of the Union. Provided that the Branch committee may establish more than one workplace committee in a workplace.
- (b) It shall be a duty of the Branch Secretary to ensure that Union delegates (however named) are elected at workplaces whether they are part of a workplace committee or not.
- (c) The rules relating to the election of such delegates and workplace committees and the location of such delegates and workplace committees shall be determined by the relevant Branch committee of management. However as a guide the following processes may apply:
  - (i) A person shall not be elected as a Union delegate unless he or she is a financial member of the Branch.
  - (ii) A Union delegate shall be elected for a fixed and regular term in accordance with procedures adopted by the Branch committee of management and consistent with these rules.
  - (iii) A Union delegate may -
    1. Represent the members of the Branch employed in his or her area in dealings between those members and management;
    2. Generally represent the Branch in his or her area;
    3. Take all reasonable and necessary steps to enrol as members all eligible employees in his or her area;
    4. Ensure that all members in his or her area are and remain financial;
    5. Where authorized in writing by the Branch Secretary, collect all fines, fees, levies and dues owing by members employed in his or her area, pay over all moneys so collected to the Branch Secretary at least monthly and obtain a receipt for the same;
    6. Immediately report to the Branch Secretary any complaint from a member in his or her area or any breach or suspected breach of any agreement or award which is occurring or is suspected of having occurred in his or her area; and

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7. Report to the Branch Secretary on any matter concerning his or her area as directed by the Secretary or the Branch Committee.
  8. Take any action which is authorised or directed by the Branch Secretary or the Branch Committee.
- (d) The election of a person as a Union delegate shall automatically terminate -
- (i) if he or she resigns his or her membership of the Branch or is expelled there from in accordance with these rules;
  - (ii) if he or she dies;
  - (iii) if he or she ceases to be employed in the area in respect of which he/she was appointed.
- (e) Should the Branch Secretary become aware that any Union Delegate is not performing such duties or responsibilities as set out in (e), or is reported by a financial member or members at his or her place of employment for dereliction of these duties, the Secretary shall report same to the Committee of Management who shall have the power to refer the matter to the Union Ombudsman and if necessary following the Ombudsman report, summon the Union Delegate before the Committee and should the charges be proved, the Committee shall have the power to dismiss such Union Delegate and cause another election to take place within 28 days of the dismissal.

The Committee shall ensure that a Union Delegate charged with dereliction of duty is informed in writing at least two weeks before the meeting, at which such charges are to be heard of the nature of the charges and the Committee of Management shall ensure a full and fair hearing of such charges, such person shall be eligible for re-election as a Union Delegate.

#### **57 - SUB-BRANCHES - NEW SOUTH WALES BRANCH**

- (a) Notwithstanding rule 56, Sub-Branchees of the New South Wales Branch may be established by the Branch Committee at workplaces where fifteen or more are enrolled as members attached to the Branch, provided that workplaces where less than fifteen employees are enrolled shall be grouped conveniently by the Branch Committee so as to form Sub-Branchees and so that each Sub-Branch so formed shall comprise not less than fifteen members attached to the Branch. Provided further the Branch Committee may authorise the establishment of more than one Sub-Branch in a workplace.
- (b) (i) In addition to the Sub-Branchees created pursuant to sub-rule 57(a) of these rules, separate Sub-Branchees known as Health Managers Sub-Branchees, may be established by Branch Committee on a local health district basis where fifteen or more are enrolled as members attached to the Branch, provided that where less than fifteen employees are enrolled they may be grouped by Branch Committee so that each Health Managers Sub-Branch shall comprise not less than fifteen members attached to the Branch.
- (ii) Members eligible to be members of a Health Managers Sub-Branch may not attend nor vote at Sub-Branch meetings of the institution at which they are employed. They may not accept office in any institutional or other Sub-Branch.

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- (c) The members of the Sub-Branch shall elect a committee consisting of a President, Vice-President, Secretary and a number of members of the Sub-Branch, all of whom shall be representatives of the Sub-Branch. The number of ordinary Sub-Branch members to be elected to the committee shall be determined by the Sub-Branch, but, in any case, such number shall be not less than five. If more than sufficient candidates are nominated elections shall be held in the order, President, Vice President, Secretary, Committee Member. The quorum of a Sub-Branch committee shall be not less than four. The quorum of a Sub-Branch meeting shall be not less than seven, provided that only members who at the time of nomination have had at least 12 months' continuous financial membership shall be eligible to nominate for the position of President, Vice-President, Secretary, except where this provision is waived by the Branch Secretary on the grounds of not previously having sufficient members at a workplace. All other provisions of this rule apply to those members.

The Sub-Branch committee shall have no power to alter or rescind rules or to enforce, or perform functions in relation to the enforcement of rules, or to exercise any of the functions of management.

- (d) (i) The members of the Sub-Branch committee shall be elected annually by secret ballot at the Annual General Meeting and shall hold their positions until the next succeeding Annual General Meeting or until their successors have been appointed, whichever is the sooner.
- (ii) At least twenty-one days notice in writing on notice boards accessible to all members of the Sub-Branch shall be given by the Sub-Branch Secretary to members of the date set for Annual General Meetings.
- (iii) At the Annual General Meeting, a Returning Officer and two Scrutineers shall be appointed for the purposes of conducting elections under this rule and shall exercise their respective functions until their successors have been appointed. The Returning Officer and Scrutineers so appointed,
- (1) may or may not be a member of the Union,
  - (2) shall not be the holder of any office in or an employee of the Branch or Sub-Branch of the Union. In the event of the Returning Officer or Scrutineers being unable to carry out their duties the Sub-Branch committee may appoint a Returning Officer and/or Scrutineers to conduct the election.

The Returning Officer and Scrutineers so appointed by the Sub-Branch committee shall only act until the Returning Officer and Scrutineer can resume their duties.

- (iv) Nominations must be in writing, signed by the member who is nominated and endorsed by at least two (2) financial members and must be forwarded by registered mail or by any other means that ensures delivery so as to reach the Returning Officer at least seven days prior to the Annual General Meeting. The Returning Officer shall provide each member with a receipt upon delivery of his nomination.
- (v) The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event of his finding a defect in a nomination he or she shall, before rejecting the nomination, notify the person concerned of the defect, and, where it is practicable to do so, give him or her the opportunity of remedying the defect within seven days of his having been so notified.
- (vi) If more than sufficient candidates are nominated an election shall be held.

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- (vii) The Returning Officer shall obtain sufficient ballot papers for the election and shall make arrangements so as to enable members to vote at the Annual General Meeting.
  - (viii) The Returning Officer shall initial all ballot papers which shall not bear any other distinguishing mark.
  - (ix) Any member of the Sub Branch who will not be present at the Annual General Meeting may lodge with the Returning Officer, at any time after the closing date for nominations and before the Annual General Meeting commences, a written request for an absentee vote. On the receipt of such a written request, the Returning Officer will promptly provide the appropriate absentee voting form to the member. This absentee voting form shall be completed by the member and submitted to the Returning Officer prior to the commencement of the Annual General Meeting. All absentee votes so received shall be counted by the Returning Officer at the Annual General Meeting.
  - (x) In the cases of an equality of votes for two or more candidates the Returning Officer shall determine by drawing lots which of the members is elected.
  - (xi) Any candidate at any such election may appoint a scrutineer who shall be entitled at the expense of the candidate to be present at all stages of the ballot.
  - (xii) The Returning Officer shall declare the result of the ballot following the count which includes any absentee votes received at the Annual General Meeting and all persons elected shall occupy their positions forthwith.
- (e) There shall be a General Meeting of each Sub-Branch at least once in each quarter for the payment of contributions and other general business, except in cases where the Branch Committee sanctions the holding of meetings less frequently. Members of each Sub-Branch shall attend all general meetings of the Sub-Branch, at which non members shall not be admitted. An Annual General Meeting of the Sub-Branch shall be held each year in the month of February, March or April, at which nominations shall be received and an election take place for the committee of the Sub-Branch.
- The committee of a Sub-Branch may at any time direct the Secretary to call a Special General Meeting of the Sub-Branch.
- At least seven days' notice in writing on notice boards accessible to all members of the Sub-Branch shall be given by the Sub-Branch Secretary to members of the date set for general meetings or special meetings with the exception of Annual General Meetings where twenty-one (21) days notice shall be given.
- (f) The committee of a Sub-Branch may meet once in every calendar month. Such meetings will be called by the Secretary by notice in writing to members of the Sub-Branch committee. The President of the Sub-Branch may, however, at any time instruct the Secretary to summon a special meeting of the committee.
  - (g) All moneys collected by Sub-Branches shall be forwarded to the Branch Assistant Secretary-Treasurer within two weeks after each general meeting of the Sub-Branch, together with a statement showing the names of the members making such payments and the amount so paid.

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- (h) Each Sub-Branch may adopt by laws for its own conduct and guidance provided that such by laws are not inconsistent with any of the rules of the Branch and are first approved by the Branch Committee. Such by-laws may be altered, added to, amended or rescinded by a simple majority vote of members at an Annual or Special General Meeting of the Sub-Branch, provided that such alterations, additions, amendments or rescissions must be approved by the Branch Committee.
- (i) (i) The President shall preside at all meetings conducted by the Sub-Branch and will preserve good order so that business may be conducted properly.
  - (ii) He or she shall see that minutes of the meeting are read and confirmed and upon such reading and confirmation sign the same.
  - (iii) The President shall have a deliberate vote only.
  - (iv) The Vice-President shall assist the President, and shall in his or her absence exercise the power of the President.
- (j) The Secretary shall attend all meetings and prepare documents for the Sub-Branch and committee meetings. He or she shall conduct and file all correspondence, summon members to meetings of the Sub-Branch committee and members of the Sub-Branch to the quarterly meeting. He/she shall submit to the President, any urgent information he or she may officially receive and the President, together with the Secretary, shall decide upon the best course to be proceeded with until the next meeting of the Sub-Branch committee. He or she shall keep a register of the names and addresses of the representatives and members of the Sub-Branch.
- (k) Subject to the resolutions and the decisions of the Branch Council and of the Branch Committee, the meetings of the Sub-Branch shall have the general control and conduct of the business of the Sub-Branch and decisions of the meetings shall bind all members of the Sub-Branch.
- (l) Casual vacancies occurring in the positions of President, Vice-President, Secretary or member of the committee of the Sub-Branch shall be filled by the Sub-Branch committee from members of the Sub-Branch who would be eligible to nominate for the vacant position at an annual election. Such person shall only hold such position until the following election.
- (m) No member of the Sub-Branch committee shall be dismissed unless a resolution is passed by a majority of members at an ordinary or Special General Meeting of the Sub-Branch convened for the purpose, finding him or her guilty, in accordance with these rules, of misappropriation of the funds of the Union, a substantial breach of the rules of the Union, gross misbehaviour or gross neglect of duty, or finding that he or she has ceased, according to these rules, to be eligible to hold his position.
- No such motion will be moved unless the member concerned has been given fourteen days' notice in writing of the intention to move a resolution charging him or her with an offence, the alleged grounds for such resolution and the time, date and place of the meeting at which he shall be given the opportunity to be heard.
- (n) This rule shall be reviewed by the Branch Council prior to the elections due in 2014.

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## 58 - BRANCH QUORUM

- (a) Quorums for the meetings of a Branch held in accordance with these rules, shall be as follows -
  - (i) at any General Meeting of a Branch 25 financial members;
  - (ii) at any meeting of the Branch Committee, a majority of members of the Branch Committee or ten members thereof, whichever is the lesser.
- (b) If no quorum be present at the expiration of 15 minutes after the time stated for the commencement of the meeting, such meeting shall lapse, but without prejudice to another meeting being called for the same purpose as such meeting was called, at such other time and place as may be thought fit. In the event that any such other meeting has been called, the business for which the same has been called may be transacted by those present, notwithstanding the fact that there is not a quorum present. Any resolutions passed at any such meeting shall be as binding and effectual as if a quorum were present. Seven days' notice of any such other meeting shall be given by the Branch Secretary to all members of the Branch or Branch Committee as the case may be.
- (c) Notwithstanding anything else contained in these rules, where a Branch has less than 100 members the following quorum shall apply:
  - (i) At any General Meeting of a Branch 10 financial members;
  - (ii) at any meeting of the Branch Committee, a majority of members of the Branch Committee or five members thereof, whichever is the lesser.

## 59 - BRANCH VOTING

- (a) Voting at all meetings of a Branch or Branch Committee or the New South Wales Branch Council shall be by show of hands or by such other method as the meeting may decide. The Chair shall have a deliberative vote only and in the event of a tie the questions shall lapse.

## 60 - BRANCH PLEBISCITE

- (a) Notwithstanding anything contained in these rules, a plebiscite of all members of a Branch -
  - (i) may be held for any purpose at the discretion of the Branch Committee; and,
  - (ii) shall be held if requested by a requisition in writing and signed by not less than 5 per cent of the financial members of the Branch.

Such requisition to contain in block letters the name of each member signing same and the name of the establishment at which such member is employed. Provided that no decision of a Branch Committee or the New South Wales Branch Council shall be reviewed or referred to a plebiscite of members pursuant to sub-rule (ii) of this clause unless the appropriate request has been delivered to the Branch President or Branch Secretary within two months of the said decision.

- (b) Any such plebiscite shall be conducted by secret postal ballot and shall be under the absolute control and direction of the Branch Returning Officer who shall -
  - (i) prepare ballot papers which shall contain the question to be voted on;

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- (ii) issue a ballot paper to each member entitled to vote;
  - (iii) determine the time and date for the closure of the ballot, having consideration for the convenience of the voters;
  - (iv) take such steps as are necessary to ensure that a result is correctly ascertained; and,
  - (v) report the result of the plebiscite to the first meeting of the Branch Committee held after the conclusion of the counting of the votes cast.
- (c) A simple majority decision of the members voting shall be final and shall prevail over any contrary decision of the Branch Committee or the New South Wales Branch Council.

## **PART D - GENERAL**

### **61- REGISTERED OFFICE**

The registered office of the Union shall be at such place as the National Council or National Executive from time to time may decide.

### **62 - RULE BOOK**

Each member shall be supplied with a copy of the registered rules of the Union upon application to the relevant Branch Secretary.

### **63 - INSPECTION OF BOOKS**

The Branch must provide access to the Branch's financial records in accordance with its statutory obligations.

### **64 - MEMBERS ENGAGED ON UNION BUSINESS**

- (a) Should any member of the Union lose any part of his or her salary or wages or be required to work overtime in consequence of being engaged on the business of the Union or his or her Branch under instructions from the National Executive or his or her Branch Committee, the National Executive or his or her Branch Committee, as the case may be, shall make good all such loss or shall remunerate the member at his or her rate of salary for the time occupied by him or her whilst so engaged. Reasonable out-of-pocket expenses shall be allowed members engaged on Union or Branch business.
- (b) Any Officer or member transacting business on behalf of the Union or any Branch thereof shall report on such business to the body which appointed him or her to carry out such business. Any such Officer or member neglecting to make such report may forfeit all claims for any time lost and expenses incurred whilst so engaged on such business.

### **65 - DISSOLUTION**

The Union shall not be dissolved so long as there are two Branches and there are not less than 100 members. The question of dissolution shall be determined by a national plebiscite in accordance with these rules. The provisions of this clause shall not apply to any amalgamation with any other trade Union or organisation.



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## 66 - AFFILIATION

- (a) The Union may, by resolution of the National Council, affiliate with anybody having objects in common with the objects of the Union.
- (b) A Branch Committee may by resolution affiliate the Branch with anybody having objects in common with the objects of the Union.

## 67 - ALTERATIONS OF RULES

- (a) The National Council shall have power to make new rules or to add to, amend, rescind or otherwise alter these rules at a meeting of the National Council or by postal ballot of the members of the National Council conducted pursuant to rule 25 of these rules.
- (b) Notice of any proposal for the making of a new rule or for the adding to, amendment, rescission or other alteration of any of these rules shall be given in writing to each member of the National Council and to the Secretary of each Branch at least one month prior to the relevant meeting of the National Council or to the commencement of the postal ballot (as the case may be) provided that any such proposal may itself be amended when being considered by the relevant meeting.
- (c) Nothing contained in this rule shall derogate from the power conferred by rule 49 on a Branch to make rules for its own internal management but details of any proposal to make such a rule shall be contained in the notice calling the special general meeting of members at which the proposal is to be considered.

## 68 - NAME AND RESIDENCE

A register of the names and addresses of the Branch Officers and members of the Branch shall be kept in the registered office of the Branch. A member shall notify the Branch Secretary in writing within fourteen days of any change of that member's address. Any notice which is required to be given to a member under these rules shall be forwarded to the address of that member last appearing on that register of members.

## 69 - DUAL OFFICES

- (a) No person shall hold more than one paid office within the Union or any Branch of the Union.
- (b) A paid National Officer shall not also hold an elected position within a Branch of the Union.
- (c) No person shall simultaneously hold more than one of the offices of National President, National Senior Vice-President, National Junior Vice-President, National Trustee, National Secretary or National Assistant Secretary.
- (d) (i) Where a Branch Secretary is elected or appointed to one of the National offices of National President, National Senior Vice-President, National Junior Vice-President, National Trustee, National Secretary or National Assistant Secretary, he or she shall not while holding that National office also act as a member of National Executive by virtue of being a Branch Secretary. During the time that the Branch Secretary holds that National office, the Assistant Branch Secretary of the relevant Branch shall act as a member of the National Executive instead of that Branch Secretary, and shall, on the National Executive, exercise all the powers and duties otherwise exercised by that Branch Secretary. If the Branch Secretary ceases to hold that National office, he or she shall resume the position on National Executive he or she holds by virtue of his or her office of Branch Secretary.

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- (ii) Where a Branch Assistant Secretary is elected or appointed to one of the National offices of National President, National Senior Vice-President, National Junior Vice President, National Trustee, National Secretary or National Assistant Secretary, and where the Branch Secretary of that same Branch is elected or appointed to one of those National offices, that Branch Assistant Secretary shall not while holding that National office also act as a member of National Executive by virtue of sub-rule 73(d)(i). During the time that the Branch Assistant Secretary holds that National office, and the Branch Secretary of that same Branch holds one of those National offices, the Branch Committee of Management of the relevant Branch shall appoint one of its members to act as a member of the National Executive instead of that Branch Secretary, and that person shall, on the National Executive, exercise all the powers and duties otherwise exercised by that Branch Secretary. If the Branch Assistant Secretary ceases to hold that National office, he or she shall act in the position on National Executive he or she would otherwise act in instead of the Branch Secretary.
- (e) No person shall simultaneously hold more than one of the following offices -
- Branch President, Branch Vice-President, Branch Secretary, Branch Assistant Secretary, Branch Trustee, and ordinary member of Branch Committee.
- (f) No person shall simultaneously hold a paid National office position and an office of ordinary member of Branch Committee.

#### **70 - FULL TIME PAID OFFICERS - NEW SOUTH WALES BRANCH AND NEW SOUTH WALES STATE REGISTERED HEALTH SERVICES UNION NSW**

- (a) Notwithstanding anything elsewhere in the rules of the Union, in the New South Wales Branch where the Branch Secretary or Branch Assistant Secretary-Treasurer is also elected or appointed to an equivalent full time paid office in the Health Services Union NSW, an organisation registered pursuant to the provisions of the Industrial Relations Act 1996 (NSW), and is in receipt of remuneration and terms and conditions of employment from the Health Services Union NSW equal to that determined by the Branch Council, he or she shall be deemed to be paid by the New South Wales Branch for such time as he or she continues to receive such payment from Health Services Union NSW and shall not be entitled to be paid by the New South Wales Branch. For all other purposes under the rules of the Union the officer shall be deemed to be the holder of a full time paid office in the New South Wales Branch.
- (b) For the avoidance of doubt, if an officer referred to in sub-rule (a) herein ceases to be paid by the Health Services Union NSW in respect of the full time paid office, he or she will be entitled to remuneration and terms and conditions of employment provided by the New South Wales Branch identical to that previously provided by the Health Services Union NSW.

#### **71 - STANDING ORDERS AND RULES OF DEBATE**

The National Council shall determine from time to time the standing orders and rules of debate to apply to meetings of the National Council, National Executive, Branch Committees and General meetings of members of the Union or any Branch thereof. A copy of such standing orders and rules of debate as determined from time to time shall be supplied free of charge by a Branch Secretary to any financial member of the Branch requesting the same.

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## **72 – ASSOCIATE MEMBER**

Associate membership is only open to persons who are not otherwise eligible to apply for ordinary membership.

A resigning or retiring member may apply to remain an Associate Member. Further any person, who supports the objects of the Union as outlined in rules, may apply to become an Associate Member.

The relevant Branch shall determine the conditions and benefits of Associate Membership and any administration fee to be applied provided that Associate Members shall not be deemed financial members for all purposes of these rules.

## **PART E – FINANCES AND FINANCIAL ACCOUNTABILITY**

### **73 - INTRODUCTION**

- (a) The purposes of this Part of the rules are to:
  - (i) Establish principles of financial governance and accountability that ensure the conduct of the Union's financial affairs is transparent and to hold officers accountable;
  - (ii) Comply with the requirements of the Act.
- (b) The financial year of the NORU and the Branches shall end on the 30th June in each year.

### **74 - THE FINANCIAL RESPONSIBILITIES OF OFFICERS**

Financial Responsibilities of National Officers

- (a) Each National Officer of the Union has the following responsibilities in relation to the financial management of the Union:
  - (i) Not to make improper use of confidential information in order to gain a personal advantage, or an advantage for any person other than the Union.
  - (ii) Not to make improper use of his or her position in order to gain a personal advantage, or an advantage for any person other than the Union.
  - (iii) Not to improperly exercise his or her powers for a purpose other than to serve the interests of the Union in order to gain a personal advantage, or an advantage for any person other than the Union.
  - (iv) To fully disclose to National Executive, and take reasonable steps to avoid, any conflict between his or her duty to the Union and his or her personal interests.
  - (v) To ensure that the financial reports of the Union are prepared in an accurate and timely manner, all National officers shall answer fully and frankly such questions that are reasonably asked, and provide such information as is reasonably requested, by the National Executive or the National Auditor.

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- (vi) To inform the National Executive, or the National Auditor, of any matter that the National Officer is aware of which, unless disclosed, might result in the financial reports not providing a true and fair view of the financial position and performance of the Union.
  - (b) The responsibilities of National Officers stated in this rule are in addition to, and do not derogate from, duties imposed by any rule of law or statute.
  - (c) Conduct of an officer is not improper, and is not a breach of the responsibilities imposed by this rule, if before or after the conduct occurs the National Officer makes a full and frank disclosure to the National Executive of all material facts relating to the conduct and the National Executive ratifies that conduct.
  - (d) The National Trustees shall deal with the property and funds of the Union as they may from time to time be directed by the National Council or National Executive.

#### Financial Responsibilities of Branch Officers

- (e) Each Branch Officer of the Union has the following responsibilities in relation to the financial management of the Branch:
  - (i) Not to make improper use of confidential information in order to gain a personal advantage, or an advantage for any person other than the Branch.
  - (ii) Not to make improper use of his or her position in order to gain a personal advantage, or an advantage for any person other than the Branch.
  - (iii) Not to improperly exercise his or her powers for a purpose other than to serve the interests of the Branch in order to gain a personal advantage, or an advantage for any person other than the Branch.
  - (iv) To fully disclose to Branch Executive, and take reasonable steps to avoid, any conflict between his or her duty to the Branch and his or her personal interests.
  - (v) To ensure that the financial reports of the Branch are prepared in an accurate and timely manner, all Branch Officers shall answer fully and frankly such questions that are reasonably asked, and provide such information as is reasonably requested, by the Branch committee of management or the Branch Auditor.
  - (vi) To inform the Branch committee of management, or the Branch Auditor, of any matter that the Branch officer is aware of which, unless disclosed, might result in the financial reports not providing a true and fair view of the financial position and performance of the Branch.
- (f) The responsibilities of Branch Officers stated in this rule are in addition to, and do not derogate from, duties imposed by any rule of law or statute.
- (g) Conduct of a Branch Officer is not improper, and is not a breach of the responsibilities imposed by this rule, if before or after the conduct occurs Branch Officer makes a full and frank disclosure to the officer's Branch committee of management of all material facts relating to the conduct and the Branch committee of management ratifies that conduct.

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## 75 - FINANCE COMMITTEES OF THE UNION AND THE BRANCHES

- (a) There shall be a Finance Committee of the NORU (called the National Finance Committee) consisting of the National Officers.
- (b) Each Branch shall have a Finance Committee (however named) comprising:
- (i) In the case of the New South Wales Branch, the Branch President, Branch Secretary, the Branch Assistant Secretary-Treasurer, and 4 ordinary members appointed by and from the Branch Council.  
  
The quorum shall be four (4) Members of the Branch Finance Committee.
  - (ii) In the case of the Victoria No.3 Branch, the Branch Secretary, the 2 Branch Trustees and 2 ordinary members appointed by and from the committee of management.
  - (iii) In the case of the other Branches, the Branch Secretary, at least 1 Branch Trustee and at least 2 members of the Branch Committee appointed by and from the committee of management.
- (c) The National Finance Committee and each Branch Finance Committee:
- (i) Shall be chaired by a person appointed by the National Executive or Branch committee of management to fill that role. In his or her absence at a meeting, the remaining members present shall elect one of their number present to chair the meeting.
  - (ii) Shall have a quorum of sixty per cent of the members of the Committee.
  - (iii) Shall meet at least as regularly as is determined by National Executive or Branch committee of management. The person appointed chair of the Committee may call a meeting more regularly if he or she considers it appropriate. The National Finance Committee shall meet at least once every two months. Branch Finance Committees shall meet at least quarterly.
  - (iv) In accordance with a decision of the chair of the Committee, the Committee may meet in person, by way of telephone conference, or by any other electronic means.
- (d) The functions of the Finance Committee are:
- (i) Develop the annual budget to be adopted by the National Executive or the Branch Committee of Management.
  - (ii) Monitor and report to National Executive (in the case of the National Finance Committee) and to Branch committee of management (in the case of the Branch Finance Committee) on the financial performance of the NORU or Branch against the budget.
  - (iii) Ensure there are adequate internal control systems in place and functioning to promote operational efficiency, minimise financial risk and fraud, and to ensure financial accountability.
  - (iv) Examine and monitor expenditure to ensure that expenditure is consistent with achieving the objects and complies with policy and procedures.

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- (v) Examine and monitor all credit card expenditure by employees and officers to ensure compliance with applicable policy and procedures.
  - (vi) Ensure that the applicable Financial Management Policy and Procedures are complied with at all times.
  - (vii) Ensure that the rules concerning the finances and financial management are complied with at all times.
  - (viii) Monitor and ensure that the NORU or Branch is complying with all statutory obligations regarding financial management and reporting requirements.
- (e) The Finance Committee also has the following functions in relation to auditing:
- (i) Make recommendations regarding the appointment of the Auditor to the National Executive or Branch Committee of Management.
  - (ii) In conjunction with the National or Branch Auditor, make recommendations to the National Executive or Branch committee of management about changes to the Union's or Branch's systems of internal control and systems to identify, monitor and mitigate significant financial risk.
  - (iii) In conjunction with the National or Branch Auditor, ensure that the Union's or Branch's annual financial statements are fairly represented in all material respects in accordance with Australian accounting principles and Standards.
  - (iv) Ensure that any matter that the National or Branch Auditor wishes to bring to the attention of the National Executive or Branch committee of management has been given adequate attention.
- (f) The National Finance Committee shall report to each meeting of National Executive about the matters referred to in sub-rules (d) and (e).
- (g) The Branch Finance Committee shall report to each meeting of Branch Committee of Management about the matters referred to in sub-rules (d) and (e).
- (h) If there is a matter that is so important, or so urgent, that it requires more immediate attention or direction from the National Executive or Branch Committee of Management, and two or more members of the Finance Committee so resolve:
- (i). A report about the matter shall be sent by the chair of the Finance Committee to each member of the National Executive or the Branch Committee of Management;
  - (ii). The National President, or President of the Branch, shall determine if a National Executive or Branch Committee of Management meeting should be called to deal with the matter.
- (i) National Executive and each Branch Committee of Management may authorise the Finance Committee to approve expenditure of the funds of the Union or the Branch, as the case may be, on ordinary or extraordinary operating expenditure up to an amount specified.

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- (j) The powers and functions conferred by this rule on the National Executive are only exercisable in relation to the National Finance Committee and the powers and functions conferred by this rule on a Branch Committee of Management are only exercisable in relation to that Branch's Finance Committee.

## **76 - THE FUNDS AND PROPERTY OF THE UNION**

- (a) Subject to sub-rule (e), the National Executive:
- (i) has control of all of the funds and property of the Union;
  - (ii) may determine all matters associated with the property of the Union, including the acquisition, disposal, transfer, use and control of the property; and
  - (iii) may determine all matters associated with the investment of the funds of the Union, including the acquisition, disposal, transfer, use and control of the investments.
- (b) Subject to sub-rule (e), the National Secretary is authorised to expend the funds of the Union on normal operating expenditure, subject to the limitations contained in the policies and procedures referred to in sub-rule (d).
- (c) Subject to sub-rule (e), the National Finance Committee is authorised to expend the funds of the Union on ordinary and extraordinary operating expenditure, subject to the limitations contained in the policies and procedures referred to in sub-rule (d).
- (d) Without limiting sub-rule (a), the National Executive shall adopt and implement policies and procedures, consistent with the principles of good governance and the Union's statutory obligations, governing all matters associated with the control of the funds, investments and property including, but not limited to:
- (i) The opening, closure and operation of accounts with financial institutions.
  - (ii) The procedures followed when making financial transactions.
  - (iii) The establishment of an annual budget.
  - (iv) The keeping of financial records.
  - (v) The production, content, timing and distribution of financial reports.
  - (vi) The auditing of the Union's finances.
  - (vii) The documentation, reporting and accounting of transactions and expenditure.
  - (viii) What is defined as normal and extraordinary operating expenditure for the purposes of these rules.
  - (ix) The limits to the amounts the National Secretary and National Finance Committee are authorised to expend.
  - (x) The conferral of authority to expend the funds of the Union.

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- (xi) The expenditure on which the funds of the Union cannot be expended without specific authorisation of the National Executive.
  - (xii) The procedure that must be followed in expending the funds of the Union.
  - (xiii) The issuing, use of, and accountability for credit cards.
  - (xiv) All aspects related to the use of credit cards and accounting for that expenditure.
  - (xv) The procedure that must be followed in purchasing goods or services using the funds of the Union.
  - (xvi) Hospitality and gifts.
  - (xvii) The employment and remuneration of officers and staff.
  - (xviii) The disclosure and management of conflicts of interest.
- (e) National Council may make directions, which National Executive, the National Finance Committee, and National Officers must comply with, concerning the matters referred to in sub-rules (a)-(d).
  - (f) Policies and procedures adopted under sub-rule (d) must be identified in the resolutions of the National Executive as rule 76 policies and procedures. Once adopted rule 76 policies and procedures shall be binding on all officers and members of the Union.
  - (g) Rule 76 policies and procedures must be published on the website conducted by the Union within fourteen days of their adoption.

## **77 - LOANS, GRANTS AND DONATIONS**

- (a) Notwithstanding anything elsewhere contained in these rules, the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive of the Union has approved the making of the loan, grant or donation and has satisfied itself:
  - (i) That the making of the loan, grant or donation would be in accordance with the other rules of the Union, and,
  - (ii) In relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory.
- (b) Sub-rule (a) shall not apply to or in relation to payments made by the Union by way of provision for, or reimbursement of, out of pocket expenses incurred by persons for the benefit of the Union. Nor do the provisions of sub-rule (a) apply to a transfer of funds to a Branch referred to in sub-rule 79(c).



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## 78 - CAPITATION FEES

- (a) Each Branch shall pay annually to the Union capitation fees (which includes the Branch's proportion of the Union's affiliation fee to the ACTU) being such amount per financial member as decided from time to time by two-thirds vote of National Council ('Branch capitation fees').
- (b) Branch capitation fees shall apply equally to Branches.
- (c) Branch capitation fees shall be calculated and payable on the basis of the number of financial members of the Union attached to that Branch as at the 30th June in the appropriate year certified as correct by the Branch Secretary.
- (d) Branch capitation fees shall be due and payable:
  - (i) when paid annually, by the 31st August next following, or
  - (ii) if a Branch chooses to pay its Branch capitation fees on a quarterly basis, by 14 July, 14 October, 14 January and 14 April next following; or
  - (iii) if the Branch chooses to pay monthly by the 14th of each month.

## 79 - BRANCH LIABILITIES

- (a) Branch's liabilities means:
  - (i) the liability of the Union to a third person for an amount resulting from the conduct of a Branch or officers, employees or agents of the Branch, whether that conduct is engaged in separately or jointly with any other and whether that conduct has, directly or indirectly, resulted in the liability;
  - (ii) an unpaid debt due for repayment as defined in sub-rule (c).
- (b) Without limiting the foregoing, the Branch's liabilities referred to in sub-rule 79(a)(i) includes:
  - (i) Liability for the remuneration of officers and others engaged to perform work for the Branch.
  - (ii) Liability to pay payroll tax, similar types of tax, workers' compensation, superannuation and other types of contributions in respect to those engaged in the Branch.
  - (iii) Liability to pay stamp duty and other similar types of tax in respect to the transfer, howsoever described, of property used by or enjoyed by the Branch or its officers.
  - (iv) Liability to pay mortgage repayments and other similar types of payment in respect to property used by or enjoyed by the Branch or its officers.
  - (v) Liability to pay debts on any loans whose funds have been applied principally for the benefit of the Branch.
  - (vi) Liability to pay damages or penalties for conduct of the Branch or conduct of its officers, employees or agents.

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- (c) An unpaid debt is due for repayment when:
- (i) The Union effects a transfer of funds from the funds of the Union to the funds of a Branch ('a loan') on agreed terms requiring the repayment of an amount, and part or all of the repayment amount is due for repayment under the agreed terms, and the Branch has not repaid to the Union the amount due and payable from the Branch's funds and property;
  - (ii) The Union agrees to provide a service of any nature to a Branch, directly or indirectly, on the terms that the Branch pay an amount to the Union in relation to the service and part or all of the payment is due under the agreed terms, and the Branch has not repaid to the Union the amount due and payable from the Branch's funds and property; or
  - (iii) The Union, with the agreement of the Branches concerned, has made a payment in relation to group activities of two or more Branches (or the activities of the officers or members of two or more Branches), and National Executive has determined an amount to be reimbursed by the Branch referable to those activities, and the Branch has not reimbursed the Union for the amount determined by National Executive.

#### **80 - CONSEQUENCES OF NOT PAYING CAPITATION FEES OR MEETING BRANCH LIABILITIES**

- (a) Where a Branch owes money to the Union:
- (i) The Branch delegates to National Council from that Branch shall not, unless the National Council otherwise decides, be entitled to participate in any meeting of National Council until such payment is made in full.
  - (ii) The Branch Secretary shall not, unless the National Executive otherwise decides, be entitled to participate in any meeting of the National Executive until such payment is made in full.
- (b) The Branch only owes money to the Union for the purposes of sub-rule (a) when:
- (i) The Branch has failed to pay Branch capitation fees that are due and payable under rule 78;
  - (ii) The Union has paid a Branch liability as defined in rule 79(a)(i) of more than \$5,000; or
  - (iii) The Branch owes an unpaid debt due for repayment as defined in sub-rule 79(a)(ii) of more than \$5,000.
- (c) In relation to a Branch liability as defined in rule 79, the National Executive may direct and require the Branch by its officers to:
- (i) In the case of a Branch liability referred to in sub-rule 79(a)(i), to pay the Branch liability;
  - (ii) In the case of a Branch liability referred to in sub-rule 79(a)(ii), to repay the loan, pay the amount due or pay the amount determined by National Executive as the case may be; and
  - (iii) If the Union has paid all or part of the Branch liability referred to in 79(a)(i) from the funds of the Union, to reimburse the Union the amount paid by the Union.

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- (d) Where the National Executive has made a direction under sub-rule (c) then the Branch, and each of its officers, has an obligation to take all necessary steps to comply with the direction, including giving any necessary authorities and executing any documents reasonably necessary to comply with the direction.
  - (e) In the case of a Branch liability referred to in sub-rule 79(c)(iii), to enable the Union and its Branches to minimise its and their liabilities and meet its and their statutory obligations, the Branch, and each of its officers, also have obligations:
    - (i) To promptly provide information reasonably requested of it;
    - (ii) To co-operate with the Union and other Branches; and
    - (iii) In the event that any additional liability is incurred by the Union due to the failure by a Branch to provide accurate information within timeframes required, that additional liability will be treated as a loan by the Union as defined in sub-rule 78(c) repayable immediately.
  - (f) In the case of a Branch liability referred to in sub-rule 79(a)(i), if the Branch contends that the Union is not liable to a third person, then:
    - (i) The Branch shall pay from the funds of the Branch all of the legal costs incurred associated with that contention; and
    - (ii) If there are any legal costs incurred by the Union associated with that contention, then the payment of those costs from the funds of the Union shall be treated as a loan as defined in sub-rule 78(c) by the Union to the Branch repayable within 30 days from the receipt by the Union of an invoice, or similar requirement, for the payment of those costs; and
    - (iii) So long as the obligations referred to in sub-rule 80(e)(i) and (ii) are complied with, the Union is not to pay the liability unless it has received advice that there is no reasonable defensible contention that the liability is not payable.

## **81 - FARES AND EXPENSES**

- (a) National Executive shall determine from time to time the fares and expenses to be paid to or on behalf of members of the National Executive when attending National Executive meetings or when attending to the business of the Union.
- (b) In the case of Branch delegates to National Council, unless otherwise determined by National Executive or National Council, such fares and expenses shall be paid by the Branch concerned and in the case of National Executive members such fares and expenses shall be paid out of the funds of the Union.

## **82 - NATIONAL AUDITOR**

- (a) The National Auditor shall be appointed annually by the National Executive.
- (b) The National Auditor shall be a person qualified under any governing statute to hold that appointment.
- (c) The National Auditor shall perform such functions and duties as are prescribed by any governing statute and such other functions and duties, not inconsistent with any governing statute, as are required by the National Council or the National Executive.

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- (d) The National Auditor shall for the purpose of performing his or her functions and duties:
- (i) have access to and be entitled to examine all documents of the Union in the custody, control or power of the Union or any of its Branches;
  - (ii) be empowered to question any Officer or employee of the Union or any Branch of the Union about such documents and any other matter related to the performance of the National Auditor's functions and duties;
  - (iii) to obtain from any bank or other institution at which the funds of the Union or any Branch thereof are deposited or invested such information as he or she may require.
- (e) The National Auditor shall have power to:
- (i) Make recommendations to National Executive about the financial affairs of the Union or its Branches;
  - (ii) Make recommendations to National Finance Committee about the financial affairs of the Union or its Branches;
  - (iii) Make recommendations to a Branch committee of management about the financial affairs of that Branch.
  - (iv) Work in conjunction with the National Finance Committee to enable that committee to perform its functions and duties referred to in sub-rule 75(e);
  - (v) Attend any National Finance Committee meeting and raise any matter concerning the financial affairs of the Union.

### **83 - FINANCIAL REPORTING REQUIREMENTS**

- (a) The Union shall prepare such financial reports as are required to be prepared by any governing law ('the financial reports').
- (b) The Union shall provide within any timeframe established by any governing statute:
- (i) A copy of the full financial reports free of charge to the members of the Union, unless the National Executive resolves that a concise report is to be provided to members of the Union; and
  - (ii) A copy of the full financial reports free of charge to any member that requests such a copy.
- (c) A copy of the full or concise reports referred to in (b) may be provided by publication in the Union's Journals, by correspondence, email, by posting on the Union's website or by some other method where all Union members have reasonable access to and are able to view the report.
- (d) The purpose of this sub-rule is to provide for a general meeting of members referred to in s 266(3) of the Fair Work (Registered Organisations) Act 2009. Members of the Union may requisition a general meeting of the Union for the purpose of considering the auditor's report, the general purpose financial report and the operating report. The meeting shall only be called if 5% or more of the members requisition the meeting. The requisition shall be in writing and signed by those members. If the National Secretary receives such a requisition, he or she shall:

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- (i) Call a general meeting of members, giving not less than 21 days' notice.
  - (ii) Determine the time and place at which the meeting shall be heard.
  - (iii) Shall ensure that facilities are provided to enable members in each State and Territory to participate at the meeting. This includes telephone or video conferencing or other electronic means of attending at and participating in the meeting.
  - (iv) Direct the Branch Secretaries to give at least 14 days' notice of the meeting to members of their respective Branches, including notice of the purpose of the meeting and how members may attend at and participate in the meeting by telephone or video conferencing or other electronic means.
  - (v) Shall ensure that members are given such documents as are required by law to be provided within any timeframe established by any governing law.

#### **84 - ACCESS TO FINANCIAL RECORDS**

- (a) The Union must provide access to the Union's financial records in accordance with its statutory obligations.
- (b) A member of the National Executive has a right of access to the financial records of the Union at all reasonable times. For the purposes of this rule, the financial records of the Union are those records that are required to be kept and maintained by any governing statute.
- (c) Any member of the National Executive shall, on giving three days' notice to the National Secretary, be entitled within the ordinary office hours of the Union to inspect the books and documents of the Union.
- (d) In relation to any information provided under this rule, the member of National Executive:
  - (i) Must not make improper use of the information in order to gain a personal advantage or an advantage for any person other than the Union.
  - (ii) Must not make improper use of his or her position in order to gain a personal advantage or an advantage for any person other than the Union.
  - (iii) Must not improperly exercise his or her powers for a purpose other than to serve the interests of the Union in order to gain a personal advantage, or an advantage for any person other than the Union; and
  - (iv) Must act in good faith in what he or she believes to be the best interests of the Union.

#### **85 – DISCLOSURE OF REMUNERATION AND NON-CASH BENEFITS BY OFFICERS**

- a) The obligations concerning the disclosure of remuneration and non-cash benefits are regulated by the Act ('the disclosure obligations').
- b) In addition to the disclosure obligations imposed by the Act, and without limiting those obligations in any way:
  - (i) The disclosure obligations are also obligations owed by officers under these rules.

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- (ii) Where the disclosure obligations impose on an officer of a Branch an obligation to disclose a matter to the Branch, the Branch Secretary of that Branch shall forward to the National Secretary a written record of the disclosure.
  - (iii) The written record forwarded to the National Secretary shall be made within one month of the disclosure to the Branch, or immediately if requested by the National Secretary.

## **86 - DISCLOSURE OF REMUNERATION PAID TO THE HIGHEST PAID OFFICERS**

- a) The obligations concerning the disclosure of the remuneration and benefits provided to officers are regulated by the Act ('the disclosure of remuneration obligations').
- b) In addition to the disclosure of remuneration obligations imposed by the Act, and without limiting those obligations in any way:
  - (i) The disclosure of remuneration obligations are also obligations under these rules.
  - (ii) The disclosure of remuneration obligations in the Act imposed in relation to some officers of the organisation apply, under these rules, to all officers of the organisation.
  - (iii) The disclosure of remuneration obligations in the Act imposed in relation to some officers of each Branch apply, under these rules, to all officers of the Branch

## **87 – DISCLOSURE OF MATERIAL PERSONAL INTERESTS**

- a) The obligations concerning the disclosure of material personal interests are regulated by the Act ('the disclosure of material personal interests obligations').
- b) In addition to the disclosure of material personal interests obligations imposed by the Act, and without limiting those obligations in any way:
  - (i) The disclosure of material personal interests obligations are also obligations owed by officers under these rules.
  - (ii) Where the disclosure of material personal interests obligations impose on an officer of a Branch an obligation to disclose a matter to the Branch, the Branch Secretary of that Branch shall forward to the National Secretary any written record relating to the disclosure.
  - (iii) The written record forwarded to the National Secretary shall be made within one month of the disclosure to the Branch, or immediately if requested by the National Secretary.

## **88 – DISCLOSURE OF PAYMENTS**

- a) The obligations concerning the disclosure of payments made by the organisation or a branch are regulated by the Act ('the disclosure of payments obligations').
- b) In addition to the disclosure of payments obligations imposed by the Act, and without limiting those obligations in any way:
  - (i) The disclosure of payments obligations are also obligations under these rules.

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- (ii) The disclosure of payment obligations in the Act imposed in relation to some officers of the organisation apply, under these rules, to all officers of the organisation.
  - (iii) The disclosure of payment obligations in the Act imposed in relation to some officers of each Branch apply, under these rules, to all officers of the Branch

### **89 – BRANCH FINANCIAL POLICIES AND PROCEDURES**

- (a) This rule applies to each Branch of the Union, other than the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch.
- (b) Each Branch shall develop and implement internal control policies and procedures relating to the expenditure of the Branch and to ensure that the Branch is conducted in accordance with the principles of good governance and to ensure accountability to members of the Branch.
- (c) The policies and procedures referred to in sub-rule 89(b) shall be adopted by the Branch committee of management for each Branch and once adopted shall be binding on all officers and members of the Branch. Such policies and procedures must be identified in the resolutions of the Branch committee of management as rule 89 Branch policies and procedures.
- (d) Rule 89 Branch policies and procedures must be published on any website conducted by the relevant Branch within fourteen days of their adoption.

### **90 - BRANCH POLICIES AND PROCEDURES: NSW, VICTORIAN No.1 AND No.3 BRANCHES**

- (a) Each Branch shall develop and implement internal control policies and procedures relating to the expenditure of the Branch and to ensure that the Branch is conducted in accordance with the principles of good governance and to ensure accountability to members of the Branch. Each Branch shall also develop and implement policies and procedures to ensure that the Branch is representative of and accountable to its members, will be able to operate effectively, will encourage members to participate in the affairs of their Branch and to encourage the democratic functioning and control of the Branch.
- (b) Such policies and procedures shall be adopted by the Branch Committee (or in the case of the New South Wales Branch, the Branch Council) and once adopted shall be binding on all officers and members of the Branch. Such policies and procedures must be identified in the resolutions of the Branch Committee (or in the case of the New South Wales Branch, the Branch Council) as Rule 90 Branch policies and procedures.
- (c) Rule 90 Branch policies and procedures must be published on the website of the Branch within fourteen days of their adoption.
- (d) Rule 90 Branch policies and procedures once adopted may only be altered, amended, or revoked by a resolution duly passed by not less than 70% of all members of the Branch Committee (or in the case of New South Wales Branch, the Branch Council). Provided that where the Branch Committee (or in the case of New South Wales Branch, the Branch Council) so alters, amends or revokes the Rule 90 Branch policies and procedures, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 60.

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- (e) Notwithstanding anything appearing elsewhere in these Rules, this Rule may only be altered, amended or revoked by a resolution passed by not less than 70% of all members of Branch Committee (or in the case of New South Wales Branch, the Branch Council). Provided that where the Branch Committee (or in the case of New South Wales Branch, the Branch Council) so alters, amends or revokes this Rule, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 60. Nothing in this sub-rule operates to limit the operation generally of Rule 60.

## **91 – DELETED**

## **PART F - SPECIAL BRANCH AND TRANSITIONAL RULES**

### **92 – TRANSITIONAL RULE - MEMBERSHIP**

- (a) On the date of the certification of this rule any person who is then life member of the HSU East Branch shall become a life member of the New South Wales Branch, the Victoria No.1 Branch or the Victoria No.3 Branch, whichever is applicable having regard to rule 38.
- (b) On the date of the certification of this rule, any period of membership and/or financial membership of the Union in the HSU East Branch in accordance with the Union's rules prior to the date of certification shall be deemed to be for all purposes membership and/or financial membership of the Union in the New South Wales Branch, Victoria No.1 Branch or Victoria No.3 Branch, whichever is applicable having regard to rule 38. Any period of unfinancial membership in the HSU East Branch in accordance with the Union's rules prior to the date of certification shall be deemed to be for all purposes a period of unfinancial membership in the New South Wales Branch, the Victoria No.1 Branch or the Victoria No.3 Branch, whichever is applicable having regard to rule 38.

### **93 – VICTORIA NO. 1 BRANCH PROPERTY**

- (a) This rule prevails over any other rule to the extent of any inconsistency and may only be amended or rescinded by a resolution of the National Executive consenting to the amendment or rescission.
- (b) For the purposes of this rule:
- (i) A reference to the Secured Property is a reference to the property known as 208-212 Park Street, South Melbourne, Victoria, or any new property acquired by the Union for the benefit of the Victoria No. 1 Branch;
  - (ii) The Secured Property forms part of the Branch Fund of the Victoria No. 1 Branch; and
  - (iii) A reference to financing documents is a reference to facility agreements, loan agreements, mortgages, guarantees, security and other documents relating to the financial accommodation provided by a lender and security for that financial accommodation.
- (c) This rule deals with any financing documents required to be entered into by the Union with any financial institution for the benefit of the Victoria No. 1 Branch as a consequence of the dissolution of the HSU East Branch or any replacement financing documents affecting the Secured Property which are entered into by the Union for the benefit of the Victoria No. 1 Branch.



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- (d) To the extent that the Union is required to enter into financing documents, the Branch Committee shall ensure that all payments required to be made pursuant to any financing documents will be made as and when required and all other obligations required to be performed will be undertaken as and when required. Without limiting the generality of this obligation, the Branch Committee shall ensure that:
- (i) all facilities provided by the lender are repaid in full on or before the due date as and when required under the financing documents;
  - (ii) if the financing documents include a guarantee and indemnity or other security provided in respect of facilities provided to the Health Services Union NSW, it pays any amounts that become payable to the lender under that guarantee and indemnity and security documents as and when demanded by the lender;
  - (iii) it does not take any action or fail to perform any act that will result in a breach under the financing documents or an event of default or potential event of default occurring under the financing documents;
  - (iv) at all times the Branch has the capacity to make the payments as and when required under the financing documents;
  - (v) all information that is provided to a lender for the purpose of obtaining the financial accommodation referred to in the financing documents and during the term of the financing documents including any accounts and financial information is not incorrect or misleading;
  - (vi) there is no material adverse change in its assets or financial position from that disclosed in information provided to a lender for the purpose of obtaining the financial accommodation during the term of the financing documents;
  - (vii) all ongoing compliance and reporting obligations under the financing documents are met, including, but not limited to, maintaining proper accounts and providing such accounts, cash flow projections, reports and valuations as may be required by a lender and which comply with the accounting standards required by a lender;
  - (viii) all the requirements of a lender in relation to insurance over the Secured Property are complied with and ensure that the Union is the beneficiary of any insurance policy;
  - (ix) all obligations under financing documents in relation to the Secured Property are complied with;
  - (x) all monies required to be paid in connection with the Secured Property including rates and taxes are paid on the due date for payment;
  - (xi) the Secured Property is maintained in good condition and repair;
  - (xii) no leases, licences or other rights to use the Secured Property are granted without obtaining the prior approval of the National Executive and the lender;
  - (xiii) the prior consent of National Executive and the lender is obtained in respect of any dealings relating to the Secured Property;
  - (xiv) there is no subdivision or consolidation of any Secured Property without obtaining the prior approval of the National Executive and the lender;

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- (xv) there is no change to or steps taken to change the zoning of any Secured Property or change the use of the Secured Property or the nature of the business conducted on the Secured Property without obtaining the prior consent of the National Executive and the lender; and
  - (xvi) no variations to any leases or management agreements affecting the Secured Property are made which will materially affect the Secured Property and its value.
  - (xvii) Where in this sub-rule the consent of the National Executive is required, the National Executive will not unreasonably withhold that consent.
- (e) The Branch Committee will ensure that the National Secretary is provided with:
- (i) details of any proposed communication or information to be provided to a lender prior to it being provided to a lender which communication or information must be approved by the National Secretary prior to it being submitted to a lender;
  - (ii) copies of all accounts, reports, valuations, cash flow projections and any other financial information that is provided to a lender;
  - (iii) evidence of insurance in relation to the Secured Property and that all premiums in relation to the insurance have been paid;
  - (iv) evidence that all monies in connection with the Secured Property have been paid on time including rates and taxes;
  - (v) immediate notification of any event, action or circumstance that may result in a breach of the financing documents or an event of default or potential event of default under the financing documents; and
  - (vi) any other notification, information or documents received from a lender in relation to the financial accommodation provided by a lender and the financing documents.
- (f) The Branch Committee will ensure that the National Secretary is provided with a monthly statement showing that the Branch has met its obligation to pay instalments of principal with interest, line fees, and any other amounts due to be paid each month under the financing documents and any further information requested by the National Secretary or the National Executive in writing in relation to the Branch Committee's management of the Secured Property and adherence to the terms of the financing documents.
- (g) The Branch Committee shall inform the National Secretary, and keep the National Secretary informed, of all accounts at banks or financial institutions in which funds that form part of the Branch Fund of the Branch are held and the purpose for which each account is maintained.
- (h) In the event that the National Executive forms the view, on reasonable grounds, that the Branch Committee has breached its obligations, or that there is a likelihood that the Branch Committee will not meet its obligations, under the terms and conditions of the financing documents, the National Executive may take all steps necessary to remedy the breach, including exercising any of the powers of the Branch Committee in relation to the Secured Property. The National Executive shall be entitled to meet the costs of taking such remedial action using the funds of the Branch.

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- (i) In the event that the Branch wishes to enter into new financing documents, it shall obtain the consent of the National Executive. The National Executive shall give that consent by resolution provided that it is satisfied on reasonable grounds that entering into the new financing documents is in the best interests of the Union, having regard to the Union's obligations under the existing financing documents and the new financing documents, the interests of the Branch and any other relevant matter.
  - (j) In the event that the Branch Committee decides to sell the Secured Property, or acquire new real property, it shall obtain the consent of the National Executive for the sale or acquisition. The National Executive shall give that consent by a resolution, provided that it is satisfied on reasonable grounds that the sale is in the best interests of the Union, having regard to the impact of the sale or acquisition on the Union, the interests of the Branch and any other relevant matters.
  - (k) The Branch Committee shall pay for all costs and expenses incurred by the Union in relation to considering and entering into any such financing documents and complying with any ongoing compliance obligations under the financing documents as and when required under the financing documents or in relation to any sale of the Secured Property or the acquisition of any new real property.

#### **94 – TRANSITIONAL RULES ARISING FROM THE 2013 RULE CHANGES**

- (a) The amendments to the rule 14 (National Officers) and 69 (Dual Offices) take effect as follows:
  - (i) The current office holders referred to in rule 14 continue to hold office pursuant to subrule 23B(a) and those offices continue to exist. Those office holders may cease to hold their offices in the ordinary manner pursuant to these rules;
  - (ii) For the purposes of the conduct of the elections to be held in 2014 the reference to National Officers in rule 23B(a) shall mean the National Officers referred to in rule 14 as amended by these rules. After the conduct of the elections the amendments to rule 14 have full effect; and
  - (iii) For the elections to be held in 2014, and thereafter, the amendments to rule 69 take effect.
- (b) The amendments to the rule 40 (Branch Officers), the final paragraph of rule 48 (Branch Secretary), rule 50 (now retitled Branch Assistant Secretary – Treasurer of the NSW Branch) and rule 53 (Branch Trustees) have the effect of making the office of Assistant Secretary and the offices of Branch Trustee positions the same as those that exist in each of the other Branches, other than the New South Wales Branch. The amendments to those rules take effect as follows:
  - (i) The current holder of the office of Branch Assistant Secretary-Treasurer of the Victoria No 1 Branch shall continue to hold office pursuant to subrule 23A(b) and that office continues to exist. That office holder may cease to hold her office in the ordinary manner pursuant to these rules;
  - (ii) For the purposes of the conduct of the elections to be held in 2014 the reference to Officers of a Branch in rule 23 B(a) shall mean the Branch Officers referred to in the rule 40 as amended by these rules. After the conduct of the elections the amendments to rule 40 have full effect;
  - (iii) In rule 40(b), the insertion of the words ‘and Branch Assistant Secretary’ takes effect on the certification of this rule.

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- (iv) The following amendments will take effect on the declaration of the results of the ballots for the offices of Victorian No 1 Branch Trustees in 2014, or on the date the Branch Assistant Secretary-Treasurer shall cease to hold office (whichever is the later):
- (A) In rule 48, the amendments to the final paragraph.
  - (B) In rule 50, the amendments to the unnumbered head of the rule.
  - (C) In rule 51, the deletion of the words ‘and the Victorian No 1 Branch’.
  - (D) In rule 53(b), the deletion of the words ‘and the Victorian No 1 Branch’.
  - (E) In rule 53(c), the deletion of the words ‘and the Victorian No 1 Branch’.
- (c) The amendments to the rules made in 2013 otherwise take effect on the date the rules are certified, unless the context requires otherwise.

## **95 – FINANCIAL MANAGEMENT OF THE SA/NT BRANCH**

- a) The purpose of this rule is to ensure:
- (i) The South Australia/Northern Territory Branch (‘the Branch’) ceases to be a reporting unit for the purposes of section 242 of the Act.
  - (ii) The National Office Reporting Unit (NORU) becomes the reporting unit for the purposes of the Act of the Branch and the National Office.
  - (iii) The financial affairs of the Branch and the National Office will form part of and be integrated into the NORU report prepared and filed pursuant to the Act.
  - (iv) NORU will take full administrative responsibility for financial management for the Branch.
  - (v) The National Secretary and National Executive will assume the powers, duties and functions related to the exercise of financial responsibility and management of the Branch.
- b) Nothing in this rule has the effect of:
- (i) Altering the rights of any Branch, or any Branch officer, other than the South Australia/Northern Territory Branch and officers of that Branch.
  - (ii) Conferring an office in the Branch on any National Officer, or member of National Executive, for the purposes of the rules, and exercising powers, duties and functions under this rule is not the holding of an office in the Branch for the purposes of rule 69.
- c) NORU will take complete administrative responsibility for the financial management of the Branch. This includes:
- (i) The Branch will no longer maintain a Branch Balance Sheet. Balance Sheet items including Cash at Bank and Property will be transferred to the NORU Balance Sheet.
  - (ii) NORU will take responsibility for Branch financial transactions and will include the incomes and expenditures of the Branch on the NORU Income and Expenditure Statement as a cost centre.

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- (iii) The Branch will not operate a separate bank account;
  - (iv) NORU will assume responsibility for the lodgement of BAS and PAYG payroll tax statements and payments for the Branch.
  - (v) In all transactions, the Branch will use the NORU Australian Business Number.
  - (vi) NORU will meet all Branch payroll obligations, including the issuing of payment summaries, pay slips, and the payment of superannuation contributions.
  - (vii) Each month, NORU will provide the Branch Committee with a Statement of Income and Expenditure for the Branch.
  - (viii) Each month, NORU will advise the Branch of staff leave entitlements.
  - (ix) In addition to reporting requirements of the NORU in accordance with s265 of the Act, the Branch Committee of Management will cause a financial report for the year ended 30 June each year to be provided to the members of the Branch outlining income and expenditure of the NORU on behalf of the South Australia/Northern Territory Branch, within five months of the end of the financial year.
- d) The National Secretary is empowered to, and will take such steps as are necessary to, enable the NORU to comply with this rule and the Act.
- e) For the avoidance of doubt, and without limiting the effect of sub-rules (c) and (d), so far as financial responsibility and financial management of the Branch, its Branch officers and the Branch Committee of Management are concerned:
- (i) In rules 11, 12 (a) (c), 63, 81 (b), 87 (h), 88 (d), 88 (f), the reference to ‘Branch’ shall be taken to read ‘NORU’.
  - (ii) Any rule made by the SA/NT Branch under rule 39 (d) shall not be inconsistent with this rule.
  - (iii) The powers, duties and functions conferred by rules 44 (a) (so far as it concerns finances), (b), (i), 85 (c), 85 (e), 85 (h) (ii), 86 (c), 87 (e), 87 (g), 87 (i) (ii), are not conferred on the Branch Committee and are conferred on the National Executive.
  - (iv) The powers, duties and functions conferred by rules 11 (g), 44 (c), 48 (b), (c), (d), (j), (l) (other than the annual return of information), 56 (c) (iii) (5), 85 (h) (iii) and (iv), 86 (e), 87 (i) (iii), 87 (i) (iv) are not conferred on the Branch, the Branch committee of Management or Branch Secretary and are conferred on the National Secretary.
  - (v) Rules 44 (k) and 52 do not apply as the auditing of the Branch is to be conducted by the National Auditor appointed and exercising powers under rule 82.
  - (vi) The obligations imposed on Branch officers by rules 74 (e) and (g) must be performed as if a reference to ‘Branch committee of management’ also included a reference to National Executive, and the ‘Branch Auditor’ also included a reference to National Auditor.
  - (vii) The funds and property of the Branch under rule 53 are part of the funds and property of the Union under rule 76.
  - (viii) Rules 75, 78, 79, 80, 89 do not apply to the Branch.

- 
- f) Nothing in the above rules limits the powers of the National Executive to delegate matters referred to in this rule to the National Finance Committee in the ordinary manner.
  - g) The officers of the Branch must take such steps as are necessary to enable the National Secretary and the NORU to comply with these rules and the Act.
  - h) This rule commences to take effect on the date of certification\*. This rule ceases to take effect when it is repealed. On repeal, the rules of the union (other than this rule) governing the administrative responsibility for financial tasks of Branches will apply to the Branch.
  - i) Whilst in effect this rule shall prevail over rule 35(a) and (b) to the extent of the inconsistency.
  - j) If the committee of management of the Branch passes a resolution seeking to reinstate the responsibility of the Branch for the functions referred to in paragraph (c), the National Secretary is empowered to, and must, take such steps as are necessary to give effect to that resolution, including making all appropriate applications under the Act and executing all necessary documentation to effect such a reinstatement.

\*\*\*END OF RULES\*\*\*

\*Note – Rule 95(h) was certified on 7 July 2017 (R2017/71)



## **AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

### **s. 576(e)(1) – Procedure for carrying out award modernisation process**

#### **IN THE MATTER OF:**

#### **AM 2008/13 – HEALTH AND WELFARE SERVICES (EXCLUDING SOCIAL AND COMMUNITY SERVICES)**

#### **SUPPLEMENTARY SUBMISSION OF THE HEALTH SERVICES UNION**

1. When this matter was before the Commission in Melbourne on 3 and 4 December 2008, Commissioner Smith raised for consideration whether the Commission might make a Health Industry Award with occupation based classification streams. That model will be referred to herein as the "industry hybrid modern award".
2. The HSU's position is that which has been articulated to the Commission thus far in its submissions and draft award of 31 October 2008, and its submissions made to the Commission in its consultations.
3. In particular, the HSU continues to oppose the adoption of a separate occupational award for nursing.
4. In the HSU's submission, the ANF has not demonstrated sufficient basis for the nursing profession to have separate award coverage. When regard is had to the terms and conditions applicable to nurses and to other health professionals across the industry there are substantial areas of similarity and limited points of difference.

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5. One result of acceding to the ANF's submission, and its proposal for a stand alone award that would cover Registered Nurses, Enrolled Nurses and Assistants in Nursing would be that Assistants-in-Nursing and Personal Care Workers would be covered by separate awards. In the submission of the HSU, that would create an unworkable situation because:
  - a. Those classes of workers are amongst the most numerous in the industry, and in particular, in the aged care sector of the industry;
  - b. There is no clear distinction between the roles. This fact is relevant in two ways:
    - i. First, the creation of two named roles covered by separate awards would be productive of argument and confusion about the precise classification and coverage of a worker performing such tasks; and
    - ii. There is no imperative to deal with those workers in separate awards because there is no history of those workers having different award conditions, and no rationale based in their work for making such a distinction.
6. These further submissions are made in relation to the Commission's proposed industry hybrid model.
7. In the HSU's submission, an industry hybrid modern award is a model which is capable of meeting the objective of the Ministerial request of establishing a single award to have application across the industry, whilst also establishing an appropriate safety net of terms and conditions for each of the occupations engaged within the industry.
8. Since the consultation hearings, the HSU has developed a framework for an industry hybrid modern award, in the event that model is regarded as preferable by the Commission. Attached with these submissions are the following:
  - a. Draft Application clause;
  - b. Draft Classifications Schedule;
9. The HSU's submissions about the framework contained in the above documents is set out below.



## **Classifications Structure**

10. The HSU Industry Hybrid Modern Award comprises 7 occupational streams:
  - a. Support;
  - b. Care;
  - c. Technical;
  - d. Administration and Management;
  - e. Medical/Dental;
  - f. Health Professional;
  - g. Nursing.
11. The scope of the streams is described in the Introduction to the Classifications Schedule.
12. The Classification matrix contains 11 Generic Classification Levels, commencing with industry entry-level positions at Health 1 and Health 2. The positions requiring the highest level of education, training and experience are at Health 10 and 11.
13. The Administration and Management stream is the only stream with employees at each of the Health levels in the Classification structure. The other streams occupy only some of the Health classification levels.
14. A generic classification system has been proposed so that the award has genuine industry application. The HSU Industry Hybrid Modern Award employs a matrix similar to that in the Manufacturing and Associated Industries and Occupations Award 2010 exposure draft. Workers and managers can identify their position within their stream, and the relativity of that position to workers in other streams. Where practicable, common criteria are used to determine the level applicable to an employee level, regardless of their stream.
15. Each of the levels in the matrix, other than Health 1, contains more than one pay point. The initial pay point for each level applies upon entry to that level. Progression through the pay points within a level occurs by reference to length of service, the acquisition of additional skills, or appointment to a position which requires additional responsibility or enhanced skills. The criteria for progression in each level are set out in the Classification structures relevant to the various streams.
16. Employees at Health 4 must have a Certificate III level (trade certificate level or equivalent) qualification. Each of the levels

Health 5 through to Health 10 require an ascending level of qualifications for *entry* at that level, as follows:

- Certificate IV;
  - Diploma (or equivalent);
  - Advanced Diploma (or equivalent);
  - 3 year degree (or equivalent);
  - 4 year degree (or equivalent);
  - 6 year qualification/Doctorate (or equivalent).
17. Progression through the levels and through the pay points within the levels is described in the classification structure. Progression occurs by reference to both passage of time and appointment.
  18. The rationale for the Streams, each Classification Level and the criteria for progression between them, is set out below.

### **Creation of Streams of Work**

19. The streams of work within the draft classifications structure are both function-based and profession or occupation based.
20. Administration and Managerial functions are combined into a single stream. Workers in this stream are found at each level of the classification structure.
21. The areas of clinical practice have separate occupation-based streams.
22. Dentists and doctors are in the same clinical stream.
23. Nurses are contained in a separate occupational stream.
24. Health professionals, including allied health workers, and other professionals such as scientists, are contained in a single stream.
25. The draft Industry Hybrid Modern Award Classification structure also contains a "Care" stream. The Care stream includes workers in multi-skilled entry level and intermediate caring roles. Dental assistants, Allied Health Assistants and Aboriginal/Torres Strait Islander Health Workers are included in this stream. Additionally, this stream includes workers called Health Care Assistants, a term which is used in the draft to denote both Assistants in Nursing or Personal Care Workers. For the reasons set out above it is submitted it would be counter-productive and inequitable to afford these workers different pay or conditions.

## THE CLASSIFICATION LEVELS

### Health 1

26. Health 1 is an entry-level position which does not require any previous skills, training or industry experience.
27. No workers in any of the clinical streams (Nursing, Health Professional, Dental/Medical) or the Care stream are found at this level. The classification only contains workers in the Support, Technical and Administration and Management streams. The indicative tasks for workers at this level are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.
28. Equivalent classifications in current awards include the following:
  - a. General Services 1 – *Health and Allied Services – Private Sector Victoria Award – AT783872*;
  - b. General Services 1 – *Health and Allied Services – Public Sector Victoria Award – AT783945*;
  - c. Grade 1 positions – *Aged Care General Services (State) Award (NSW NAPSA) – AN120011*;
  - d. Hospital Worker, Level 1 – *Private Hospital and Residential Aged Care (Nursing Homes) Award 2002* (an award which covers employers in Western Australia in the residential care industry) – AP817073
  - e. Level 1 positions – *Dental Assistants and Secretaries (State) Award (NSW NAPSA) – AN120179*
  - f. Level 1 – *Clerical Award – Private Hospitals – State 2003 – AN140065*
29. It is not envisaged that any workers within this classification will remain at this level for any more than 6 months. Within that period, the employee will either be determined by the employer to be unsuitable, or will have satisfied their employer of their capacity to perform the tasks associated with their role to a satisfactory standard. That assessment of suitability should take place as early as possible within the first six months of engagement.
30. An employee at this level may request assessment of suitability by the employer for the purpose of progressing to Health 2.

### Health 2

31. Health 2 is a classification, which, like Health 1, requires no formal qualification. It comprises two types of workers:

- a. First, workers who have commenced in a Health 1 position and, within the first six months of their commencement, have demonstrated the competencies relevant to their role and been determined to be suitable; and
  - b. Workers in positions for which Health 2 is regarded as industry entry level.
32. The latter type of position is distinguished from the earlier by the fact that some skills are required for entry. Those skills may have been acquired outside the health industry. For example, Health 2 is the entry level for a driver, who must possess a driving licence. A typist at this level must possess typing skills. Health 2 is also the industry entry level for cooks, who must have some cooking skills in order to perform the fundamental requirements of their position.
33. The indicative tasks for workers at this level are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.
34. Health 2 is regarded as the industry entry level for employees in Care stream roles, such as health care assistants (a new generic title to cover the workers formerly designated either as Assistants in Nursing or Personal Care Workers), untrained dental assistants and Aboriginal and Torres Strait Islander health workers. It is not envisaged that these workers will remain within this level for any more than 6 months. Within that period, the employee will either be determined by the employer to be unsuitable for the position, or will have satisfied their employer of their capacity to perform the tasks associated with their role to a satisfactory standard. That assessment of suitability should take place as early as possible within the first six months of engagement. An employee may request assessment of suitability by the employer for the purpose of progressing to Health 3.
35. Workers in the other streams with positions at Health 2 level, that is, in the Administration and Management, Technical and Support Streams can advance beyond the initial pay point in the following manner:
  - a. To the second level within the classification, that is, to Health 2(b), by completion of one year's service;

OR

- b. To the first pay point of Health 3 by the completion of Certificate II level training or its equivalent.

36. Equivalent classifications in current awards include the following:

- a. Skill Levels 2 and 3 – *Health and Allied Services – Private Sector Victoria Award – AT783872*;
- b. Skill Levels 2 and 3 – *Health and Allied Services – Public Sector Victoria Award – AT783945*;
- c. Dental Assistant – unqualified – *Dental (Private Sector Victoria) Award 1998 – AP779110CRV*;
- d. Levels 2/3 – *Clerical Award – Private Hospitals – State 2003 – AN140065*

### **Health 3**

37. Health 3 contains workers in the Support, Care, Technical and Administration and Management streams. Workers at this level require Certificate II qualifications (as defined under the Australian Qualifications Framework) or their equivalent.

38. The indicative tasks for workers at this level across each of the above streams are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.

39. The Level contains a second pay point to which all employees progress automatically after twelve months of service. Progression may occur prior to that time on assessment by the employer.

40. Equivalent classifications in current awards include the following:

- a. Level 4 – *Clerical Award – Private Hospitals – State 2003 – AN140065*

### **Health 4**

41. Health 4 is a classification level, entry to which requires a Certificate III qualification (trade certificate or equivalent).

42. Health 4 contains employees in the Support, Care, Technical and Administration and Management streams.

43. The indicative tasks for workers at this level across each of the above streams are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.

44. Health 4 is the "standard rate", or the 100% rate for the purpose of maintaining relativities between the levels, and for the purpose of the calculation of allowances.
45. Health 4 has 3 pay points within the level, being:
  - a. 4(a) – the entry level point;
  - b. 4(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 4(c) – the point to which all workers progress after twelve months' service at pay point 4(b).
46. Equivalent classifications in current awards include the following:
  - a. Level 3 positions – *Dental Assistants and Secretaries (State) Award (NSW NAPSA) – AN120179*

## **Health 5**

47. Health 5 is defined by the requirement that workers at this level possess either a Certificate IV (post-trade certificate) qualification or an Associate Diploma or equivalent.
48. There are three pay points within this classification level.
49. Health 5 is the first level in the Classifications Matrix containing employees in the Nursing Stream. This level is the entry point for Enrolled Nurses. However, an enrolled nurse may, depending on their experience and knowledge, be appointed at any one of the three pay point levels within Health 5 (or indeed, at any level above Health 5, pay point 1). The requirements for appointment at the higher pay points are set out in the classification structure. Enrolled nurses progress through the pay points in levels 5, 6 and 7 to every second pay point after entry level with the acquisition of each twelve months of additional service.
50. Workers in the Support, Care, Technical and Administration and Management Streams are also found at this level.
51. The criteria for progression of those employees to the pay points in Health 5 is as follows:
  - a. 5(a) – the entry level point;
  - b. 5(b) – the point to which all workers progress after completion of twelve months' service; and

- c. 5(c) – the point to which all workers progress after twelve months' service at pay point 5(b).
52. Equivalent classifications in current awards include the following:
- a. Enrolled Nurse – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse – *Nurses (South Australian Public Sector) Award 2002* – AP817220
  - c. Recreation Activities Officer – *Private Hospital Employees (State) Award (NSW NAPSA)* – AN120434
  - d. Credit officer, public relations officer, supply officer, food services/catering officer – *The Private Hospital Administrative Officers - Victoria Award 2005* – AP838706CRV

## **Health 6**

53. Health 6 is defined by the requirement that workers who enter at this level are required to possess a Diploma qualification or equivalent.
54. The only workers from the clinical streams at Health 6 are in the Nursing Stream. Enrolled nurses may either be appointed to a position in Health 6 or will progress to pay points within Health 6 according to their length of service.
55. Workers in the Support, Health Care Assistant, Technical and Administration/Clerical/Management Streams are also found at this level.
56. Health 6 has 3 pay points within the level. The criteria for progression to those pay points differs between the streams. For the non-Clinical streams, progression is as follows:
- a. 6(a) – the entry level point;
  - b. 6(b) – the point to which all workers progress after completion of twelve months' service at 6(a); and
  - c. 6(c) – the point to which all workers progress after twelve months' service at pay point 6(b).
57. Equivalent classifications in current awards include the following:
- a. Enrolled Nurse (Paypoint Y3) – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse (Paypoint Y3) – *Nurses (South Australian Public Sector) Award 2002* – AP817220

- c. Level 2, Senior Dental Technician – *Dental Technicians and Attendants Award* – AN150045

## **Health 7**

- 58. Health 7 is defined by the requirement that workers who enter at this level possess an Advanced Diploma or equivalent.
- 59. Nursing is the only clinical stream where there may be positions at Health 7 level. Enrolled nurses enter this level either by appointment, or by reference to length of service. This is the highest level in the structure to which Enrolled Nurses progress without the acquisition of a further qualification.
- 60. The only other streams with workers at this level are the Administration and Management Stream and the Technical Stream.
- 61. Technical stream workers at this level possess the highest degree of skills in this stream. Pharmacy Technicians, Anaesthetic Technicians and Dental Prosthetists are classified at this level.
- 62. In the Clerical, Administrative and Management Stream, workers in the stream are in management roles, specialist roles or higher level administrative positions. The indicative tasks of management roles at this level are set out in the Management section of the Classification structure. Examples of workers in these roles include the roles of Laboratory Supervisor, Medical Stenographer and Information Services Officer.
- 63. Health 7 has 3 pay points within the level. Progression, for workers at each of the streams in this level is as follows:
  - a. 7(a) – the entry level point and the point to which an Enrolled Nurse will progress after one year at Health 6, pay point 3 (a maximum of six years service);
  - b. 7(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 7(c) – the point to which all workers progress after completion of twelve months' service at 7(b).
- 64. Equivalent classifications in current awards include the following:
  - a. Enrolled Nurse – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse – *Nurses (South Australian Public Sector) Award 2002* – AP817220



## Health 8

65. Health 8 is defined by the requirement that workers at this level possess either a three-year bachelor degree (such as a degree in nursing) or equivalent.
66. Health 8 contains workers within 2 of the clinical streams: nursing and health professionals. This level is the entry point for Registered Nurses and also health professionals such as clinical perfusionists, oral health therapists and dental hygienists. Diversional and play therapists also undertake a three-year degree.
67. Workers in the Administration/Clerical/Management Stream are also found at this level. Middle level managers are found at this level, as are experienced specialists such as accountants and finance managers .
68. Health 8 has 3 pay points within the level. Progression through the pay points within the level is as follows:
  - a. 8(a) – the entry level point;
  - b. 8(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 8(c) – a further pay point to which all workers progress after completion of a further twelve months' service.
69. Equivalent classifications in current awards include the following:
  - a. Registered Nurse, Level 1 – *Nurses Private Employment (A.C.T.) Award 2002 – AP818792CRA*
  - b. Registered Nurse, Level 1 – *Nurses (South Australian Public Sector) Award 2002 – AP817220*

## Health 9

70. Nurses, Health Professionals and Managers are found at this level.
71. Health 9 is:
  - a. The entry level classification for health professionals whose professional registration requires completion of a four year degree or its equivalent;
  - b. A level to which Registered Nurses who have progressed through the pay points in Health 8 will progress after further service;

- c. A level which applies to Registered Nurses appointed to specialist positions, regardless of years of service;
  - d. Entry level classification for workers in management roles which require a four year degree or its equivalent.
72. Many health professionals require a four-year degree to practice. Physiotherapists and Occupational Therapists are two examples of such professionals.
73. Health 9, pay point 1 is the entry level for Nurse Specialists, as defined in the classifications. Nurse Specialists are registered nurses in roles which provide leadership, including clinical leadership, and role modelling, particularly in the areas of research, quality assurance. Nurse Specialists are often involved in staff and policy development.
74. For those professions where a Masters is a mandatory requirement of practice, such as Audiology, entry is at pay point 2 of this level.
75. Management employees at this level are senior managers, professionals and specialists.
76. There are three pay points within this Health Level. Employees at this level will progress to subsequent pay points of this level by reference to their completion of each additional twelve months' satisfactory service.
77. Equivalent classifications in current awards include the following:
- a. Registered Nurse, Level 2 – *Nurses (Tasmanian Private Sector Award) 2005*
  - b. Physiotherapist (qualified) – UG1 - *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004 – AP835426CRV*
  - c. Radiation Therapy Technologist (Qualified) – UG1 - *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004 – AP835426CRV*
  - d. Medical Scientist 1 – *Medical Scientists (South Australian Public Sector) Award AN150080*

## **Health 10**

78. Health 10 contains employees in each of the clinical streams, and the Administration and Management stream.

79. In the clinical streams, Health 10 is a level applicable as an entry level for those clinicians for whom a 5 or 6-year qualification, or doctoral qualifications are required for entry.
80. The clinicians for whom 5 or 6 year qualifications or doctoral qualifications are required for entry are as follows:
  - a. Medical/Dental Stream– Interns and newly qualified Dental officers;
  - b. Health Professional Streams – Clinical Psychologists and Optometrists.
81. Those employees move to the second and third pay points within Level 10 upon completion of twelve and twenty-four months' service respectively.
82. Nurses move into Health 10 only by appointment, and not as a result of incremental improvement by reference to length of service.
83. In the Nursing Stream, Health 10 is the classification to which Registered Nurses may progress by appointment to one of the following roles:
  - a. Nurse Manager;
  - b. Nurse Consultant;
  - c. Nurse Educator;
  - d. Assistant Director of Nursing.
84. Health Professionals whose practice entry qualification is less than a 5 or 6 year degree move into Health 10 level only by appointment to one of the senior specialist roles which are described in the Health Professional Stream Descriptors.
85. Equivalent classifications in current awards include the following:
  - a. Registered Nurse, Levels  $3\frac{3}{4}$  - *Nurses (Queensland Public Health Sector) Award 2004* - AP835218
  - b. Registered Nurse, Level 4 – *Nurses (SA) Award* – AN150097
  - c. Hospital Medical Officer – *Health and Welfare Services – Private Hospital Medical Officers – Victoria Award 2003* – AP825417CRV

## **Health 11**

86. Health 11 is the level applicable to the following positions:

- a. Medical Roles: Registrars, Senior Registrars and Career Medical Officers;
  - b. Dental Roles: Senior Dental Officers and Dental Specialists;
  - c. Health Professional Roles: senior health professionals and Principal Officers specific to a particular health professional discipline;
  - d. Nursing Roles: Directors of Nursing and Nurse Practitioner roles;
  - e. Chief Executives or Senior Line Executives.
87. The descriptors of the roles at each of the pay points within this level are contained in the Descriptor schedules for the relevant Classification Streams.
88. Progression through the pay points at Health 11 is by appointment only. There is no incremental progression through Health 11 by reference to length of service.
89. Examples of current award classifications that would be located at this level are:-
- a. Chief Radiographer – *Private Hospital Employees (State) Award (NSW NAPSA) – AN120434*;
  - b. Director of Medical Services – *Hospital Specialists and Medical Administrators Award 2002 – AP816036*;
  - c. Registered Nurse, Level 5 (Director of Nursing) – *Nurses (SA) Award – AN150097*

### **Supervision Allowance**

90. The Health Services Union submits that a modern award for the Health Industry should contain an allowance to recognise and compensate the additional burden on workers for supervising staff. We submit that a Supervision allowance be included in the general allowances and take the following form:

#### **Supervision allowance**

The supervision allowance is payable to an employee who is required to supervise other employees with the amount of such allowance depending upon the number of employees supervised.

Number of employees	Percentage of Standard Rate
1-5 employees	4.22% per week
6-10 employees	4.87% per week

11-20 employees	6.32% per week
More than 20 employees	7.46% per week

## **Health Services Union**

14 January 2009

# Modern Health Industry Hybrid Award

## DRAFT APPLICATION CLAUSE

### 4. APPLICATION

**4.1** This award applies throughout Australia to employers of employees within the Health Industry and prevails over any other modern award.

**4.2** This award also applies to employers of employees in occupations in the following streams of this award:

- a. Health Professional
- b. Medical and Dental Officers
- c. Nursing

**4.3** This award does not apply to an employee excluded from award coverage by the Act. Nor does this award apply to an employer in respect of any employee to whom an Enterprise Award applies.

**4.4** For the purposes of this award, the Health Industry includes, however named:

- (a) Hospital services,
- (b) General and specialist medical services,
- (c) Medical laboratory services,
- (d) Medical diagnostic services,
- (e) Health research services,
- (f) Nursing services,
- (g) Allied health services,
- (h) Surgical and day procedure services,
- (i) Mental health services,
- (j) Community health services,
- (k) Aboriginal health services,
- (l) Rehabilitation services,
- (m) Dental services,
- (n) Optometry and optical services,
- (o) Divisions of general practice and/or general practice networks,
- (p) Blood banking services,
- (q) organizations, services and/or societies constituted for the purpose of assisting persons suffering from specific diseases, disorders or social or emotional disability, &
- (r) Administrative, clerical, management, executive, technical, specialist, ancillary and support services in the health and medical services industry,
- (s) Aged care services, including aged care home care services

**4.5** For the purposes of this Award, the Health Industry does not include the health insurance industry.

# Modern Health Industry Award

## CLASSIFICATIONS SCHEDULE

### INTRODUCTION

A modern health industry award contains the following functional, occupational or profession based classification streams. The streams cover all the types of workers required to deliver health services to patients in the modern multi-disciplinary health services environment.

Those classifications are:

1. The Support Stream – workers who perform maintenance, grounds keeping, security, transport, domestic, laundry/linen, stores, food service functions or other functions of a similar type however named;
2. The Care Stream – multi skilled workers who provide personal care assistance to patients and/or provide assistance to clinicians in the course of care or treatment;
3. The Technical Stream – workers who undertake work requiring a specialist technical skill and who possess a certificate or advanced qualification or are in the process of acquiring such qualifications. This stream includes lab assistants, pharmacy technicians, sterilising technicians, theatre technicians, dental technicians, orthotic technicians, prosthetic technicians, ECG technicians, anaesthetic or instrument technicians, perfusionists, phlebotomists and others;
4. The Administration and Management Stream – clerical and administrative employees, specialist managers or senior staff who oversee the performance of administrative functions or the delivery of patient care services.
5. The Dental and Medical Officers Stream – doctors of medicine and dentists registered and performing work within those fields of expertise;

6. The Health Professionals Stream - clinicians and other professionals who deliver health and scientific services to patients directly or indirectly;
7. The Nursing Stream – workers who have successfully completed a course of training in nursing leading to enrolment or registration with a relevant statutory body;

The levels within each stream ascend by reference to autonomy of role, complexity of tasks and qualifications and skills required of the employee. Rates of pay progress commensurate with the described role levels. The indicative tasks associated with each level are described within the classification system below. Indicative tasks assist to place an employee's role in a particular level within a stream.



## Modern Health Industry Award – Classifications Matrix

Health Grade	Steps	Support Stream	Care Stream	Technical Stream	Administration and Management Stream	Dental and Medical Officers Stream	Health Professional Stream	Nursing Stream	Indicative Training Level - (AQF)	% of Health 4 (Standard Rate)
<b>Health 1</b>									Entry	<b>89.5</b>
<b>Health 2</b>	two								Entry	<b>92.5</b>
<b>Health 3</b>	two								Cert II	<b>97</b>
<b>Health 4</b>	three								Cert III	<b>100</b>
<b>Health 5</b>	three								Certificate IV/Associate Diploma	<b>105</b>
<b>Health 6</b>	three								Diploma	<b>107.5</b>
<b>Health 7</b>	three								Advanced Diploma	<b>110</b>
<b>Health 8</b>	three								Degree - 3 years	<b>150</b>
<b>Health 9</b>	three								Degree - 4 years/Mandatory Masters	<b>160</b>
<b>Health 10</b>	three								Degree – 6 years/Doctorate	<b>170</b>
<b>Health 11</b>	three								Post-Doctoral	<b>180</b>

# SUPPORT, CARE, TECHNICAL AND ADMINISTRATION STREAM DESCRIPTORS

## Health 1

An employee at this level:

- Works within established routines, methods and procedures;
- Has minimal responsibility, accountability or discretion;
- Works under direct or routine supervision, either individually or in a team;
- No previous experience or training is required;
- Subject to satisfactory assessment of competencies will progress to Health 10 level within 6 months of commencement. Earlier assessment should take place if the employee is demonstrating satisfactory performance or upon request of the employee.

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Laundry Hand Car Park Attendant Hospital Orderly Maintenance/Handyperson (unqualified) Food and Domestic Services Assistant		Laboratory Assistant Orthotic Technician Theatre Attendant Recording Attendant (including EEG and ECG)	Dental Secretary Data Entry operator Administration Assistant Receptionist

## Health 2

An employee at this level:

- Works within established routines, methods and procedures;
- Has limited responsibility, accountability or discretion;
- May work under limited supervision, either individually or in a team;
- Possesses communication skills;
- Requires on-the-job training and/or specific skills training or experience;
- For *Care Stream* positions, this is the Entry Level classification. Subject to satisfactory assessment of competencies, a worker will progress to Health 2 level within 6 months of commencement. Earlier assessment should take place if the employee is demonstrating satisfactory performance or upon request of the employee.

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Housekeeper Store person Laundry Operator Driver (requiring car license) Cook Gardener (non trade)	<b>Health Care Assistant</b> (new name for PCW) Dental Assistant (untrained) Aboriginal/Torres Strait Islander Health Worker Allied Health Assistant (unqualified)		Typist Library Clerk

This classification contains two pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service.

## Health 3

An employee at this level:

- Is capable of prioritising work within established routines, methods and procedures;
- Is responsible for work performed with a medium level of accountability or discretion;
- Works under limited supervision, either individually or in a team;
- Possesses sound communication and/or arithmetic skills;
- Requires specific on-the-job training and/or relevant skills training or experience; an administration stream employee who undertakes a range of basic clerical functions within established routines, methods and procedures. No or limited experience and training are required;
- Demonstrate basic operational knowledge in a moderate range of areas;
- Apply a defined range of skills;
- Apply known solutions to a limited range of predictable problems;
- Perform a range of tasks where choice between a limited range of options is required
- Assess and record information from varied sources;
- Take limited responsibility for own outputs in work and learning;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Food Monitor		Theatre Technician HASA (WSG 4) Also clause 5.1.2 of (AN140225 – Private Hospitals Employees’ Award – State 2003 [QLD])	

This classification contains two pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service.

## Health 4

An employee at this level:

- Is capable of prioritising work within established policies, guidelines and procedures;
- Is responsible for work performed with a medium level of accountability or discretion;
- Works under limited supervision, either individually or in a team;
- Possesses good communication, interpersonal and/or arithmetic skills;
- Requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience;
- Demonstrate some relevant theoretical knowledge;
- Apply a range of well-developed skills;
- Apply known solutions to a variety of predictable problems;
- Perform processes that require a range of well-developed skills where some discretion and judgment are required;
- Interpret available information, using discretion and judgment;
- Take responsibility for own outputs in work and learning;
- Take limited responsibility for the output of others

- Requires substantial on-the-job training, may require formal qualifications at a trade level;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Security Officer Driver (requiring truck license )	Allied Health Assistant (qualified) Nutrition Assistant	Instructor Trades (unqualified) Dental Laboratory Assistant Pathology Collector Mortuary Technician Optical Dispenser Laboratory Assistant	Medical Secretary Medical Records Clerk

This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 5

An employee at this level:

- Is capable of prioritising work and exercising discretion within established policies, guidelines and procedures;
- Is responsible for work performed with a medium level of accountability;
- Works under limited supervision, either individually or in a team;
- Requires a basic knowledge of medical terminology (administration stream);
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May be required to supervise the work of others;
- Requires substantial on-the-job training, may require formal qualifications at a level beyond a trade and/or relevant skills training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream

	First Aid Attendant (in commercial or industrial undertakings) Aromatherapist Audiometrist Massage Therapist Mental Health Worker	Pathology Technician Technical Assistant (Laboratory) Engineering Assistant	Payroll Officer/ Clerk Ward Clerk Switchboard Operator Casualty Clerk Purchasing Officer Human Resource Officer Health & Safety Officer
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This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 6

An employee at this level:

- Is capable of functioning semi autonomously, and prioritising his or her own work within established policies, guidelines and procedures;
- Is responsible for work performed with a substantial level of accountability;
- Works either individually or in a team;
- Requires a comprehensive knowledge of medical terminology;
- Has a working knowledge of health insurance schemes (administration stream);
- May require basic computer knowledge or be required to use a computer on a regular basis;
- Possesses administrative skills and problem solving abilities;
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May be required to supervise the work of others;
- May require formal qualifications at post-trade or Diploma level and/or relevant skills training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Maintenance/Handyperson (trade) Gardener (trade)		Pathology Collector Dental Technician	Library Technician (in training) Public Relations Officer

Cook (trade) Driver (articulated vehicle)			
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This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 7

An employee at this level:

- Is capable of functioning autonomously, and prioritising his or her own work within established policies, guidelines and procedures;
- Is responsible for work performed with a substantial level of accountability and responsibility;
- Works either individually or in a team;
- Possesses administrative skills and problem solving abilities;
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May supervise the work of others, including work allocation, rostering and guidance;
- May require formal qualifications at post-trade or Diploma level and/or relevant skills, training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Chef Trades Instructor General Services Supervisor		Pharmacy Technician Interpreter (unqualified) Anaesthetic Technician	Medical Stenographer Secretary Laboratory Supervisor Information Services Officer

This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

# MANAGEMENT STREAM DESCRIPTORS

## Health 6

Management	Description
Health 6	Entry positions at the <b>Health 6</b> level are regarded as base grade administrators who may also be regarded as supervisory positions coordinating a small work group, or as an entry level specialist role within a particular technical or professional area

An entry level management employee at this level:

- Prepare statistical reports and summaries and monitor and check accuracy of reports;
- Monitor daily billings and collections by cashiers and banking;
- Process standard claim forms, ensuring that all legislated procedural requirements are met;
- Train new employees in basic clerical or administrative functions;
- Follow progress of invoices, orders or payments to ensure action occurs as specified in these documents;
- Undertake enquiries related to work area; for example the availability of ordered stock; the best available price for ordered items; overdue accounts;
- Maintain accurate and effective filing systems;
- Prepare minutes and agendas, and coordinate meeting dates for committee meetings;
- Supervise the activities of a small group of staff within a specified function (e.g.payroll, patient accounts);
- Liaise with immediate supervisor and middle management level positions to seek and provide information;
- Establish and maintain appropriate work patterns and procedures for the function supervised;
- Administer the function to ensure current legislation is understood and adhered to;
- Prepare accounts and reports for use by middle management and executive staff;
- Liaise and consult with external agencies (e.g Medicare, Health Insurance Funds, Government Departments and Authorities, Workers Compensation Authorities) with regard to problem accounts and compensable claims and payments of accounts;
- Negotiate with clients to obtain information and discuss problems in paying accounts and arrange payment procedures;



- Negotiate with suppliers for the purchase and delivery of facility supplies;

## Health 7

Management	Description
Health 7	Entry positions at the <b>Health 7</b> level are regarded as senior supervisory positions overseeing a small to medium sized workgroup or administrators responsible for a specified activity recognised across the facility or a specialist role within a particular technical or professional position

An employee at this level:

- Recruit and select permanent and temporary staff for general positions;
- Coordinate and prepare accounting, payroll or statistical records and submit consolidated reports;
- Implement controls and systems to ensure resources are fully utilised and enterprise policies are implemented;
- Develop and present training programs;
- Liaise with facility staff up to department head to obtain and present information;
- Allocate and control staff and resources to ensure activities of the work area are carried out efficiently and effectively;
- Monitor safe work practices and security standards to maintain a safe and secure environment;
- Assist staff with problems, and recommend action to be taken;

## Health 8

Management	Description
Health 8	Entry positions at the <b>Health 8</b> level are regarded as middle management in control of a medium workforce, or administrators managing a function, or an experienced specialist role within a particular technical or professional discipline

An employee at this level:

- Provide advice on techniques and procedures for infection control and safety matters;

- Carry out a quality assurance program to ensure the achievement of required standards of presentation, hygiene and cost of delivery;
- Develop rosters for the cleaning of the facility(ies) and presentation of gardens involving up to 100 staff;
- Prepare reports on service delivery development and undertake special projects for the facility and other bodies;
- Review the staff establishment profile and adjust where necessary to maintain the integrity of the HRIS and the internal establishment profile, advise on funding available for staffing requirements;
- Direct and control the salary administration program;
- Oversee and contribute to the formulation, implementation and ongoing review of staff induction and training programs;
- Collaborate with Department Heads, Medical Officers, injured employees, unions, rehabilitation providers and other key staff to devise, plan and implement rehabilitation programs;
- Review existing computer software effectiveness with a view to enhancing its functionality and develop software to meet new requirements;
- In conjunction with the Finance staff, prepare and interpret financial budgets, annual returns and comparative monthly statements

## Health 9

Management	Description
Health 9	Positions at the <b>Health 9</b> level are senior managers, professionals and specialists who are generally responsible for a significant operational area, function or department within a division or health care services unit or multi-function manager of institutions providing a range of services across the agency

An employee at this level:

- Prepare economic and demographic forecasts as part of an overall planning process to determine the future growth and services of the facility;
- Develop financial control systems, budget guidelines and reporting mechanisms so that the Executive and Board have a complete understanding of the financial viability, efficiency and future options for resource management;
- Determine the performance of organisational units in the enterprise in respect of their financial planning, and control activities in compliance with management instructions,

statements of policy and procedures, high standards of administrative practice and facility objectives;

- Investigate the supply needs of the organisation/s leading to the development of purchasing and inventory control programs required to achieve cost effective delivery schedule;
- Inspect suppliers, manufacturing and wholesale operations to ensure the achievement of minimum standards of hygiene, product quality, distribution and storage standards;
- Manage a range of services within an institution covering patient services, finance, personnel, technical and engineering services, energy management and community relations;
- Conduct programmed audits into operational and financial procedures and the safeguarding of assets;
- Direct and control a significant service function in an institution, determining staffing, training, supply and expenditure needs for the division;
- Oversee and direct the provision of a comprehensive patient food service, as well as an extensive non-patient service;
- Advise and counsel management and senior staff on the implementation and management of human resource issues, such as disciplinary matters, the identification of new work practices to reduce budget overruns, consultative strategies, training needs and management obligations;
- Represent and advocate on behalf of the facility at industrial relations tribunals and in labour negotiations

## Health 10

Management	Description
Health 10	Entry positions at the <b>Health 10</b> operate at the executive level or are line managers in control of a substantial division/department or facility in a large institution or are Chief Executives of small hospitals

An employee at this level:

- Develop and implement plans for future expansion of services and facilities to meet emerging community health needs and operating efficiency constraints;
- Prepare, manage and monitor the institution's budget;
- Direct and control subordinate managers in control of environmental services, linen services, engineering and technical services, human resources, supply, catering, patient services, management information services and public relations;

- Represent the institution in meetings with external professional organisations and the Government Departments and Authorities in order to facilitate improved service standards and achievement of budget constraints;
- Authorise statutory and other reports as required by Government authorities and the employer in relation to service delivery standards and budget status;
- Direct and control the full range of services for a small, independent hospital, which may include an attached nursing home, including policy development and planning for the short and longer term development of the institutions;
- Control the accounting and financial reporting functions of business, investment and operational units which are conducted independently of the hospital's operating and funding arrangements.

### Health 11

Management	Description
Health 11	Entry positions at the <b>Health 11</b> level are Chief Executives or the senior line executive of a large regional health service

An employee at this level:

- Develop, negotiate and implement budgets covering all aspects of the agency's activities;
- Undertake major special projects that substantially reshape the future health care service for a major institution;
- Direct and control a comprehensive human resource function in a major or multi-faceted, multi-campus institution providing strategic advice to the Executive, and directing a range of activities including workforce planning; organisation and policy development; industrial relations; salary administration; occupational health and safety policy, training and procedures; rehabilitation and Workers Compensation claims management and representation; personnel administration; staff development and training; staff counselling and the selection, recruitment and termination of employees;
- Manage the full range of administrative and support functions and services for a large agency, identify outcomes, resources and standards of operation and manager specific issues, to improve operating efficiency and effectiveness;
- Manage an executive relationships with unions which involves the identification of issues and strategies for the consultative involvement of staff through elected representatives, as well as the negotiation of disputes which may occur from time to time;
- Liaise and negotiate with Government Departments and Authorities on organisation-wide policy matters, including resources, health services, capital works and other matters;

- Direct the organisation's planning activities and provide leadership and overall guidance in both the administration and operation of a small-medium sized hospital;
- Advise the Committee of Management on matters of policy, financial planning, service needs and delivery, legal and statutory obligations and any other matters affecting the service delivery;
- Control and manage all non-clinical services within a major hospital, as the senior line executive, providing executive support and relief to the Chief Executive, and financial advice to the Board of Management;
- Develop and implement policies, programs and procedures for the Hospital.

# Entry Levels for Health Professionals, Dental and Medical Practitioners and Nursing Streams

In accordance with the Australian Qualifications framework adopted in this draft award the professionals in the Health Professionals, Medical/Dental Practitioners and Nursing Streams will commence in the structure as follows, based on the length of their relevant health qualification.

**Health 5, Pay Point 1** is entry level for an Enrolled Nurse.

**Health 8, Pay Point 1** is entry level for a health professional possessing a 3 year degree qualification.

**Health 8, Pay Point 1** is entry level for a Registered Nurse possessing a 3 year degree qualification.

**Health 9, Pay Point 1** is entry level for a health professional possessing a 4 year degree qualification.

**Health 9, Pay Point 1** is entry level for a Nurse Specialist.

**Health 9, Pay Point 2** is entry level for a health professional with a Mandatory Masters qualification.

**Health 10, Pay Point 1** is entry level for a health professional with a 5 or 6 year degree or doctoral qualification.

**Health 10, Pay Point 1** is entry level for a Dental Officer and a Medical Intern.

**Health 10, Pay Point 1** is entry level for a Nurse Consultant, Nurse Manager and Nurse Educator.

**Health 10, Pay Point 2 & 3** is entry level for a Resident Medical Officer and a Dental Officer.

**Health 10, Pay Point 3** is entry level for an Assistant Director of Nursing.

**Health 11, Pay Point 1** is entry level for a Director of Nursing and a Nurse Practitioner.

**Health 11, Pay Point 1** is entry level for a Senior Dental Officer and a Medical Registrar.

**Health 11, Pay Point 2** is entry level for a Senior Medical Registrar.

**Health 11, Pay Point 3** is entry level for a Dental Specialist and a Career Medical Officer

Professionals in the Health Professional, Dental/Medical Officers and Nursing Streams will then progress in accordance with the occupational classification structures set out below.

# DENTAL AND MEDICAL OFFICERS STREAM DESCRIPTORS

## Health 10 Pay Point 1 – Medical Interns/Dental Officers

A **Medical Intern** is a medical practitioner in the first postgraduate year of clinical experience.

A **Dental Officer** employed at this level is a newly qualified employee. Dental officers at this level are beginning practitioners who are developing their skills and competencies in dentistry.

## Health 10 Pay Point 2 & 3 - Resident Medical Officer/Dental Officer

A **Resident Medical Officer** is a medical practitioner in the second or any subsequent post graduate year of clinical experience. An RMO must complete 12 months of clinical experience to advance to the next increment.

A **Dental Officer** at this level serves as a practicing dentist who performs routine dental work requiring the independent examination, investigation, treatment planning and treatment of patients. This is a moderate skill level and includes the moderately experienced dentist who is competent in basic tasks. He or she may require regular professional support and mentoring. A Dental Officer at this level must complete 12 months of clinical experience to advance to the next increment.

## Health 11 Pay Point 1 - Medical Registrar/Senior Dentist

A **Medical Registrar** is a medical practitioner admitted to an Australian Medical Council accredited vocational training program leading to a fellowship of a Medical College including those of General Practice and Rural and Remote Medicine.

A **Senior Dentist** at this level is a general dental practitioner who performs the full range of professional dental tasks described for the Dental Officer above. The work differs in that the Dental Officer at this level, *regularly* encounters, diagnoses, and administers treatment for dental diseases and dental health problems of greater-than-usual difficulty.

## Health 11 Pay Point 2 - Senior Medical Registrar

A **Senior Medical Registrar** is a medical practitioner who has successfully completed examinational requirements for appointment as a Fellow of an Australian or Australasian Specialists College and is awaiting granting of the fellowship.



### **Health 11 Pay Point 3 - Career Medical Officer/Dental Specialist**

A **Career Medical Officer** is a medical practitioner with not less than four completed years of post-graduate clinical experience who is appointed as such.

**Dental Specialists** are experienced dentists who are:

- Widely recognised for their exceptional competence in general dental work and have a proven record for carrying out a broad range of advanced and complex dental procedures;
- Maintain a clinical caseload and provides;
- Clinical education in the area of expertise through in-service training to undergraduate and/or post-graduate students;
- In-service to other dental officers in their clinical specialist area of expertise;
- Consultation and advice to specialist teams across an area or geographic or clinical network; and
- Discipline specific professional supervision and leadership either within a facility or across facilities and/or area health services.

# HEALTH PROFESSIONAL STREAM DESCRIPTORS

This classification stream comprises professionally qualified allied health professionals, medical scientists, medical imaging scientists and pharmacists and other occupations as listed below.

## Entry Levels

**Health 8, Pay Point 1** is entry level for a health professional possessing a 3 year degree qualification.

**Health 9, Pay Point 1** is entry level for a health professional possessing a 4 year degree qualification.

**Health 9, Pay Point 2** is entry level for a health professional with a Mandatory Masters qualification.

**Health 10, Pay Point 1** is entry level for a health professional with a 5 or 6 year or doctoral qualification.

An employee at this level:

This level is the entry level for new graduates who meet the requirement to practice as a Health Professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the Employer.

## Classification Structure

A Health Professional shall progress through the classification structure in accordance with the criteria outlined below and the Levels in the health professional structure shall be paid as follows:

### Health 8 Pay Point 1 through Health 9 Pay Point 3 – Base Grade Health Professional

The entry level for a health professional will be based on the length of their qualification as described above and they will progress through the Pay Points in Health 8 and Health 9 on an annual incremental basis.

Health Professional	Description
	<p>Works independently and as such would be required to exercise independent judgment on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex, or critical tasks.</p> <p>Demonstrates a commitment to continuing professional development.</p> <p>Contributes to workplace education through</p>

	<p>provision of seminars or lectures or in-services.</p> <p>Is actively involved in quality improvement activities or research.</p> <p>Contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work.</p> <p>May be required to contribute to the supervision of discipline specific students.</p>
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**Health 10 Pay Point 1 – Specialist Health Professional OR Doctoral Entry Level**

<b>Health Professional</b>	<b>Description</b>
<b>Specialist Health Professional</b>	<p>Performs a wide range of discipline specific functions and is capable of operating independently but with professional consultation when performing novel, complex, or critical tasks; and</p> <p>Demonstrates a commitment to continuing professional development; and</p> <p>May have responsibility for the supervision of discipline specific students and/or staff.</p> <p>OR</p>
<b>Doctoral Entry Level</b>	<p>This is the entry level for a health professional requiring a 5 or 6 year degree or doctoral qualification. A professional appointed as such will progress through the Pay Points in Health 10 after the completion of 12 months service.</p>

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

**Expertise**

- Demonstrates expertise in a specific area, or as a generalist, as recognised by other professionals from their own workplace and is consulted for professional advice by health and other professionals from their own work place and/or;
- Contributes to the development of their field of expertise in their own workplace.

### **Sole Practice**

- Is a sole discipline specific Health Professional in a metropolitan, regional or rural setting who practices in professional isolation from Health Professionals from the same discipline.

### **Leadership**

- Health Professionals will have professional responsibility for a specific team or clinical unit within a department and undertakes a discipline specific workload in that department and/or;
- Health Professionals are responsible for providing regular feedback and appraisal regarding the performance of staff and/or;
- Health Professionals are responsible for maintaining effective relationships and/or;
- Health Professionals at this level may assist with the development and implementation of policies, procedures, standards and practices.

### **Education**

- Health Professionals are responsible and accountable for providing a professional level of services for the employer or oversee the management of aspects of services and the staff and/or;
- Has responsibility for the co-ordination of student education in the work place for their professional group and/or;
- May have responsibility for the teaching and training of other Health Professionals.

### **Health 10 Pay Point 2 - Specialist Health Professional**

<b>Health Professional</b>	<b>Description</b>
<b>Specialist Health Professional</b>	<p>A Health Professional at this level would be experienced and be able to independently apply professional knowledge and judgement when performing novel, complex, or critical tasks specific to their discipline.</p> <p>At this level Health Professionals will have additional responsibilities</p>

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### **Expertise**

- Works in an area that requires high levels of specialist knowledge and skill as recognised by the employer and/or;
- Be recognized as an expert in their field of work by health and other professionals from within their Area Health Service and be consulted for professional advice by health or other professionals from within their own Area Health Service and/or;
- Be actively contributing to the development of professional knowledge and skills in their field of work as demonstrated by positive impacts on service delivery, positive referral patterns to area of expertise and quantifiable/measurable improvements in health outcomes.

### **Sole Practice**

- Is a sole discipline specific Health Professional in a metropolitan, regional or rural setting who practices in professional isolation from Health Professionals from the same discipline and/or;
- Is performing across a number of recognized specialties within a discipline.

### **Leadership**

- Health Professionals at this level are accountable for allocation and/or expenditure of resources and ensuring targets are met. Staff are responsible for ensuring optimal budget outcomes for their customers and communities and/or;
- Health Professionals are responsible for providing regular feedback and appraisals for senior staff to improve health outcomes for customers and for maintaining a performance management system and/or;
- Health Professionals are responsible for providing support for the efficient, cost effective and timely delivery of services.

### **Education**

- Organise/co-ordinate a discipline specific undergraduate and/or postgraduate education programme and/or;
- Is recognized by their profession for their expertise in education and/or;
- May hold an honorary appointment with an academic institution for the purpose of teaching undergraduate or post graduate students.

## Health 10 Pay Point 3 - Specialist Health Professional

Health Professional	Description
<b>Specialist Health Professional</b>	A Health Professional at this level would independently apply significant professional knowledge and judgement when performing a wide range of novel, complex, or critical tasks specific to their discipline

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be recognised as an expert in their field of work and be consulted for professional advice by health or other professionals from across the state and/or;
- Be actively contributing to their field of work within the state as demonstrated by presenting at state conferences, or contributing to peer reviewed state journals, or as a representative on a state level committee and/or;
- Have demonstrated an ongoing strong commitment to education, usually by gaining further relevant postgraduate qualifications and/or;
- Initiate and be responsible for quality improvement activities and/or research.

### Leadership

- Health Professionals at this level are responsible for reviewing senior staff performances through regular appraisal to improve health outcomes for patients and for maintaining a performance management system and/or;
- Health Professionals at this level are responsible for providing timely delivery of services and are accountable to the appropriate Executive and/or;
- Health Professionals are responsible for contributing to the development and implementation of business plans and/or;
- Health Professionals at this level are required to make judgements and may in some cases be delegated responsibility to approve changes in standard practice and procedures.

## Health 11 Pay Point 1 - Consultant Health Professional

Health Professional	Description
<b>Consultant Health Professional</b>	A Health Professional at this level would independently apply a high level of professional judgement and knowledge when performing a wide range of novel, complex or critical tasks, specific to their discipline.

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be nationally recognized as an expert in their field of work and be consulted nationally for professional advice by health or other professionals and/or;
- Be actively contributing to their field of work nationally as demonstrated by presenting at Australian / NZ conferences, or contributing to peer reviewed national journals, or as a representative on a national level committee and/or;
- Have demonstrated an ongoing commitment to continuing education by obtaining a postgraduate qualification and/or;
- Initiate and be responsible for quality improvement activities and/or research.

### Leadership

- Health Professionals at this level are responsible for reviewing senior staff performances through regular appraisal to improve health outcomes for patients and for maintaining a performance management system and/or;
- Health Professionals are responsible for maintaining effective relationships and communication with Area Health Service to ensure that corporate goals and priorities of the Health System are met and/or;
- Health Professionals at this level are responsible for providing timely delivery of services and are accountable to the appropriate Executive and/or;
- Health Professionals are responsible for contributing to the development and implementation of business plans and/or;
- Health Professionals at this level are required to make judgements and may in some cases be delegated responsibility to approve changes in standard practice and procedures.

## Health 11 Pay Point 2 - Consultant Health Professional

Health Professional	Description
<b>Consultant Health Professional</b>	A Health Professional at this level would apply a high level of professional judgement and knowledge when performing a wide range of novel, complex, and critical tasks, specific to their discipline.

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be recognised as an expert by their own profession or other professions by making significant contributions to the development of expertise at a national level and be widely consulted for high level advice by professionals from a range of workplaces. They will be internationally recognised as an expert in their field of work by presenting at international conferences, or publishing in peer reviewed international journals, or as a representative on international level committees and/or;
- Have demonstrated an outstanding commitment to continuing education, by obtaining a relevant post graduate qualification.

### Leadership

- Health Professionals at this level would need a proven record of achievement at a senior level and/or;
- Health Professionals would need to have the capacity to allocate resources, set priorities and ensure budgets are met within a large and complex organisation and/or;
- Health Professionals at this level are responsible to the Executive for providing effective services and ensuring budget/strategic targets are met and/or;
- Health Professionals at this level are expected to develop/implement and deliver strategic business plans which increase the level of care to customers within a budget framework.

## Health 11 Pay Point 3 – Principal Discipline Specific Officer

Health Professional	Description
<b>Principal Discipline Specific Officer</b>	A Principal Discipline Specific Officer - has been appointed as such and holds a post graduate degree at least equivalent to a PHD in an area relevant to



	<p>professional practice, from an approved university, or such other qualifications deemed by the Employer to be equivalent and who has had not less than ten years post graduate experience in an appropriate health professional field and has been deemed eligible for appointment as a Principal Discipline Specific Officer by a Credentialing Committee.</p>
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An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

**Expertise**

- Actively contributing to the knowledge, skill base and body of knowledge of the profession;
- Teaching and research participation;
- Supervision of staff, students or research projects;
- Capacity to secure research funds;
- Have an international reputation in their discipline;
- Have a significant body of published work in peer-reviewed journals;
- Provides mentoring and support.

This stream includes, but is not limited to, the following degree qualified professionals:

Audiologist; Art Therapist; Biomedical Engineer; Clinical Perfusionist; Clinical Psychologists; Counsellor; Dietitian; Diversional Therapist; Exercise Physiologist; Genetic Counsellor; Medical Scientist, Medical Physicist; Medical Radiation Scientist; Medical Technologist; Music Therapist; Nuclear Medicine Technologist; Occupational Therapist; Optometrist, Orthoptist; Orthotist/Prosthetist; Pharmacists; Physiotherapist; Play Therapist; Podiatrist; Psychologist; Radiation Therapist; Radiographer; Social Worker; Speech Pathologist.

# NURSING STREAM DESCRIPTORS

## Health 5 Pay Point 1 – Enrolled Nurse

**{Enrolled Nurses progress through the Pay Points at Health 5, 6 and 7 in accordance with the following descriptors}**

An Enrolled Nurse (EN) will be appointed at this level based on:

Training and experience, which includes:

- Having satisfactorily completed a hospital based course of training in nursing of not more than twelve months duration leading to enrolment as an EN; or
- Having satisfactorily completed a course of training of twelve months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a State/Territory Nurses Registration Board; and
- Having practical experience of up to but not more than twelve months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill indicators at this pay point are as follows:

The employee:

- Has limited or no practical experience of current situations;
- Exercises limited discretionary judgement, not yet developed by practical experience.

## Health 5 Pay Point 3

This is the pay point to which an employee will be appointed as an EN or progress from Pay Point 1, having been assessed as being competent at Pay Point 1. This assessment will be based on:

Training and experience, which includes:

- Having satisfactorily completed a hospital based course of general training in nursing of more than twelve months duration and/or 500 or more hours theory content or a course accredited at advanced certificate level leading to enrolment as an EN; or
- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay Point 1;

- The undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows.

The employee is required to demonstrate some of the following skills in the performance of their work:

- a developing ability to recognise changes required in nursing activity and in consultation with the RN, implement and record such changes, as necessary; and/or
- is able to relate theoretical concepts to practice; and/or
- Requires assistance in complex situations and in determining priorities.

**Health 6 Pay Point 2** means the pay point to which an employee will be appointed as an EN or progress from Health 5 Pay Point 3, having been assessed as being competent at Health 5 Pay point 3. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for Health 5 Pay Point 3; and
- The undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows.

The employee is required to demonstrate some of the following in the performance of their work:

- An ability to organise, practise and complete nursing functions in stable situations with limited direct supervision; and/or
- The use of observation and assessment skills to recognise and report deviations from stable conditions; and/or
- Demonstrated flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- Uses communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

**Health 7 Pay Point 1** means the pay point to which an employee will be appointed as an EN or progress from Health 6 Pay Point 2, having been assessed as being competent at Health 6 Pay Point 2. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Health 6 Pay Point 2; and
- The undertaking of in-service training, subject to its provision by the employing agency, from time to time; and

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows:

The employee is required to demonstrate some of the following in the performance of their work:

- Speed and flexibility in accurate decision making; and/or
- Organises own workload and sets own priorities with minimal direct supervision; and/or
- Uses observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- Uses communication and interpersonal skills to meet psychosocial needs of individual/groups.

**Health 7 Pay Point 3** means the pay point to which an employee will be appointed as an EN or will progress from Health 7 Pay Point 1, having been assessed as being competent at Health 7 Pay Point 1. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Health 7 Pay Point 1; and the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows:

The employee is required to demonstrate all of the following in the performance of the employee's work:

- Contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- Efficiency and sound judgement in identifying situations requiring assistance from an RN.

### **Health 8 Pay Point 1- Registered Nurse**

Means a Registered Nurse (RN) who:

- According to the employee's level of competence; and
- Under the general guidance of, or with general access to a more competent RN who provides work related support and direction;
- Is required to perform general nursing duties which include substantially, but are not confined to;
- Delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
- Coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
- Providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;
- Providing support, direction and education to newer or less experienced staff, including EN's;
- Accepting accountability for the employee's own standards of nursing care and service delivery;
- Participating in action research and policy development within the practice setting.

### **Health 8 Pay Point 2**

Means an RN who:

- Holds any other qualification required for working in the employee's particular practice setting, and who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in this subclause on a continuing basis;
- Appointed at this level (to be known as a Clinical nurse), is required in addition to the duties of an RN1, to perform duties delegated by a Clinical nurse consultant or higher

level classification, and clinical nursing duties which will substantially include, but are not confined to;

- Delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;
- Providing support, direction, orientation and education;
- Being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by the Clinical nurse consultant;
- Acting as a role model in the provision of holistic care to patients or clients in the practice setting;
- Assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting; and
- Subject to relieving Pay Point 3 as required.

### **Health 9 Pay Point 1 - Nurse Specialist**

Means an RN who:

Appointed at this level (to be known as a Nurse Specialist), according to practice setting and patient or client group;

- Providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and quality assurance programs; staff and patient/client education; staff selection, management, development and appraisal; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care.

### **Health 10 Pay Point 1 - Clinical Nurse Consultant, Nurse Manager, Nurse Educator**

Means an RN who:

Appointed at this level (to be known as a Clinical nurse consultant, Nurse manager or a Nurse educator), according to practice setting and patient or client group;

In the case of a Clinical nurse consultant to perform duties which will substantially include but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and

- quality assurance programs; staff and patient/client education; staff selection, management, development and appraisal; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- Delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
  - Coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
  - Coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.

In the case of a Nurse manager, to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs, staff selection and education, allocation and rostering of staff, occupational health, and initiation and evaluation of research related to staff and resource management; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- Being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and
- Managing financial matters, budget preparation and cost control in respect of nursing within that span of control.

In the case of Nurse educator, to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse manager, particularly in the areas of action research, implementation and evaluation of staff education and development programs, staff selection, and implementation and evaluation of patient or client education programs; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care; and
- Being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

### **Health 10 Pay Point 3 - Assistant Director of Nursing**

Means an RN who:

In the case of an Assistant director of nursing (clinical) to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (management) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's
  - Area of responsibility, provision of appropriate education programs, coordination and promotion of clinical research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - Managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
  - Being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
  - Being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
  - Being accountable for clinical operational planning and decision making for a specified span of control;
- and
- Being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.

In the case of an Assistant director of nursing (management), to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (clinical) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of
- Responsibility, coordination and promotion of nursing management research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the
- Provision of quality nursing care;
- Managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse managers;



- Being accountable for the effective and efficient management of human and material resources within a specified span of control;
- Being accountable for the development and coordination of nursing management systems within a specified span of control;  
and
- Being accountable for the structural elements of quality assurance for a specified span of control.

In the case of an Assistant director of nursing (education) to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in conjunction with others including the Assistant director of nursing (clinical) and the Assistant director of nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility,
- Coordination and promotion of nurse education research projects; participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- Managing the activities of, and providing leadership, coordination and support to a specific group of Nurse educators;
- Being accountable for the standards and effective coordination of education programs for a specified population;
- Being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;
- Being accountable for the management of educational resources including their financial management and budgeting control; and
- Undertaking career counselling for nursing staff.

Where significant and demonstrable reasons exist for two or more of these functions to be combined, the employer will seek the agreement of the union, which will not be unreasonably withheld.

### **Health 11 Pay Point 1 - Director of Nursing**

Means an RN who:

An employee appointed at this level (to be known as Director of nursing) is required to perform duties which will substantially include, but are not confined to:

- Being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;

- Participating as a member of the executive of the health unit, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of health unit policy;
- Providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;
- Providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management; and generally advocating for the interests of nursing to the executive team of the health unit;
- Managing the budget of the nursing division of the health unit;
- Ensuring that nursing services meeting changing needs of clients or patients through proper strategic planning; and
- Complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

### **Health 11 Pay Point 1 - Nurse Practitioner**

*A nurse practitioner* is a registered nurse/midwife appointed to the role, who has obtained an additional qualification relevant to the state regulating authority to enable them to become licensed Nurse Practitioners. They are authorized to function autonomously and collaboratively in an advanced and extended clinical role.

The role of the licensed nurse practitioner means that

- The nurse practitioner is able to assess and manage the care of clients/residence using nursing knowledge and skills. It is dynamic practice that incorporates application of high level knowledge and skills , beyond that required of a registered nurse /midwife in extended practice across stable, unpredictable and complex situations;
- The nurse practitioner role is grounded in the nursing profession's values, knowledge, theories and practice and provides innovative and flexible health care delivery that complements other health care providers;
- The scope of practice of the nurse practitioner is determined by the context in which the nurse practitioner is authorized to practice. The nurse practitioner therefore remains accountable for the practice for which they directed;
- Professional efficacy whereby practice is structured in a nursing model and enhanced by autonomy and accountability;

- Is authorized to directly refer clients/ residents to other health professionals, prescribe medications and order diagnostic investigations including pathology and plain screen X rays; and
- The exhibit clinical leadership that influences and progresses clinical care, policy and collaboration through all levels of health service.

## Indicative Classifications at Entry Level

### Health 1

Support Stream	Care Stream	Technical Stream	Administration and Management Stream	Dental and Medical Practitioner Stream	Health Professional Stream	Nursing Stream
Laundry Hand Car Park Attendant Hospital Orderly Maintenance/Handyperson (unqualified) Food and Domestic Services Assistant		Laboratory Assistant Orthotic Technician Theatre Attendant Recording Attendant (including EEG and ECG)	Dental Secretary Data Entry operator Administration Assistant Receptionist			

## Health 2

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Housekeeper Store person Laundry Operator Driver (requiring car license) Cook Gardener (non trade)	Health Care Assistant Dental Assistant (untrained) Aboriginal/Torres Strait Islander Health Worker Allied Health Assistant (unqualified)		Typist Library Clerk			

## Health 3

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Food Monitor		Theatre Technician				

#### Health 4

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Security Officer Driver (requiring MR class license)	Allied Health Assistant(qualified)  Nutrition Assistant	Instructor Trades (unqualified) Dental Laboratory Assistant Pathology Collector Mortuary Technician Optical Dispenser Laboratory Assistant	Medical Secretary Medical Records Clerk			

### Health 5

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
	First Aid Attendant (in commercial or industrial undertakings) Aromatherapist Audiometrist Massage Therapist  Mental Health Worker	Pathology Technician Technical Assistant (Laboratory)  Engineering Assistant	Payroll Officer/ Clerk Ward Clerk Switchboard Operator Casualty Clerk Purchasing Officer Human Resource Officer Safety Officer			Enrolled Nurse

### Health 6

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Maintenance/Handy person (trade) Gardener (trade) Cook (trade)  Driver (articulated vehicle)		Pathology Collector  Dental Technician	Library Technician (in training)  Public Relations Officer			Enrolled Nurse

### Health 7

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Chef Trades Instructor  General Services Supervisor	Dental Prosthetist	Pharmacy Technician Interpreter (unqualified) Anaesthetic Technician	Medical Stenographer Secretary Laboratory Supervisor  Information Services Officer			

### Health 8

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
			Accountant Laundry Manager  Finance Manager		Clinical Perfusionist (in training) Oral Health Therapists Dental Hygienists Medical Physicist (in training) Diversional Therapist Play Therapist	Registered Nurse



## Health 9

Support Stream	Care Stream	Technical Stream	Administration and Management Stream	Dental and Medical Practitioner Stream	Health Professional Stream	Nursing Stream
			Environmental Services Manager Human Resources Manager Unit Manager  Engineer		Medical Scientist Bio Medical Engineer Psychologist Pharmacist Medical Physicist Audiologist Clinical Perfusionist Genetic Counsellor Dietitian Physiotherapist Occupational Therapist Speech Pathologist	Nurse Specialist

**Health 10**

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
				Dental Officer Intern Resident Medical Officer	Clinical Psychologist (Phd) Optometrist	Nurse Manager Nurse Consultant Nurse Educator Assistant Director of Nursing

**Health 11**

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
				Medical Registrar Senior Dental Officer Senior Medical Registrar Dental Specialist Career Medical Officer	Clinical Psychologist	Director of Nursing Nurse Practitioner



## **AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

### **s. 576(e)(1) – Procedure for carrying out award modernisation process**

#### **IN THE MATTER OF:**

#### **AM 2008/13 – HEALTH AND WELFARE SERVICES (EXCLUDING SOCIAL AND COMMUNITY SERVICES)**

#### **SUPPLEMENTARY SUBMISSION OF THE HEALTH SERVICES UNION**

1. When this matter was before the Commission in Melbourne on 3 and 4 December 2008, Commissioner Smith raised for consideration whether the Commission might make a Health Industry Award with occupation based classification streams. That model will be referred to herein as the "industry hybrid modern award".
2. The HSU's position is that which has been articulated to the Commission thus far in its submissions and draft award of 31 October 2008, and its submissions made to the Commission in its consultations.
3. In particular, the HSU continues to oppose the adoption of a separate occupational award for nursing.
4. In the HSU's submission, the ANF has not demonstrated sufficient basis for the nursing profession to have separate award coverage. When regard is had to the terms and conditions applicable to nurses and to other health professionals across the industry there are substantial areas of similarity and limited points of difference.

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5. One result of acceding to the ANF's submission, and its proposal for a stand alone award that would cover Registered Nurses, Enrolled Nurses and Assistants in Nursing would be that Assistants-in-Nursing and Personal Care Workers would be covered by separate awards. In the submission of the HSU, that would create an unworkable situation because:
  - a. Those classes of workers are amongst the most numerous in the industry, and in particular, in the aged care sector of the industry;
  - b. There is no clear distinction between the roles. This fact is relevant in two ways:
    - i. First, the creation of two named roles covered by separate awards would be productive of argument and confusion about the precise classification and coverage of a worker performing such tasks; and
    - ii. There is no imperative to deal with those workers in separate awards because there is no history of those workers having different award conditions, and no rationale based in their work for making such a distinction.
6. These further submissions are made in relation to the Commission's proposed industry hybrid model.
7. In the HSU's submission, an industry hybrid modern award is a model which is capable of meeting the objective of the Ministerial request of establishing a single award to have application across the industry, whilst also establishing an appropriate safety net of terms and conditions for each of the occupations engaged within the industry.
8. Since the consultation hearings, the HSU has developed a framework for an industry hybrid modern award, in the event that model is regarded as preferable by the Commission. Attached with these submissions are the following:
  - a. Draft Application clause;
  - b. Draft Classifications Schedule;
9. The HSU's submissions about the framework contained in the above documents is set out below.

## **Classifications Structure**

10. The HSU Industry Hybrid Modern Award comprises 7 occupational streams:
  - a. Support;
  - b. Care;
  - c. Technical;
  - d. Administration and Management;
  - e. Medical/Dental;
  - f. Health Professional;
  - g. Nursing.
11. The scope of the streams is described in the Introduction to the Classifications Schedule.
12. The Classification matrix contains 11 Generic Classification Levels, commencing with industry entry-level positions at Health 1 and Health 2. The positions requiring the highest level of education, training and experience are at Health 10 and 11.
13. The Administration and Management stream is the only stream with employees at each of the Health levels in the Classification structure. The other streams occupy only some of the Health classification levels.
14. A generic classification system has been proposed so that the award has genuine industry application. The HSU Industry Hybrid Modern Award employs a matrix similar to that in the Manufacturing and Associated Industries and Occupations Award 2010 exposure draft. Workers and managers can identify their position within their stream, and the relativity of that position to workers in other streams. Where practicable, common criteria are used to determine the level applicable to an employee level, regardless of their stream.
15. Each of the levels in the matrix, other than Health 1, contains more than one pay point. The initial pay point for each level applies upon entry to that level. Progression through the pay points within a level occurs by reference to length of service, the acquisition of additional skills, or appointment to a position which requires additional responsibility or enhanced skills. The criteria for progression in each level are set out in the Classification structures relevant to the various streams.
16. Employees at Health 4 must have a Certificate III level (trade certificate level or equivalent) qualification. Each of the levels

Health 5 through to Health 10 require an ascending level of qualifications for *entry* at that level, as follows:

- Certificate IV;
  - Diploma (or equivalent);
  - Advanced Diploma (or equivalent);
  - 3 year degree (or equivalent);
  - 4 year degree (or equivalent);
  - 6 year qualification/Doctorate (or equivalent).
17. Progression through the levels and through the pay points within the levels is described in the classification structure. Progression occurs by reference to both passage of time and appointment.
  18. The rationale for the Streams, each Classification Level and the criteria for progression between them, is set out below.

### **Creation of Streams of Work**

19. The streams of work within the draft classifications structure are both function-based and profession or occupation based.
20. Administration and Managerial functions are combined into a single stream. Workers in this stream are found at each level of the classification structure.
21. The areas of clinical practice have separate occupation-based streams.
22. Dentists and doctors are in the same clinical stream.
23. Nurses are contained in a separate occupational stream.
24. Health professionals, including allied health workers, and other professionals such as scientists, are contained in a single stream.
25. The draft Industry Hybrid Modern Award Classification structure also contains a "Care" stream. The Care stream includes workers in multi-skilled entry level and intermediate caring roles. Dental assistants, Allied Health Assistants and Aboriginal/Torres Strait Islander Health Workers are included in this stream. Additionally, this stream includes workers called Health Care Assistants, a term which is used in the draft to denote both Assistants in Nursing or Personal Care Workers. For the reasons set out above it is submitted it would be counter-productive and inequitable to afford these workers different pay or conditions.

## THE CLASSIFICATION LEVELS

### Health 1

26. Health 1 is an entry-level position which does not require any previous skills, training or industry experience.
27. No workers in any of the clinical streams (Nursing, Health Professional, Dental/Medical) or the Care stream are found at this level. The classification only contains workers in the Support, Technical and Administration and Management streams. The indicative tasks for workers at this level are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.
28. Equivalent classifications in current awards include the following:
  - a. General Services 1 – *Health and Allied Services – Private Sector Victoria Award – AT783872;*
  - b. General Services 1 - *Health and Allied Services – Public Sector Victoria Award – AT783945;*
  - c. Grade 1 positions – *Aged Care General Services (State) Award (NSW NAPSA) – AN120011;*
  - d. Hospital Worker, Level 1 – *Private Hospital and Residential Aged Care (Nursing Homes) Award 2002* (an award which covers employers in Western Australia in the residential care industry) – AP817073
  - e. Level 1 positions – *Dental Assistants and Secretaries (State) Award (NSW NAPSA) – AN120179*
  - f. Level 1 – *Clerical Award – Private Hospitals – State 2003 – AN140065*
29. It is not envisaged that any workers within this classification will remain at this level for any more than 6 months. Within that period, the employee will either be determined by the employer to be unsuitable, or will have satisfied their employer of their capacity to perform the tasks associated with their role to a satisfactory standard. That assessment of suitability should take place as early as possible within the first six months of engagement.
30. An employee at this level may request assessment of suitability by the employer for the purpose of progressing to Health 2.

### Health 2

31. Health 2 is a classification, which, like Health 1, requires no formal qualification. It comprises two types of workers:

- a. First, workers who have commenced in a Health 1 position and, within the first six months of their commencement, have demonstrated the competencies relevant to their role and been determined to be suitable; and
  - b. Workers in positions for which Health 2 is regarded as industry entry level.
32. The latter type of position is distinguished from the earlier by the fact that some skills are required for entry. Those skills may have been acquired outside the health industry. For example, Health 2 is the entry level for a driver, who must possess a driving licence. A typist at this level must possess typing skills. Health 2 is also the industry entry level for cooks, who must have some cooking skills in order to perform the fundamental requirements of their position.
33. The indicative tasks for workers at this level are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.
34. Health 2 is regarded as the industry entry level for employees in Care stream roles, such as health care assistants (a new generic title to cover the workers formerly designated either as Assistants in Nursing or Personal Care Workers), untrained dental assistants and Aboriginal and Torres Strait Islander health workers. It is not envisaged that these workers will remain within this level for any more than 6 months. Within that period, the employee will either be determined by the employer to be unsuitable for the position, or will have satisfied their employer of their capacity to perform the tasks associated with their role to a satisfactory standard. That assessment of suitability should take place as early as possible within the first six months of engagement. An employee may request assessment of suitability by the employer for the purpose of progressing to Health 3.
35. Workers in the other streams with positions at Health 2 level, that is, in the Administration and Management, Technical and Support Streams can advance beyond the initial pay point in the following manner:
  - a. To the second level within the classification, that is, to Health 2(b), by completion of one year's service;

OR



- b. To the first pay point of Health 3 by the completion of Certificate II level training or its equivalent.

36. Equivalent classifications in current awards include the following:

- a. Skill Levels 2 and 3 – *Health and Allied Services – Private Sector Victoria Award – AT783872*;
- b. Skill Levels 2 and 3 – *Health and Allied Services – Public Sector Victoria Award – AT783945*;
- c. Dental Assistant – unqualified – *Dental (Private Sector Victoria) Award 1998 – AP779110CRV*;
- d. Levels 2/3 – *Clerical Award – Private Hospitals – State 2003 – AN140065*

### **Health 3**

37. Health 3 contains workers in the Support, Care, Technical and Administration and Management streams. Workers at this level require Certificate II qualifications (as defined under the Australian Qualifications Framework) or their equivalent.

38. The indicative tasks for workers at this level across each of the above streams are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.

39. The Level contains a second pay point to which all employees progress automatically after twelve months of service. Progression may occur prior to that time on assessment by the employer.

40. Equivalent classifications in current awards include the following:

- a. Level 4 – *Clerical Award – Private Hospitals – State 2003 – AN140065*

### **Health 4**

41. Health 4 is a classification level, entry to which requires a Certificate III qualification (trade certificate or equivalent).

42. Health 4 contains employees in the Support, Care, Technical and Administration and Management streams.

43. The indicative tasks for workers at this level across each of the above streams are contained in the Classification Level Descriptors – Care, Support, Technical and Administration and Management Streams.

44. Health 4 is the "standard rate", or the 100% rate for the purpose of maintaining relativities between the levels, and for the purpose of the calculation of allowances.
45. Health 4 has 3 pay points within the level, being:
  - a. 4(a) – the entry level point;
  - b. 4(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 4(c) – the point to which all workers progress after twelve months' service at pay point 4(b).
46. Equivalent classifications in current awards include the following:
  - a. Level 3 positions – *Dental Assistants and Secretaries (State) Award (NSW NAPSA) – AN120179*

## **Health 5**

47. Health 5 is defined by the requirement that workers at this level possess either a Certificate IV (post-trade certificate) qualification or an Associate Diploma or equivalent.
48. There are three pay points within this classification level.
49. Health 5 is the first level in the Classifications Matrix containing employees in the Nursing Stream. This level is the entry point for Enrolled Nurses. However, an enrolled nurse may, depending on their experience and knowledge, be appointed at any one of the three pay point levels within Health 5 (or indeed, at any level above Health 5, pay point 1). The requirements for appointment at the higher pay points are set out in the classification structure. Enrolled nurses progress through the pay points in levels 5, 6 and 7 to every second pay point after entry level with the acquisition of each twelve months of additional service.
50. Workers in the Support, Care, Technical and Administration and Management Streams are also found at this level.
51. The criteria for progression of those employees to the pay points in Health 5 is as follows:
  - a. 5(a) – the entry level point;
  - b. 5(b) – the point to which all workers progress after completion of twelve months' service; and

- c. 5(c) – the point to which all workers progress after twelve months' service at pay point 5(b).
52. Equivalent classifications in current awards include the following:
- a. Enrolled Nurse – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse – *Nurses (South Australian Public Sector) Award 2002* – AP817220
  - c. Recreation Activities Officer – *Private Hospital Employees (State) Award (NSW NAPSA)* – AN120434
  - d. Credit officer, public relations officer, supply officer, food services/catering officer – *The Private Hospital Administrative Officers - Victoria Award 2005* – AP838706CRV

## **Health 6**

53. Health 6 is defined by the requirement that workers who enter at this level are required to possess a Diploma qualification or equivalent.
54. The only workers from the clinical streams at Health 6 are in the Nursing Stream. Enrolled nurses may either be appointed to a position in Health 6 or will progress to pay points within Health 6 according to their length of service.
55. Workers in the Support, Health Care Assistant, Technical and Administration/Clerical/Management Streams are also found at this level.
56. Health 6 has 3 pay points within the level. The criteria for progression to those pay points differs between the streams. For the non-Clinical streams, progression is as follows:
- a. 6(a) – the entry level point;
  - b. 6(b) – the point to which all workers progress after completion of twelve months' service at 6(a); and
  - c. 6(c) – the point to which all workers progress after twelve months' service at pay point 6(b).
57. Equivalent classifications in current awards include the following:
- a. Enrolled Nurse (Paypoint Y3) – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse (Paypoint Y3) – *Nurses (South Australian Public Sector) Award 2002* – AP817220

- c. Level 2, Senior Dental Technician – *Dental Technicians and Attendants Award* – AN150045

## **Health 7**

- 58. Health 7 is defined by the requirement that workers who enter at this level possess an Advanced Diploma or equivalent.
- 59. Nursing is the only clinical stream where there may be positions at Health 7 level. Enrolled nurses enter this level either by appointment, or by reference to length of service. This is the highest level in the structure to which Enrolled Nurses progress without the acquisition of a further qualification.
- 60. The only other streams with workers at this level are the Administration and Management Stream and the Technical Stream.
- 61. Technical stream workers at this level possess the highest degree of skills in this stream. Pharmacy Technicians, Anaesthetic Technicians and Dental Prosthetists are classified at this level.
- 62. In the Clerical, Administrative and Management Stream, workers in the stream are in management roles, specialist roles or higher level administrative positions. The indicative tasks of management roles at this level are set out in the Management section of the Classification structure. Examples of workers in these roles include the roles of Laboratory Supervisor, Medical Stenographer and Information Services Officer.
- 63. Health 7 has 3 pay points within the level. Progression, for workers at each of the streams in this level is as follows:
  - a. 7(a) – the entry level point and the point to which an Enrolled Nurse will progress after one year at Health 6, pay point 3 (a maximum of six years service);
  - b. 7(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 7(c) – the point to which all workers progress after completion of twelve months' service at 7(b).
- 64. Equivalent classifications in current awards include the following:
  - a. Enrolled Nurse – *Nurses Private Employment (A.C.T.) Award 2002* – AP818792CRA
  - b. Enrolled Nurse – *Nurses (South Australian Public Sector) Award 2002* – AP817220

## Health 8

65. Health 8 is defined by the requirement that workers at this level possess either a three-year bachelor degree (such as a degree in nursing) or equivalent.
66. Health 8 contains workers within 2 of the clinical streams: nursing and health professionals. This level is the entry point for Registered Nurses and also health professionals such as clinical perfusionists, oral health therapists and dental hygienists. Diversional and play therapists also undertake a three-year degree.
67. Workers in the Administration/Clerical/Management Stream are also found at this level. Middle level managers are found at this level, as are experienced specialists such as accountants and finance managers .
68. Health 8 has 3 pay points within the level. Progression through the pay points within the level is as follows:
  - a. 8(a) – the entry level point;
  - b. 8(b) – the point to which all workers progress after completion of twelve months' service; and
  - c. 8(c) – a further pay point to which all workers progress after completion of a further twelve months' service.
69. Equivalent classifications in current awards include the following:
  - a. Registered Nurse, Level 1 – *Nurses Private Employment (A.C.T.) Award 2002 – AP818792CRA*
  - b. Registered Nurse, Level 1 – *Nurses (South Australian Public Sector) Award 2002 – AP817220*

## Health 9

70. Nurses, Health Professionals and Managers are found at this level.
71. Health 9 is:
  - a. The entry level classification for health professionals whose professional registration requires completion of a four year degree or its equivalent;
  - b. A level to which Registered Nurses who have progressed through the pay points in Health 8 will progress after further service;

- c. A level which applies to Registered Nurses appointed to specialist positions, regardless of years of service;
  - d. Entry level classification for workers in management roles which require a four year degree or its equivalent.
72. Many health professionals require a four-year degree to practice. Physiotherapists and Occupational Therapists are two examples of such professionals.
73. Health 9, pay point 1 is the entry level for Nurse Specialists, as defined in the classifications. Nurse Specialists are registered nurses in roles which provide leadership, including clinical leadership, and role modelling, particularly in the areas of research, quality assurance. Nurse Specialists are often involved in staff and policy development.
74. For those professions where a Masters is a mandatory requirement of practice, such as Audiology, entry is at pay point 2 of this level.
75. Management employees at this level are senior managers, professionals and specialists.
76. There are three pay points within this Health Level. Employees at this level will progress to subsequent pay points of this level by reference to their completion of each additional twelve months' satisfactory service.
77. Equivalent classifications in current awards include the following:
- a. Registered Nurse, Level 2 – *Nurses (Tasmanian Private Sector Award) 2005*
  - b. Physiotherapist (qualified) – UG1 - *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004 – AP835426CRV*
  - c. Radiation Therapy Technologist (Qualified) – UG1 - *Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004 – AP835426CRV*
  - d. Medical Scientist 1 – *Medical Scientists (South Australian Public Sector) Award AN150080*

## **Health 10**

78. Health 10 contains employees in each of the clinical streams, and the Administration and Management stream.

79. In the clinical streams, Health 10 is a level applicable as an entry level for those clinicians for whom a 5 or 6-year qualification, or doctoral qualifications are required for entry.
80. The clinicians for whom 5 or 6 year qualifications or doctoral qualifications are required for entry are as follows:
  - a. Medical/Dental Stream– Interns and newly qualified Dental officers;
  - b. Health Professional Streams – Clinical Psychologists and Optometrists.
81. Those employees move to the second and third pay points within Level 10 upon completion of twelve and twenty-four months' service respectively.
82. Nurses move into Health 10 only by appointment, and not as a result of incremental improvement by reference to length of service.
83. In the Nursing Stream, Health 10 is the classification to which Registered Nurses may progress by appointment to one of the following roles:
  - a. Nurse Manager;
  - b. Nurse Consultant;
  - c. Nurse Educator;
  - d. Assistant Director of Nursing.
84. Health Professionals whose practice entry qualification is less than a 5 or 6 year degree move into Health 10 level only by appointment to one of the senior specialist roles which are described in the Health Professional Stream Descriptors.
85. Equivalent classifications in current awards include the following:
  - a. Registered Nurse, Levels  $3\frac{3}{4}$  - *Nurses (Queensland Public Health Sector) Award 2004* - AP835218
  - b. Registered Nurse, Level 4 - *Nurses (SA) Award* - AN150097
  - c. Hospital Medical Officer - *Health and Welfare Services - Private Hospital Medical Officers - Victoria Award 2003* - AP825417CRV

## **Health 11**

86. Health 11 is the level applicable to the following positions:

- a. Medical Roles: Registrars, Senior Registrars and Career Medical Officers;
  - b. Dental Roles: Senior Dental Officers and Dental Specialists;
  - c. Health Professional Roles: senior health professionals and Principal Officers specific to a particular health professional discipline;
  - d. Nursing Roles: Directors of Nursing and Nurse Practitioner roles;
  - e. Chief Executives or Senior Line Executives.
87. The descriptors of the roles at each of the pay points within this level are contained in the Descriptor schedules for the relevant Classification Streams.
88. Progression through the pay points at Health 11 is by appointment only. There is no incremental progression through Health 11 by reference to length of service.
89. Examples of current award classifications that would be located at this level are:-
- a. Chief Radiographer – *Private Hospital Employees (State) Award (NSW NAPSA) – AN120434*;
  - b. Director of Medical Services – *Hospital Specialists and Medical Administrators Award 2002 – AP816036*;
  - c. Registered Nurse, Level 5 (Director of Nursing) – *Nurses (SA) Award – AN150097*

### **Supervision Allowance**

90. The Health Services Union submits that a modern award for the Health Industry should contain an allowance to recognise and compensate the additional burden on workers for supervising staff. We submit that a Supervision allowance be included in the general allowances and take the following form:

#### **Supervision allowance**

The supervision allowance is payable to an employee who is required to supervise other employees with the amount of such allowance depending upon the number of employees supervised.

Number of employees	Percentage of Standard Rate
1-5 employees	4.22% per week
6-10 employees	4.87% per week



11-20 employees	6.32% per week
More than 20 employees	7.46% per week

## **Health Services Union**

14 January 2009

# Modern Health Industry Hybrid Award

## DRAFT APPLICATION CLAUSE

### 4. APPLICATION

**4.1** This award applies throughout Australia to employers of employees within the Health Industry and prevails over any other modern award.

**4.2** This award also applies to employers of employees in occupations in the following streams of this award:

- a. Health Professional
- b. Medical and Dental Officers
- c. Nursing

**4.3** This award does not apply to an employee excluded from award coverage by the Act. Nor does this award apply to an employer in respect of any employee to whom an Enterprise Award applies.

**4.4** For the purposes of this award, the Health Industry includes, however named:

- (a) Hospital services,
- (b) General and specialist medical services,
- (c) Medical laboratory services,
- (d) Medical diagnostic services,
- (e) Health research services,
- (f) Nursing services,
- (g) Allied health services,
- (h) Surgical and day procedure services,
- (i) Mental health services,
- (j) Community health services,
- (k) Aboriginal health services,
- (l) Rehabilitation services,
- (m) Dental services,
- (n) Optometry and optical services,
- (o) Divisions of general practice and/or general practice networks,
- (p) Blood banking services,
- (q) organizations, services and/or societies constituted for the purpose of assisting persons suffering from specific diseases, disorders or social or emotional disability, &
- (r) Administrative, clerical, management, executive, technical, specialist, ancillary and support services in the health and medical services industry,
- (s) Aged care services, including aged care home care services

**4.5** For the purposes of this Award, the Health Industry does not include the health insurance industry.

# Modern Health Industry Award

## CLASSIFICATIONS SCHEDULE

### INTRODUCTION

A modern health industry award contains the following functional, occupational or profession based classification streams. The streams cover all the types of workers required to deliver health services to patients in the modern multi-disciplinary health services environment.

Those classifications are:

1. The Support Stream – workers who perform maintenance, grounds keeping, security, transport, domestic, laundry/linen, stores, food service functions or other functions of a similar type however named;
2. The Care Stream – multi skilled workers who provide personal care assistance to patients and/or provide assistance to clinicians in the course of care or treatment;
3. The Technical Stream – workers who undertake work requiring a specialist technical skill and who possess a certificate or advanced qualification or are in the process of acquiring such qualifications. This stream includes lab assistants, pharmacy technicians, sterilising technicians, theatre technicians, dental technicians, orthotic technicians, prosthetic technicians, ECG technicians, anaesthetic or instrument technicians, perfusionists, phlebotomists and others;
4. The Administration and Management Stream – clerical and administrative employees, specialist managers or senior staff who oversee the performance of administrative functions or the delivery of patient care services.
5. The Dental and Medical Officers Stream – doctors of medicine and dentists registered and performing work within those fields of expertise;

6. The Health Professionals Stream - clinicians and other professionals who deliver health and scientific services to patients directly or indirectly;
7. The Nursing Stream – workers who have successfully completed a course of training in nursing leading to enrolment or registration with a relevant statutory body;

The levels within each stream ascend by reference to autonomy of role, complexity of tasks and qualifications and skills required of the employee. Rates of pay progress commensurate with the described role levels. The indicative tasks associated with each level are described within the classification system below. Indicative tasks assist to place an employee's role in a particular level within a stream.

## Modern Health Industry Award – Classifications Matrix

Health Grade	Steps	Support Stream	Care Stream	Technical Stream	Administration and Management Stream	Dental and Medical Officers Stream	Health Professional Stream	Nursing Stream	Indicative Training Level - (AQF)	% of Health 4 (Standard Rate)
<b>Health 1</b>									Entry	89.5
<b>Health 2</b>	two								Entry	92.5
<b>Health 3</b>	two								Cert II	97
<b>Health 4</b>	three								Cert III	100
<b>Health 5</b>	three								Certificate IV/Associate Diploma	105
<b>Health 6</b>	three								Diploma	107.5
<b>Health 7</b>	three								Advanced Diploma	110
<b>Health 8</b>	three								Degree - 3 years	150
<b>Health 9</b>	three								Degree - 4 years/Mandatory Masters	160
<b>Health 10</b>	three								Degree – 6 years/Doctorate	170
<b>Health 11</b>	three								Post-Doctoral	180

# SUPPORT, CARE, TECHNICAL AND ADMINISTRATION STREAM DESCRIPTORS

## Health 1

An employee at this level:

- Works within established routines, methods and procedures;
- Has minimal responsibility, accountability or discretion;
- Works under direct or routine supervision, either individually or in a team;
- No previous experience or training is required;
- Subject to satisfactory assessment of competencies will progress to Health 10 level within 6 months of commencement. Earlier assessment should take place if the employee is demonstrating satisfactory performance or upon request of the employee.

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Laundry Hand Car Park Attendant Hospital Orderly Maintenance/Handyperson (unqualified) Food and Domestic Services Assistant		Laboratory Assistant Orthotic Technician Theatre Attendant Recording Attendant (including EEG and ECG)	Dental Secretary Data Entry operator Administration Assistant Receptionist

## Health 2

An employee at this level:

- Works within established routines, methods and procedures;
- Has limited responsibility, accountability or discretion;
- May work under limited supervision, either individually or in a team;
- Possesses communication skills;
- Requires on-the-job training and/or specific skills training or experience;
- For *Care Stream* positions, this is the Entry Level classification. Subject to satisfactory assessment of competencies, a worker will progress to Health 2 level within 6 months of commencement. Earlier assessment should take place if the employee is demonstrating satisfactory performance or upon request of the employee.

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Housekeeper Store person Laundry Operator Driver (requiring car license) Cook Gardener (non trade)	<b>Health Care Assistant</b> (new name for PCW) Dental Assistant (untrained) Aboriginal/Torres Strait Islander Health Worker Allied Health Assistant (unqualified)		Typist Library Clerk

This classification contains two pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service.

## Health 3

An employee at this level:

- Is capable of prioritising work within established routines, methods and procedures;
- Is responsible for work performed with a medium level of accountability or discretion;
- Works under limited supervision, either individually or in a team;
- Possesses sound communication and/or arithmetic skills;
- Requires specific on-the-job training and/or relevant skills training or experience; an administration stream employee who undertakes a range of basic clerical functions within established routines, methods and procedures. No or limited experience and training are required;
- Demonstrate basic operational knowledge in a moderate range of areas;
- Apply a defined range of skills;
- Apply known solutions to a limited range of predictable problems;
- Perform a range of tasks where choice between a limited range of options is required
- Assess and record information from varied sources;
- Take limited responsibility for own outputs in work and learning;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Food Monitor		Theatre Technician HASA (WSG 4) Also clause 5.1.2 of (AN140225 – Private Hospitals Employees’ Award – State 2003 [QLD])	

This classification contains two pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service.

## Health 4

An employee at this level:

- Is capable of prioritising work within established policies, guidelines and procedures;
- Is responsible for work performed with a medium level of accountability or discretion;
- Works under limited supervision, either individually or in a team;
- Possesses good communication, interpersonal and/or arithmetic skills;
- Requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience;
- Demonstrate some relevant theoretical knowledge;
- Apply a range of well-developed skills;
- Apply known solutions to a variety of predictable problems;
- Perform processes that require a range of well-developed skills where some discretion and judgment are required;
- Interpret available information, using discretion and judgment;
- Take responsibility for own outputs in work and learning;
- Take limited responsibility for the output of others



- Requires substantial on-the-job training, may require formal qualifications at a trade level;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Security Officer Driver (requiring truck license )	Allied Health Assistant (qualified) Nutrition Assistant	Instructor Trades (unqualified) Dental Laboratory Assistant Pathology Collector Mortuary Technician Optical Dispenser Laboratory Assistant	Medical Secretary Medical Records Clerk

This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 5

An employee at this level:

- Is capable of prioritising work and exercising discretion within established policies, guidelines and procedures;
- Is responsible for work performed with a medium level of accountability;
- Works under limited supervision, either individually or in a team;
- Requires a basic knowledge of medical terminology (administration stream);
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May be required to supervise the work of others;
- Requires substantial on-the-job training, may require formal qualifications at a level beyond a trade and/or relevant skills training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream

	First Aid Attendant (in commercial or industrial undertakings) Aromatherapist Audiometrist Massage Therapist Mental Health Worker	Pathology Technician Technical Assistant (Laboratory) Engineering Assistant	Payroll Officer/ Clerk Ward Clerk Switchboard Operator Casualty Clerk Purchasing Officer Human Resource Officer Health & Safety Officer
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This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 6

An employee at this level:

- Is capable of functioning semi autonomously, and prioritising his or her own work within established policies, guidelines and procedures;
- Is responsible for work performed with a substantial level of accountability;
- Works either individually or in a team;
- Requires a comprehensive knowledge of medical terminology;
- Has a working knowledge of health insurance schemes (administration stream);
- May require basic computer knowledge or be required to use a computer on a regular basis;
- Possesses administrative skills and problem solving abilities;
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May be required to supervise the work of others;
- May require formal qualifications at post-trade or Diploma level and/or relevant skills training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Maintenance/Handyperson (trade) Gardener (trade)		Pathology Collector Dental Technician	Library Technician (in training) Public Relations Officer

Cook (trade) Driver (articulated vehicle)			
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This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

## Health 7

An employee at this level:

- Is capable of functioning autonomously, and prioritising his or her own work within established policies, guidelines and procedures;
- Is responsible for work performed with a substantial level of accountability and responsibility;
- Works either individually or in a team;
- Possesses administrative skills and problem solving abilities;
- Possesses well developed communication, interpersonal and/or arithmetic skills;
- May supervise the work of others, including work allocation, rostering and guidance;
- May require formal qualifications at post-trade or Diploma level and/or relevant skills, training or experience;

Indicative roles, at an entry level, are:

Support Stream	Care Stream	Technical Stream	Administration and Management Stream
Chef Trades Instructor General Services Supervisor		Pharmacy Technician Interpreter (unqualified) Anaesthetic Technician	Medical Stenographer Secretary Laboratory Supervisor Information Services Officer

This classification contains three pay points. The first is the entry rate. The second is a pay point to which all entrants at this level will progress on or before the completion of twelve month service. The third is a pay point to which all employees on the second pay point will progress to on or before twelve months service at this second pay point.

# MANAGEMENT STREAM DESCRIPTORS

## Health 6

Management	Description
Health 6	Entry positions at the <b>Health 6</b> level are regarded as base grade administrators who may also be regarded as supervisory positions coordinating a small work group, or as an entry level specialist role within a particular technical or professional area

An entry level management employee at this level:

- Prepare statistical reports and summaries and monitor and check accuracy of reports;
- Monitor daily billings and collections by cashiers and banking;
- Process standard claim forms, ensuring that all legislated procedural requirements are met;
- Train new employees in basic clerical or administrative functions;
- Follow progress of invoices, orders or payments to ensure action occurs as specified in these documents;
- Undertake enquiries related to work area; for example the availability of ordered stock; the best available price for ordered items; overdue accounts;
- Maintain accurate and effective filing systems;
- Prepare minutes and agendas, and coordinate meeting dates for committee meetings;
- Supervise the activities of a small group of staff within a specified function (e.g.payroll, patient accounts);
- Liaise with immediate supervisor and middle management level positions to seek and provide information;
- Establish and maintain appropriate work patterns and procedures for the function supervised;
- Administer the function to ensure current legislation is understood and adhered to;
- Prepare accounts and reports for use by middle management and executive staff;
- Liaise and consult with external agencies (e.g Medicare, Health Insurance Funds, Government Departments and Authorities, Workers Compensation Authorities) with regard to problem accounts and compensable claims and payments of accounts;
- Negotiate with clients to obtain information and discuss problems in paying accounts and arrange payment procedures;

- Negotiate with suppliers for the purchase and delivery of facility supplies;

## Health 7

Management	Description
Health 7	Entry positions at the <b>Health 7</b> level are regarded as senior supervisory positions overseeing a small to medium sized workgroup or administrators responsible for a specified activity recognised across the facility or a specialist role within a particular technical or professional position

An employee at this level:

- Recruit and select permanent and temporary staff for general positions;
- Coordinate and prepare accounting, payroll or statistical records and submit consolidated reports;
- Implement controls and systems to ensure resources are fully utilised and enterprise policies are implemented;
- Develop and present training programs;
- Liaise with facility staff up to department head to obtain and present information;
- Allocate and control staff and resources to ensure activities of the work area are carried out efficiently and effectively;
- Monitor safe work practices and security standards to maintain a safe and secure environment;
- Assist staff with problems, and recommend action to be taken;

## Health 8

Management	Description
Health 8	Entry positions at the <b>Health 8</b> level are regarded as middle management in control of a medium workforce, or administrators managing a function, or an experienced specialist role within a particular technical or professional discipline

An employee at this level:

- Provide advice on techniques and procedures for infection control and safety matters;

- Carry out a quality assurance program to ensure the achievement of required standards of presentation, hygiene and cost of delivery;
- Develop rosters for the cleaning of the facility(ies) and presentation of gardens involving up to 100 staff;
- Prepare reports on service delivery development and undertake special projects for the facility and other bodies;
- Review the staff establishment profile and adjust where necessary to maintain the integrity of the HRIS and the internal establishment profile, advise on funding available for staffing requirements;
- Direct and control the salary administration program;
- Oversee and contribute to the formulation, implementation and ongoing review of staff induction and training programs;
- Collaborate with Department Heads, Medical Officers, injured employees, unions, rehabilitation providers and other key staff to devise, plan and implement rehabilitation programs;
- Review existing computer software effectiveness with a view to enhancing its functionality and develop software to meet new requirements;
- In conjunction with the Finance staff, prepare and interpret financial budgets, annual returns and comparative monthly statements

## Health 9

Management	Description
Health 9	Positions at the <b>Health 9</b> level are senior managers, professionals and specialists who are generally responsible for a significant operational area, function or department within a division or health care services unit or multi-function manager of institutions providing a range of services across the agency

An employee at this level:

- Prepare economic and demographic forecasts as part of an overall planning process to determine the future growth and services of the facility;
- Develop financial control systems, budget guidelines and reporting mechanisms so that the Executive and Board have a complete understanding of the financial viability, efficiency and future options for resource management;
- Determine the performance of organisational units in the enterprise in respect of their financial planning, and control activities in compliance with management instructions,

statements of policy and procedures, high standards of administrative practice and facility objectives;

- Investigate the supply needs of the organisation/s leading to the development of purchasing and inventory control programs required to achieve cost effective delivery schedule;
- Inspect suppliers, manufacturing and wholesale operations to ensure the achievement of minimum standards of hygiene, product quality, distribution and storage standards;
- Manage a range of services within an institution covering patient services, finance, personnel, technical and engineering services, energy management and community relations;
- Conduct programmed audits into operational and financial procedures and the safeguarding of assets;
- Direct and control a significant service function in an institution, determining staffing, training, supply and expenditure needs for the division;
- Oversee and direct the provision of a comprehensive patient food service, as well as an extensive non-patient service;
- Advise and counsel management and senior staff on the implementation and management of human resource issues, such as disciplinary matters, the identification of new work practices to reduce budget overruns, consultative strategies, training needs and management obligations;
- Represent and advocate on behalf of the facility at industrial relations tribunals and in labour negotiations

## Health 10

Management	Description
Health 10	Entry positions at the <b>Health 10</b> operate at the executive level or are line managers in control of a substantial division/department or facility in a large institution or are Chief Executives of small hospitals

An employee at this level:

- Develop and implement plans for future expansion of services and facilities to meet emerging community health needs and operating efficiency constraints;
- Prepare, manage and monitor the institution's budget;
- Direct and control subordinate managers in control of environmental services, linen services, engineering and technical services, human resources, supply, catering, patient services, management information services and public relations;

- Represent the institution in meetings with external professional organisations and the Government Departments and Authorities in order to facilitate improved service standards and achievement of budget constraints;
- Authorise statutory and other reports as required by Government authorities and the employer in relation to service delivery standards and budget status;
- Direct and control the full range of services for a small, independent hospital, which may include an attached nursing home, including policy development and planning for the short and longer term development of the institutions;
- Control the accounting and financial reporting functions of business, investment and operational units which are conducted independently of the hospital's operating and funding arrangements.

### Health 11

Management	Description
Health 11	Entry positions at the <b>Health 11</b> level are Chief Executives or the senior line executive of a large regional health service

An employee at this level:

- Develop, negotiate and implement budgets covering all aspects of the agency's activities;
- Undertake major special projects that substantially reshape the future health care service for a major institution;
- Direct and control a comprehensive human resource function in a major or multi-faceted, multi-campus institution providing strategic advice to the Executive, and directing a range of activities including workforce planning; organisation and policy development; industrial relations; salary administration; occupational health and safety policy, training and procedures; rehabilitation and Workers Compensation claims management and representation; personnel administration; staff development and training; staff counselling and the selection, recruitment and termination of employees;
- Manage the full range of administrative and support functions and services for a large agency, identify outcomes, resources and standards of operation and manager specific issues, to improve operating efficiency and effectiveness;
- Manage an executive relationships with unions which involves the identification of issues and strategies for the consultative involvement of staff through elected representatives, as well as the negotiation of disputes which may occur from time to time;
- Liaise and negotiate with Government Departments and Authorities on organisation-wide policy matters, including resources, health services, capital works and other matters;



- Direct the organisation's planning activities and provide leadership and overall guidance in both the administration and operation of a small-medium sized hospital;
- Advise the Committee of Management on matters of policy, financial planning, service needs and delivery, legal and statutory obligations and any other matters affecting the service delivery;
- Control and manage all non-clinical services within a major hospital, as the senior line executive, providing executive support and relief to the Chief Executive, and financial advice to the Board of Management;
- Develop and implement policies, programs and procedures for the Hospital.

# Entry Levels for Health Professionals, Dental and Medical Practitioners and Nursing Streams

In accordance with the Australian Qualifications framework adopted in this draft award the professionals in the Health Professionals, Medical/Dental Practitioners and Nursing Streams will commence in the structure as follows, based on the length of their relevant health qualification.

**Health 5, Pay Point 1** is entry level for an Enrolled Nurse.

**Health 8, Pay Point 1** is entry level for a health professional possessing a 3 year degree qualification.

**Health 8, Pay Point 1** is entry level for a Registered Nurse possessing a 3 year degree qualification.

**Health 9, Pay Point 1** is entry level for a health professional possessing a 4 year degree qualification.

**Health 9, Pay Point 1** is entry level for a Nurse Specialist.

**Health 9, Pay Point 2** is entry level for a health professional with a Mandatory Masters qualification.

**Health 10, Pay Point 1** is entry level for a health professional with a 5 or 6 year degree or doctoral qualification.

**Health 10, Pay Point 1** is entry level for a Dental Officer and a Medical Intern.

**Health 10, Pay Point 1** is entry level for a Nurse Consultant, Nurse Manager and Nurse Educator.

**Health 10, Pay Point 2 & 3** is entry level for a Resident Medical Officer and a Dental Officer.

**Health 10, Pay Point 3** is entry level for an Assistant Director of Nursing.

**Health 11, Pay Point 1** is entry level for a Director of Nursing and a Nurse Practitioner.

**Health 11, Pay Point 1** is entry level for a Senior Dental Officer and a Medical Registrar.

**Health 11, Pay Point 2** is entry level for a Senior Medical Registrar.

**Health 11, Pay Point 3** is entry level for a Dental Specialist and a Career Medical Officer

Professionals in the Health Professional, Dental/Medical Officers and Nursing Streams will then progress in accordance with the occupational classification structures set out below.

# DENTAL AND MEDICAL OFFICERS STREAM DESCRIPTORS

## Health 10 Pay Point 1 – Medical Interns/Dental Officers

A **Medical Intern** is a medical practitioner in the first postgraduate year of clinical experience.

A **Dental Officer** employed at this level is a newly qualified employee. Dental officers at this level are beginning practitioners who are developing their skills and competencies in dentistry.

## Health 10 Pay Point 2 & 3 - Resident Medical Officer/Dental Officer

A **Resident Medical Officer** is a medical practitioner in the second or any subsequent post graduate year of clinical experience. An RMO must complete 12 months of clinical experience to advance to the next increment.

A **Dental Officer** at this level serves as a practicing dentist who performs routine dental work requiring the independent examination, investigation, treatment planning and treatment of patients. This is a moderate skill level and includes the moderately experienced dentist who is competent in basic tasks. He or she may require regular professional support and mentoring. A Dental Officer at this level must complete 12 months of clinical experience to advance to the next increment.

## Health 11 Pay Point 1 - Medical Registrar/Senior Dentist

A **Medical Registrar** is a medical practitioner admitted to an Australian Medical Council accredited vocational training program leading to a fellowship of a Medical College including those of General Practice and Rural and Remote Medicine.

A **Senior Dentist** at this level is a general dental practitioner who performs the full range of professional dental tasks described for the Dental Officer above. The work differs in that the Dental Officer at this level, *regularly* encounters, diagnoses, and administers treatment for dental diseases and dental health problems of greater-than-usual difficulty.

## Health 11 Pay Point 2 - Senior Medical Registrar

A **Senior Medical Registrar** is a medical practitioner who has successfully completed examinational requirements for appointment as a Fellow of an Australian or Australasian Specialists College and is awaiting granting of the fellowship.

### **Health 11 Pay Point 3 - Career Medical Officer/Dental Specialist**

A **Career Medical Officer** is a medical practitioner with not less than four completed years of post-graduate clinical experience who is appointed as such.

**Dental Specialists** are experienced dentists who are:

- Widely recognised for their exceptional competence in general dental work and have a proven record for carrying out a broad range of advanced and complex dental procedures;
- Maintain a clinical caseload and provides;
- Clinical education in the area of expertise through in-service training to undergraduate and/or post-graduate students;
- In-service to other dental officers in their clinical specialist area of expertise;
- Consultation and advice to specialist teams across an area or geographic or clinical network; and
- Discipline specific professional supervision and leadership either within a facility or across facilities and/or area health services.

# HEALTH PROFESSIONAL STREAM DESCRIPTORS

This classification stream comprises professionally qualified allied health professionals, medical scientists, medical imaging scientists and pharmacists and other occupations as listed below.

## Entry Levels

**Health 8, Pay Point 1** is entry level for a health professional possessing a 3 year degree qualification.

**Health 9, Pay Point 1** is entry level for a health professional possessing a 4 year degree qualification.

**Health 9, Pay Point 2** is entry level for a health professional with a Mandatory Masters qualification.

**Health 10, Pay Point 1** is entry level for a health professional with a 5 or 6 year or doctoral qualification.

An employee at this level:

This level is the entry level for new graduates who meet the requirement to practice as a Health Professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the Employer.

## Classification Structure

A Health Professional shall progress through the classification structure in accordance with the criteria outlined below and the Levels in the health professional structure shall be paid as follows:

### Health 8 Pay Point 1 through Health 9 Pay Point 3 – Base Grade Health Professional

The entry level for a health professional will be based on the length of their qualification as described above and they will progress through the Pay Points in Health 8 and Health 9 on an annual incremental basis.

Health Professional	Description
	<p>Works independently and as such would be required to exercise independent judgment on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex, or critical tasks.</p> <p>Demonstrates a commitment to continuing professional development.</p> <p>Contributes to workplace education through</p>

	<p>provision of seminars or lectures or in-services.</p> <p>Is actively involved in quality improvement activities or research.</p> <p>Contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work.</p> <p>May be required to contribute to the supervision of discipline specific students.</p>
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**Health 10 Pay Point 1 – Specialist Health Professional OR Doctoral Entry Level**

<b>Health Professional</b>	<b>Description</b>
<b>Specialist Health Professional</b>	<p>Performs a wide range of discipline specific functions and is capable of operating independently but with professional consultation when performing novel, complex, or critical tasks; and</p> <p>Demonstrates a commitment to continuing professional development; and</p> <p>May have responsibility for the supervision of discipline specific students and/or staff.</p> <p>OR</p>
<b>Doctoral Entry Level</b>	<p>This is the entry level for a health professional requiring a 5 or 6 year degree or doctoral qualification. A professional appointed as such will progress through the Pay Points in Health 10 after the completion of 12 months service.</p>

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

**Expertise**

- Demonstrates expertise in a specific area, or as a generalist, as recognised by other professionals from their own workplace and is consulted for professional advice by health and other professionals from their own work place and/or;
- Contributes to the development of their field of expertise in their own workplace.

### **Sole Practice**

- Is a sole discipline specific Health Professional in a metropolitan, regional or rural setting who practices in professional isolation from Health Professionals from the same discipline.

### **Leadership**

- Health Professionals will have professional responsibility for a specific team or clinical unit within a department and undertakes a discipline specific workload in that department and/or;
- Health Professionals are responsible for providing regular feedback and appraisal regarding the performance of staff and/or;
- Health Professionals are responsible for maintaining effective relationships and/or;
- Health Professionals at this level may assist with the development and implementation of policies, procedures, standards and practices.

### **Education**

- Health Professionals are responsible and accountable for providing a professional level of services for the employer or oversee the management of aspects of services and the staff and/or;
- Has responsibility for the co-ordination of student education in the work place for their professional group and/or;
- May have responsibility for the teaching and training of other Health Professionals.

### **Health 10 Pay Point 2 - Specialist Health Professional**

<b>Health Professional</b>	<b>Description</b>
<b>Specialist Health Professional</b>	<p>A Health Professional at this level would be experienced and be able to independently apply professional knowledge and judgement when performing novel, complex, or critical tasks specific to their discipline.</p> <p>At this level Health Professionals will have additional responsibilities</p>



An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### **Expertise**

- Works in an area that requires high levels of specialist knowledge and skill as recognised by the employer and/or;
- Be recognized as an expert in their field of work by health and other professionals from within their Area Health Service and be consulted for professional advice by health or other professionals from within their own Area Health Service and/or;
- Be actively contributing to the development of professional knowledge and skills in their field of work as demonstrated by positive impacts on service delivery, positive referral patterns to area of expertise and quantifiable/measurable improvements in health outcomes.

### **Sole Practice**

- Is a sole discipline specific Health Professional in a metropolitan, regional or rural setting who practices in professional isolation from Health Professionals from the same discipline and/or;
- Is performing across a number of recognized specialties within a discipline.

### **Leadership**

- Health Professionals at this level are accountable for allocation and/or expenditure of resources and ensuring targets are met. Staff are responsible for ensuring optimal budget outcomes for their customers and communities and/or;
- Health Professionals are responsible for providing regular feedback and appraisals for senior staff to improve health outcomes for customers and for maintaining a performance management system and/or;
- Health Professionals are responsible for providing support for the efficient, cost effective and timely delivery of services.

### **Education**

- Organise/co-ordinate a discipline specific undergraduate and/or postgraduate education programme and/or;
- Is recognized by their profession for their expertise in education and/or;
- May hold an honorary appointment with an academic institution for the purpose of teaching undergraduate or post graduate students.

## Health 10 Pay Point 3 - Specialist Health Professional

Health Professional	Description
<b>Specialist Health Professional</b>	A Health Professional at this level would independently apply significant professional knowledge and judgement when performing a wide range of novel, complex, or critical tasks specific to their discipline

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be recognised as an expert in their field of work and be consulted for professional advice by health or other professionals from across the state and/or;
- Be actively contributing to their field of work within the state as demonstrated by presenting at state conferences, or contributing to peer reviewed state journals, or as a representative on a state level committee and/or;
- Have demonstrated an ongoing strong commitment to education, usually by gaining further relevant postgraduate qualifications and/or;
- Initiate and be responsible for quality improvement activities and/or research.

### Leadership

- Health Professionals at this level are responsible for reviewing senior staff performances through regular appraisal to improve health outcomes for patients and for maintaining a performance management system and/or;
- Health Professionals at this level are responsible for providing timely delivery of services and are accountable to the appropriate Executive and/or;
- Health Professionals are responsible for contributing to the development and implementation of business plans and/or;
- Health Professionals at this level are required to make judgements and may in some cases be delegated responsibility to approve changes in standard practice and procedures.

## Health 11 Pay Point 1 - Consultant Health Professional

Health Professional	Description
<b>Consultant Health Professional</b>	A Health Professional at this level would independently apply a high level of professional judgement and knowledge when performing a wide range of novel, complex or critical tasks, specific to their discipline.

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be nationally recognized as an expert in their field of work and be consulted nationally for professional advice by health or other professionals and/or;
- Be actively contributing to their field of work nationally as demonstrated by presenting at Australian / NZ conferences, or contributing to peer reviewed national journals, or as a representative on a national level committee and/or;
- Have demonstrated an ongoing commitment to continuing education by obtaining a postgraduate qualification and/or;
- Initiate and be responsible for quality improvement activities and/or research.

### Leadership

- Health Professionals at this level are responsible for reviewing senior staff performances through regular appraisal to improve health outcomes for patients and for maintaining a performance management system and/or;
- Health Professionals are responsible for maintaining effective relationships and communication with Area Health Service to ensure that corporate goals and priorities of the Health System are met and/or;
- Health Professionals at this level are responsible for providing timely delivery of services and are accountable to the appropriate Executive and/or;
- Health Professionals are responsible for contributing to the development and implementation of business plans and/or;
- Health Professionals at this level are required to make judgements and may in some cases be delegated responsibility to approve changes in standard practice and procedures.

## Health 11 Pay Point 2 - Consultant Health Professional

Health Professional	Description
<b>Consultant Health Professional</b>	A Health Professional at this level would apply a high level of professional judgement and knowledge when performing a wide range of novel, complex, and critical tasks, specific to their discipline.

An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

### Expertise

- Be recognised as an expert by their own profession or other professions by making significant contributions to the development of expertise at a national level and be widely consulted for high level advice by professionals from a range of workplaces. They will be internationally recognised as an expert in their field of work by presenting at international conferences, or publishing in peer reviewed international journals, or as a representative on international level committees and/or;
- Have demonstrated an outstanding commitment to continuing education, by obtaining a relevant post graduate qualification.

### Leadership

- Health Professionals at this level would need a proven record of achievement at a senior level and/or;
- Health Professionals would need to have the capacity to allocate resources, set priorities and ensure budgets are met within a large and complex organisation and/or;
- Health Professionals at this level are responsible to the Executive for providing effective services and ensuring budget/strategic targets are met and/or;
- Health Professionals at this level are expected to develop/implement and deliver strategic business plans which increase the level of care to customers within a budget framework.

## Health 11 Pay Point 3 – Principal Discipline Specific Officer

Health Professional	Description
<b>Principal Discipline Specific Officer</b>	A Principal Discipline Specific Officer - has been appointed as such and holds a post graduate degree at least equivalent to a PHD in an area relevant to

	<p>professional practice, from an approved university, or such other qualifications deemed by the Employer to be equivalent and who has had not less than ten years post graduate experience in an appropriate health professional field and has been deemed eligible for appointment as a Principal Discipline Specific Officer by a Credentialing Committee.</p>
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An employee at this level will have additional responsibilities and will also satisfy the requirements of one of the following streams;

**Expertise**

- Actively contributing to the knowledge, skill base and body of knowledge of the profession;
- Teaching and research participation;
- Supervision of staff, students or research projects;
- Capacity to secure research funds;
- Have an international reputation in their discipline;
- Have a significant body of published work in peer-reviewed journals;
- Provides mentoring and support.

This stream includes, but is not limited to, the following degree qualified professionals:

Audiologist; Art Therapist; Biomedical Engineer; Clinical Perfusionist; Clinical Psychologists; Counsellor; Dietitian; Diversional Therapist; Exercise Physiologist; Genetic Counsellor; Medical Scientist, Medical Physicist; Medical Radiation Scientist; Medical Technologist; Music Therapist; Nuclear Medicine Technologist; Occupational Therapist; Optometrist, Orthoptist; Orthotist/Prosthetist; Pharmacists; Physiotherapist; Play Therapist; Podiatrist; Psychologist; Radiation Therapist; Radiographer; Social Worker; Speech Pathologist.

# NURSING STREAM DESCRIPTORS

## Health 5 Pay Point 1 – Enrolled Nurse

**{Enrolled Nurses progress through the Pay Points at Health 5, 6 and 7 in accordance with the following descriptors}**

An Enrolled Nurse (EN) will be appointed at this level based on:

Training and experience, which includes:

- Having satisfactorily completed a hospital based course of training in nursing of not more than twelve months duration leading to enrolment as an EN; or
- Having satisfactorily completed a course of training of twelve months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a State/Territory Nurses Registration Board; and
- Having practical experience of up to but not more than twelve months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill indicators at this pay point are as follows:

The employee:

- Has limited or no practical experience of current situations;
- Exercises limited discretionary judgement, not yet developed by practical experience.

## Health 5 Pay Point 3

This is the pay point to which an employee will be appointed as an EN or progress from Pay Point 1, having been assessed as being competent at Pay Point 1. This assessment will be based on:

Training and experience, which includes:

- Having satisfactorily completed a hospital based course of general training in nursing of more than twelve months duration and/or 500 or more hours theory content or a course accredited at advanced certificate level leading to enrolment as an EN; or
- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Pay Point 1;

- The undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows.

The employee is required to demonstrate some of the following skills in the performance of their work:

- a developing ability to recognise changes required in nursing activity and in consultation with the RN, implement and record such changes, as necessary; and/or
- is able to relate theoretical concepts to practice; and/or
- Requires assistance in complex situations and in determining priorities.

**Health 6 Pay Point 2** means the pay point to which an employee will be appointed as an EN or progress from Health 5 Pay Point 3, having been assessed as being competent at Health 5 Pay point 3. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for Health 5 Pay Point 3; and
- The undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows.

The employee is required to demonstrate some of the following in the performance of their work:

- An ability to organise, practise and complete nursing functions in stable situations with limited direct supervision; and/or
- The use of observation and assessment skills to recognise and report deviations from stable conditions; and/or
- Demonstrated flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- Uses communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

**Health 7 Pay Point 1** means the pay point to which an employee will be appointed as an EN or progress from Health 6 Pay Point 2, having been assessed as being competent at Health 6 Pay Point 2. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Health 6 Pay Point 2; and
- The undertaking of in-service training, subject to its provision by the employing agency, from time to time; and

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows:

The employee is required to demonstrate some of the following in the performance of their work:

- Speed and flexibility in accurate decision making; and/or
- Organises own workload and sets own priorities with minimal direct supervision; and/or
- Uses observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- Uses communication and interpersonal skills to meet psychosocial needs of individual/groups.

**Health 7 Pay Point 3** means the pay point to which an employee will be appointed as an EN or will progress from Health 7 Pay Point 1, having been assessed as being competent at Health 7 Pay Point 1. This assessment will be based on:

Training and experience, which includes:

- Not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Health 7 Pay Point 1; and the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.

Nursing skills and knowledge which the employee possesses and may be required to utilise at this pay point. Skill Indicators at this pay point are as follows:

The employee is required to demonstrate all of the following in the performance of the employee's work:



- Contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- Efficiency and sound judgement in identifying situations requiring assistance from an RN.

### **Health 8 Pay Point 1- Registered Nurse**

Means a Registered Nurse (RN) who:

- According to the employee's level of competence; and
- Under the general guidance of, or with general access to a more competent RN who provides work related support and direction;
- Is required to perform general nursing duties which include substantially, but are not confined to;
- Delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
- Coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
- Providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;
- Providing support, direction and education to newer or less experienced staff, including EN's;
- Accepting accountability for the employee's own standards of nursing care and service delivery;
- Participating in action research and policy development within the practice setting.

### **Health 8 Pay Point 2**

Means an RN who:

- Holds any other qualification required for working in the employee's particular practice setting, and who is appointed as such by a selection process or by reclassification from a lower level in the circumstances that the employee is required to perform the duties detailed in this subclause on a continuing basis;
- Appointed at this level (to be known as a Clinical nurse), is required in addition to the duties of an RN1, to perform duties delegated by a Clinical nurse consultant or higher

level classification, and clinical nursing duties which will substantially include, but are not confined to;

- Delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;
- Providing support, direction, orientation and education;
- Being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by the Clinical nurse consultant;
- Acting as a role model in the provision of holistic care to patients or clients in the practice setting;
- Assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting; and
- Subject to relieving Pay Point 3 as required.

### **Health 9 Pay Point 1 - Nurse Specialist**

Means an RN who:

Appointed at this level (to be known as a Nurse Specialist), according to practice setting and patient or client group;

- Providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and quality assurance programs; staff and patient/client education; staff selection, management, development and appraisal; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care.

### **Health 10 Pay Point 1 - Clinical Nurse Consultant, Nurse Manager, Nurse Educator**

Means an RN who:

Appointed at this level (to be known as a Clinical nurse consultant, Nurse manager or a Nurse educator), according to practice setting and patient or client group;

In the case of a Clinical nurse consultant to perform duties which will substantially include but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and

- quality assurance programs; staff and patient/client education; staff selection, management, development and appraisal; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- Delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
  - Coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
  - Coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.

In the case of a Nurse manager, to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs, staff selection and education, allocation and rostering of staff, occupational health, and initiation and evaluation of research related to staff and resource management; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- Being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and
- Managing financial matters, budget preparation and cost control in respect of nursing within that span of control.

In the case of Nurse educator, to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse manager, particularly in the areas of action research, implementation and evaluation of staff education and development programs, staff selection, and implementation and evaluation of patient or client education programs; participating in policy development and implementation; and acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care; and
- Being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

### **Health 10 Pay Point 3 - Assistant Director of Nursing**

Means an RN who:

In the case of an Assistant director of nursing (clinical) to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (management) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's
  - Area of responsibility, provision of appropriate education programs, coordination and promotion of clinical research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - Managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
  - Being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
  - Being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
  - Being accountable for clinical operational planning and decision making for a specified span of control;
- and
- Being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.

In the case of an Assistant director of nursing (management), to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (clinical) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of
- Responsibility, coordination and promotion of nursing management research projects; participating as a member of the nursing executive team; and contributing to the development of nursing and health unit policy for the purpose of facilitating the
- Provision of quality nursing care;
- Managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse managers;

- Being accountable for the effective and efficient management of human and material resources within a specified span of control;
- Being accountable for the development and coordination of nursing management systems within a specified span of control;  
and
- Being accountable for the structural elements of quality assurance for a specified span of control.

In the case of an Assistant director of nursing (education) to perform duties which will substantially include, but are not confined to:

- Providing leadership and role modelling, in conjunction with others including the Assistant director of nursing (clinical) and the Assistant director of nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility,
- Coordination and promotion of nurse education research projects; participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- Managing the activities of, and providing leadership, coordination and support to a specific group of Nurse educators;
- Being accountable for the standards and effective coordination of education programs for a specified population;
- Being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;
- Being accountable for the management of educational resources including their financial management and budgeting control; and
- Undertaking career counselling for nursing staff.

Where significant and demonstrable reasons exist for two or more of these functions to be combined, the employer will seek the agreement of the union, which will not be unreasonably withheld.

### **Health 11 Pay Point 1 - Director of Nursing**

Means an RN who:

An employee appointed at this level (to be known as Director of nursing) is required to perform duties which will substantially include, but are not confined to:

- Being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;

- Participating as a member of the executive of the health unit, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of health unit policy;
- Providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;
- Providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management; and generally advocating for the interests of nursing to the executive team of the health unit;
- Managing the budget of the nursing division of the health unit;
- Ensuring that nursing services meeting changing needs of clients or patients through proper strategic planning; and
- Complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

### **Health 11 Pay Point 1 - Nurse Practitioner**

*A nurse practitioner* is a registered nurse/midwife appointed to the role, who has obtained an additional qualification relevant to the state regulating authority to enable them to become licensed Nurse Practitioners. They are authorized to function autonomously and collaboratively in an advanced and extended clinical role.

The role of the licensed nurse practitioner means that

- The nurse practitioner is able to assess and manage the care of clients/residence using nursing knowledge and skills. It is dynamic practice that incorporates application of high level knowledge and skills , beyond that required of a registered nurse /midwife in extended practice across stable, unpredictable and complex situations;
- The nurse practitioner role is grounded in the nursing profession's values, knowledge, theories and practice and provides innovative and flexible health care delivery that complements other health care providers;
- The scope of practice of the nurse practitioner is determined by the context in which the nurse practitioner is authorized to practice. The nurse practitioner therefore remains accountable for the practice for which they directed;
- Professional efficacy whereby practice is structured in a nursing model and enhanced by autonomy and accountability;

- Is authorized to directly refer clients/ residents to other health professionals, prescribe medications and order diagnostic investigations including pathology and plain screen X rays; and
- The exhibit clinical leadership that influences and progresses clinical care, policy and collaboration through all levels of health service.

## Indicative Classifications at Entry Level

### Health 1

Support Stream	Care Stream	Technical Stream	Administration and Management Stream	Dental and Medical Practitioner Stream	Health Professional Stream	Nursing Stream
Laundry Hand Car Park Attendant Hospital Orderly Maintenance/Handyperson (unqualified) Food and Domestic Services Assistant		Laboratory Assistant Orthotic Technician Theatre Attendant Recording Attendant (including EEG and ECG)	Dental Secretary Data Entry operator Administration Assistant Receptionist			



## Health 2

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Housekeeper Store person Laundry Operator Driver (requiring car license) Cook Gardener (non trade)	Health Care Assistant Dental Assistant (untrained) Aboriginal/Torres Strait Islander Health Worker Allied Health Assistant (unqualified)		Typist Library Clerk			

## Health 3

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Food Monitor		Theatre Technician				

#### Health 4

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Security Officer Driver (requiring MR class license)	Allied Health Assistant(qualified)  Nutrition Assistant	Instructor Trades (unqualified) Dental Laboratory Assistant Pathology Collector Mortuary Technician Optical Dispenser Laboratory Assistant	Medical Secretary Medical Records Clerk			

### Health 5

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
	First Aid Attendant (in commercial or industrial undertakings) Aromatherapist Audiometrist Massage Therapist  Mental Health Worker	Pathology Technician Technical Assistant (Laboratory)  Engineering Assistant	Payroll Officer/ Clerk Ward Clerk Switchboard Operator Casualty Clerk Purchasing Officer Human Resource Officer Safety Officer			Enrolled Nurse

### Health 6

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Maintenance/Handy person (trade) Gardener (trade) Cook (trade)  Driver (articulated vehicle)		Pathology Collector  Dental Technician	Library Technician (in training)  Public Relations Officer			Enrolled Nurse

### Health 7

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
Chef Trades Instructor  General Services Supervisor	Dental Prosthetist	Pharmacy Technician Interpreter (unqualified) Anaesthetic Technician	Medical Stenographer Secretary Laboratory Supervisor  Information Services Officer			

### Health 8

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
			Accountant Laundry Manager  Finance Manager		Clinical Perfusionist (in training) Oral Health Therapists Dental Hygienists Medical Physicist (in training) Diversional Therapist Play Therapist	Registered Nurse

**Health 9**

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
			Environmental Services Manager Human Resources Manager Unit Manager  Engineer		Medical Scientist Bio Medical Engineer Psychologist Pharmacist Medical Physicist Audiologist Clinical Perfusionist Genetic Counsellor Dietitian Physiotherapist Occupational Therapist Speech Pathologist	Nurse Specialist

**Health 10**

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
				Dental Officer Intern Resident Medical Officer	Clinical Psychologist (Phd) Optometrist	Nurse Manager Nurse Consultant Nurse Educator Assistant Director of Nursing

**Health 11**

<b>Support Stream</b>	<b>Care Stream</b>	<b>Technical Stream</b>	<b>Administration and Management Stream</b>	<b>Dental and Medical Practitioner Stream</b>	<b>Health Professional Stream</b>	<b>Nursing Stream</b>
				Medical Registrar Senior Dental Officer Senior Medical Registrar Dental Specialist Career Medical Officer	Clinical Psychologist	Director of Nursing Nurse Practitioner

**New South Wales Government**

**Submission to the Australian Industrial  
Relations Commission**

**Exposure Draft Modern Awards  
Stage 4**

**16 October 2009**

## Introduction

1. On 25 September 2009 the Australian Industrial Relations Commission (the Commission) published a further 29 exposure drafts in the final stage of the award modernisation process.
2. Throughout the award modernisation process, the NSW Government has argued for the preservation of NSW award and legislative standards within modern awards so as to ensure it does not leave employees in this State worse off, nor add to employer costs and wage bills.
3. In its first submission to the Commission, the NSW Government stated its position as follows:

A strong, effective and relevant award system, together with an independent tribunal with broad powers, are the key elements of the NSW industrial relations jurisdiction. The NSW Government is concerned to ensure that the employees and employers who currently enjoy the benefits of that system are not left worse off by the award modernisation process.<sup>1</sup>

4. This remains the broad objective of the NSW Government. It is concerned that the Commission's recent Statement<sup>2</sup> proposes by way of the modern award exposure drafts to:
  - exclude certain conditions contained in NSW Notional Agreements Preserving State Awards (NAPSAs); and/or

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<sup>1</sup> See NSW Government submission to the Australian Industrial Relations Commission, Award Modernisation, May 2008, para 9

<sup>2</sup> See [2009] AIRCFB 865



- reduce employee conditions or rates of pay when compared to those NAPSAs and the relevant Australian Pay and Classification Scales (Pay Scales).<sup>3</sup>
5. As noted in a previous submission<sup>4</sup> the industrial conditions contained within NAPSAs were determined by the Industrial Relations Commission of NSW (IRC) having been satisfied that the award it made (from which the NAPSA was derived) contains fair and reasonable conditions of employment for employees.<sup>5</sup>
  6. Once such conditions and rates of pay were enshrined in a State award they became the minimum standard required to be paid in NSW for a particular class of employees. To this extent they would be held to constitute a 'fair minimum safety net of enforceable terms and conditions of employment for employees' consistent with the objects of the ministerial request.<sup>6</sup>
  7. The NSW Government submits that when making modern awards the Commission should therefore ensure that these important minimum conditions and rates of pay are not lost and that modern awards should provide outcomes for NSW employees at least as beneficial as current State provisions.

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<sup>3</sup> For the purposes of consistency with previous NSW Government submissions terms used are those set down in the *Workplace Relations Act 1996* rather than the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. For example: The terms Notional Agreements Preserving State Awards (NAPSAs) and Australian Pay and Classification Scales (Pay Scales) are used rather than 'award-based transitional instruments' and 'transitional APCS' respectively.

<sup>4</sup> See NSW Government submission to the Australian Industrial Relations Commission, Exposure Draft Modern Awards – Stage 2, February 2009, para 5

<sup>5</sup> See s.10 of the *Industrial Relations Act 1996 (NSW)*.

<sup>6</sup> See 1(b) of Ministerial Request and s576A(2)(b) of *Workplace Relations Act 1996 (Cth)*

8. To disregard rates of pay and conditions contained within NAPSAs as part of the award modernisation process is to the detriment of both employers and employees in this State. This is particularly so where workplaces currently covered by NSW NAPSAs will clearly form the majority of the proposed modern award coverage.<sup>7</sup>

### **Specific concerns of the NSW Government regarding the Stage 4 exposure drafts**

9. The NSW Government notes that generally the Commission appears to have not adopted conditions contained in NSW state awards, including rates of pay.
10. It is noted in that regard that while the Australian Fair Pay Commission recently decided to freeze minimum wages in the federal jurisdiction the IRC awarded a 2.8 per cent increase at the 2009 NSW State Wage Case. As a result, rates of pay in almost all state awards are now conspicuously higher than their corresponding Pay Scales in the federal jurisdiction.
11. Certain particular areas of concern in respect of four exposure draft awards are detailed below. The NSW Government submits that the concerns identified below would cause the Commission to review the relevant terms and conditions of those exposure drafts before those modern awards are finalised.

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<sup>7</sup> Examples are the *Hair and Beauty Industry Award 2010* and the proposed *Restaurant Industry Award 2010*.

12. It is noted that the immediate impact of some of the proposed changes for employees and employers in NSW may be ameliorated by a transition period. A transition period is appropriate, but that does not address the NSW Government's concerns that certain proposed rates and conditions should not be adopted.

## **Social, Community, Home Care and Disability Services Industry Award 2010**

13. The Commission has published an exposure draft for this sector that largely adopts the classifications and wage rates contained in the federal *Social and Community Services (Queensland) Award 2001*. The Commission has noted that the relevant NSW NAPSA provides for 'generally higher wage rates than the federal awards'.<sup>8</sup>
14. The NSW Government submits that the fact the rates of pay derived from the relevant NSW NAPSA are higher than other federal awards within this industry cannot of itself be a sufficient justification to consider them inappropriate for inclusion within the proposed modern award.
15. On 3 March 2006, prior to the commencement of the federal Work Choices amendments, the *Social and Community Services (State) Award* (SACS Award) was made by consent, by a Full Bench of the IRC. Under the Work Value Principle of the NSW State Wage Fixing Principles the award provided for three separate increases of 3.5 per cent between July 2006 and July 2008.<sup>9</sup>

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<sup>8</sup> [2009] AIRCFB 865 paras 99 &101

<sup>9</sup> *Social and Community Services Employees (State) Award*, Re [2006] NSWIRComm 87

16. As a consequence of that decision, the SACS Award was not varied pursuant to the NSW State Wage Case decisions handed down between 2006 and 2008.
  
17. By contrast, those employees who moved into the federal industrial relations system under the SACS Award/NAPSA received the increase handed down by the Australian Fair Pay Commission in its first Minimum Wage Review in 2006.<sup>10</sup> The effect of this is that within the social and community sector in NSW it is currently the position that employees whose wage rates are determined by Pay Scales are entitled to receive a higher rate of pay than those employed under the SACS Award.<sup>11</sup>
  
18. As the following table illustrates the rates of pay in the proposed modern award are considerably lower than the rates contained within the SACS Award. The disparity is even greater when compared with the relevant Pay Scales in the federal jurisdiction.

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<sup>10</sup> Note: AFPC's first Minimum Wage Review handed down an increase of \$27.36 to all APCS up to \$700 per week and an increase of \$22.04 to all APCS above \$700 per week.

<sup>11</sup> Note: The NSW *Social and Community Services (State) Award* is still to receive the increase awarded by the IRC in the 2009 State Wage Case. This is expected to increase all current rates of pay by 2.8 per cent.

<b>State Award classification</b>	<b>Rate of pay per week \$</b>	<b>Modern Award classification</b>	<b>Rate of pay per week \$</b>	<b>Reduction per week \$</b>
Community Service Worker Grade 2 Year 4	727.25	Social and community services employee Level 2 Pay point 4	698.22	29.03
Community Service Worker Grade 4 Year 4	972.06	Social and community services employee Level 4 Pay point 4	831.84	140.62
Community Service Worker Grade 6 Year 2	1,195.47	Social and community services employee Level 8 Pay point 3	1,080.16	115.31

19. The social and community services industry is a heavily award reliant sector of the workforce where a majority of employees have a minimal capacity to bargain for overaward payments. Accordingly, the NSW Government is concerned that many minimum rates of pay in the proposed modern award are significantly less than those set down in the SACS Award and its related Pay Scales. Indeed, in many instances, the proposed modern award would deliver rates of pay lower than those contained in the SACS Award prior to the work value case decision in 2006. That is of great concern given that the case was specifically intended to rectify the undervaluation of work performed in the sector.<sup>12</sup>
20. The NSW Government is concerned that should the current minimum rates of pay be included in the proposed modern award, then the Commission will have effectively disregarded the deliberations of both the IRC and the Queensland Industrial Relations Commission<sup>13</sup> and caused rates to be set that do not reflect a fair value for the work done.

<sup>12</sup> Internal analysis undertaken by NSW Office of Industrial Relations shows in December 2005, approximately half of the classifications in the NSW *Social and Community Services Employees (State) Award* prescribed higher rates of pay than the rates in the proposed modern award.

<sup>13</sup> For Queensland decision see: *A/2008/5 Queensland Community Services and Crisis Assistance Award – State 2008*, 6 May 2009

21. As the NSW Government is a major funder of the social and community sector it has a vested interest in ensuring employees in this industry are appropriately remunerated for the work performed. The NSW Government submits the best way of achieving proper outcomes for employees who will fall within the coverage of the proposed modern award is for the Commission to give full and careful consideration to the most recent deliberations about the notions of work value and pay equity before state industrial tribunals.
22. The NSW Government also wishes to bring to the Commission's attention that there are presently ongoing discussions between two tiers of government and the relevant union about possible future jurisdictional coverage within this industry. Depending upon the outcome of those discussions, the NSW Government may seek to forward a supplementary submission to the Commission as to this industry at a later date.

### **Children's Services Award 2010**

23. In previous submissions the NSW Government has drawn attention to the importance of the Commission providing reasons for its decisions to ensure that the award modernisation process is both transparent and readily understandable. The absence of reasons for the non-inclusion of certain conditions and rates of pay that have been determined by the IRC in the NSW jurisdiction to be fair and reasonable, continues to raise concerns since there is an absence of a readily understandable justification for that course.<sup>14</sup> The Commission's Statement in respect of

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<sup>14</sup> See NSW Government submission to the Australian Industrial Relations Commission, Exposure Draft Modern Awards, October 2008, paras 23-30

this exposure draft contains little rationale, or indeed particulars, as to the source of the classifications and rates of pay contained within it.

24. In broad terms, a modern award made in the terms of the exposure draft will provide for lower minimum weekly rates of pay when compared to those provided within the Pay Scales derived from the NSW *Miscellaneous Workers Kindergartens and Child Care Centres, &c. (State) Award/NAPSA*. While some employees would derive a higher rate of pay under the proposed modern award, internal analysis suggests that close to two-thirds of the classifications within the relevant Pay Scales would suffer a diminution in rates of pay.

<b>NAPSA Classification</b>	<b>Rate of pay per week \$</b>	<b>Modern Award classification</b>	<b>Rate of pay per week \$</b>	<b>Reduction per week \$</b>
Support worker	588.62	Support Worker Level 1.1	557.00	31.62
Child care worker – Pre schools (Cert III)	668.42	Children's Services Employee Level 3.1	637.64	30.78
Child Care Worker – Long Day Care Certificate III Step 5	692.74	Children's Services Employee Level 3.1	637.64	55.10
Assistant Co-ordinator - Long Day Care Qualified	916.56	Children's Services Employee Level 5.1	791.54	125.02
Co-ordinator - Long Day Care Qualified (OOSH)	985.72	Children's Services Employee Level 6.1	916.56	69.16

25. Within the NSW jurisdiction in 2006, the Full Bench of the IRC awarded a series of wage increases to the *Miscellaneous Workers Kindergartens and Child Care Centres, &c., (State) Award* under the NSW Work Value

and Equal Remuneration Principles. The increases were to be phased in over five instalments between March 2006 and March 2008.

26. In its decision, the Full Bench found that child care workers had been historically undervalued and had never been afforded the protections of properly set rates reflecting the real value of their work. With over 95 per cent of those employed in the industry being women, the Full Bench acknowledged the existence of a gender pay gap from the conception of the industry and accordingly awarded a pay increase intended to redress that undervaluation.<sup>15</sup>

27. At the 2007 NSW State Wage Case, the IRC again recognised the long standing undervaluation of work in this industry by allowing (upon application by the relevant union) increases awarded in the preceding two State Wage Case decisions to apply to the *Miscellaneous Workers Kindergartens and Child Care Centres, &c., (State) Award*.

28. In its 2007 State Wage Case decision, the Full Bench noted:

If increases resulting from State Wage Cases are not applied to that Award, the wage rates may not reflect the true value of the work as determined by the Full Bench and its decision in the Award proceedings may effectively be reversed as State Wage Case increases are progressively absorbed into the increases awarded.<sup>16</sup>

29. The NSW Government submits that the Commission should give full and careful consideration to those decisions and set rates of pay in the modern award which recognises the distinct characteristics of this

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<sup>15</sup> See *Miscellaneous Workers Kindergartens and Child Care Centres &c., (State) Award*, Re [2006] NSWIRComm 64 & [2007] NSWIRComm 118, paras 229-231

<sup>16</sup> [2007] NSWIRComm 118, para 275



industry. This should encompass the principle of equal remuneration for work of equal or comparable value in a manner consistent with those decisions and with paragraph 3(e) of the Ministerial Request (or provide clear reasons as to why such an approach is not appropriate).

## **Miscellaneous Award 2010**

30. The NSW Government supports the safeguarding of industrial conditions of employees who perform work of a type that has traditionally been covered by awards, but who are not covered by another modern award. It recognises that the current exposure draft may extend coverage to some employees who have formerly been defined as 'award free' in the NSW jurisdiction.
31. There are, however, concerns about the minimum rate of pay prescribed for Level 1 (the lowest rate in the exposure draft) and the description of the proposed award's coverage.
32. As the Commission notes in its Statement the rate of pay for Level 1 is set at the minimum wage (\$543.90) in the federal jurisdiction and will apply to employees with less than three months service.<sup>17</sup>
33. Since June 2008, there has been a State Minimum Wage Order in the NSW jurisdiction that applies to all adult employees whose employment is not subject to an industrial instrument. The minimum rate of pay for such adult employees in NSW is currently \$568.20, which is \$24.30 higher than the minimum rate contained in the exposure draft.

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<sup>17</sup> [2009] AIRCFB 865, para 82

34. It is difficult to determine in any definitive way the number of employees who do not fall within the parameters of an industrial instrument in NSW. ABS data<sup>18</sup> suggests that there are approximately 615,000<sup>19</sup> persons working in award free occupations in the NSW jurisdiction, which equates to approximately 18 per cent of the total labour force. It is further estimated that approximately 30 per cent of the total number of persons working in award free occupations, or approximately 185,000 persons, are currently receiving less than \$799 per week. It would be possible (depending upon their skill levels and status of employment) for a reasonable proportion of these persons to derive a benefit from the basic minimum rates of pay contained in the exposure draft.<sup>20</sup>
35. Internal analysis undertaken shows there are a number of occupations within the NSW jurisdiction that have traditionally been considered award free. These occupations are set out in Appendix A of this submission. The NSW Government acknowledges that, in some instances, a number of those occupations listed are covered under pre-reform federal awards or may have coverage under modern awards when they come into operation on 1 January 2010.
36. The NSW Government acknowledges the Commission has been directed by means of the ministerial request to create an award with coverage that is uncharacteristic in its scope.<sup>21</sup> There are concerns, however, regarding the uncertainty of that coverage by virtue of it being defined on an exclusionary basis, rather than referring to specific

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<sup>18</sup> ABS, Census of Population and Housing, Table 1, Selected occupations by individual income (weekly) for NSW.

<sup>19</sup> This figure should be treated with caution as it includes employees, independent contractors and owner managers.

<sup>20</sup> Note: Clause 14.1, Minimum Wages of the Exposure Draft *Miscellaneous Award 2010* prescribes the highest rate of pay at \$733.70.

<sup>21</sup> See paras 4A and 8A of Ministerial Request

occupations and callings, as is customary in common rule NSW state awards.

37. The Commission has recognised this lack of clarity in its own Statement. As it notes, 'It is unclear which employees will be covered by this award. It may be that it will have application in some areas of the workforce which have not been covered by awards before.'<sup>22</sup>
38. Should the coverage clause of the exposure draft be made in its current terms, there may well be unintended consequences, exacerbated by the lack of representation for those employers and employees who have inadvertently fallen within its coverage.
39. Under the *Fair Work Act 2009* (Cth), Fair Work Australia may make a determination varying a modern award to remove any uncertainty or ambiguity.<sup>23</sup> Given the potential doubt concerning the coverage of this exposure draft, the NSW Government suggests the Commission should alert the parties to such provisions in its decision when the *Miscellaneous Award 2010* is made in December of this year.
40. The NSW Government supports the making of a comprehensive award in particular, to cover those employees who would formerly have been afforded the protections of an award or NAPSA in NSW but have potentially been left without award coverage due to the award modernisation process. It is equally important, however, that employers (particularly those who operate small to medium size enterprises and do not have access to advice from employer organisations) are permitted to

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<sup>22</sup> [2009] AIRCFB 865, para 84

<sup>23</sup> See Section 160 of *Fair Work Act 2009* (Cth)

operate their businesses with certainty when employing staff and are fully aware of their industrial obligations.

41. As noted above, the *Miscellaneous Award 2010* may well apply to classes of employers and employees who are not accustomed to having their workplace arrangements determined by awards. The NSW Government contends that it is incumbent upon the Fair Work Ombudsman to take an active role in ensuring employers and employees who are to be covered by the award understand their workplace rights and responsibilities.

## **Restaurant Industry Award 2010**

42. On 29 May 2009, the Deputy Prime Minister wrote to the Commission advising of amendments to the ministerial request. The amended request required the Commission to create a separate modern award covering the restaurant and catering industry.
43. The coverage clause of the *Restaurant Industry Award 2010* exposure draft is broadly similar to that contained within the NSW *Restaurants, &c., Employees (State) Award*. The standard Saturday and Sunday penalty rates that were formerly contained within the *Hospitality Industry (General) Award 2010* have been reduced and reflect the rates within the NSW Award/NAPSA, with respect to full time and part time employees.
44. As noted in the NSW Government's submission of July 2009, approximately 93 per cent of employees who are employed in the broader hospitality industry work in the food and beverage sector, which includes cafes and restaurants. While the hospitality industry as a whole

is dominated by young workers, this is particularly so for the food and beverage sector, with two-thirds of all their employees aged between 16 and 24 years. Furthermore, the food and beverage sector is also characterised by a high incidence of casual employment (69 per cent) and is three times more likely to employ workers on a casual basis than the broader labour market.<sup>24</sup>

45. Given the high incidence of casual employment in this sector the NSW Government is concerned that the exposure draft contains proposed rates which if adopted would result in significant reductions in minimum hourly rates of pay for casual employees when compared to the Pay Scales derived from the *Restaurants, &c., Employees (State) Award/NAPSA*, as the following table reveals.

<b>NAPSA classification (casual)</b>	<b>Rate of pay per hour</b>	<b>Modern Award classification (casual)</b>	<b>Rate of pay per hour</b>	<b>Reduction per hour</b>
<b>Grade 2 (general waiting)</b>	<b>\$</b>	<b>Level 2 (food and beverage)</b>	<b>\$</b>	<b>\$</b>
Monday to Friday	19.42	Monday to Friday	19.18	0.24
Saturday	23.90	Saturday	23.01	0.89
Sunday	28.39	Sunday	26.85	1.54
<b>Grade 3 (specialised waiting)</b>		<b>Level 3 (food and beverage)</b>		
Monday to Friday	20.29	Monday to Friday	19.87	0.42
Saturday	24.98	Saturday	23.84	1.14
Sunday	29.66	Sunday	27.81	1.85
<b>Grade 5 (tradesperson)</b>		<b>Level 4 (Cook Grade 3 - tradesperson)</b>		
Monday to Friday	22.11	Monday to Friday	20.97	1.14
Saturday	27.22	Saturday	25.17	2.05
Sunday	32.32	Sunday	29.36	2.96

<sup>24</sup> See NSW Government submission to the Australian Industrial Relations Commission, Restaurant and Catering Industry Modern Award, 24 July 2009, paras 7-10 and Industry Analysis: Hospitality, Workplace Research Centre, July 2008, p.4

46. Part of the reason for the disparity in wage rates is that the exposure draft prescribes a 25 per cent loading for casuals, but not a one-twelfth loading in respect of annual leave. This is because the annual leave provisions of the National Employment Standards contained within the *Fair Work Act 2009* (Cth) do not apply to casual employees. By contrast, the NSW *Restaurants, &c., Employees (State) Award/NAPSA* and its related Pay Scales provides for a 20 per cent casual loading plus an additional one-twelfth loading (an aggregate 28.3 per cent loading) as prescribed by the NSW *Annual Holidays Act 1944*.<sup>25</sup> If the *Fair Work Act* does not provide annual leave for casuals then the casual loading ought to be set at a correspondingly higher rate that recognises that fact, to prevent casual employees being worse off.
47. Further, as the table above illustrates, the disparities between the two rates of pay are greater when work by casual staff is performed on weekends. This is because the proposed modern award prescribes various penalty rates to be paid on the relevant base minimum rates of pay, whereas under the NSW *Restaurants, &c., Employees (State) Award/NAPSA*, penalty rates are calculated on the loaded casual rate of pay.
48. Of further concern with respect to casual employment under the proposed modern award is the reduction in minimum engagements as compared to the NSW Award/NAPSA and the loss of casual conversion provisions.

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<sup>25</sup> Under the *Annual Holidays Act 1944* a full time or part time worker is entitled to four weeks annual holiday for each completed year of employment with an employer. A casual employee is effectively entitled to a payment in lieu of the leave entitlement determined on the basis of one-twelfth of the worker's ordinary pay for each hour worked (s4(3)).

49. In the NSW jurisdiction a large majority of state awards (including the *Restaurants, &c., Employees (State) Award*) provide minimum engagements of three hours for casual employees. Furthermore, when giving consideration to the determination of minimum engagements for part time work agreements, made under the *Industrial Relations Act 1996 (NSW)*, the IRC expressed its concerns ‘that for some employees the time and expense incurred in preparing for and travelling to and from work may in reality outweigh the remuneration and benefits which such work provides’.<sup>26</sup> For that reason, subject to a number of exceptions, the IRC chose to fix a minimum engagement of three hours per day for such workers in the 1998 State Part-Time Work Case.
50. Secure employment provisions, which establish a right for casual employees with a regular and systematic work history to seek conversion to permanent full-time or part-time employment is included in a majority of NSW state awards, including the *Restaurants, &c., Employees (State) Award*.
51. Furthermore, prior to the amended ministerial request, employees working within the restaurants sector were to be afforded casual conversion provisions under the *Hospitality Industry (General) Award 2010* which was made on 19 December 2008. In its recent Statement,<sup>27</sup> having regard to the weight of current coverage within pre-reform federal awards and other State NAPSAs, the Commission has now deemed it appropriate to exclude this important provision from a modern award that will undoubtedly cover a high number of casual employees.

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<sup>26</sup> See State Part-Time Work Case [1998] NSWIRComm 142 Note: In this case the IRC determined a part time work agreement must provide for 3 continuous hours per shift. However, a 2 hour shift can be worked if: for personal reasons the employee wants to work for 2 hours per shift or the employee’s workplace is within 5km of their home or the relevant award or enterprise agreement would otherwise allow for a 2 hour shift.

<sup>27</sup> [2009] AIRCFB 865, para 204

52. The NSW Government reiterates its previous position that the right of casual employees to elect to convert to permanent employment is an important test case standard in the NSW jurisdiction and should be applied uniformly across modern awards to provide a fair and relevant safety net of employment conditions.<sup>28</sup>

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<sup>28</sup> For the NSW Government's position re secure employment provisions see NSW Government submission to the Australian Industrial Relations Commission, July 2008, paras 18-22 & NSW Government submission to the Australian Industrial Relations Commission, Exposure Draft Modern Awards – Stage 2, February 2009, paras 21-24



## Appendix A

NSW Possible Award Free Occupations  
(Common Rule Awards Only, Enterprise Awards & Public Sector industrial instruments  
excluded)

- Accountant
- Advertising sales representatives (excludes Advertising Sales Reps & Commercial Travellers Awards)
- Aquaculture employee
- Art gallery guide
- Artist
- Auctioneer
- Baby sitter
- Charity collections (door to door etc)
- Chiropractor
- Clothing designer/pattern maker using a computer
- Debt collector
- Deckhand on fishing trawlers
- Dentist
- Disc jockey
- Driving instructor
- Drivers delivering pre-ordered food to homes and offices (own vehicle)
- Estimator
- Equipment hire company hirer (excludes retail sales)
- Financial Planning
- Gardener working in or about domestic premises (excludes working for landscape gardener)
- Grain silo attendant
- Hire car driver
- Host/ess (no sales)
- Information booth attendant (excludes Shop & Theatrical Employees Awards)
- Information technology industry employee
- Insurance sales employee (federal coverage)
- Interior designer
- Lawn mowing (residential)
- Legal professional
- Manager (exceptions apply)
- Market research employee (excludes by phone)
- Marketing and business management professions
- Medical doctor
- Medical technician (excludes Mechanical Opticians, Dental Technicians & Orthoptists Awards)
- Nanny
- Optometrist
- Pamphlet, letter, magazine or brochure delivery employee
- Personal carer, private residences (excludes Miscellaneous Workers Home Care Industry (State) Award)

- Pilot (federal coverage exists)
- Plumber's labourer
- Professional architect
- Public relations officer
- Recruitment consultant
- Research officer
- Sales representatives (selling only services)
- Sculptor
- Solicitor
- Tax consultant
- Telephone canvasser (cold canvassing for the sale of goods)
- Tour guide (excludes Theatrical Employees Recreation and Leisure Industry (State) Award)
- Travel consultant working in a travel agency (federal coverage exists)
- Tree lopper (excludes civil works)
- Tutor, including a private tutor
- Vet
- Water taxi driver

## **REQUEST UNDER SECTION 576C(1) – AWARD MODERNISATION**

### **CONSOLIDATED VERSION**

*This is a consolidated version of the Award Modernisation Request, incorporating the Variation of Award Modernisation Request under section 576C(4), issued by Julia Gillard, Minister for Employment and Workplace Relations on 26 August 2009.*

**I, JULIA GILLARD, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**, pursuant to section 576C(1) of the Workplace Relations Act 1996 (the Act), request that the President of Australian Industrial Relations Commission (the Commission) undertake award modernisation in accordance with this request.

This award modernisation request is to be read in conjunction with Part 10A of the Act.

#### **Objects**

1. The aim of the award modernisation process is to create a comprehensive set of modern awards. As set out in section 576A of the Act, modern awards:
  - (a) must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and
  - (b) together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and
  - (c) must be economically sustainable and promote flexible modern work practices and the efficient and productive performance of work; and
  - (d) must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual employment agreements;
  - (e) must result in a certain, stable and sustainable modern award system for Australia.
2. The creation of modern awards is not intended to:
  - (a) extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia;
  - (b) result in high-income employees being covered by modern awards;
  - (c) disadvantage employees;

- (d) increase costs for employers;
- (e) result in the modification of enterprise awards or Notional Agreements Preserving State Awards (NAPSAs) that are derived from state enterprise awards. This does not preclude the creation of a modern award for an industry or occupation in which enterprise awards or NAPSAs that are derived from state enterprise awards operate. However a modern award should be expressed so as not to bind an employer who is bound by an enterprise award or a NAPSA derived from a state enterprise award in respect of an employee to whom the enterprise award or NAPSA applies;
- (f) exempt or have the effect of exempting employees who are not high income employees, from modern award coverage or application, unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation.

2A In paragraph 2(e) an enterprise award means an award that regulates the terms and conditions of employment in:

- (a) a single enterprise (or part of a single enterprise) only; or
- (b) in one or more enterprises, if the employers all carry on similar business activities under the same franchise and are:
  - i. franchisees of the same franchisor; or
  - ii. related bodies corporate of the same franchisor; or
  - iii. any combination of the above.

2B In paragraph 2(e) a NAPSA derived from a State enterprise award means a NAPSA derived from a State award that regulated the terms and conditions of employment in:

- a. a single enterprise (or part of a single enterprise) only; or
- b. in one or more enterprises, if the employers all carry on similar business activities under the same franchise and are:
  - i. franchisees of the same franchisor; or
  - ii. related bodies corporate of the same franchisor; or
  - iii. any combination of the above.

### **Performance of functions by the Commission**

- 3. In accordance with section 576B of the Act, the Commission must have regard to the following factors when performing its functions under Part 10A of the Act and this award modernisation request:
  - (a) the creation of jobs and the promotion of high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
  - (b) protecting the position in the labour market of young people, employees to whom training arrangements apply and employees with a disability;
  - (c) the needs of the low paid;

- (d) the desirability of reducing the number of awards operating in the workplace relations system;
- (e) 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 or comparable value;
- (f) the need to assist employees to balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce;
- (g) the safety, health and welfare of employees;
- (h) relevant rates of pay in Australian Pay & Classification Scales and transitional awards;
- (i) minimum wage decisions of the Australian Fair Pay Commission; and
- (j) the representation rights, under the Act or the Registration and Accountability of Organisations Schedule, of organisations and transitionally registered associations.

#### **Award modernisation process**

- 4. When modernising awards, the Commission is to create modern awards primarily along industry lines, but may also create modern awards along occupational lines as it considers appropriate.
- 4A. The Commission is to create a modern award to cover employees who are not covered by another modern award and who perform work of a similar nature to that which has historically been regulated by awards (including State awards). The Commission is to identify this award as such. This modern award is not to cover those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have not traditionally been covered by awards. The modern award may deal with the full range of matters able to be dealt with by any modern award however the Commission must ensure that the award deals with minimum wages and meal breaks and any necessary ancillary or incidental provisions about NES entitlements.
- 4B. In creating modern awards, and as indicated at paragraph 3(d) above, the Commission must have regard to the desirability of reducing the number of awards operating in the workplace relations system.
- 4C. In undertaking the award modernisation process, in relation to Victoria, the Commission should take into account transitional awards, transitional Victorian reference awards and common rules that are currently in operation under Schedule 6 to the *Workplace Relations Act 1996* and that would be given effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* after 1 July 2009.

- 4D. The Commission must also ensure that modern awards (other than State reference public sector modern awards) are not expressed to cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award, or to cover employers of those employees.
5. Division 3 of Part 10A of the Act deals with the terms of modern awards, including the provisions that may be included and must not be included in modern awards. Subject to paragraphs 28 - 46 below, modern awards may also include provisions relating to the National Employment Standards (NES).
6. As soon as practicable after receiving this award modernisation request, the President will consult with the major employer and employee representative bodies on the best process to be followed by the Commission when creating modern awards. The President will then release a clear program and timetable for completing the award modernisation process.
7. Individual Commission members may be directed by the President in the award modernisation process.
8. The Commission will identify the type of work, industry and/or occupations covered by a modern award and the application of each award.
- 8A. In developing the modern award in accordance with paragraph 4A the Commission must have particular regard to paragraph 1(c) and consider how the modern award will include provisions appropriate for application to employers and employees in a range of industries and/or occupations.
9. The Commission is to have regard to the desirability of avoiding the overlap of awards and minimising the number of awards that may apply to a particular employee or employer. Where there is any overlap or potential overlap in the coverage of modern awards, the Commission will as far as possible include clear rules that identify which award applies.
10. The Commission will prepare a model flexibility term to enable an employer and an individual employee to agree on arrangements to meet the genuine individual needs of the employer and the employee.
11. Each modern award will include the model flexibility term with such adaptation as is required for the modern award in which it is included.
- 11AA The Commission must ensure that the flexibility term:
- identifies the terms of the modern award that may be varied by an individual flexibility arrangement;
  - requires that the employee and the employer genuinely agree to an individual flexibility arrangement;
  - requires the employer to ensure that any individual flexibility arrangement must result in the employee being better off overall;
  - sets out how any flexibility arrangement may be terminated;
  - requires the employer to ensure that any individual flexibility arrangement be in writing and signed:
    - (a) in all cases – by the employee and the employer;

- (b) if the employee is under 18 – by the parent or guardian of the employee;
- requires the employer to ensure that a copy of the individual flexibility arrangement be given to the employee;
- prohibits an individual flexibility arrangement agreed to by an employer and employee from requiring the approval or consent of another person, other than the consent of a parent or guardian where an employee is under 18; and
- where an employee genuinely agrees with an employer to make an individual flexibility arrangement but is either unable to read and/or sign that arrangement, a parent, guardian or representative may sign that agreement on their behalf.

11AB. The Commission can also require any appropriate additional protections for employees or groups of employees of Australian Disability Enterprises.

11A. The Commission should ensure that each modern award includes a clause that sets out a process or process 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.

12. The Commission may include transitional arrangements in modern awards to ensure the Commission complies with the objects and principles of award modernisation set out in this award modernisation request.

### **Consultation**

13. The President will consult with the Australian Fair Pay Commission and State industrial tribunals as appropriate.

14. The Commission will prepare an exposure draft of each modernised award. The Commission will, as appropriate, hold a conference or conferences with major employer and employee representative bodies for the purpose of informing the preparation of each exposure draft.

15. The Commission is to publish exposure drafts of each modernised award for the purpose of further consultation and to ensure that all stakeholders and interested parties have a reasonable opportunity to comment upon the exposure drafts. In so far as practicable, the exposure drafts will be electronically published for comment.

16. Consultation on exposure drafts of modern awards will be open and transparent.

### **Creating modern awards**

17. Upon completion of the consultation processes in relation to an exposure draft, the Commission will prepare the modern award.

18. The President may establish one or more Full Benches for the purpose of creating modern awards. Each modern award is to be created by a Full Bench.

## **Timing**

19. The Commission is to complete the award modernisation process by 31 December 2009.
20. To that end, the Commission should endeavour by 30 June 2008 to have identified a list of priority industries or occupations for award modernisation, developed a timetable for completing the award modernisation process and developed a proposed model award flexibility clause. In developing its priority list, the Commission will have regard to those industries and occupations with high numbers of Australian Workplace Agreements and NAPSAs.
21. In identifying a list of priority industries or occupations for award modernisation, developing a timetable for completing the award modernisation process and developing a proposed model award flexibility clause, the Commission is to consult with major workplace relations stakeholders and other interested parties. It is acknowledged that the Commission will require the full support and cooperation of major workplace relations stakeholders and other interested parties in order to conduct that consultation.
22. In developing a timeframe for completing the award modernisation process, the Commission should endeavour to have created by the end of December 2008 modern awards for each of the priority industries or occupations it has identified following the consultations with key workplace relations stakeholders.

## **Reporting on the progress of award modernisation**

23. The President is to publish a quarterly report outlining:
  - (a) those industries or occupations undergoing or about to commence award modernisation, including the Commission member responsible, under the auspices of the Full Bench, for those industries and/or occupations;
  - (b) the progress of award modernisation, including any significant developments during the quarter, key issues or developments scheduled for the next quarter and any adjustments made to the timetable determined by the President for the award modernisation process; and
  - (c) any other matters which the President considers appropriate.
24. The first quarterly report should relate to the June quarter 2008.

## **Minimum wages**

25. In accordance with section 576J of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees including, where appropriate, junior employees, employees to whom training arrangements apply and employees with a disability in order to assist in the promotion of employment opportunities for those employees.



## **Allowances**

26. Allowances should be clearly and separately identified in modern awards.
27. The Commission is to ensure that all modern awards include an appropriate method or formula for automatically adjusting relevant allowances when minimum wage rates are adjusted.

## **Restaurant and catering industry**

27A. The Commission should create a modern award covering the restaurant and catering industry, separate from those sectors in the hospitality industry providing hotelier, accommodation or gaming services. The development of such a modern award should establish a penalty rate and overtime regime that takes account of the operational requirements of the restaurant and catering industry, including the labour intensive nature of the industry and in the industry's core trading times.

## **Interaction with the National Employment Standards**

28. The NES consist of 10 legislated minimum conditions of employment for all employees covered by the federal system. The NES will establish a simple legislative framework of minimum entitlements with straightforward application or machinery rules that are essential to the operation of each entitlement. The NES will operate in conjunction with a relevant modern award to provide a fair safety net of minimum entitlements for award covered employees.
29. A modern award may cross reference a provision of the NES. A modern award may replicate a provision of the NES only where the Commission considers this essential for the effective operation of the particular modern award provision. Where a modern award replicates a provision of the NES, NES entitlements will be enforceable only as NES entitlements and not as provisions of the modern award.
30. A modern award cannot exclude the NES or any provision of the NES. However, a modern award can provide ancillary or incidental detail in relation to the operation of an entitlement under the NES but only to the extent that the term is not detrimental in any respect, when compared to the NES.
31. Subject to paragraphs 34 and 35 below, a modern award may include industry-specific detail about matters in the NES.
32. Subject to paragraph 34 below, a modern award may supplement the NES where the Commission considers it necessary to do so to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to the terms of this request and the existing award provisions (including under NAPSAs) for those employees, such as small business redundancy entitlements or the rate of pay at which various types of leave is taken. The Commission may only supplement the NES where the effect of these provisions is not detrimental to an employee in any respect, when compared to the NES.
33. The NES provides that particular types of provisions are able to be included in modern awards even though they might otherwise be inconsistent with the NES. The Commission

may include provisions dealing with these issues in a modern award. The NES allows, but does not require, modern awards to include terms that:

- provide for loadings to be paid to school-based trainees and school-based apprentices in lieu of certain entitlements;
- enable the averaging of hours of work over a specified period;
- provide for the cashing out of paid annual leave by an employee, provided that such terms require:
  - the retention of a minimum balance of 4 weeks' leave after the leave is cashed out;
  - the cashing out of each amount be by separate agreement in writing; and
  - payment of cashed out leave be at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone;
- require employees, or allow employees to be required, to take paid annual leave, but only if the requirement is reasonable;
- otherwise deal with the taking of paid annual leave;
- provide for the cashing out of paid personal/carer's leave, provided that such terms require:
  - the retention of a minimum balance of 15 days' leave after the leave is cashed out;
  - the cashing out of each particular amount be by separate agreement in writing; and
  - the payment of cashed out leave be at least at the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone;
- relate to the kind of evidence required to be provided by an employee when taking paid personal/carer's leave, unpaid carer's leave or compassionate leave;
- provide for the substitution of public holidays by agreement between an employer and employee;
- specify the period of notice an employee may be required to give when terminating their employment; and
- specify further situations in which section 119 (redundancy pay) does not apply to the termination of an employee's employment.

33AAA Where an industry has developed specific arrangements for termination and redundancy to reflect the way the industry operates, the Commission may specify in a modern award that section 119 of the NES does not apply in those circumstances.

33AA Where a modern award covers work performed in remote locations, the Commission should include terms that permit the roster arrangements and working hours presently operating in practice in those locations to continue after the making of the modern award.

33A The NES allows a modern award to include terms requiring an employee, or allowing an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable. Where an award covers remote work, a modern award should provide that an employer may reasonably require employees who work on a roster cycle make up of working days (on-duty period) and non-working days (off-duty period) to do either or both of the following:

- (i) to take any period or periods of annual leave of the same duration as the on-duty period under the employee's work cycle roster;
- (ii) to take annual leave on any day nominated as annual leave as part of the roster cycle.

34. In relation to long service leave, the Australian Government will, in co-operation with state governments, develop a national long service leave entitlement under the NES. In doing so, the Australian Government will also consult with major employer and employee representative bodies. Until then, long service leave entitlements derived from various sources will be protected. So as to not pre-empt the development of a nationally consistent approach, the Commission must not include a provision of any kind in a modern award that deals with long service leave.
35. Other than expressly authorised under this request, the Commission must not include a term in a modern award on the basis that it would be an allowable modern award matter where the substance of the matter is dealt with under the NES.

#### *Termination and Redundancy*

36. The NES excludes employees from redundancy entitlements where their award contains an 'industry specific redundancy scheme'. An 'industry specific redundancy scheme' in a modern award will operate in place of the NES entitlement, including the NES redundancy definition, in these circumstances."
37. An 'industry specific redundancy scheme' is one identified as such in a modern award.
38. The Commission may include an 'industry specific redundancy scheme' in a modern award.
39. In determining whether particular redundancy arrangements constitute an 'industry specific redundancy scheme', the Commission may have regard to the following factors:
- when considered in totality, whether the scheme is no less beneficial to employees in that industry than the redundancy provisions of the NES; and
  - whether the scheme is an established feature of the relevant industry.

#### *Shift workers*

40. The NES apply to shift workers and provide that a shift worker is entitled to an additional week of annual leave – that is, five weeks of annual leave for each year of completed service.
41. The NES rely on a modern award to define, where required, a shift worker as appropriate for the particular industry covered by the award.
42. In modernising awards, the Commission must have regard to whether it is appropriate to include a definition of shift worker in a modern award that applies to these types of employees for the purposes of the NES annual leave entitlements.

*Piece workers*

43. The NES apply to a piece worker.
44. The NES rely on modern awards to define a piece worker and set out rules relating to the payment of NES entitlements (based on ordinary hours of work) for a piece worker.
45. In modernising awards, the Commission must have regard to whether it is appropriate to include:
  - (a) a definition of piece worker in a modern award that applies to these types of employees (if an employee is employed on the basis of hours worked, it is not expected that such employees would be defined as piece workers); or
  - (b) a provision that would provide a calculation of payment, a payment rate, or a payment rule in relation to a piece worker employee with respect to paid leave or paid absence under the NES. For example, a method of making payment to a piece worker employee when that employee is absent on annual leave. Any provisions setting out a calculation payment must take into account the various methods by which a piece worker may be remunerated under the modern award, including by incentive payments or bonuses.

*Ordinary hours of work*

46. Many entitlements in the NES rely on modern awards to set out ordinary hours of work on a weekly or daily basis for an employee covered by the modern award. The Commission is to ensure that it specifies in each modern award the ordinary hours of work for each classification of employee covered by the modern award for the purpose of calculating entitlements in the NES. The Commission is also to ensure that ordinary hours (or the process for determining ordinary hours) are specified for each type of employment permitted by the modern award (for example, part time, casual). In the case of employees to whom training arrangements apply, the Commission should ensure that ordinary hours (or the process for determining ordinary hours) are specified for the purpose of calculating entitlements in the NES.

**Maritime Industry**

47. When creating a modern award covering the maritime industry, the Commission should ensure that the modern award covers employers on licensed, permit or majority Australian-crewed ships (as defined in item 1 of Schedule 2 to the *Fair Work Amendment Regulations 2009* (No.1)) and their employees.
48. The Commission should give consideration to the circumstances and needs of the employers and employees in the areas described in these regulations.
49. As well as giving consideration to the modern awards objective in s576A of Part 10A of the *Workplace Relations Act 1996*, the other terms of this award modernisation request and the NES, the Commission should consider whether it is appropriate to establish award provisions for employers of the crews of permit ships and their employees relating to accrued entitlements and associated arrangements. In considering this matter, the Commission should have regard to the needs of those employers and employees who may

be in Australia for relatively short periods or who are regularly moving in and out of the Australian jurisdiction.

### **Horticulture Industry**

50. The Commission should enable employers in the horticulture industry to continue to pay piece rates of pay to casual employees who pick produce, as opposed to a minimum rate of pay supplemented by an incentive based payment.
51. Where a modern award covers horticultural work, the Commission should:
  - have regard to the perishable nature of the produce grown by particular sectors of the horticulture industry when setting the hours of work provisions for employees who pick and pack this produce; and
  - provide for roster arrangements and working hours that are sufficiently flexible to accommodate seasonal demands and restrictions caused by weather as to when work can be performed.

### **Hours of work and penalty provisions – work that involves receiving calls, using call centre technology and entering and retrieving data**

52. Where a modern award applies to employees primarily performing the work of receiving calls, using call centre technology and entering and retrieving data, the Commission should establish working hours and penalty rates arrangements that are substantially based upon those that presently apply to those employees within the industry in which they work.

### **Overtime penalty rates – part-time work**

53. The Commission should ensure that the hours of work and associated overtime penalty arrangements in the retail, pharmacy and any similar industries the Commission views as relevant do not operate to discourage employers from:
  - offering additional hours of work to part-time employees; and
  - employing part-time employees rather than casual employees.