



SOUTH
AUSTRALIAN
EMPLOYMENT
TRIBUNAL

CARETAKERS AND CLEANERS AWARD

This is a consolidated version of an award of the **South Australian Employment Tribunal** published pursuant to the provisions of the *Fair Work Act 1994*.

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 Caretakers and Cleaners Award.

CLAUSE 1.2 ARRANGEMENT

OPDATE 21:02:2006 on and from

1.2.1 By clause number

Clause no. Title

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1.2.2 In alphabetical order

Clause no. Subject matter

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CLAUSE 1.3 LOCALITY, SCOPE AND PERSONS BOUND

OPDATE 04:05:2011 on and from

- 1.3.1 This Award shall apply throughout the State of South Australia.
- 1.3.2 Except as provided in clause 1.3.3, this Award shall be binding on the industry of the occupations of:
- 1.3.2.1 Adult persons employed as caretakers or cleaners; and
- 1.3.2.2 All persons employed as caretakers or cleaners by a council subsidiary or regional subsidiary established under the *Local Government Act 1999* ("the Act") and any other entity established under the Act including an entity established by any of the preceding bodies, whether as employers or employees and whether members of an association or not.
- 1.3.3 This Award shall not be binding on those persons who are subject to an enterprise agreement within the meaning of the **Act** but only to the extent of any inconsistency.

CLAUSE 1.4 COMMENCEMENT AND DURATION OF AWARD

OPDATE 04:05:2011 on and from

This Award as varied by section 99 review operates on and from 4 May 2011.

CLAUSE 1.5 DEFINITIONS

OPDATE 04:05:2011 on and from

- 1.5.1 **Act** means the *Fair Work Act 1994*.
- 1.5.2 **Commission** means the Industrial Relations Commission of South Australia.
- 1.5.3 **Continuous service** means service as prescribed in clause 1.6.
- 1.5.4 **Spouse** includes a defacto spouse, but, except in relation to parental leave, does not include a spouse from whom the employee is legally separated.
- 1.5.5 **Supervision**
- Employees are subject to three defined levels of **supervision**:
- Routine**
The employee receives broad instructions on work to be performed except when new or unusual features require more specific instructions. Work in progress is checked intermittently whilst all work is checked on completion.
- General**
The employee receives specific instructions only when new procedures or tasks are involved. Work is checked on completion.
- Limited**
The employee is subject to work checks which are generally confined to establishing that satisfactory progress is being made. Work is reviewed on completion.
- 1.5.6 **Union** means the union known as United Voice.
- 1.5.7 **Weeks pay** means the ordinary time rate of pay as prescribed in clause 4.4.1.

CLAUSE 1.6 CONTINUOUS SERVICE

OPDATE 22:12:2005 on and from

1.6.1 Maintenance of continuous service

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

- (a) Absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.
- (b) Absence of the employee from work for any cause by leave of the employer.
- (c) Absence from work on account of illness, disease or injury.
- (d) Absence with reasonable cause. Proof of such reasonable cause lies with the employee.
- (e) 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*.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.

1.6.2 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:

- (a) to the extent that the employee receives or is entitled to receive pay for the period; or
- (b) 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 shall be established comprising representatives of the employer and employees. Each **relevant association** shall be entitled to be represented.
- 2.1.3 The particular consultative mechanisms and procedures shall 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 an 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 shall be made to the **Commission**. The agreement shall be made available in writing, to all employees at the enterprise or workplace and the unions 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 shall become a schedule to this Award and the variation shall 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 agree to it;
 - 2.1.7.3 That the Award variation necessitated by the agreement meets the requirements of the "no disadvantage" test set out at Section 79 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, programme, organisation, structure or technology that are likely to have **significant effects** on employees, the employer shall 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 employer's 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 the 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 shall 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 the **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;
- (b) the expected effects of the changes on the 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 employers interests.

CLAUSE 3.2 GRIEVANCE AND DISPUTE SETTLEMENT PROCEDURE

OPDATE 22:12:2005 on and from

- 3.2.1 Subject to the provisions of the **Act**, any industrial dispute or matter likely to create a dispute shall be dealt with in the following manner:
- 3.2.1.1 Any matter which has been fully discussed between an employee or employees and the supervisor and is still in dispute shall be referred to the Job Delegate or nominated employee representative.
- 3.2.1.2 The matter in dispute shall be discussed with the supervisor concerned.
- 3.2.1.3 If unresolved at this level, the matter in dispute shall be referred to the responsible management representative who shall ensure that the matter is recorded in writing and shall take all reasonable steps to resolve the matter.
- 3.2.1.4 If the matter is still unresolved, discussions shall then occur between a responsible management representative and a **union** official if applicable.
- 3.2.1.5 If agreement has not been reached the matter shall then be discussed between a representative nominated by the employer, which may include a representative of the Association of employers to which the employer is a member and the **union** official, if applicable.
- 3.2.1.6 If still not settled the matter shall be submitted to the **Commission**.
- 3.2.1.7 Without prejudice to either party, work shall continue to be performed in accordance with the Award while the matters in dispute are negotiated in good faith.
- 3.2.1.8 Subject to the provisions of the *Occupational Health, Safety and Welfare Act, 1986*, where a matter arises concerning a bona fide safety issue, the Union should notify the employer immediately, and if the matter is not able to be resolved between the parties, the assistance of an appropriate Safety Authority should be sought.
- 3.2.1.9 An any stage of the procedures, the parties; may seek the assistance of a conciliator, a member of the **Commission**, or a mutually acceptable person.

PART 4 – EMPLOYER AND EMPLOYEES DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

CLAUSE 4.1 ANTI-DISCRIMINATION

OPDATE 22:12:2005 on and from

- 4.1.1 It is the intention of the parties to this Award to achieve the principal object of 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.
- 4.1.2 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 operation are directly or indirectly discriminatory in their effects.
- 4.1.3 Nothing in this clause is to be taken to affect:
- 4.1.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation;
- 4.1.3.2 Until considered and determined further by the **Commission**, the payment of different wages for employees who have not reached a particular age;
- 4.1.3.3 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**.
- 4.1.4 Nothing in this clause is to be taken to prevent:
- 4.1.4.1 A matter referred to in 4.1.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.
- 4.1.4.2 A matter referred to in 4.1.1 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.

CLAUSE 4.2 EMPLOYMENT CATEGORIES

OPDATE 22:12:2005 on and from

4.2.1 Probationary employment

- 4.2.1.1 Notwithstanding the provisions of clause 4.2.2, an employer may engage an employee whose contract of hiring is by the week on a probationary basis for a period of one month. In this case, employment during the first month of service shall be deemed to be a hiring by the hour, ie casual.
- 4.2.1.2 An employer seeking to engage an employee on a probationary basis as outlined in 4.2.1.1 must notify the employee of this fact in writing at the time of engagement.

4.2.2 Contract of hiring

The contract of hiring of every person (except those in casual employment) bound by this Award shall, in the absence of express contract to the contrary, be deemed to be hiring by the week, and the contract of hiring of every person in casual employment bound by this Award shall, in the absence of an express contract to the contrary, be deemed to be hiring by the hour.

4.2.3 The categories of employment are:

4.2.3.1 **Full-time employment** means employment in which the employee works regularly an average of 38 ordinary hours per week.

4.2.3.2 **Part-time employment** means employment in which the employee works for a specified number of hours per week being less than 38 hours, with a minimum engagement of 2 hours.

4.2.3.3 **Casual employment** means employment in which the employee is engaged by the hour with a minimum of 2 hours employment on each engagement. Provided that where a casual employee is employed at a single person site, the minimum engagement is one hour per engagement.

4.2.4 **Stand down of employees**

Notwithstanding anything elsewhere contained in this Award, the employer will have the right to deduct payment for any time 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.

Provided however, that this clause 4.2.4 will only take effect in respect of any period or periods for which the employer actually notifies the employee that he/she is stood down from his/her employment for one of the said reasons.

CLAUSE 4.3 TERMINATION OF EMPLOYMENT

OPDATE 22:12:2005 on and from

4.3.1 **Notice of termination by employer**

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

<i>Period of continuous service</i>	<i>Period of notice</i>
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

4.3.1.2 In addition to the notice in 4.3.1.1, 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.

4.3.1.3 Payment at the ordinary rate of pay, in lieu of the notice prescribed in 4.3.1.1 and/or 4.3.1.2 and/or 4.4.3, 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.

4.3.1.4 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.

4.3.1.5 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.

4.3.2 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.

4.3.3 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.

4.3.4 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.

4.3.5 Notice of termination by employee

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

<i>Period of continuous service</i>	<i>Period of notice</i>
Not more than 1 year	At least 1 week
More than 1 year	At least 2 weeks

or, in the absence of such notice, forfeit the wages from any monies due on termination.

CLAUSE 4.4 REDUNDANCY

OPDATE 22: 12: 2005 on and from

4.4.1 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.

4.4.2 Discussions before termination

4.4.2.1 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 the **Union**. 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 effect of any terminations on the employees concerned.

4.4.2.2 For the purposes of discussion, the employer shall as soon as practicable provide in writing to the employees concerned and the **Union**, 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.

4.4.3 Period of notice of termination on redundancy

4.4.3.1 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 4.3 provided that 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.

4.4.3.2 Should the employer fail to give notice of termination as required in this clause 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.

4.4.4 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 the 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.

4.4.5 Severance pay

4.4.5.1 Employees are entitled to severance pay as prescribed below in addition to the period of notice prescribed for termination in clause 4.3.1.1. and 4.3.

4.4.5.2 Severance pay - employees of a small business

An employee of a **small business** as defined in 4.4.1 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**:

<i>Period of continuous service</i>	<i>Severance pay</i>
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 4.4.1.

4.4.5.3 Severance pay - other than employees of a small business

An employee, other than an employee of a **small business** as defined in 4.4.1, 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**:

<i>Period of continuous service</i>	<i>Severance pay</i>
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

4.4.5.4 Additional severance pay for employees aged over 45 years with 10 years or more continuous service

In addition to the severance pay in 4.4.5.3 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 4.4.1.

4.4.5.5 Continuity of **service** will be calculated in the manner prescribed by clause 1.6.

4.4.5.6 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.

4.4.5.7 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.

4.4.6 **Time off during notice period**

During the period of notice of termination given by the employer an employee shall be allowed up to one days 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 the employee 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 apply in lieu of the provisions of 4.3.2.

4.4.7 **Alternative employment**

4.4.7.1 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.

4.4.7.2 The following provisions shall apply in cases where an employer loses a cleaning contract (the outgoing contractor) and the work performed under that cleaning contract is Awarded to another cleaning contractor who offers employment to former employees of the outgoing contractor such that those employees are performing substantially the same work as they were previously performing for the outgoing contractor.

4.4.7.2(a) Such application shall be lodged as soon as practicable, but in any event no later than one calendar month after the date of termination of such employment.

4.4.7.2(b) Specific applications granted by the **Commission** pursuant to this clause are set out in clause 2 of Schedule 4.

4.4.7.2(c) For the purposes of this clause, up to and including a 20% reduction in hours to be worked by an employee in the alternative employment shall be regarded as "suitable alternative employment" insofar as the number of hours is concerned.

4.4.7.2(d) Any dispute as to what constitutes "suitable alternative employment" in any specific instance shall be dealt with in accordance with the grievance and dispute settlement procedures set out in clause 3.2.

4.4.8 **Employee leaving during notice**

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

4.4.9 **Written notice**

The employer shall, as soon as practical, but prior to the termination of the employees 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 employees employment;
- (b) Details of the monetary entitlements of the employee upon the termination of the employee's 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 the employee terminate their employment during the period of notice.

4.4.10 **Payment in lieu treated as service**

If an employer makes payment in lieu for all or any of the period of notice prescribed by clause 4.4.3, 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 Act 1987*, as amended.

4.4.11 **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 the employee's employment had been terminated, and the employer may at the employers 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.

4.4.12 **Employees with less than one year of service**

This clause shall not apply to employees with less than 1 year's **continuous service** and the general obligation of employers should be 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.

4.4.13 **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.

4.4.14 **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.

4.4.16 **Transmission of business**

The provisions of this clause are not applicable where a transmission of business occurs and the conditions of 4.5.2 or 4.5.3 are met.

4.4.17 **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 4.4.5.3 or 4.4.5.4, then the employees will be entitled to the severance pay set out in those clauses in lieu of that set out in 4.4.5.2.

4.4.18 **Severance pay under suitable alternative employment**

Where suitable alternative employment has been obtained by the employer in the circumstances set out in 4.4.7.2, employees shall have their entitlements calculated in accordance with clauses S4.1 or S4.2 of Schedule 4.

CLAUSE 4.5 TRANSMISSION

OPDATE 22:12:2005 on and from

4.5.1 **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.

4.5.2 **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*:

4.5.2.1 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

4.5.2.2 The provisions of clause 4.4 do not apply in respect of the termination of the employee's employment with the *transmittor*.

4.5.3 **Offer of employment with the transmittee**

An employee is not entitled to benefits under clause 4.4 in respect of termination of employment resulting from *transmission* of the business, undertaking, establishment or part of it if:

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

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

4.5.3.3 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

4.5.3.4 The employee unreasonably refuses to accept the offer.

CLAUSE 4.6 SERVICE PROVISIONS (TERMINATION, CHANGE AND REDUNDANCY)

OPDATE 22:12:2005 on and from

4.6.1 **Continuity of service**

For the purposes of clauses 4.3 and 4.4 *service* means *continuous service* (as defined in clause 1.6).

4.6.2 **Service with two or more corporations**

Where an employee has been employed by two or more corporations that are associated corporations, by two or more corporations that are related to each other within in 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 4.3 and 4.4.

PART 5 – WAGES AND RELATED MATTERS

CLAUSE 5.1 CLASSIFICATION OF EMPLOYEES

OPDATE 22:12:2005 on and from

5.1.1 **Cleaner (Building Attendant) Grade 1** is an employee who at the completion of training is capable of performing work within the scope of this level.

5.1.1.1 Such an employee (to the level of the employee's training):

- is responsible for the quality of the employee's own work subject to routine supervision;
- works under routine supervision either individually or in a team environment;
- exercises discretion within the level of the employee's skills and training;
- performs those tasks customarily performed by cleaners utilising a range of materials and equipment, to clean a range of surfaces including removing food stuffs and eating utensils, in order to restore or maintain buildings in a clean and hygienic condition.

5.1.1.2 Indicative of the tasks which an employee at this level may perform, on a daily or periodic basis, are the following:

- vacuuming and spot cleaning of carpets and soft furnishings
- sweeping and mopping
- toilet cleaning
- rubbish collection
- spray buffing
- telephone cleaning and germ proofing
- cleaning of glass, both internal and external
- cleaning related minor servicing
- minor maintenance duties incidental and/or peripheral to cleaning
- ordering and distributing cleaning supplies
- performing client, tenant and public relations duties
- receiving deliveries
- collecting, servicing and maintaining shopping and/or luggage trolleys
- securing premises where such work is incidental to the cleaning function

5.1.2 **Cleaner (Building Attendant) Grade 2** is an employee who at the completion of training is capable of performing work within the scope of this level

- 5.1.2.1 Such an employee performs work above and beyond the skills of a **Building Attendant Grade One** and:
- works from complex instructions and procedures;
 - assists in the provision of on-the-job training;
 - works under general supervision either individually or in a team environment;
 - is responsible for assuring the quality of the employee's own work, and performs those tasks customarily performed by cleaners.
- 5.1.2.2 In addition, a Grade 2 employee is required to perform any of the following indicative tasks, or a combination of such tasks, for the greater part of each day or shift:
- minor maintenance duties incidental and/or peripheral to cleaning;
 - ordering and distribution of cleaning stores;
 - client, tenant and public relations duties;
 - receiving deliveries;
 - performing specialist cleaning function for the greater part of each day or shift.
- 5.1.2.3 Specialist cleaning functions means the operation of any equipment or method of cleaning outlined below:
- Carpet cleaning. Operating equipment used in any or all of the following methods: powder system or liquid shampoo systems or hot water injection and extraction systems (commonly called **steam cleaning**);
 - Cleaning windows on the exterior of multi storied buildings from swinging scaffolds, bosun's chairs, hydraulic bucket trucks or similar devices;
 - Operating "ride on" powered sweeping machines or other similar motorised cleaning or sweeping equipment;
 - Operating steam cleaning and pressure washing equipment on the exterior of buildings.
- 5.1.3 **Cleaner (Building Attendant) Grade 3** is an employee who at the completion of training is required to perform work above and beyond the skills of an employee at **Building Attendant Grade 1 or 2**.
- 5.1.3.1 An employee at this level:
- works from complex instructions and procedures;
 - assists in the provision of on-the-job training;
 - co-ordinates the work of **Building Attendants Grade 1 and Grade 2** and generally supervises the activity of all Building Attendants;
 - is responsible for ensuring the quality of the employee's own work;
 - has a knowledge of the employer's operation.

- 5.1.3.2 Indicative of the tasks which an employee at this level may perform are the following:
- Ensuring that proper maintenance procedures for building plant and equipment are observed;
 - the arrangement of service calls to ensure that building plant is operating correctly;
 - dealing with tenants and owners responsible with respect to the proper cleaning, servicing and functioning of the building;
 - co-ordinating of the work (with Leading Hands) of all Building Attendants;
 - participate in routine human resource and health and safety matters consistent with their supervisory functions;
 - be directly involved in the provision of on-the-job training.
- 5.1.4 **Caretaker/Building Attendant Grade 1** is an employee who is responsible for the security and normal maintenance of a building who may in the course of duty answer all alarms, and take preventative action to safeguard the building and contents against damage, but who is not responsible for the maintenance of any mechanical or electrical plant as defined in **Caretaker/Building Attendant Grade 2**. Employees in **Caretaker/Building Attendant Grade 1** level may undertake incidental clerical duties such as keeping records or providing reports in relation to duties performed.
- 5.1.5 **Caretaker/Building Attendant Grade 2** is an employee who in addition to being responsible for the security and maintenance of a building is also responsible for the care and maintenance of any mechanical or electrical equipment or plant such as air conditioning, motors, pumps, hot and cold water plants, various alarms systems or who has to diagnose breakdowns in the various services, and take preventative action to safeguard the building and contents against damage, even though the employee may have to call in qualified tradespersons to effect a permanent repair.
- Employees in this level may also perform bookkeeping, record keeping or liaising with the public or similar duties.
- 5.1.6 **Flexibility of work**
- Employees within each classification are to perform a wider range of duties involving work which is incidental or peripheral to their main tasks or functions.

CLAUSE 5.2 WAGE RATES

OPDATE 22:12:2005 on and from

The minimum rates of wages payable under this Award are contained in Schedule 1.

CLAUSE 5.3 TRAVELLING ALLOWANCE

OPDATE 01:04:2008 1st pp on or after

- 5.3.1 An employee who is required by an employer to work in two or more work places on any day shall be deemed to be continuously employed if she/he recommences work at the second or subsequent work places within a period of 2 hours from ceasing work at the previous work place.
- 5.3.2 Where an employee pursuant to clause 5.3.1 is required by an employer to travel between two or more work places, the employee shall be paid for the following additional amounts:
- 5.3.2.1 If required to use public transport the employer shall pay to the employee the actual fare incurred by the employee in travelling to the second or subsequent work place.
- 5.3.2.2 Where employees are required to use their own motor vehicle the employer shall pay to the employee an allowance of 59c per kilometre travelled.

CLAUSE 5.4 BROKEN SHIFT TRAVEL ALLOWANCE

OPDATE 22:12:2005 on and from

Any Cleaner/Building Attendant in casual or part-time employment who is required by an employer to perform work in two working periods on each working day shall be paid a travelling allowance of \$4.50 for each such working day where the place of residence is situated 1.5 kilometres or more distant from the place of employment

CLAUSE 5.5 MIXED FUNCTIONS

OPDATE 22:12:2005 on and from

Any employee engaged for more than half of one shift on duties carrying a higher rate than ordinary classifications shall be paid the higher rate for such shift. If for less than half of one day, shall be paid the higher rate for the time so worked.

CLAUSE 5.6 PAYMENT OF WAGES

OPDATE 22:12:2005 on and from

- 5.6.1 The employer shall not hold more than three days wages in hand upon paying the wages due to the employee at the end of each pay period.
- 5.6.2 Provided, however, that payment for over-time worked on the weekend prior to any pay day may be paid in the following pay period.
- 5.6.3 Where the employment of an employee whose contract of hiring is by the week is terminated by notice given by either party in accordance with clause 4.3, the employer shall pay to the employee all entitlements due to the employee under the provisions of the Award and the Long Service Leave Act at the completion of such notice.
- 5.6.4 Where a public holiday falls on the normal pay day the wages shall be paid on the ordinary working day preceding the normal pay day.
- 5.6.5 Where an employer pays wages by Electronic Funds Transfer, the employer will be liable for any costs associated with this form of payment.
- 5.6.6 The employer shall supply to each employee a pay-slip with each pay in accordance with the requirements of s102 of the **Act**.

CLAUSE 5.7 MEAL ALLOWANCES

OPDATE 29:07:2009 1st pp on or after

If an employee is required to work overtime for more than 2 hours on any day the employee shall be paid a meal allowance of \$10.20 provided that the employee shall not be paid such allowance if, not later than the day preceding that on which the overtime is worked, the employee was notified that the employee would be required to work such overtime. An employee who has been so notified and has provided themselves with a meal but is not required to work such overtime shall be paid \$10.20 in respect of such meal.

CLAUSE 5.8 SITE ALLOWANCE APPLICABLE AT PASMINGO - BHAS PORT PIRIE

OPDATE 22:12:2005 on and from

- 5.8.1 Employees of persons, firms or companies in the contract cleaning industry who perform contract cleaning work at the Pasminco - BHAS Smelter Site at Port Pirie shall, in addition to their rate of pay and allowance received (if any) pursuant to this Award, receive an amount of 31.5 cents per hour flat rate for each hour worked, to compensate for special disabilities encountered at the site.
- 5.8.2 The special disabilities allowance shall stand alone and shall not be included for any other purpose of this Award.
- 5.8.3 The quantum of the allowance shall be reviewed by the parties to the Award at the commencement of each calendar year, commencing 1st January 1996.

CLAUSE 5.9 SUPERANNUATION

OPDATE 22:12:2005 on and from

5.9.1 Definitions

5.9.1.1 The **Fund** shall mean:

- (a) the Australian Retirement Fund (ARF), OR
- (b) an Approved Fund which complies with the *Superannuation Industry (Supervision) Act 1993* as amended from time to time, and any scheme which may be made in succession thereto.

5.9.1.2 **Ordinary time earnings** means:

- (a) Award classification rate;
- (b) over-Award payment;
- (c) shift loading, including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;

5.9.1.3 **Ordinary time earnings** does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance.

5.9.2 Superannuation legislation

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

5.9.3 Employer contributions

An employer will make contributions for an employee in accordance with the legislative requirements referred to in 5.9.2. These contributions will be based on the employee's ordinary time earnings.

5.9.4 Voluntary employee contributions

5.9.4.1 Employees who may wish to make contributions to the **Fund** additional to those being paid by the employer pursuant to clause 5.9.3 shall be entitled to authorise the employer to pay into the Fund from the employee's wages amounts specified by the employee.

- 5.9.4.2 Upon such authorisation, the employer shall be required to make the deduction and forward it to the **Fund**.
- 5.9.4.3 Employee contributions to the **Fund** requested under these clauses shall be subject to the following conditions:
- (a) The amount of the contribution shall be expressed in whole dollars.
 - (b) After the first contribution, the amount of the contribution shall only be adjusted from the first full pay period in July each year.

PART 6 – HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK AND PUBLIC HOLIDAY WORK

CLAUSE 6.1 ORDINARY HOURS OF WORK

OPDATE 22:12:2005 on and from

6.1.1 Cleaners

6.1.1.1 In the case of cleaners employed at retail shops a maximum average of 38 per week to be worked in five shifts per week or in six shifts per week of which one shift is not more than three hours or; a maximum of 76 per fortnight to be worked in eleven shifts provided that not more than six shifts shall be worked in any week.

6.1.1.2 In the case of cleaners not falling within clause 6.1.1.1, a maximum average of 38 per week is to be worked Monday to Friday inclusive.

6.1.2 Residential Caretakers

6.1.2.1 The ordinary hours of work shall not exceed 38 in any one week or 10 in any one day; provided that the hours to be worked by caretakers are mutually agreed between the employer and the employee.

6.1.2.2 If required a residential caretaker shall unlock, open, close and lock premises for the convenient running of the building (such time shall not count as time worked), subject to the following:

- (a) That if the premises are occupied in such a way that they are required to be kept open after 10.00 p.m. such time after 10.00 p.m. shall be paid for at the appropriate overtime rate.
- (b) Provided a building is normally closed for business on Saturdays, Sundays and public holidays, time engaged (up to 2 hours per week) on security checks (if required), shall not count as time worked.
- (c) An employee shall not be required to have their family assume any of their duties at any time, except by mutual agreement.

6.1.3 Non-Residential Caretakers

The maximum number of ordinary hours to be worked for which the rate of pay fixed by clause 5.2 shall be paid shall be 38 per week.

6.1.4 The ordinary hours of work for full-time employees shall be an average of 38 hours per week to be worked on one of the following basis:

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

6.1.5 No more than 152 hours shall be worked in each four week period.

6.1.6 The method of implementation of the 38 hour week may be any one of the following:

- (a) by employees working less than 8 ordinary hours each day; or
- (b) by employees working less than 8 ordinary hours on one day each week; or

- (c) by employees working less than 8 ordinary hours on one day every two weeks; or
 - (d) by employees being rostered off during a particular work cycle so that each employee has one week day off during that cycle.
 - (e) by the employee working for 9.5 hours on four days in a one week cycle.
- 6.1.7 Such days rostered off pursuant to clause 6.1.6(d) or 6.1.6(e) may, at the discretion of the employer, be rostered in advance of a full "credit" having been accrued for the day.
- 6.1.8 In each site, 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.
- 6.1.9 In the absence of agreement at site level in respect to the implementation of the 38 hour week, the following procedure shall be applied without delay:
- 6.1.9.1 Consultation shall take place within the particular establishment concerned.
 - 6.1.9.2 If it is unable to be resolved at establishment level the matter shall be referred to the Secretary of the **Union** and a conference of the parties shall be convened without delay.
 - 6.1.9.3 In the absence of agreement either party may refer the matter to the **Commission** for resolution.
- 6.1.10 Provided that the wage rate for casual and part-time employees shall be calculated according to an hourly divisor of 1/38th of the appropriate weekly rate prescribed by clause 5.2.

CLAUSE 6.2 OVERTIME - CLEANERS

OPDATE 22: 12: 2005 on and from

- 6.2.1 Subject to the provisions of 6.1 all time worked by cleaners on Mondays to Fridays, inclusive, in excess of 38 hours or in excess of 8 hours on any day shall be paid for at the rate of time and a half, and if an employee works more than 3 hours overtime in any day, they shall be paid at the rate of double time for all work in excess of 3 hours.
- 6.2.2 All time worked by cleaners, other than those mentioned in clause 6.2.3, on a Saturday before noon shall be paid for at the rate of time and a half for the first 3 hours and double time thereafter or if worked after noon on a Saturday at the rate of double time.
- 6.2.3 Subject to the provisions of 6.1, all time worked by cleaners employed at retail shops, in excess of 38 hours in a week on a Saturday before 12.00 pm shall be paid for at the rate of time and a half for the first 3 hours and double time thereafter or if worked after 12.00 pm on a Saturday at the rate of double time. All time worked by such cleaners in excess of 8 hours before 12.00 pm on a Saturday shall be paid for at the rate of time and a half, and all time worked in excess of 8 hours after 12.00 pm on a Saturday shall be paid for at the rate of double time.

CLAUSE 6.3 OVERTIME - CARETAKERS

OPDATE 22:12:2005 on and from

- 6.3.1 Subject to the provisions of 6.1 all overtime worked in excess of thirty-eight (38) hours in any week shall be paid at the rate of time and one-half for the first three (3) hours and double time thereafter, provided that:
- (a) all overtime worked on a Sunday shall be paid at the rate of double time.
 - (b) all overtime worked on a Public Holiday shall be paid at the rate of double time and one half.
- 6.3.2 Notwithstanding clause 6.3.1 if an employee on weekly hiring and his/her employer agree time off in lieu of payment for overtime may be taken providing that:
- 6.3.2.1 The employee's agreement is recorded in writing.
 - 6.3.2.2 The employer maintains appropriate time sheets showing when the overtime was worked and when the employee took time off in lieu.
 - 6.3.2.3 The time off in lieu shall be taken at a time mutually agreed between the employee and the employer but in no case later than four (4) weeks after the overtime was worked.
 - 6.3.2.4 For the purposes of this clause the time off due to an employee in lieu of overtime shall be calculated on an hour for hour basis, i.e. one hour of overtime = one hour time off in lieu.
 - 6.3.2.5 If an employee resigns their employment or their employment is terminated by the employer after having worked overtime for which they elected to take time off, in lieu of payment but prior to taking such time off then the overtime will be paid to the employee as if he/she never agreed to take time off in lieu.

CLAUSE 6.4 SATURDAY, SUNDAY AND PUBLIC HOLIDAYS FOR CLEANERS

OPDATE 22:12:2005 on and from

6.4.1 Cleaners employed at retail shops

For all time worked within the weekly hours prescribed by clause 6.1 on a Saturday before 12.00 pm shall be paid at the rate of time and a quarter, and for all time worked after 12.00 pm on a Saturday at the rate of time and a half.

- 6.4.2 In addition to the rates prescribed by this clause an employee shall be paid the sum of 35 cents for each Saturday so employed.
- 6.4.3 All time worked by cleaners on a Sunday shall be paid for at the rate of double time.
- 6.4.4 All time worked by cleaners on a public holiday shall be paid at the rate of two and one half times the rate ordinarily applicable.

CLAUSE 6.5 SATURDAY, SUNDAY AND PUBLIC HOLIDAYS FOR CARETAKERS

OPDATE 22:12:2005 on and from

All ordinary time worked on a Saturday shall be paid at the rate of time and one-half and all ordinary time worked on a Sunday shall be paid at the rate of double time and all ordinary time worked on a public holiday shall be paid at the rate of double time and one-half.

CLAUSE 6.6 AFTERNOON AND NIGHT SHIFT WORK FOR CLEANERS

OPDATE 02:08:2012 on and from

- 6.6.1 For all time worked between 5.30 pm and 7.30 am (on the following day), the ordinary hourly rates as prescribed in S1.4 of Schedule 1 shall be increased by an amount equivalent to 30% of the full-time ordinary hourly rate.
- 6.6.2 Provided that, for work which is regularly rostered to be performed between 5.30 pm and 10.00 pm and which is regularly rostered to be completed not later than 10.00 pm, in lieu of the rate set out in 6.6.1, the ordinary hourly rates as prescribed in S1.4 of Schedule 1 shall be increased by an amount equivalent to 15% of the full-time ordinary hourly rate.

Casual employees will receive the monetary equivalent of the loadings payable to full-time and part-time employees under clauses 6.6.1 and 6.6.2.

- 6.6.3 The rates referred to in 6.6.1 and 6.6.2 are to be disregarded in calculating overtime, Saturday and Sunday rates, and personal leave.

CLAUSE 6.7 AFTERNOON AND NIGHT SHIFT WORK FOR CARETAKERS

OPDATE 21:02:2006 on and from

- 6.7.1 All non-residential caretakers engaged on non-continuous or continuous shift work shall for work in ordinary time be paid an additional 15 % of the appropriate hourly rate while working **afternoon shifts**.

Afternoon shift means any shift which continues after 6.00 pm and which concludes at or before 12 midnight.

- 6.7.2 All residential caretakers where so required to work by their employer on an **afternoon shift** (as defined) on duties other than those prescribed in clause 6.1.2.2 shall be paid an additional 15 per cent of the appropriate hourly rate whilst working that shift.
- 6.7.3 The rates referred to in this clause are to be disregarded in calculating overtime, Saturday and Sunday rates, and personal leave.

CLAUSE 6.8 TIME OFF IN LIEU OF OVERTIME

OPDATE 22:12:2005 on and from

- 6.8.1 Notwithstanding anything contained in clauses 6.2 and 6.3, time off in lieu of payment for overtime may be taken where an employee on weekly hiring and his/her employer so agree provided that:
- 6.8.1.1 The employee's agreement is recorded in writing.
- 6.8.1.2 The employer maintains appropriate time sheets showing when the overtime was worked and when the employee took time off in lieu for such overtime.
- 6.8.1.3 The time off in lieu shall be taken at a time mutually agreed between the employee and employer but in any case no longer than four (4) weeks after the overtime is worked.
- 6.8.1.4 For the purposes of this clause the time off due to an employee on weekly hiring shall be calculated on an hour for hour basis, i.e. one hour of overtime = one hour time off in lieu.

- 6.8.1.5 If an employee resigns their employment or their employment is terminated by the employer after having worked overtime for which they elected to take time off in lieu of payment but prior to taking such time off, then the overtime will be paid to the employee as if he/she never agreed to take time off in lieu.

CLAUSE 6.9 EXTRA RATES

OPDATE 22:12:2005 on and from

Extra rates in this Award are not cumulative so as to exceed double time and a half ordinary rates.

CLAUSE 6.10 MEAL BREAKS AND CRIB BREAK

OPDATE 22:12:2005 on and from

6.10.1 Meal breaks

- 6.10.1.1 An unpaid meal break of not less than 30 minutes and not more than 60 minutes duration will be provided to employees who are rostered to work individual shifts in excess of 5 consecutive hours. Such meal breaks will not be regarded as working time.
- 6.10.1.2 The duration of the meal break prescribed above will be determined by agreement between the employer and employee or, failing this, at the employer's discretion based on the operational requirements of the job. The break will commence not later than 5 hours after the commencement of the shift.
- 6.10.1.3 Where a meal break is not provided within 5 hours of commencement of duty, the employee will be offered a paid break of 20 minutes duration to commence as soon as possible after the expiration of that 5 hour period.
- 6.10.1.4 The provision outlined at 6.10.1.3 must not be utilised as an on-going arrangement in substitution for the Meal Break arrangements outlined in this clause.
- 6.10.1.5 Employees engaged for less than 5 hours on each shift will not be entitled to a meal break.

6.10.2 Crib breaks

- 6.10.2.1 An employee required to work overtime for more than 2 hours shall, before starting overtime after working ordinary hours, be allowed a crib break of 20 minutes, which shall be paid for at ordinary rates.
- 6.10.2.2 Provided that the requirement to observe the aforementioned crib break may be waived by mutual agreement between the employer and the employee.

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

7.1.1.1 Subject to 7.1.1.2, a period of 28 consecutive days paid leave shall be allowed annually to every employee on a weekly contract of hire after 12 months continuous service (less the period of annual leave).

7.1.1.2 Employees on a weekly contract of hire whose daily hours of work during at least two weeks out of three usually finish after 10.00 pm or who works on seven days of the week shall be entitled to an additional seven days of paid leave.

7.1.1.3 Part-time employees shall be entitled to the provisions of this clause and related clauses on a pro rata basis.

7.1.2 Annual leave exclusive of public holidays

Subject to this clause the annual leave prescribed by this clause shall be exclusive of the public holidays named in this Award and if any such holiday falls within an employees' period of annual leave there shall be added to that period one day for each such holiday falling as aforesaid.

7.1.3 Calculation of service

7.1.3.1 Service before the date of this variation shall be taken into consideration for purposes of calculating annual leave but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or a payment in lieu thereof has been allowed or made.

7.1.3.2 Where the employer is a successor or assignee or transmittee of a business, if an employee was in the employment of the employers predecessor at the time when he became such successor or assignee or transmittee the employee in respect of the period during which the employee was in the service of the predecessor shall for the purposes of this clause be deemed to be in the service of the employer.

7.1.4 Calculation of month

7.1.4.1 For the purposes of this clause a month commences on the day of the month an employee commenced and ends one calendar month later. If there is no such day in the subsequent month that day will be taken to be is the last day of the subsequent month.

7.1.5 Leave to be taken

7.1.5.1 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.

7.1.6 Time of taking annual leave

7.1.6.1 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 clause 7.5.

- 7.1.6.2 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.
- 7.1.6.3 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.
- 7.1.6.4 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.
- 7.1.7 Leave allowed before due date**
- 7.1.7.1 An employer may allow annual leave to an employee either wholly or in part 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 twelve months in respect of which annual leave had been taken before it accrued.
- 7.1.7.2 If an employee's employment is terminated having been granted annual leave in advance of qualifying for the annual leave the employer has the right to deduct from whatever remuneration is payable upon termination, an amount of 1/12th of the payment made for annual leave granted in advance, for each month of the qualifying period not served by the employee.
- 7.1.8 Payment for period of leave**
- 7.1.8.1 Each employee before going on leave shall be paid such wages as are payable in respect of the period due to and being taken by the employee. For the purposes of this clause and clauses 7.1.9 and 7.1.10 wages shall be at the rate prescribed by clause 5.2 for the occupation in which the employee was ordinarily employed immediately prior to the commencement of his leave or the termination of his employment as the case may be.
- 7.1.8.2 An employee is also entitled to payment of a loading equivalent to 17.5% of the payment provided for at 7.1.8.1 at the time that payment is made.
- 7.1.8.3 Where an employee would have received shift loadings and weekend penalties had the employee not been going on leave during the relevant period and such loadings would have entitled the employee to a greater amount than the loading of 17.5%, the shift and penalty loadings are to be substituted for the 17.5% loading prescribed in 7.1.8.2.
- 7.1.8.4 Annual leave loading is payable on leave accrued in accordance with 7.1.1.
- 7.1.8.5 Part-time employees shall be paid on the basis of 4/48ths of their annual average ordinary hours worked within the period determining the entitlement to annual leave.
- 7.1.8.6 Provided however that where such employee's service is terminated that employee's calculation for entitlement shall be made on the basis of such weeks worked as the period of service bears to the average ordinary hours worked in such period.
- 7.1.8.7 The loading as prescribed at 7.1.8.2, 7.1.8.3 and 7.1.8.4 above shall apply to part-time employees and pro rata leave.

7.1.9 Proportionate leave on termination

7.1.9.1 For employees engaged employed as caretakers and cleaners, the following shall apply:

7.1.9.1(a) Where employment is terminated, an employee subject to 7.1.1.1 shall be paid at the ordinary rate of wage for 12.66 hours for each completed month of service and in respect of which leave has not been granted under this clause.

7.1.9.1(b) Where employment is terminated, an employee subject to 7.1.1.2 shall be paid at the ordinary rate of wages for 15.83 hours for each completed month of service and in respect of which leave has not been granted under this clause. Part-time employees shall be entitled to the provisions of this clause on a pro rata basis.

7.1.9.2 Provided that persons employed as cleaners by persons, firms or companies in the contract cleaning industry shall receive the following:

7.1.9.2(a) Where the contract of employment is terminated, an employee subject to 7.1.1.1 shall be paid 2.923 hours for each completed week of service and in respect of which leave has not been granted under this clause.

7.1.9.2(b) Where the contract of employment is terminated, an employee subject to 7.1.1.2 shall be paid 3.65 hours for each completed week of service and in respect of which leave has not been granted under this clause.

7.1.9.3 Part-time employees shall be entitled to the provisions of this clause on a pro rata basis.

7.1.10 Annual close-down

Where an employer closes down his establishment, or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the establishment or section or sections concerned, the following provisions shall apply:

7.1.10.1 The employer may, by giving not less than six weeks notice of the intention to stand off all employees in the plant or section or sections concerned for the duration of the close-down, allow those who are not then qualified for a full entitlement to annual leave in accordance with 7.1.1 paid leave calculated in accordance with 7.1.9 as appropriate.

7.1.10.2 An employer may close down his plant for one or two separate periods for the purpose of granting annual leave in accordance with this clause. If the employer closes down his plant in two separate periods one of those periods shall be for a period of at least twenty-one consecutive days. Provided that where the employer and employees agree, the employer may close down his plant in accordance with this clause in three separate periods, none of which need be of twenty-one consecutive days. In such cases, the employer shall advise the employees of the proposed dates of each close-down.

7.1.10.3 An employee who has then qualified for a full entitlement to annual; leave in accordance with 7.1.1 and has also completed a further month or more of **continuous service** shall be allowed such leave and also be paid leave calculated in accordance with 7.1.9, as appropriate, for continuous service completed since the end of that employee's last 12 month qualifying period.

7.1.10.4 The next twelve-monthly qualifying period for each employee affected by such close-down shall commence from the day on which the establishment or section or sections concerned is re-opened for work after the first close-down.

7.1.10.5 If in the first year of his or her service with an employer an employee is allowed proportionate annual leave under 7.1.10.1, and subsequently within such year leaves his or her employment or his or her employment is terminated by the employer, the employee shall be entitled to the benefit of clause 7.1.9, subject to adjustment for any proportionate leave which the employee may have been allowed pursuant to this clause.

7.1.11 Part close-down and rostered leave

7.1.11.1 An employer may close down operations, or a section or sections of operations, for a period of at least twenty-one consecutive days, and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.

7.1.11.2 An employer may close down operations, or a section or sections of operations, for a period of less than twenty-one consecutive days, and allow the balance of the annual leave due to an employee in one or two continuous periods either of which may be in accordance with a roster. In such case, the granting and taking of annual leave shall be subject to the agreement of the employer and the employee. The employer shall advise the employee of the proposed date of the close-down or close-downs and the details of the annual leave roster.

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 (other than an employee in casual employment) who is unable to attend or remain at his place of employment by reason of **illness** and who complies with the conditions prescribed in 7.2.2 shall be granted paid leave not exceeding the personal leave credit of that employee.

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

7.2.2.1 The employee shall, as soon as practicable, either before or at the usual time of commencing work (and in any event not later than 24 hours after the commencement of the absence) advise the employer of his or her inability to attend for duty and, as far as practicable, of the nature of the **illness** and the estimated duration of the absence; and

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

7.2.2.3 Notwithstanding the above, the employee must notify the employer of absence from work as soon as the employee becomes aware of the absence or intended absence from work. In the case of employees engaged to work afternoons or evenings this notification must be before the commencement of their shift.

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

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 accumulated 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 such year, be entitled to a grant of leave under this clause by that employer equal to ten days on full pay.

7.2.6 Part-time employees

7.2.6.1 A part-time employee (as defined) shall be entitled to personal leave based on the same quantum of leave as is prescribed for a full-time employee but calculated on a pro rata basis according to the number of hours worked per week and as set out in the table hereunder:

TABLE

<i>Hours worked per week</i>	<i>Hours of personal leave entitlements per week</i>
15	0.58
16	0.62
17	0.65
18	0.69
19	0.73
20	0.77
21	0.81
22	0.85
23	0.88
24	0.92
25	0.96
26	1.00
27	1.04
28	1.08
29	1.12
30	1.15
31	1.19
32	1.23
33	1.27
34	1.31
35	1.35
36	1.38
37	1.42
38	1.46

For the purpose of personal leave entitlement when hours worked per week are less than 15 the following formula shall apply.

Entitlement per week for 38 hours employment = 1.46 hours

e.g. 13 hours of work = $\frac{13}{38} \times 1.46 = .50$ hours

7.2.6.2 In the calculation of the quantum of leave at the commencement of each succeeding year of continuous service, the hours then being worked by the employee, or which are agreed to be worked, each week shall be the basis of the calculation. If at the end of any such year the number of hours worked on average each week is materially different from the number used on that basis the credit shall be altered accordingly.

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 employee's **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 Employer's responsibility to inform

- 7.4.2.1 On becoming aware that:
- (a) an employee is pregnant; or
 - (b) an employee's **spouse** is pregnant; or
 - (c) an employee is adopting a **child**,
- an employer must inform the employee of:
- (i) the employee's entitlements under this clause; and
 - (ii) the employee's 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 employee's 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 employee's **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 employee's **spouse**.
- 7.4.4.3(c) In the case of **extended adoption leave**, by any period of **extended adoption leave** taken by the employee's **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 employee's **spouse**, as appropriate;
- (b) states that the employee or the employee's **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 employee's **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 employee's 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 employee's 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 employee's **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 employee's **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 employee's 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 **child's** first birthday.
- 7.4.7.9 **Adoption leave** cannot extend beyond the **child's** 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 employee's **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 employee's 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 employee's 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 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.

7.4.13.3 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 7.4.13.1.

7.4.14 **Return to work after parental leave**

7.4.14.1 An employee must confirm the employee's 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 employee's 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 employee's 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 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.

7.4.15.3 The employee's request and the employer's 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 employee's 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 employee's **family** who need the employee's 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 employee's care and support of 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 person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee 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 7.1.6 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.

CLAUSE 7.6 PUBLIC HOLIDAYS

OPDATE 22:12:2005 on and from

An employee on a weekly contract of hiring shall be entitled (without loss of pay) to the following Public Holidays which occur during his/her employment: New Year's Day, Australia Day, Good Friday, the day after Good Friday, Easter Monday, Anzac Day, Adelaide Cup Day, Queen's Birthday, Labour Day, Christmas Day and Proclamation Day, or any other day which by Act of Parliament or proclamation may be created a public holiday throughout the State of South Australia, or which may be substituted for any of such holidays.

CLAUSE 7.7 CHRISTMAS DAY FALLING ON A SATURDAY OR SUNDAY

OPDATE 22:12:2005 on and from

7.7.1 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.

7.7.1.1 **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.

7.7.1.2 **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.

7.7.2 Full-time employees

7.7.2.1 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**.

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

- (a) in addition to the normal Saturday or Sunday payment (as appropriate), a Christmas Day loading of one half of an ordinary day's pay, and
- (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 day's pay or an additional day's leave with pay.

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

- (a) for the **actual day**, the payment described in 7.7.2.2(a), and,
- (b) for the **substitute day**, either public holiday rates in accordance with 6.5 (as appropriate) or be granted an additional day's leave in lieu of the public holiday rates.

7.7.3 Part-time employees

7.7.3.1 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**.

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

- (a) the payment described in 7.7.2.2(a); and
- (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.

7.7.3.3 If the benefits of 7.7.3.2(a) or (b) apply, an employee who works on the **substitute day**, will be paid at ordinary time rates for such day.

CLAUSE 7.8 TRADE UNION TRAINING LEAVE

OPDATE 22:12:2005 on and from

7.8.1 Accredited **union** delegates who have completed 12 months **continuous service** with their current employer shall be allowed leave of up to 5 working days per year to attend accredited trade union training courses which contribute to the employee's understanding of industrial relations issues.

The following conditions will apply to the granting of leave for trade union training purposes:

- 7.8.1.1 Not less than 4 weeks notice shall be given by the employee to the employer of the commencement date of the training course.
- 7.8.1.2 An employee will not be entitled to payment for attendance at a course unless otherwise rostered to work on the day, and at the hours, concerned.
- 7.8.1.3 An employer must be able to make adequate staffing arrangements during the period of leave involved.
- 7.8.1.4 At any one time, no more than one employee of each employer covered by the Award may be absent on such leave.
- 7.8.1.5 Where an employer employs up to 20 employees covered by this Award, there shall be no requirement to grant leave under this clause.
- 7.8.1.6 Subject to 7.8.1 above:
- (a) Where an employer employs more than 20 employees but less than 100 employees covered by this Award, the employer may grant up to 5 **days leave** in any one year as an aggregate total for all employees for the purpose of their participation in relevant trade union training courses.
 - (b) Where an employer employs more than 100 employees but less than 200 employees covered by this Award, the employer may grant up to 10 **days leave** in any one year as an aggregate total for all employees for the purpose of their participation in relevant trade union training courses.
 - (c) Where an employer employs more than 200 employees covered by this Award, the employer may grant up to 15 **days leave** in any one year as an aggregate total for all employees for the purpose of their participation in relevant trade union training courses.
- 7.8.1.7 A **days leave** shall be calculated on the basis of the normal hours which would have been worked by the employee but for the granting of leave under this clause.
- 7.8.1.8 Trade union training leave is non-cumulative and non-transferable. An employer may require proof of attendance at the end of the course.
- 7.8.3 An employer shall not be liable for any additional costs other than the payment of ordinary time earnings (excluding penalties) to the employee whilst on leave.
- 7.8.4 An application for leave pursuant to this clause shall be in writing and include:
- (a) the name of the employee seeking leave;
 - (b) period of leave sought (including daily starting and finishing times);
 - (c) title, description, agenda and location of the course or courses to be attended;
 - (d) the name of the organisation conducting the course; and
 - (e) a copy of an outline of the course to be attended.

- 7.8.5 Leave taken pursuant to this clause shall be counted as ***continuous service*** for all purposes of this Award and shall not affect the entitlement of the employee concerned to other forms of leave provided by this Award.

PART 8 – TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

CLAUSE 8.1 ACCOMMODATION, FUEL AND LIGHT FOR CARETAKERS

OPDATE 22:12:2005 on and from

- 8.1.1 An employer shall not require a resident caretaker to vacate their accommodation for the use of a relieving person during an annual leave period, except by mutual agreement.
- 8.1.2 The employer shall provide a residential caretaker and their immediate family with reasonable accommodation and his reasonable needs in respect of fuel, lighting, and power without charge to such employee.
- 8.1.3 Reasonable accommodation shall mean living accommodation in a well kept establishment with adequate furnishings, good bedding, good floor coverings, good lighting and heating.

PART 9 – OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

CLAUSE 9.1 UNIFORMS

OPDATE 22:12:2005 on and from

- 9.1.1 If an employer requires an employee to wear a uniform, the employer shall provide such garment, which shall remain the property of the employer.
- 9.1.2 Items of clothing issued shall be replaced on production of proof that the previous issue is unserviceable by fair wear and tear.
- 9.1.3 Employees shall be supplied with suitable rubber gloves for the cleaning of sanitary conveniences.
- 9.1.4 Where employees are required to work in water they shall be supplied free of charge with rubber boots which shall remain the property of the employer.
- 9.1.5 Receipt for issue of the aforementioned items of clothing will be acknowledged by the employees on an appropriate record maintained by the employer for the purpose.
- 9.1.6 Deficiencies or missing items will be paid for by employees at 60 per cent cost of replacement.
- 9.1.7 On the voluntary or other termination of an employee's services, the employee will return to the employer all current items of personal issue in their possession.
- 9.1.8 Where an employee upon termination fails to return a uniform or other company property supplied by the employer, the employer shall have the right to deduct the depreciated value of the uniform or other company property not returned from the employee's termination pay.
- 9.1.9 Provided that in the event of any dispute arising under this clause, the onus shall be upon the employer to keep appropriate records, in order to rely upon the right of deduction.

CLAUSE 9.2 TOOLS

OPDATE 22:12:2005 on and from

All necessary tools shall be supplied by the employer.

PART 10 – AWARD COMPLIANCE AND ASSOCIATION RELATED MATTERS

CLAUSE 10.1 POSTING AND AVAILABILITY OF AWARD

OPDATE 22:12:2005 on and from

- 10.1.1 An employer must ensure that a copy of this Award, as varied from time to time, and any enterprise agreement to be read in conjunction with the Award, is exhibited at all times in the workplace, at a place that is reasonably accessible to employees.
- 10.1.2 An employer must, at the request of an employee, produce a copy of the Award, and any enterprise agreement to be read in conjunction with the Award, as soon as practicable after the request, and allow the employee a reasonable opportunity to examine it.
- 10.1.3 If an employee asks the employer for a copy of the Award, or variation to the Award, or an enterprise agreement to be read in conjunction with the Award, or a variation to the agreement, the employer must give the employee a copy of the Award or agreement, or variation within 14 days after the request, and the employee will be entitled to retain the copy of the Award, agreement or variation.
- 10.1.4 An employer is not obliged to give an employee a copy of the Award, agreement or variation if the employer has given the employee a copy of the Award, agreement or variation within the preceding 12 months.

CLAUSE 10.2 TIME AND WAGE RECORDS

OPDATE 21:02:2006 on and from

- 10.2.1 An employer must keep time and wage records for all employees including the following information:
 - (a) A record of the names, addresses and date of commencement of the employees.
 - (b) A record (a **time book**) identifying each employee's times of beginning and ending work on each day (including a note of time allowed for meals and other breaks), the rate of pay and the wages paid to each employee and the date of each payment of wages.
 - (c) A record of annual leave, personal leave, parental leave, trade union training leave, and long service leave granted to each employee.
 - (d) A record of the date of birth of employees under 21 years of age.
 - (e) Any entitlement to long service leave.
 - (f) Long Service Leave records are required to be kept by the employer in the forms as set out in the Long Service Leave Regulations 2002, unless the employer promptly and accurately records the information required by these forms in wages, leave or other similar records kept by the employer.
 - (g) The time book must, if practicable, be verified by signature of the employee on, or as soon as possible after, each pay day, in order to verify the correctness of entries.
 - (h) Upon reasonable request of an employee, former employee, or an authorised inspector, an employer must produce a record relating to the employee or former employee and permit the employee, or inspector to make copies of, or take extracts from the record.

- (i) When a business, or part of a business, is transferred or assigned, the transferor or assigner must transmit to the transferee or assignee all records relating to the employees who become employees of the transferee or assignee.
- (j) If an employee is paid on an hourly basis, or on a basis where the rate of pay varies according to time worked, the employer must, when the employer makes a payment of wages, provide the employee with a written record showing the number of ordinary and overtime hours worked by the employee in the period, the rate of pay on which the payment is based and the amount of any superannuation contributions.

CLAUSE 10.3 RIGHT OF ENTRY

OPDATE 22:12:2005 on and from

10.3.1 An official of an association of employees may enter an employer's premises at which one or more members of the association is employed and:

10.3.1.1 Inspect time books and wages records; and

10.3.1.2 Inspect the work carried out by employees who are members of the association and note the conditions under which the work is carried out; and

10.3.1.3 If specific complaints of non-compliance with the Award have been made, interview employees who are members of the association about the complaints.

10.3.2 Before an official exercises these powers the official must give reasonable notice in writing to the employer of at least 24 hours unless some other period is reasonable in the circumstances of the particular case.

10.3.3 A person exercising these powers must not interrupt the performance of work at the workplace; or

- harass an employer or employee; or
- hinder or obstruct an employee in carrying out any duty of employment; or
- Use or threaten to use force in relation to an employer, an employee or any other person.

10.3.4 An employer may apply to the **Commission** seeking the withdrawal of the relevant powers from an official or from an association in the event of abuse of any of these powers.

SCHEDULE 1 - WAGES

OPDATE 01:07:2018 1st pp on or after

PART A - CARETAKERS**S1.1 Wages**

The minimum rate of wage for work in ordinary time payable to caretakers shall be as follows:

<i>Caretaker</i>	<i>Total per week</i> \$
Caretaker Grade 1	810.60
Caretaker Grade 2	854.50

S1.2 Additional rates

S1.2.1 All time worked by any caretaker in working a lift shall be regarded as time worked by the employee as a caretaker.

S1.2.2 Where a caretaker is required to supervise cleaners he/she shall be paid the following additional rates:

	<i>Total per week</i> \$
(a) if in charge of 3 to 10 employees	37.80
(b) if in charge of 11 to 20 employees	56.40
(c) if in charge of over 20 employees	72.00

PART B - CLEANERS

S1.3 The minimum rates of wages for work in ordinary time payable to cleaners shall be as follows:

<i>Building Attendant</i>	<i>Total per week</i> \$
Grade 1	783.30
Grade 2	810.60
Grade 3	854.50

S1.4 Hourly rates

S1.4.1 A cleaner in part time employment = 1/38th of the weekly rate.

S1.4.2 To give effect to the decision in the *Casual Loading Case*, [2012] SAIRComm 1, the rate of pay of casual employees will be 1/38th of the weekly rate plus a casual loading of 25%.

S1.5 Supervisory rates

Where a Grade 1 or Grade 2 Cleaner/Building Attendant is required to supervise other Cleaners/Building Attendants the following additional rates shall be paid:

	<i>Extra allowance per week \$</i>
(a) if in charge of 3 to 10 employees	37.80
(b) if in charge of 11 to 20 employees	56.40
(c) if in charge of over 20 employees	72.00

NOTE: In calculating changes in rates, the following shall be observed:

S1.5.1 In relation to any rates expressed as weekly rates, the result shall be rounded off into multiples of 10 cents; less than 5 cents going to the lower multiple, and 5 cents or more going to the higher.

S1.5.2 In relation to any rates expressed as hourly rates, the result shall be calculated to the nearest cent.

S1.6 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].

S1.7 Safety net adjustments

The rates of pay in this Award include the safety net adjustment payable under the *2018 State Wage Case and Minimum Standard for Remuneration*. This 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, currently operating enterprise flexibility 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 the existing or previous State Wage Case principles, previous General Reviews of Award Wages and the *2018 State Wage Case and Minimum Standard for Remuneration* excepting those resulting from enterprise agreements or Award variations to give effect to enterprise agreements, are not to be used to offset safety net adjustments.

S1.8 Economic incapacity applications

Any employer or group of employers bound by an Award may apply to, temporarily or otherwise, reduce, postpone and/or phase-in the application of any increase in labour costs flowing from the *2018 State Wage Case and Minimum Standard for Remuneration* on the grounds of serious economic adversity. The merit of such application will be determined in the light of the particular circumstances of each case and the impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party may make such an application under s 31A of the *South Australian Employment Tribunal Act 2014* (the SAET Act) in the form approved under rule 34 of the *South Australian Employment Tribunal Rules 2017*. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench of SAET.

Any decision to temporarily postpone or reduce an increase will be subject to a further review, the date of which will be determined by SAET at the time it decides any application under this provision.

An individual employer making an application pursuant to this provision may make a request under s 55(2) of the SAET Act that the hearing of the matter be conducted in private and/or that some or all of the evidentiary material produced in the case not be available for inspection. Any such request will be determined by SAET in the circumstances of each case.

SCHEDULE 2 – TRAINING WAGE ARRANGEMENTS

OPDATE 22:12:2005 on and from

CLAUSE S2.1 TITLE

This Schedule shall be known as the Caretakers and Cleaners Award Training Wage Arrangements Schedule.

CLAUSE S2.2 ARRANGEMENT

Clause No. Title

S2.1	Title
S2.2	Arrangement
S2.3	Application
S2.4	Period of operation
S2.5	Definitions
S2.6	Training conditions
S2.7	Employment conditions
S2.8	Wages
S2.9	Disputes settling procedures

CLAUSE S2.3 APPLICATION

S2.3.1 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.

S2.3.2 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 S2.3.2.

S2.3.3 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**.

S2.3.4 Nothing in this Schedule shall be taken to replace the prescription of training requirements in the Award.

CLAUSE S2.4 PERIOD OF OPERATION

This Schedule shall operate on and from 22 December 2005.

CLAUSE S2.5 DEFINITIONS

S2.5.1 **Act** means the *Training and Skills Development Act 2003* or any successor legislation.

- S2.5.2 **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.
- S2.5.3 **T&SC** means the Training and Skills Commission under the **Act**.
- S2.5.4 **Award** means the Caretakers and Cleaners Award.
- S2.5.5 **Commission** means the Industrial Relations Commission of South Australia.
- S2.5.6 **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.
- S2.5.7 **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**.
- S2.5.8 **Training agreement** means a Contract of Training for a **traineeship** made between the employer and a **trainee**, which is registered with the **T&SC**.
- S2.5.9 **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.
- S2.5.10 **Training plan** means a programme of training which forms part of a **training agreement** registered with the **T&SC**.
- S2.5.11 **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**.
- S2.5.12 **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 S2.6 TRAINING CONDITIONS

- S2.6.1 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**.
- S2.6.2 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.
- S2.6.3 The employer shall provide a level of supervision in accordance with the **traineeship Agreement** during the **traineeship** period.

S2.6.4 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 S2.7 EMPLOYMENT CONDITIONS

S2.7.1 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**. A part-time **trainee** shall be engaged in accordance with the provisions of clause S2.11, Part-Time Traineeships, of this Schedule.

S2.7.2 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.

S2.7.3 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**.

S2.7.4 The **trainee** shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the **approved training**.

S2.7.5 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.

S2.7.6 Trainees working overtime

S2.7.6.1 Reasonable overtime may be worked by the **trainee** provided that it does not affect the successful completion of the **approved training**.

S2.7.6.2 No **trainee** shall work overtime or shiftwork on their own unless consistent with the provisions of the Award.

S2.7.6.3 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**.

S2.7.6.4 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.

S2.7.7 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.

S2.7.8 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 S2.8 WAGES

S2.8.1 The wage payments hereunder shall only apply to **trainees** while they are undertaking an approved **traineeship** which includes **approved training** as defined in this Schedule.

S2.8.2 The wages payable to **trainees** shall be 80% of those of the Cleaners (Building Attendant) Grade 1 rate for all time worked including such time as is spent on **approved training**.

S2.8.3 Time spent on **approved training** shall be 20% of the total time of the period of engagement of the employee under the **traineeship** agreement.

S2.8.4 The **trainee** shall be entitled to overtime and shift penalty rates and allowances prescribed by the relevant Award. The **trainee** wage shall be the basis for the calculation of overtime and/or shift penalty rates.

S2.8.5 In cases where a **trainee** accepts a full-time position, the following will apply:

The proportion of training time shall increase proportionate to the increase in overall weekly hours. That is, the **trainee** shall increase the time spent on **approved training** to 20% of 38 hours per week, or one day per week.

CLAUSE S2.9 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**.

SCHEDULE 3 - SUPPORTED WAGE PROVISIONS

OPDATE 01:07:2018 1st pp on or after

CLAUSE S3.1 DEFINITIONS

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:

- S3.1.1 **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".
- S3.1.2 **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.
- S3.1.3 **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.
- S3.1.4 **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.

CLAUSE S3.2 ELIGIBILITY CRITERIA

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**.

(The 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 current employment).

The Award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 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**, in accordance with the requirements of the *Disabilities Service Act 1986* and the Standard contained therein, as amended from time to time.

CLAUSE S3.3 SUPPORTED WAGE RATES

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

<i>Assessed capacity (clause S3.4)</i>	<i>% of prescribed Award rates</i>
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 not be less than \$86.90 per week).

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

CLAUSE S3.4 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:

- (a) the employer and a union party to the Award, in consultation with the employee or, if desired by any of these;
- (b) the employer and an **accredited Assessor** (as defined) acceptable to the employee and the employee's advisers and to the employer.

CLAUSE S3.5 LODGEMENT OF ASSESSMENT INSTRUMENT

S3.5.1 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 SAET.

S3.5.2 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 10 working days.

CLAUSE S3.6 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**.

CLAUSE S3.7 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.

CLAUSE S3.8 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.

CLAUSE S3.9 TRIAL PERIOD

- S3.9.1 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 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- S3.9.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment.
- S3.9.3 The minimum amount payable to the employee during the trial period shall not be less than \$86.90 per week.
- S3.9.4 Work trials should include induction or training as appropriate to the job being trialled.
- S3.9.5 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 clause S3.4.

SCHEDULE 4 - VARIATION OF SEVERANCE PAY PROVISIONS

OPDATE 22:12:2005 on and from

CLAUSE S4.1 SEVERANCE PAY - OTHER THAN EMPLOYEES OF A SMALL BUSINESS

An employee (other than a casual employee) whose employment is terminated by reason of redundancy and for whom "suitable alternative employment" is obtained in accordance with the provisions of clause 4.4.7 of this Award shall be entitled to the following amounts of severance pay in lieu of those prescribed by clause 4.4.5.3 of this Award in respect of a continuous period of service.

<i>Period of continuous service</i>	<i>Severance payments</i>
Less than 1 year	Nil
1 year and less than 2 years	2 weeks pay
2 years and less than 3 years	3.5 weeks pay
3 years and less than 4 years	4.25 weeks pay
4 years and less than 5 years	5.25 weeks pay
5 years and less than 6 years	7 weeks pay
6 years and less than 7 years	8 weeks pay
7 years and over	9 weeks pay

In addition to the above an employee with not less than 10 years **continuous service**, who is over the age of 45 years is entitled to an additional 2 weeks severance pay.

* **Weeks pay** is defined in 4.4.1.

CLAUSE S4.2 SEVERANCE PAY - EMPLOYEES OF A SMALL BUSINESS (AS DEFINED IN 4.4.1.1 OF THIS AWARD)

An employee (other than a casual employee) whose employment is terminated by reason of **redundancy** and for whom "suitable alternative employment" is obtained in accordance with the provisions of clause 4.4.7 of this Award shall be entitled to the following amounts of severance pay in lieu of those prescribed by clause 4.4.5.2 of this Award in respect of a continuous period of service.

<i>Period of continuous service</i>	<i>Severance payments</i>
Less than 1 year	Nil
1 year and less than 2 years	2 weeks pay
2 years and less than 3 years	3.5 weeks pay
3 years and less than 4 years	4.25 weeks pay
4 years and over	5.25 weeks pay

* **Weeks pay** is defined in 4.4.1.

CLAUSE S4.3 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 clause S4.1 then the employees will be entitled to the severance pay set out in that clause in lieu of that set out in clause S4.2.

CLAUSE S4.3 APPLICATIONS under CLAUSE 4.7

<i>Registry number</i>	<i>Date of Award</i>
142	8 February 1994
143	8 February 1994
145	8 February 1994
152	8 February 1994
155	8 February 1994
159	4 July 1994
160	1 July 1994
161	21 August 1994
162	13 August 1994
163	1 September 1994
170	17 March 1995
173	7 April 1995
175	30 June 1995
182	11 December 1995
192	30 January 1998
197	31 July 1998
200	30 September 1998
201	9 October 1998
202	30 November 1998
206	20 September 1999
207	20 September 1999
208	5 October 1999
212	31 October 1999
214	31 January 2000
2919/2001	8 June 2001
0471/2001	10 July 2001
516/2002	1 March 2002
7455/2002	13 November 2002
7418/2002	27 November 2002
3420/2003	26 August 2003
2922/2004	1 June 2004
7551/2004	25 November 2004

APPLICATIONS FILED

<i>Case Number</i>	<i>Description</i>
00471/2001	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 10/07/2001.
00881/2001	AWARD CONDITIONS re variation of severance pay provisions. Recommendations issued.
01804/2001	AWARD VARIATION Appln withdrawn re variation of severance pay provisions.
02142/2001	AWARD VARIATION Appln dismissed re variation of severance pay provisions. Appeal also dismissed [2002] SAIRComm 15. Filed in Box 16A.
02919/2001	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 08/06/2001.
4173/2001	AWARD VARIATION Award varied. Schedule 1 Wages re SWC 2001. Oupdate ppc 15/07/2001.
516/2002	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 01/03/2002.
3073/2002	AWARD REVIEW S99 New Award issued. Oupdate 22/12/2005. Matter reopened - Cl. 6.6 Afternoon and Night Shift Work for Cleaners. Oupdate 22/12/2005.
4298/2002	AWARD VARIATION Award varied. Sch. 1 Wages re SWC 2002. Oupdate 15/07/2002.
7418/2002	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 27/11/2002.
7455/2002	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 13/11/2002.
3420/2003	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 26/08/2003.
3511/2003	AWARD VARIATION Award varied. Schedule 1 Wages re SWC 2003. Oupdate ppc 15/07/2003.
6681/2003	AWARD VARIATION Appln withdrawn re nomination of other approved superannuation fund.
2922/2004	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 01/06/2004.
4224/2004	AWARD VARIATION Award varied. Sch. 1 Wages re SWC 2004. Oupdate ppc 15/07/2004.
6077/2004	AWARD VARIATION Award varied. New Cl. 8(d) Meal Breaks, New Cl. 47 Trade Union Training Leave. Oupdate 21/02/2005.

<i>Case Number</i>	<i>Description</i>
7551/2004	AWARD VARIATION Award varied. App. D Variation of Severance Pay Provisions. Oupdate 25/11/2004.
2337/2005	AWARD VARIATION Award varied. Sch. 1 Wages re SWC 2005. Oupdate ppc 15/07/2005.
3496/2005	AWARD VARIATION Award varied. Cl. 40 Redundancy, App. D Severance Pay. Oupdate 01/07/2005.
7460/2005	AWARD VARIATION Award varied. Cl. 26 Meal Allowances & Crib Breaks. Oupdate ppc 24/11/2005.
664/2006	AWARD VARIATION Award varied. Cl. 6.7 Afternoon & Night Shift Work for Caretakers, Cl. 7.1 Annual Leave, Cl. 7.2 Personal Leave - Injury & Sickness, Cl. 7.3 Bereavement Leave, Cl. 7.4 Parental Leave, Cl. 7.5 Personal Leave to Care for a Family Member, Cl. 10.2 Time & Wage Records. Oupdate 21/02/2006.
2269/2006	AWARD VARIATION Award varied. Sch. 2 Supported Wage Provisions re Remuneration Minimum Standard. Oupdate ppc 17/04/2006.
3938/2006	AWARD VARIATION Award varied. Cl. 5.3 Travelling Allowance, Cl. 5.7 Meal Allowance. Oupdate ppc 15/07/2006.
4363/2006	AWARD VARIATION Award varied. Sch.1 Wages re General Application to Review Award Wages 2006. Oupdate ppc 15/07/2006.
1531/2007	AWARD VARIATION Award varied. Sch. 3 Supported Wage Provisions re Minimum Standard for Remuneration. Oupdate ppc 02/03/2007.
4133/2007	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2007. Oupdates ppc 15/07/2007 & 01/10/2007.
583/2008	AWARD VARIATION Award varied. Cl. 5.3 Travelling Allowance, Cl. 5.7 Meal Allowances. Oupdate ppc 01/04/2008.
5319/2008	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2008. Oupdate ppc 01/10/2008.
4811/2009	AWARD VARIATION Award varied. Cl. 5.7 Meal Allowances. Oupdate ppc 29/07/2009.
5548/2009	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2009. Oupdate ppc 01/10/2009.
4581/2010	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2010. Oupdate ppc 01/10/2010.
5254/2010	AWARD REVIEW S99 Award varied. Cl. 1.3 Locality, Scope & Persons Bound; Cl. 1.4 Commencement & Duration of Award; Cl. 1.5 Definitions re coverage of local government only. Oupdate 04/05/2011.

<i>Case Number</i>	<i>Description</i>
4182/2011	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2011. Oupdate ppc 01/10/2011.
2644/2012	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2012. Oupdate ppc 01/07/2012.
3015/2012	AWARD VARIATION Award varied. Cl. 6.6 Afternoon & Night Shift Work for Cleaners, Sch. 1 Wages re casual loading case. Oupdate 02/08/2012 (ppc 01/01/2012, 01/07/2012, 01/07/2013, 01/07/2014).
3032/2013	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2013. Oupdate ppc 01/07/2013.
4310/2014	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2014. Oupdate ppc 01/07/2014.
6364/2015	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2015. Oupdate ppc 01/07/2015.
3218/2016	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2016. Oupdate ppc 01/07/2016.
3364/2017	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2017. Oupdate ppc 01/07/2017.
4424/2018	AWARD VARIATION Award varied. Sch. 1 Wages, Sch. 3 Supported Wage Provisions re SWC 2018. Oupdate ppc 01/07/2018.