



CHAUFFEURS (MINISTERIAL) PUBLIC SERVICE 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

OPDATE 27:11:97 on and from

Clause 1.1 Title

OPDATE 27:11:97 on and from

The Title of this Award is the Chauffeurs' (Ministerial) Public Service Award.

Clause 1.2 Arrangement

OPDATE 16:02:2018 on and from

By Part:

- Part 1 Application and Operation of Award
Part 2 Communication, Consultation and Dispute Resolution
Part 3 Employer and Employees' Duties, Employment Relationship and Related Arrangements
Part 4 Wages and Related Matters
Part 5 Hours of Work, Breaks, Overtime, Shift Work and Weekend Work
Part 6 Transfers, Travelling and Working Away from Usual Place of Work
Part 7 Occupational Health and Safety Matters, Equipment, Tools and Amenities
Part 8 Leave

Schedule 1 Rates of Pay

Schedule 2 Additional Compensation for Certain Work Related Injuries or Illnesses

In Alphabetical Order:

Table with 2 columns: Title and Clause No. listing various award clauses such as Abandonment of Employment, Annual Leave, and Grievance and Dispute Settling Procedure.

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### **Clause 1.3 Scope, Persons Bound and Locality**

OPDATE 15:07:2004 1st pp on or after

- 1.3.1 This award is binding upon the Liquor Hospitality and Miscellaneous Union, its officers and members, The Public Service Association of South Australia Inc., the Commissioner for Public Employment and all employees of the Commissioner for Public Employment whether as members of an Association or not, who are classified as Ministerial Chauffeurs.
- 1.3.2 This award is not binding on those persons who are appointed under the provisions of the Public Sector Management Act, 1995.
- 1.3.3 This award applies throughout the State of South Australia.

### **Clause 1.4 - Commencement Date**

OPDATE 27:11:97 on and from

- 1.4.1 This Award came into operation on 27th November 1997 and remains in force for 3 calendar months therefrom.

**PART 2 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

OPDATE 27:11:97 on and from

**Clause 2.1 - Introduction of Change**

OPDATE 27:11:97 on and from

## 2.1.1 Notification of Intended Changes

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

2.1.1.2 'Significant Effects' include major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. An exception to this arises where the Award makes provision for alteration of any of the matters referred to herein. In such case, an alteration will be deemed not to have significant effect.

## 2.1.2 Consultation with Employees and their Union

2.1.2.1 Amongst other things, the employer is to discuss with the employees affected and their Union the introduction of the changes referred to in sub-clause 2.1.1.1, the effects the changes are likely to have on employees and measures to avert or reduce the adverse effects of such changes on employees. In addition, the employer must give prompt consideration to matters raised by the employees and/or their Union concerning the changes.

2.1.2.2 The discussions are to commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in 2.1.1.1.

2.1.2.3 For the purposes of such discussion, the employer will provide in writing to the employees concerned and their Union all relevant information about the changes including their nature, their expected effects on employees and any other matters likely to affect employees except that no employer will be required to disclose confidential information, disclosure of which, when looked at objectively, would be against the employer's interests.

**Clause 2.2 - Grievance and Dispute Settling Procedure**

OPDATE 27:11:97 on and from

Any grievance, industrial dispute or matter likely to create a dispute is to be dealt with in the manner set out in this clause.

2.2.1 The parties to the procedure are obliged to make every endeavour to facilitate the effective functioning of this procedure.

2.2.2 Unions and the Department are to notify each other in writing the names of their duly accredited representatives who will be responsible, in the first instance, for matters arising on the job. These Union accredited job representatives will be the only persons entitled to make representations on behalf of members of the Union employed by the Department and the accredited departmental representatives will be responsible for dealing with matters raised by the Union job representatives.

2.2.3 The accredited representatives must make themselves available for consultation as required under the procedures.

2.2.4 An accredited Union representative must discuss any matter affecting an employee with the supervisor in charge of the section or sections in which the grievance, dispute or likely dispute exists.

2.2.5 If the matter is not resolved at this level the Union representative must ask for it to be referred to the departmental representative nominated under 2.2.2, who will arrange a conference to discuss the matter.

2.2.6 The consultation process as prescribed in sub-clause 2.2.5 is to be commenced within 24 hours of the grievance, dispute or likely dispute having been indicated, or within such longer or shorter period as may be agreed by the parties.

2.2.7 If the matter is not resolved at the conference convened under sub-clause 2.2.5, the Union representative is to advise the appropriate official of the Union of the matter in issue and a conference on the matter will be arranged. This conference is to be attended by the official or officials and the Union job representative concerned as the Union may

decide, and by the designated departmental representative and such other representatives, which may include the Human Resource Management Division, Department of Premier and Cabinet, as the Department may decide.

- 2.2.8 If a matter cannot be resolved when the procedures referred to above have been availed of, the Department and the Union should enter into consultation at a higher level on both sides, as the parties consider appropriate. At this level of consultation the Human Resource Management Division, Department of Premier and Cabinet should be involved.
- 2.2.9 At any stage in the procedures after consultation between the parties has taken place in accordance with the procedures, either party may request and be entitled to receive a response to its representations within a reasonable time as may be agreed upon between the parties.
- 2.2.10 If the grievance, dispute or likely dispute is not resolved in accordance with these procedures either party may refer the matter to the Industrial Relations Commission of South Australia.
- 2.2.11 Without prejudice to either party, and except where a bona fide health and safety issue is involved, work is to continue on a status quo basis while matters in dispute are being dealt with in accordance with these procedures. On a status quo basis means the work situation in place at the time the matter was first raised in accordance with these procedures.
- 2.2.12 If there is undue delay on the part of any party in responding to the matter creating a grievance, dispute or likely dispute the party complaining of the delay may take the matter to another level of the procedure if the party believes it is desirable to do so.
- 2.2.13 In the event of a party failing to observe these procedures the other party may take such steps as determined necessary to resolve the matter.
- 2.2.14 These procedures will not restrict the Department or its representatives or a duly authorised official of the Union making representations to each other.

### **Clause 2.3 - Consultative Mechanism**

OPDATE 27:11:97 on and from

In addition to the usual day-to-day contact, a regular monthly consultative forum will be the means of communication and consultation between the Chief Executive or his/her representative, Job Representatives and employees on matters of mutual interest and concern whether or not these matters are likely to give rise to a dispute.

**PART 3 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

OPDATE 27:11:97 on and from

**Clause 3.1 - Anti-Discrimination**

OPDATE 27:11:97 on and from

- 3.1.1 It is the intention of the parties to this award to achieve the principal object of section 3(m) of the Industrial and Employee Relations Act 1994 by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.1.2 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.
- 3.1.3. Nothing in this clause is to be taken to affect:
- 3.1.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation;
- 3.1.3.2 until considered and determined further by the Industrial Relations Commission of South Australia, the payment of different wages for employees who have not reached a particular age;
- 3.1.3.3 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.
- 3.1.4 Nothing in this Clause is to be taken to prevent:
- 3.1.4.1 a matter referred to in 3.1.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.
- 3.1.4.2 a matter referred to in 3.1.1 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 3.2 - Employment Categories**

OPDATE 01:01:2012 1<sup>st</sup> pp on or after (cl. 3.2.3)

**3.2.1 Fortnightly Employment**

All employees other than permanent part-time or casual employees are employed by the fortnight.

**3.2.2 Permanent Part-Time Employment**

- 3.2.2.1 A permanent part time employee is an employee who is engaged by the fortnight to work on a part-time basis for a constant number of hours less than thirty-eight (38) per week (which shall be at least 15 hours per week except where the employer and employee agree this can be reduced to 8 hours per week).
- 3.2.2.2 A permanent part time employees is paid per hour one thirty eight (1/38) of the weekly rate prescribed by this Award for the work performed.
- 3.2.2.3 A permanent part time employee receives pro-rata entitlements to sick leave, annual leave, bereavement leave and public holidays and is entitled to the penalties for work performed on Saturdays, Sundays and public holidays.
- 3.2.2.4 Where a permanent part time employee usually works on a day of the week on which a public holiday occurs and where they are not required to work on that day, they will be paid for the hours that they would have worked on that day.

## 3.2.3 Casual Employment

- 3.2.3.1 A casual employee is one who is engaged to work on short term and/or variable employment arrangements. Such an employee does not have continuity of employment.
- 3.2.3.2 A casual employee may be engaged under a contract of employment to work no more than 15 hours weekly and will receive a minimum period of engagement of 3 hours for each engagement.
- 3.2.3.3 A casual employee is paid for each hour worked one thirty-eighth of the rate prescribed by this Award for the work performed and a twenty (20) per cent casual loading is also applied to the actual hours worked to compensate for the lack of sick and annual leave entitlements and payment of public holidays not worked.

Pursuant to the decision of the Full Commission in the *Casual Loading Case* [[2012] SAIRComm 1], the 20% loading will be increased in accordance with the following:

- 22% from the first full pay period commencing on or after 1 January 2012;
- 23% from the first full pay period commencing on or after 1 July 2012;
- 24% from the first full pay period commencing on or after 1 July 2013; and
- 25% from the first full pay period commencing on or after 1 July 2014.

### Clause 3.3 - Termination of Employment

OPDATE 27:11:97 on and from

- 3.3.1 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

- 3.3.2 In addition to the notice in 3.3.1, employees over 45 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.
- 3.3.3 Payment at the ordinary rate of pay in lieu of the notice prescribed in 3.3.1 and/or 3.3.2 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.
- 3.3.4 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.
- 3.3.5 The period of notice in this Clause does not apply in the case of:
- 3.3.5.1 dismissal for conduct that at common law justifies instant dismissal;
  - 3.3.5.2 casual employees;
  - 3.3.5.3 employees engaged for a specific period of time; or
  - 3.3.5.4 employees engaged for a specific task or tasks.
- 3.3.6 Where an employer has given notice of termination to an employee, the employee is entitled to up to 1 day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.
- 3.3.7 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.

- 3.3.8 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 purposes of computing any service related entitlement of the employee.
- 3.3.9 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

#### **Clause 3.4 - Abandonment of Employment**

OPDATE 27:11:97 on and from

- 3.4.1 Where an employee has been absent without leave for more than two weeks, the Department/Agency may communicate, in writing, with the employee informing the person concerned that unless he/she reports for duty or furnishes a satisfactory reason for his/her absence and the estimated duration of it within a specified time (not more than two weeks from the date of the written communication) he/she will be regarded as having terminated his/her employment on the date that he/she last attended (i.e. without notice).
- 3.4.2 If the employee neither reports for duty nor sends in a satisfactory reply within the specified time, he/she must be informed in writing that he/she is regarded as having terminated his/her service on the date he/she last attended for duty (i.e. without notice).
- 3.4.3 In these circumstances, any monies held on behalf of the employee will, to the extent of a week's wage, be forfeited in lieu of notice.

#### **Clause 3.5 - Absence from Duty**

OPDATE 27:11:97 on and from

An employee who is absent from duty is not entitled to payment in respect of time of such absence unless the employee is eligible for and granted paid leave to cover the absence by the employer.

#### **Clause 3.6 Shut Down**

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

- 3.6.1 Where an employer requires the business operation, or part of it, to be temporarily shut down the employer may require the employee to take annual leave by giving the employee notice of the requirement at least 2 months before the period of annual leave is to begin.
- 3.6.2 No more than two shut downs can occur in one calendar year.
- 3.6.3 Where:
- (a) an employee is unable to attend work because of a shut down; and
  - (b) that employee has not accrued a full year of entitlement to annual leave,
- that employee must be allowed to take pro rata annual leave calculated in accordance with the formula specified in 8.1.3.2.
- 3.6.4 Where an employee is required to take leave in accordance with 3.6.1, and the employee does not have a full or pro rata credit of leave, the employee may be stood off without pay during the period of the shut down for any time in excess of the employee's leave credit.
- 3.6.5 All time that the employee is stood off without pay for the purposes of 3.6.4 is deemed to be time of service in the next 12 monthly qualifying period.

**3.7 - Direction of employees**

OPDATE 27:11:97 on and from

- 3.7.1 An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training on the condition that such duties are not designed to promote deskilling.
- 3.7.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required if the employee has been properly trained in the use of such tools and equipment.
- 3.7.3 Any direction issued by the employer in accordance with 3.7.1 and 3.7.2 must be consistent with the employer's responsibilities to provide a safe and healthy working environment.

**Clause 3.8 Additional Compensation for Certain Work Related Injuries or Illnesses**

OPDATE 30:09:1987 on and from

The employer must pay and/or provide benefits pursuant to Schedule 2 of this Award.

**PART 4 - WAGES AND RELATED MATTERS**

OPDATE 27:11:97 on and from

**Clause 4.1 - Wage Rates**

OPDATE 27:11:97 on and from

Unless a different rate of pay is prescribed elsewhere in this award, an employee must be paid at the rate of pay prescribed in Schedule 1 for the classification level in which the employee is employed.

**Clause 4.2 - Meal Allowance**

OPDATE 27:11:97 on and from

4.2.1 Any employee, who is required to work overtime at the end of such employee's day for two hours or more without being notified on the previous day or earlier of the requirement to work, will be provided with a meal free of cost. Alternatively, where a meal cannot be provided, the employee will be paid an amount as provided by the relevant Commissioner's Determinations. However, provision of a free meal or payment of meal money will not be applied to employees living in the same locality who can reasonably return home for meals.

4.2.2 This clause applies to employees who meet the above requirements whether within the metropolitan area or not.

**Clause 4.3 - Weekend Duty**

OPDATE 27:11:97 on and from

Employees, whose ordinary hours of duty are rostered over six or seven days of the week, are to be paid for work done during ordinary rostered hours (i.e. not being overtime) between 12 midnight on Friday and 12 midnight on the following Sunday an additional payment calculated at the rate of 50 per centum of their ordinary rate.

**Clause 4.4 - Payment of Wages**

OPDATE 27:11:97 on and from

Payment of wages is made by direct transfer into an employees bank or other recognised financial institution account.

**PART 5 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK**

OPDATE 27:11:97 on and from

**Clause 5.1 - Hours of Work**

OPDATE 27:11:97 on and from

- 5.1.1 The ordinary hours of work are an average of 38 per week worked on one of the following bases:
- 5.1.1.1 38 hours within a work cycle not exceeding seven consecutive days;
  - 5.1.1.2 76 hours within a work cycle not exceeding fourteen consecutive days; or
  - 5.1.1.3 114 hours within a work cycle not exceeding twenty-one consecutive days; or
  - 5.1.1.4 152 hours within a work cycle not exceeding twenty-eight consecutive days.
- 5.1.2 The ordinary hours of work prescribed in 5.1.1 above may be worked;
- 5.1.2.1 on any day or all of the days of the week, Monday to Friday or
  - 5.1.2.2 according to roster over 6 or 7 days per week as required.
- 5.1.3 The ordinary hours of work prescribed herein must be worked continuously, except for meal breaks, between 6.00 a.m. and 6.00 p.m at the discretion of the employer. However, the spread of ordinary hours may be altered by agreement between an employer and the majority of employees in the section(s) of the Department/Agency concerned.
- 5.1.4 The ordinary hours of work will generally not exceed 10 hours on any day, In any arrangement of ordinary working hours where the ordinary working hours are to exceed 8 on any day, the arrangement of hours will be subject to the agreement of the employer and the majority of employees in the section(s) of the Department/Agency concerned.
- 5.1.5 By arrangement between an employer, the union(s) concerned and the majority of employees in the section(s) concerned, ordinary hours up to 12 on any day may be worked subject to:-
- 5.1.5.1 the employer and the employees concerned being guided by the occupational health and safety provisions of the ACTU Code of Conduct on 12 Hour Shifts;
  - 5.1.5.2 proper health monitoring procedures being introduced;
  - 5.1.5.3 suitable roster arrangements being made; and
  - 5.1.5.4 proper supervision being provided.
- 5.1.6 The ordinary working hours will be determined as follows:
- 5.1.6.1 by employees working less than 8 ordinary hours each day; or
  - 5.1.6.2 by employees working less than 8 ordinary hours on one or more days each week; or
  - 5.1.6.3 by fixing one weekday on which all employees will be off during a particular work cycle; or
  - 5.1.6.4 by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.
- 5.1.7 Where an employee is given an programmed day off (PDO) in accordance with 5.1.6.3 and 5.1.6.4 such PDO will be subject to the following:-
- 5.1.7.1 the PDO system will operate on a credit basis with PDO's being taken only after they have been accrued;
  - 5.1.7.2 the PDO's will not be cumulative and a maximum of two (2) PDO's only can be taken continuously;

- 5.1.7.3 PDO's are to be flexible, at the convenience of the employer and with a minimum of notice where required. In the case of chauffeurs attached to a specific Minister, PDO's will be taken at the convenience of the Minister and direction of the Manager, Government Motor Garage, to coincide with periods or days of low demand. In the case of chauffeurs not attached to specific Ministers, PDO's will be taken at the discretion of the Manager, Government Motor Garage to coincide with days or periods of low demand. One (1) clear working day shall constitute minimum notice; i.e., minimum notification of a PDO must be given to an employee before the close of business two (2) days before the PDO is to be taken;
- 5.1.7.4 employees called in to duty on their programmed day off, due to an emergency, will be paid at ordinary time rates and be given an alternative paid day off.
- 5.1.8 Employees will commence their ordinary hours of work at 8.00 a.m. each day unless:
- 5.1.8.1 the employer gives notice to the employee prior to the cessation of work on the previous day of a different time of commencement on the following day; or
- 5.1.8.2 the employee agrees with the employer, notwithstanding a lack of notice as provided for herein, to a different time of commencement on a particular day; or
- 5.1.8.3 another employee is absent from work during a particular day at short notice as a consequence of personal sickness, family responsibilities or other similar cause; or
- 5.1.8.4 some unforeseen emergency arises on a particular day.

#### Clause 5.2 - Overtime

OPDATE 13:10:2005 on and from

- 5.2.1 For the purpose of this Clause "overtime" means all time worked in excess of or outside of ordinary hours of work as prescribed in Clause 5.1- Hours of Work of this Award.
- 5.2.2 For the purpose of this Clause "ordinary hours" means the hours of work defined as such in Clause 5.1 - Hours of Work of this Award.
- 5.2.3 All time worked by employees in excess of the first 10 hours of overtime or outside ordinary hours from 12.01 a.m. Monday to 11.59 p.m Friday are to be paid at the rate of time and a half for the first three hours and double time after that, with payments at the rate of double time to continue until the completion of the overtime being worked.
- 5.2.4 All time worked by employees in excess of the first 10 hours of overtime from 12.01 a.m. Saturday and before noon - 11.59 a.m. on the same day will be paid at the rate of time and a half for the first three hours and double time after that.
- 5.2.5 All time worked by employees in excess of the first 10 hours of overtime from 12.01 p.m. Saturday or until 11.59 p.m. Sunday will be paid at the rate of double time.
- 5.2.6 In computing overtime each day of work shall stand alone.
- 5.2.7 All work performed by employees on public holidays in excess of the first 10 hours of overtime will be paid at double time and a half.
- 5.2.8 In calculating overtime, all calculations are to the nearest 15 minutes.
- 5.2.9 Casual and part-time employees are not entitled to payment at overtime rates unless the daily hours they work exceed the ordinary hours applicable to full-time employees or where the hours worked exceed the hours prescribed in Clause 5.1 - Hours of Work of this Award.
- 5.2.10 All authorised time worked by casual and part-time employees in excess of ordinary hours on any day will be paid at the rate of time and a half for the first 3 hours and double time after that. Examples of how these provisions are to be applied are contained in the Department for Administrative and Information Services - Conditions of Employment Manual for Weekly Paid Employees or its successors.
- 5.2.11 The hourly rate, when computing overtime payments for employees is to be determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.

**Clause 5.2A - Overtime Allowance**

OPDATE 01:10:2012 1st pp on or after

- 5.2A.1 Employees engaged on a full-time basis and who work at least 10 hours overtime per week will be paid an overtime allowance in lieu of payments that would otherwise apply as follows:
- (a) \$15,715 per annum on and from the first full pay period to commence on or after 28 October 2004;
  - (b) \$16,466 on and from the first full pay period on or after 1 October 2005;
  - (c) \$17,217 on and from the first full pay period on or after 1 October 2006;
  - (d) \$17,968 on and from the first full pay period on or after 1 October 2007;
  - (e) \$18,720 on and from the first full pay period on or after 1 October 2008;
  - (f) \$19,345 on and from the first full pay period on or after 1 October 2009;
  - (g) \$19,971 on and from the first full pay period on or after 1 October 2010;
  - (h) \$20,597 on and from the first full pay period on or after 1 October 2011;
  - (i) \$21,348 on and from the first full pay period on or after 1 October 2012;
  - (j) \$22,100 on and from the first full pay period on or after 1 October 2013;
- (i.e. 48% of the annual rate of pay for a Ministerial Chauffeur step 3 in accordance with the South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2013) in lieu of overtime payment, payable fortnightly with the employee's normal remuneration, for the performance of the first 10 hours of overtime each week. The allowance is inclusive of all overtime rates that are otherwise applicable (i.e. time and a half, double time, and double time and a half).
- 5.2A.2 In determining if an employee has worked the required 10 hours per week of overtime, the time he/she works will be averaged over an accounting period of two weeks. The accounting period will be aligned with the pay cycle.
- 5.2A.3 The allowance will be paid during periods of annual leave (up to 4 weeks per annum), but will not be paid during periods of sick leave, long service leave or during periods of special leave (whether or not such leave is paid or unpaid).
- 5.2A.4 Employees can "bank" up to 20 hours of overtime in a "Time Bank" on the following basis:
- (a) The Time Bank will operate from 1 March to 28 February of the following year (or 29 February of a leap year). Employees will ensure that a zero balance of time credits exists at each 1 March.
  - (b) Employees will be permitted to draw upon the Time Bank to mitigate any fluctuations in their hours during an accounting period provided that the total number of hours used from the time bank does not exceed the balance of the Time Bank.
  - (c) The hours accumulated in the Time Bank cannot be redeemed as a cash payment and employees will not be otherwise paid for hours that are allocated to the Time Bank.
  - (d) In the event that an employee has taken all reasonable steps to ensure that a zero balance of time credits exists at each 1 March, or leaves Ministerial/VIP Chauffeur Service, any hours accumulated in the Time Bank for that individual will be credited against the required 10 hours of overtime each week for the payment of the allowance.
- 5.2A.5 When employees are called back to duty ("call-backs"), they will be paid in accordance with clause 5.3 of this Award. (Call backs are not included as part of the overtime allowance.)
- 5.2A.6 Normal overtime provisions will apply to any overtime worked in excess of the 10 hours of overtime in a weekly period prescribed for the purposes of the allowance, with the exception of hours that are allocated to the Time Bank.

- 5.2A.7 In so far as is reasonably possible (to ensure, that all employees have the opportunity to work the overtime required to attract the payment of the allowance) employees are required to submit approved timesheets daily. In the event an employee is unable to submit an approved timesheet by the due time, the employee will ensure the timesheet is submitted (by facsimile if appropriate) as soon as practicable thereafter.

#### **Clause 5.3 - Call Back**

OPDATE 27:11:97 on and from

- 5.3.1 An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of three hours at the appropriate rate for each time the employee is recalled. In this situation, except where unforeseen circumstances arise, the employee is not required to work the full three hours if the work the employee was recalled to perform is completed within a shorter period.
- 5.3.2 Overtime worked in this subclause must not be regarded as overtime for the purpose of sub clause 5.4, Rest Period After Overtime, where the actual time worked is less than three hours on such recall or on each of such recalls.
- 5.3.3 The provisions of 5.3.1 do not apply in cases where it is customary for an employee to return to the employer's premises to perform specific work outside the employee's ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- 5.3.4 Where an employee is called back during a minimum period of an earlier call back, payment will be made for that period of the subsequent call back that extends beyond the minimum period of the earlier call back.

#### **Clause 5.4 - Rest Period after Overtime**

OPDATE 27:11:97 on and from

- 5.4.1 When overtime work is necessary it will, wherever reasonably practicable be arranged so that employees have at least eight (8) consecutive hours off duty between work of successive days without loss of pay for ordinary working time occurring during the time off duty.
- 5.4.2 An employee (other than a casual employee), who works so much overtime between the end of the employee's ordinary work on one day and the start of the employee's ordinary work on the next day that the employee has not had at least eight consecutive hours off duty between those times must, subject to this sub-clause, be released after finishing such overtime until the employee has had eight consecutive hours off duty. In this circumstance, the employee concerned will not lose pay for ordinary working time occurring during the eight hours off duty.
- 5.4.3 If, on the instructions of the employer, the employee resumes or continues work without having had such eight consecutive hours off duty, the employee will be paid at double rates until released from duty for such period and the employee will then be entitled to be absent until the employee has had eight consecutive hours off duty. As in 5.4.2, in this circumstance the employee concerned will not lose pay for ordinary working time occurring during the eight hours of duty.

**PART 6 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

OPDATE 27:11:97 on and from

**Clause 6.1 - Excess Travelling Time**

OPDATE 27:11:97 on and from

- 6.1.1 An employee who on any day is required to report to work at a location, other than the Government Motor Garage, must be paid travelling time for all time reasonably spent travelling to that location in excess of the time normally spent travelling from home to the Government Motor Garage.
- 6.1.2 An employee who on any day is required to return home from a location, other than the Government Motor Garage, must be paid travelling time for all time reasonably spent travelling home in excess of the time normally spent travelling from the Government Motor Garage to home.
- 6.1.3 Travelling time will not be paid to an employee recalled to work in terms of Clause 5.3 Call Back.
- 6.1.4 Travelling time will not be paid for time spent travelling during ordinary hours established in accordance with this Clause.
- 6.1.5 Travelling time must be paid at the employee's ordinary rate of pay, except on Sundays and holidays when it will be at time and a half.
- 6.1.6 Where the majority of travelling time for a particular journey is incurred outside the Metropolitan Adelaide area, travelling time for such journey will be paid at the appropriate overtime rate, in lieu of the employee's ordinary rate of pay.

**PART 7 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

OPDATE 27:11:97 on and from

**Clause 7.1 - Protective Clothing**

OPDATE 27:11:97 on and from

- 7.1.1 Upon appointment an employee is to be supplied with one dust coat, one pair of rubber boots, pair of overalls and the choice of either an overcoat or a raincoat, such choice to be at the discretion of the employer, to be replaced when unserviceable.
- 7.1.2 The protective clothing supplied under this clause remains the property of the employer. The loss of such protective clothing due to any cause arising out of the neglect or misuse by the employee will be charged against the wages of the employee. An exception to this is that no charge will be made in respect of reasonable wear and tear.

**PART 8 - LEAVE**OPDATE 14:03:2006 1<sup>st</sup> pp on or after**Clause 8.1 Annual Leave**OPDATE 14:03:2006 1<sup>st</sup> pp on or after

## 8.1.1 Entitlement to Annual Leave

8.1.1.1 An employee (other than a casual employee) is entitled to 4 weeks annual leave for each completed year of *continuous service*.

8.1.1.2 Payment must not be made or accepted in lieu of taking annual leave, except in the case of termination of employment.

## 8.1.2 Annual Leave Exclusive of Public Holidays

The annual leave prescribed by this clause is exclusive of the public holidays named in this Award that fall on a Monday to Friday inclusive. If any such holiday falls within an employee's period of annual leave, the period of leave will be increased by one day for each holiday.

## 8.1.3 Accrual of Annual Leave Entitlement

8.1.3.1 An employee's entitlement to annual leave accrues as follows for each completed year of *continuous service*:

8.1.3.1(a) *Full-time employees*: 152 hours per annum.

8.1.3.1(b) *Part-time employees*:  $\frac{152}{38}$  x average weekly  
ordinary hours over previous 12 months = hours per annum

8.1.3.2 Upon termination of employment, if the period of service is not exactly divisible into complete years, a full-time employee accrues 12 2/3 hours annual leave for each completed month of service in the incomplete year. A part-time employee accrues such annual leave on a pro rata basis.

## 8.1.4 Time of Taking Annual Leave

8.1.4.1 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 8.5.

8.1.4.2 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.

8.1.4.3 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.

8.1.4.4 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.

## 8.1.5 Payment for Annual Leave

8.1.5.1 Prior to proceeding on annual leave, an employee is entitled to be paid for the period of leave at the ordinary rate of pay applicable to the employee.

8.1.5.2 Upon termination of employment, an employee must be paid for leave accrued in accordance with 8.1.3.2, which has not been taken.

## 8.1.6 Annual Leave Loading

8.1.6.1 An employee is also entitled to payment of a loading equivalent to 17.5% of the payment provided for in 8.1.5 at the time that payment is made.

8.1.6.2 Where an employee would have received shift loadings 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%, then the shift loadings are to be substituted for the 17.5% loading prescribed in 8.1.6.1.

8.1.6.3 Annual leave loading payment is payable on leave accrued in accordance with 8.1.3.2.

**Clause 8.2 Personal Leave – Injury and Sickness**

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

## 8.2.1 Entitlement to Personal Leave

An employee (other than a casual employee) who has a personal leave credit:

8.2.1.1 Is entitled to take personal leave if the employee is too sick to work; or

8.2.1.2 Who is on annual leave, is entitled to take personal leave if the person is too sick to work for a period of at least 3 consecutive days. Personal leave so taken does not count as annual leave.

## 8.2.2 Accrual of Personal Leave Entitlement

8.2.2.1 An employee's entitlement to personal leave accrues as follows:

8.2.2.1(a) For the first year of continuous service - at the rate of 1.46 hours for each completed 38 ordinary hours of work to a maximum of 91.2 hours.

8.2.2.1(b) For each later year of continuous service, at the beginning of each year:

(i) a full-time employee accrues 91.2 hours.

(ii) a part-time employee accrues pro rata hours in accordance with the following formula:

$$\frac{91.2}{38} \times \text{average weekly ordinary hours over previous 12 months}$$

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

## 8.2.3 Conditions for Payment of Personal Leave

8.2.3.1 The employee is not entitled to payment for personal leave unless:

8.2.3.1(a) The employee gives the employer notice of the sickness, its nature and estimated duration before the period for which personal leave is sought begins (but if the nature or sudden onset of the sickness makes it impracticable to give the notice before the period begins, the notice is validly given if given as soon as practicable and not later than 24 hours after the period begins); and

8.2.3.1(b) The employee, at the request of the employer, provides a medical certificate or other reasonable evidence of sickness.

8.2.3.2 The employee is entitled to payment at the employee's ordinary rate of pay (not including payments in the nature of penalty rates, overtime, allowances or loadings) for a period of personal leave.

### Clause 8.3 Bereavement Leave

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

#### 8.3.1 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.

#### 8.3.2 Unpaid Entitlement to Leave

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

#### 8.3.3 Effect of Other Leave

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

#### 8.3.4 For the purpose of this Clause *spouse* includes a de facto spouse.

### Clause 8.4 Parental Leave

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

#### 8.4.1 Definitions

In this clause, unless the contrary intention appears:

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

8.4.1.2 *Adoption leave* means adoption leave provided under 8.4.3.4.

8.4.1.3 *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.

8.4.1.4 *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.

8.4.1.5 *Extended adoption leave* means *adoption leave* provided under 8.4.3.4(b).

8.4.1.6 *Extended paternity leave* means *paternity leave* provided under 8.4.3.3(b).

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

- 8.4.1.8 **Maternity leave** means maternity leave provided under 8.4.3.2.
- 8.4.1.9 **Medical certificate** means a certificate as prescribed in 8.4.5.1.
- 8.4.1.10 **Parental leave** means **adoption leave, maternity leave, paternity leave, extended adoption leave** or **extended paternity leave** as appropriate, and is unpaid leave.
- 8.4.1.11 **Paternity leave** means paternity leave provided under 8.4.3.3.
- 8.4.1.12 **Primary care-giver** means a person who assumes the principal role of providing care and attention to a **child**.
- 8.4.1.13 **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).
- 8.4.1.14 **Short adoption leave** means **adoption leave** provided under 8.4.3.4(a).
- 8.4.1.15 **Special adoption leave** means **adoption leave** provided under 8.4.10.
- 8.4.1.16 **Special maternity leave** means **maternity leave** provided under 8.4.9.1.
- 8.4.1.17 **Spouse** includes a defacto spouse or a former spouse.

#### 8.4.2 **Employer's responsibility to inform**

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.

#### 8.4.3 **Eligibility for and entitlement to parental leave**

8.4.3.1 Subject to the qualifications in 8.4.4, the provisions of this clause apply to full-time, part-time and **eligible casual employees** but do not apply to other employees.

8.4.3.1(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).

8.4.3.1(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**.

8.4.3.1(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.

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

8.4.3.3 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:

- 8.4.3.3(a) An unbroken period of up to one week at the time of the birth of the *child*.
- 8.4.3.3(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*).
- 8.4.3.4 An employee is entitled to one or two periods of *adoption leave*, the total of which must not exceed 52 weeks, as follows:
- 8.4.3.4(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*).
- 8.4.3.4(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*).

#### 8.4.4 **Qualifications on entitlements and eligibility**

- 8.4.4.1 An employee engaged upon casual or seasonal work is not entitled to *parental leave*.
- 8.4.4.2 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.
- 8.4.4.3 The entitlement to *parental leave* is reduced:
- 8.4.4.3(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.
- 8.4.4.3(b) In the case of *extended paternity leave*, by any period of *maternity leave* taken by the employee's spouse.
- 8.4.4.3(c) In the case of *extended adoption leave*, by any period of *extended adoption leave* taken by the employee's spouse.

#### 8.4.5 **Certification required**

- 8.4.5.1 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.
- 8.4.5.2 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:
- 8.4.5.2(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*.

#### 8.4.5.2(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.

### 8.4.6 **Notice requirements**

#### 8.4.6.1 Maternity leave

8.4.6.1(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 8.4.5 within two weeks after the change takes place.

8.4.6.1(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.

#### 8.4.6.2 Paternity leave

An employee must:

- 8.4.6.2(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*.
- 8.4.6.2(b) Notify the employer of any change in the information provided pursuant to 8.4.5 within two weeks after the change takes place.

#### 8.4.6.3 Adoption leave

An employee must:

- 8.4.6.3(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.
- 8.4.6.3(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*.
- 8.4.6.3(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.
- 8.4.6.3(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.

#### 8.4.6.4 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.

#### 8.4.7 **Taking of parental leave**

- 8.4.7.1 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*.
- 8.4.7.2 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.
- 8.4.7.3 Paid personal leave or other paid absences are not available to an employee during the employee's absence on *parental leave*.
- 8.4.7.4 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.
- 8.4.7.5 Subject to 8.4.4 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.
- 8.4.7.6 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.
- 8.4.7.7 Where leave is granted under 8.4.7.5, 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 commencement date desired by the employee.
- 8.4.7.8 *Maternity leave* and *paternity leave* cannot extend beyond the *child's* first birthday.
- 8.4.7.9 *Adoption leave* cannot extend beyond the *child's* fifth birthday.
- 8.4.7.10 *Extended adoption leave* cannot extend beyond the first anniversary of the initial placement of the *child*.
- 8.4.7.11 Notwithstanding the provisions of this clause, employees eligible for *parental leave* have the right to request *parental leave* as consistent with 8.4.15.

#### 8.4.8 **Variation and cancellation of parental leave**

- 8.4.8.1 Without extending an entitlement beyond the limit set by 8.4.3, *parental leave* may be varied as follows:
  - 8.4.8.1(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.
  - 8.4.8.1(b) The leave may be lengthened or shortened by agreement between the employer and the employee.

- 8.4.8.2 **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.
- 8.4.8.3 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.
- 8.4.8.4 **Parental leave** may be cancelled by agreement between the employer and the employee.
- 8.4.9 **Special maternity leave and personal leave**
- 8.4.9.1 If:
- (a) an employee not then on maternity leave suffers illness related to her pregnancy she is entitled to take leave under 8.2; 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 8.4.3.2 and she is entitled to take unpaid **special maternity leave** for such periods as a registered medical practitioner certifies as necessary.
- 8.4.9.2 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**.
- 8.4.9.3 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.
- 8.4.9.4 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.
- 8.4.10 **Special adoption leave**
- 8.4.10.1 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**.
- 8.4.10.2 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.
- 8.4.10.3 The leave under this clause 8.4.10 is to be known as **special adoption leave** and does not affect any entitlement under 8.4.3.
- 8.4.10.4 **Special adoption leave** may be taken concurrently by an employee and the employee's **spouse**.
- 8.4.10.5 Where paid leave is available to the employee, the employer may require the employee to take such leave instead of **special adoption leave**.

**8.4.11 Transfer to a safe job - maternity leave**

8.4.11.1 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.

8.4.11.2 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.

8.4.11.3 Leave under this clause 8.4.11 will be treated as *maternity leave*.

**8.4.12 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:

8.4.12.1 Where the employee is pregnant, and to do so is necessary or desirable because of the pregnancy; or

8.4.12.2 Where the employee is entitled to *parental leave*, by reducing the employee's entitlement to *parental leave* for the period of such agreement.

**8.4.13 Communication during parental leave**

8.4.13.1 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*.

8.4.13.2 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.

8.4.13.3 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 8.4.13.1.

**8.4.14 Return to work after parental leave**

8.4.14.1 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*.

8.4.14.2 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.

8.4.14.3 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.

8.4.14.4 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.

#### 8.4.15 **Right to request**

8.4.15.1 An employee entitled to *parental leave* pursuant to clause 8.4.3, may request the employer to allow the employee:

(a) to extend the period of simultaneous unpaid leave provided for in clause 8.4.1.3.3(a) and 8.4.3.4(a) up to a maximum of eight weeks;

(b) to extend the period of unpaid *parental leave* provided for in 8.4.3.2 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.

8.4.15.2 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.

8.4.15.3 The employee's request and the employer's decision made under 8.4.15.1(b) and (c) must be recorded in writing.

8.4.15.4 Where an employee wishes to make a request under 8.4.15.1(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*.

#### 8.4.16 **Termination of employment**

8.4.16.1 An employee on *parental leave* may terminate their employment at any time during the period of leave by giving the required notice.

8.4.16.2 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.

#### 8.4.17 **Replacement employees**

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

8.4.17.2 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 8.5 Personal Leave To Care For a Family Member**

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

#### 8.5.1 **Definitions**

8.5.1.1 *Personal leave to care for a family member* means leave provided in accordance with this clause.

8.5.1.2 **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.

8.5.1.3 **Personal leave** means leave provided for in accordance with clause 8.2.

8.5.2 Paid Personal Leave to Care for a Family Member

8.5.2.1 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 or who requires care due to an unexpected emergency,

is entitled to up to 10 days or 76 hours in any completed year of **continuous service** (pro rata for part-time employees) to provide care and support for such persons when they are ill.

8.5.2.2 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.

8.5.2.3 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.

8.5.2.4 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.

8.5.2.5 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.

8.5.2.6 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.

8.5.2.7 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.

8.5.3 Unpaid Personal Leave to Care for a Family Member

8.5.3.1 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.

8.5.3.2 The employer and the employee shall agree upon the period of unpaid **personal leave to care for a family member** which may be taken.

- 8.5.3.3 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.
- 8.5.4 Single Day Absences
- Single day absences may be taken for *personal leave to care for a family member* as provided for in Clause 8.1.4 Time of Taking Annual Leave.
- 8.5.5 Casual Employees Caring Responsibilities
- 8.5.5.1 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 8.5 and 8.3, 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.
- 8.5.5.2 The period for which the employee will be entitled to not be available to attend work for each occasion in clause 8.5.5.1 is:
- (a) the period agreed upon between the employer and the employee; or
  - (b) up to 48 hours (or 2 days) per occasion.
- 8.5.5.3 The casual employee is not entitled to any payment for the period of non-attendance under this clause.
- 8.5.5.4 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.
- 8.5.5.5 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 8.6 Continuous Service

OPDATE 14:03:2006 1<sup>st</sup> pp on or after

##### 8.6.1 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 or the Act.
- (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.

#### 8.6.2 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.

## CHAUFFEURS (MINISTERIAL) PUBLIC SERVICE AWARD

### Schedule 1 - Rates of Pay

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

This Schedule shall operate from the first pay period to commence on or after 1 July 2018.

The minimum annual salaries which shall be paid for the hours of work prescribed in clause 5.1 will be as follows:

(i) Ministerial Chauffeurs

	\$ p.a.
1st year	44,493
2nd year	44,841
3rd year and thereafter	45,175

(ii) 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.

(iii) 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.

# CHAUFFEURS (MINISTERIAL) PUBLIC SERVICE AWARD

## Schedule 2 - Additional compensation for certain work-related injuries or illnesses

OPDATE 30:09:1987 on and from

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**PART 1 – INTRODUCTION**

1. This Schedule provides benefits to eligible employees with eligible injuries that would have been applicable under the *WR&C Act* if they cease to be entitled to similar benefits under the *RTW Act*.
2. A return to work within the meaning of the *RTW Act* is the main objective in managing all work injuries. The primary return to work objective will be employment in the employee's agency. New or other return to work options can only be explored when return to work options within the employee's agency have been fully explored (and the onus of proof to establish this lies with the employer) or if the employee requests the exploration of new or other employment options in writing (which request may be withdrawn). The relevant unions will reasonably support and cooperate in the pursuit of this objective.
3. This Schedule operates in addition to and not instead of any entitlements applicable under any other statute or law, except that:
  - 3.1 any payment which would otherwise be payable under This Schedule will not be payable if precisely the same payment has already been made under a Compensation Act; and
  - 3.2 if an eligible employee receives a payment for economic loss pursuant to Part 4 Division 6 of the *RTW Act*, clauses 60 through 63 apply.
4. Providing the criteria in clauses 35 through 36 are met, if an entitlement has been claimed by an eligible employee under a Compensation Act and that claim has been rejected, any equivalent or similar entitlement may be claimed, and if rejected, disputed under this Schedule notwithstanding that proceedings relating to the rejected Compensation Act claim are extant. In making such a claim or in any dispute about such a claim, the matter should proceed on the basis that the relevant claim under a Compensation Act shall remain rejected.
5. If the employer is considering making a decision about an employee's entitlements pursuant to This Schedule which may be adverse to the relevant employee, the employer must provide procedural fairness to the relevant employee before any final decision is made.
6. Claims for entitlements under this Schedule must be made in writing.

**PART 2 – DEFINITIONS IN THIS SCHEDULE**

7. "Average Weekly Earnings" means Average Weekly Earnings under s4(1) of the *RTW Act*;

8. “Compensation Act” means either or both or all of the *Workers Rehabilitation and Compensation Act 1986*, the *Return to Work Act 2014*, and any successor legislation to the *Return to Work Act 2014*. Insofar as references in this schedule to “Compensation Act” refer to the *Return to Work Act 2014*, those references are not limited to the *Return to Work Act 2014* as at 1 July 2017.
9. “Benefits” or “entitlements” means weekly payments of income maintenance or medical and/or like expenses or an entitlement to a reasonable rehabilitation/return to work plan pursuant to this schedule.
10. “Claims income compensation” means either an express request to be paid income compensation pursuant to this Schedule or, if an eligible employee is in receipt of income compensation pursuant to this schedule, the absence of a request to cease payments of income compensation.
11. “Eligible employee” means:
  - 11.1 current and former employees (irrespective of when a former employee’s employment ceased); who
  - 11.2 have had a claim accepted under a Compensation Act;but does not include
  - 11.3 former employees whose employment has been lawfully terminated by the employer on the ground of serious and wilful misconduct and/or criminal conduct.
12. “Income compensation lump-sum” means a lump sum payment in an agreed amount and on agreed terms and in accordance with attachment 2 to this Schedule to forever end an entitlement to income compensation pursuant to this Schedule in respect of a particular injury or injuries.
13. “Independent medical adviser” means an independent medical adviser under s4(1) of the *RTW Act*;
14. “Injury” means an injury within the meaning of s4(1) of the *RTW Act*.
15. “Interest” means interest calculated in accordance with Regulation 38 of the *Return to Work Regulations 2015* as at 1 July 2017.
16. “Medical and/or related expenses” means any cost payable or to be payable in respect of costs provided for by s33 of the *RTW Act*, such as services, appliances, medicines, materials, travel and accommodation.
17. “Medical expense lump-sum” means a lump sum payment in an agreed amount and on agreed terms in accordance with attachment 2 of this Schedule to forever end an entitlement to medical and/or related expense compensation pursuant to this Schedule in respect of a particular injury or injuries.
18. “No current work capacity” means a present inability arising from the particular eligible injury or the combined effect of one or more eligible injuries such that the eligible employee is not able to return to work, either:
  - 18.1 if the employer has made and continues to make such work available, in suitable employment in his or her employment at the time of the occurrence of the injury or injuries; or
  - 18.2 in other suitable employment.
19. “Notional Weekly Earnings” means the eligible employee’s Notional Weekly Earnings under the relevant Compensation Act as adjusted pursuant to Part 9 of this Schedule.
20. “Professional representative” means a legal practitioner or other person who has been engaged or appointed to represent a party to proceedings before SAET (whether personally or through an employee or agent).
21. “Recognised health practitioner” means a recognised health practitioner within the meaning of s4(1) of the *RTW Act*;
22. “Recovery/return to work plan” means a recovery/return to work plan established or continuing under the *RTW Act* or this Schedule.
23. “Retiring age” means “retiring age” as defined in s44(1) of the *RTW Act*.

24. “RTW Act” or *Return to work Act 2014(SA)* means the *Return to Work Act 2014(SA)* as at 1 July 2017 (and all references to the RTW Act and Regulations under that Act are references to that Act and the relevant Regulations as at 1 July 2017, subject to any express contrary intention);
25. “SAET” means the South Australian Employment Tribunal;
26. “Seriously injured worker” has the same meaning as under the *RTW Act*;
27. “Suitable employment” means suitable employment as defined under s4(1) of the *RTW Act*, and a reference to a recovery/return to work plan or services in that provision extends to a recovery/return to work plan or services under this Schedule.
28. “WR&C Act” means the *Workers Rehabilitation and Compensation Act 1986 (SA)*.

### PART 3 – ELIGIBLE INJURIES

#### Only eligible employees can have eligible injuries

29. An injury is not an eligible injury unless the injured employee is an eligible employee.

#### Temporal connection to employment

30. An eligible injury arises out of or in the course of the eligible employee:

- 30.1 attending work in accordance with their employment; or
- 30.2 performing the work for which they are employed.

#### Causal connection to criminal conduct or dangerous situations

31. To be an eligible injury the injury *must* have:

- 31.1 resulted from conduct directed at the employee that is or appears to be a criminal offence; and/or
- 31.2 occurred as a direct and immediate result of conduct that is or appears to be a criminal offence;
- 31.3 occurred in other circumstances where the employee is placed in a dangerous situation (however psychiatric injuries are only eligible injuries pursuant to 31.3 if they are caused as a consequence of a specific incident or incidents).

#### Incapacity required for eligibility

32. An eligible injury temporarily or permanently incapacitates the injured employee for work (including because of a need to attend on a medical practitioner for treatment or examination).

#### When an injury ceases to be an eligible injury

33. An eligible injury ceases to be an eligible injury when:

- 33.1 the injured employee makes a return to work within the meaning of the RTW Act which is sustainable and is earning a salary or wage that is the same or more than their Notional Weekly Earnings; and
- 33.2 there is no reasonable basis to incur medical and/or related expenses (whether to treat symptoms or reduce the likelihood of symptoms recurring or for any other reason deemed appropriate by a medical practitioner).

#### When an injury resumes being an eligible injury

34. If an eligible injury ceased to be an eligible injury pursuant to clause 33 but the criteria in clause 33 are no longer met, the injury resumes being an eligible injury.

Compensation Act status for an injury to be an eligible injury

35. To be an eligible injury a claim for compensation relating to the injury must have been accepted under a Compensation Act.
36. If, in relation to a particular injury:
- 36.1 no compensation has been paid under the RTW Act and no Recovery/Return to Work Plan has been established under the RTW Act;
- 36.2 that injury is only an eligible injury to the extent that the eligible employee would be entitled to receive benefits or entitlements under the *WR & C Act* (disregarding the operation of the *RTW Act*).

Consequential injuries taken to be part of original eligible injuries

37. Any injury arising out of or in the course of an eligible employee's attendance at a place to:
- 37.1 receive a medical service in relation to an eligible injury; and/or
- 37.2 obtain a medical report or certificate (or to be examined for that purpose) in relation to an eligible injury; and/or
- 37.3 receive services or assistance or perform activities intended to assist the eligible employee's recovery or return to work or restoration to the community in relation to an eligible injury; and/or
- 37.4 apply for, or receive, compensation in relation to an eligible injury;
- will be taken to constitute part of the original eligible injury, whether or not the eligible employee had additional reasons for attending at that place (for example, if an injury arose from performing activities at the eligible employee's home recommended by a doctor to assist in recovering from an eligible injury).

Injuries and incapacity attributable to surgery etc.

38. Any injury or incapacity attributable to surgery or other treatment or service or advice performed or provided with due care and skill by a person professing to have particular skills and undertaken or provided in relation to an eligible injury will be taken to constitute part of the original eligible injury.

**PART 4 – MEDICAL EXPENSE ENTITLEMENTS AND LUMP SUMS**Medical and related expenses entitlement

39. The employer must pay compensation for medical and/or related expenses incurred in consequence of an eligible injury, whenever any such expenses are incurred. To avoid doubt, an eligible employee's entitlement to medical and/or related expenses does not end only because income compensation payments to the eligible employee cease. However, if a redemption or commutation in respect of medical and/or related expense entitlements arising out of a particular injury or injuries has been paid pursuant to s42 of the *WR&C Act* or s54 of the *RTW Act*, no medical and/or related expenses are payable under this Schedule in relation to that injury or injuries.

Medical expense lump sums

40. Medical expense lump sums (in addition to such compensation as is payable for medical and related expenses incurred before receiving a medical expense lump sum payment) may be paid to eligible employees.

Medical and related expenses – effect of medical expense lump sum

41. Once an eligible employee has received a medical expense lump sum payment the employer is not obliged to pay compensation for medical and for related expenses pursuant to this schedule if:
- 41.1 medical and/or related expenses are incurred in consequence of a particular eligible injury after the day when the eligible employee receives a medical expense lump sum payment; and
- 41.2 a medical expense lump sum payment received by the eligible employee is specifically in respect of that particular eligible injury.

Medical and related expenses – pre approval

42. An eligible employee is entitled to a decision by the employer on a claim for compensation for a medical and/or related expense that the eligible employee wishes to incur but is yet to incur. For the avoidance of doubt, a decision to reject such a claim (in whole or in part) is a decision for the purposes of this Schedule.

**PART 5 – INCOME COMPENSATION ENTITLEMENTS & LUMP SUMS**

43. The employer must pay weekly payments of income compensation in respect of incapacity for work (whether partial or total) arising out of an eligible injury in accordance with the following principles. However, if a redemption or commutation in respect of weekly payments arising out of a particular injury or injuries has been paid pursuant to s42 of the *WR&C Act* or s53 of the *RTW Act*, no income compensation is payable under this Schedule in relation to that injury or injuries.

Work capacity review

44. An eligible employee's entitlement to income compensation in respect of a particular eligible injury does not arise without an entitling assessment pursuant to clause 49 (work capacity review) and ceases if there is a disentitling assessment pursuant to clause 51.

Income compensation – quantum

45. Weekly payments must be paid at the rate of 80% of the eligible employee's Notional Weekly Earnings or, if the eligible employee has actual earnings, 80% of the difference between actual earnings and the eligible employee's Notional Weekly Earnings.

Income compensation – duration

46. An eligible employee's entitlement to income compensation ceases when the eligible employee reaches retiring age.
47. If an eligible employee breaches the obligation of mutuality, the eligible employee's entitlement to income compensation may be discontinued for such time as the eligible employee remains in breach of the obligation of mutuality. An eligible employee resigning (other than on medical advice to resign) after claiming income compensation under this Schedule breaches mutuality. Lawful termination of employment by the employer on the ground of serious and wilful misconduct and/or criminal conduct breaches mutuality.
48. An eligible employee's entitlement to income compensation may be discontinued if there is a disentitling assessment on a work capacity review.

Work Capacity Review

49. An eligible employee's entitlement to receive income compensation does not commence unless the eligible employee is assessed in relation to the cumulative effect of one or more eligible injuries (an **entitling assessment**) by the employer as:
- 49.1 having no current work capacity; and
- 49.2 likely to continue indefinitely to have no current work capacity; or
- 49.3 being in employment but because of the injury is likely to continue indefinitely to be incapable of undertaking further or additional employment or work that would increase the eligible employee's current weekly earnings.
50. The employer may make an entitling assessment on any basis.
51. A **disentitling assessment** is an assessment that the eligible employee does not meet the criteria in clause 49. A disentitling assessment can only be made if:
- 51.1 the employer has sought and obtained an opinion from an IMA (whose expertise is appropriate to the particular injury) about whether the eligible employee meets the criteria in clause 49; and

- 51.2 if the eligible employee has earnings in employment or other work, the IMA considers that notwithstanding the eligible injury or injuries the eligible employee is, and is likely to continue indefinitely to be, capable of undertaking further or additional employment or work which would increase the eligible employee's earnings, and specifies what that additional employment or work is; and
- 51.3 the IMA provides a written opinion that the eligible employee does not meet the criteria in clause 49; and
- 51.4 if the eligible employee has earnings in employment or other work, the IMA specifies on reasonable grounds the additional employment or work the IMA considers that the eligible employee could do to increase their earnings.

Work capacity review & ceasing income compensation

52. An eligible employee receiving income compensation under this schedule shall continue to receive income compensation under this schedule until at least 13 weeks after the eligible employee receives written notification from the employer that the eligible employee is no longer entitled to receive income compensation under this Schedule because of a disentitling assessment.

Work capacity reviews & commencing or recommencing income compensation

53. If an eligible employee who is not receiving income compensation under this Schedule or a Compensation Act claims income compensation the employer is not obliged to pay income compensation under this Schedule until an entitling assessment is made. In those circumstances, if an entitling assessment is made the eligible employee is entitled to arrears and interest for all periods when they are entitled to income compensation.

First work capacity review: timing

54. A work capacity review may be performed before or after an eligible employee has exhausted their entitlement to weekly payments under a Compensation Act.
55. An eligible employee who, immediately before the end of the second designated period defined in s39 of the RTW Act, was in receipt of weekly payments under the RTW Act is entitled to receive income compensation pursuant to this Schedule at the same rate unless and until a work capacity review is conducted.
56. If clause 55 applies and the outcome of the work capacity review is:
- 56.1 an **entitling assessment**, the employer must conduct reviews in accordance with Part 9 of this Schedule and adjust the eligible employee's income compensation accordingly;
- 56.2 a **disentitling assessment**, Clause 52 and Part 8 of this Schedule apply.

Reassessment

57. An eligible employee's work capacity may be reassessed consistent with clause 49 through 51 at any reasonable time and must be reassessed as often as is reasonably necessary.

Income compensation – effect of income compensation lump sum

58. An income compensation lump sum (in addition to such compensation as is payable for income compensation before receiving an income compensation lump sum payment) may be paid to eligible employees.
59. Once an eligible employee has received an income compensation lump sum payment the employer is not obliged to pay weekly payments pursuant to this Schedule if:
- 59.1 an entitlement to income compensation in consequence of a particular eligible injury arises after the day when the eligible employee receives an income compensation lump sum payment; and
- 59.2 an income compensation lump sum payment received by the eligible employee is specifically in respect of that particular eligible injury.

Income compensation – effect of lump sum payment for economic loss

60. If this Award applies to an employee who claims compensation pursuant to Part 4 Division 6 of the *RTW Act*, before paying any such compensation the employer must:
- 60.1 give the employee written notice of:
    - 60.1.1 the dollar amount of compensation the employer says the employee is entitled to; and
    - 60.1.2 clause 60 through 63 of this Schedule; and
  - 60.2 request written confirmation from the employee that, having regard to clauses 60 through 63 of this Schedule, they wish to be paid compensation pursuant to Part 4, Division 6 of the *RTW Act* and allow a reasonable time for the employee to respond in writing.
61. If an eligible employee has received a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**) 3 months or more after this Schedule is inserted into the Award the eligible employee is not entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to.
62. If an eligible employee has received a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**) before 3 months after this Schedule is inserted into the Award, the eligible employee is not entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to unless they agree in writing to repay the payment and comply with that agreement, with repayments to be made by periodic payments in accordance with clause 78.1 unless otherwise agreed in writing.
63. If an eligible employee has received income compensation pursuant to this Schedule and then receives a payment pursuant to Part 4, Division 6 of the *RTW Act* (**the payment**):
- 63.1 the eligible employee ceases to be entitled to income compensation pursuant to this Schedule in relation to the same injury or injuries that the payment related to; and
  - 63.2 the employer is entitled to deduct from the payment any income compensation previously paid to the eligible employee pursuant to this Schedule in relation to the same injury or injuries that the payment related to.

**PART 6 – RECOVERY/RETURN TO WORK PLANS**

Continuing operation of plans established under the RTW Act

64. If a recovery/return to work plan established under s25 of the *RTW Act* has not reached its completion date or action when entitlements under this Schedule arise, it continues to operate by virtue of this Schedule irrespective of whether the *RTW Act* authorises its continued operation until the date or action the plan is expressed to conclude on, unless the eligible employee and the employer agree that the plan should cease operation or be varied or if SAET determines that the plan should cease operation or be varied.

When plans are established – entitlement

65. If it is reasonable to do so, the employer may establish a written recovery/return to work plan in relation to an eligible employee who has an eligible injury. If an eligible employee's entitlements under this Schedule are not exhausted, the employer must establish a written recovery/return to work plan if the eligible employee requests such a plan in writing.

Content of plans

66. A recovery/return to work plan may provide for any assistance, service, payments or return to work arrangement that may reasonably assist the full restoration of the eligible employee to the workforce and/or the community, including by alleviating the impact of the disability so far as is possible. A recovery/return to work plan must assist the full restoration of the eligible employee to the workforce and/or the community, including by alleviating the impact of the disability, so far as is reasonable practicable, and must be in accordance with Attachment 1 to this Schedule.
67. Recovery/return to work plans under this Schedule may not impose unreasonable obligations on eligible employees.

68. An eligible employee whose entitlements under this Schedule are not exhausted is entitled to a reasonable recovery/return to work plan if the employer establishes a recovery/return to work plan or if the employee requests a recovery/return to work plan.
69. If:
- 69.1 an eligible employee who has been incapacitated for work in consequence of an eligible injury is able to return to work, whether on a full time or part time basis and whether or not to his or her previous employment;
  - 69.2 the employer must provide suitable employment for the eligible employee (the employment being employment for which the eligible employee is fit and subject to that qualification employment which is, so far as reasonably practicable the same as, or equivalent to, the employment in which the eligible employee was working immediately before the incapacity) as part of a recovery/return to work plan;
  - 69.3 if the eligible employee requests it, but not if it is not reasonably practicable to provide such employment (and the onus of establishing that lies on the employer); or
  - 69.4 the eligible employee left the employment of the employer before the commencement of the incapacity for work; or
  - 69.5 the eligible employee terminated the employment after the commencement of the incapacity for work; or
  - 69.6 new or other employment options and any ancillary matters have been agreed and remain agreed between the eligible employee and employer and are contained in a current recovery/return to work plan; or
  - 69.7 the eligible employee has otherwise sustainably returned to work earning at or above the eligible employee's Notional Weekly Earnings.
70. Suitable employment to be provided by the employer includes employment in respect of which the number of hours each day or week that the employee performs work or the range of duties the employee performs is suitably increased in stages.
71. If all eligible employee performs alternative or modified duties pursuant to a recovery/return to work plan, the employer must pay an appropriate wage or salary in respect of those duties.

#### **PART 7 – MUTUAL OBLIGATIONS**

72. When an eligible employee is entitled to receive benefits pursuant to this Schedule the employer must reasonably:
- 72.1 manage the eligible employee's injury; and
  - 72.2 provide services and assistance to further the eligible employee's recovery and return to work and/or the community and to alleviate the impact of the disability so far as is possible; and
  - 72.3 at the employee's request, review any service/s or entitlements provided pursuant to this Schedule and/or investigate any matter, if it appears to the employee that the employer may not be complying with this Schedule and provide the employee with written advice about the outcome of any such review or investigation and any actions the employer will take arising out of any such review or investigation.
73. An employee receiving income compensation under this Schedule must not breach the obligation of mutuality defined by s48(3) and (4) of the *RTW Act*. If an employee breaches mutuality, mutuality may be restored in accordance with the principles application under the *RTW Act*. A breach of mutuality does not alter the employee's entitlement to compensation for medical and/or related expenses.

#### **PART 8 – REDUCTION, DISCONTINUANCE & SUSPENSION OF INCOME COMPENSATION**

74. If an eligible employee's entitlement to income compensation under this Schedule ceases or will cease or reduces or will reduce (including because the employee has ceased to be an eligible employee), payments of income compensation may only be discontinued or reduced in accordance with this Part.

75. Unless clause 52 applies (work capacity reviews – 13 weeks’ notice), no cessation or reduction of payments of income compensation may occur until the employee has received at least 28 days written notice of any such cessation or reduction.
76. If a person disputes a decision to reduce, discontinue or suspend their payments of income compensation (by either an application to SAET or the invocation of a dispute resolution procedure in this Award or an applicable enterprise agreement) within one month of the person receiving notice of a decision by the employer to reduce, discontinue or suspend income compensation under this Schedule:
- 76.1 the operation of the decision is suspended and –
- 76.1.1 income compensation must continue or, if the decision has already taken effect, the income compensation must be reinstated (to its previous level), until the matter first comes before a member of SAET; and
- 76.1.2 the employer must make a payment to the person of any income compensation that has not been made between the date that the decision took effect and the date the income compensation is reinstated;
- 76.1.3 unless the person elects in writing not to receive payments under this clause; and
- 76.2 SAET may as it thinks fit and from time to time, and after having regard to the nature and circumstances of the case:
- 76.2.1 further suspend the operation of the decision (from time to time) until the dispute is resolved to avoid the person suffering financial hardship and extra weight must be given to the desirability of requiring the continuation of payments if SAET considers it is reasonably open to the person to dispute the relevant decision;
- 76.2.2 vary or revoke a decision under this clause, including to provide that weekly payments will only continue, or continue at a reduced rate, if the person complies with conditions determined by SAET;
- 76.2.3 make an order to pay an amount relating to all or any weekly payments that have not been made to the employee during the dispute.
77. If a dispute is ultimately resolved in favour of the employer and the person has been paid more than the person’s lawful entitlements to income compensation pursuant to clause 76, the employer may, at the employer’s discretion (but subject to this Schedule):
- 77.1 recover the excess (and any interest on the excess) from the employee as a debt; or
- 77.2 set off the amount recoverable under clause 77.1 against liabilities of the employer to pay the employee under this Schedule or a Compensation Act.
78. If it is reasonable in the circumstances, the employer may set off or recover an amount under clause 77.1 as a single lump sum, or by periodic payments, or by a combination of a lump sum and periodic payments, or in some other manner agreed between the employer and the person in writing, however:
- 78.1 the employer cannot require a person to make periodic payments exceeding 10% of the person’s net income (“net income” means income after the appropriate deduction is made for any income tax and child support payable by the person and any deductions made because of a garnishee order or similar order or requirement or any other deduction imposed by statute) without the person’s written agreement;
- 78.2 the employer may, in its absolute discretion, waive (absolutely or subject to such conditions as the employer thinks fit) the whole or any part of an amount it is entitled to recover, and shall do so if:
- 78.2.1 the employer is satisfied that the person is experiencing severe financial hardship, or it appears appropriate to do so because of any other special circumstances specific to the person; or
- 78.2.2 the employer considers it appropriate considering the likely costs associated with recovering the amount and the amount itself;

- 78.3 unless the person has provided materially false or misleading information to the employer that caused the employer to make the relevant payment/s, the employer must grant these remissions if the total amount payable is repaid within the following periods:
- 78.3.1 a 15% remission if the total amount is repaid within 1 month of the person first receiving written notification of the amount they are liable to pay;
- 78.3.2 a 10% remission if the total amount is repaid within 6 months of the person first receiving written notification of the amount they are liable to pay.
79. If a person has made a payment (including by an amount being set off) to the employer under clause 78 the employer must, within two months of the end of the financial year in which the payment is made, furnish the person with a statement that sets out:
- 79.1 the total amount paid by the person during that financial year; and
- 79.2 the amount left to be paid (if any); and
- 79.3 must furnish a final statement within 2 months after the debt is extinguished.

Interaction between paid annual and/or long service leave and income compensation – suspension

80. If an eligible employee takes paid annual or long service leave, the employer may suspend the income compensation that would otherwise be payable to the eligible employee when the eligible employee is on that leave if the employer complies with the notice requirements of this clause.
81. If the employer proposes to suspend the income compensation that would otherwise be payable during such a period of leave, the employer must provide the eligible employee with written notice of that proposal (including details of when income compensation payments under this Schedule will resume) within 14 days of the eligible employee requesting the relevant paid leave.
82. The eligible employee may withdraw the request for paid leave at any time within 14 days of a written notice under clause 81.
83. The employer cannot compel an eligible employee to take leave when they are entitled to income compensation.

**PART 9 – ADJUSTMENTS TO INCOME COMPENSATION**

Economic adjustments to the level of income compensation

84. If an eligible employee is incapacitated for work or appears likely to be incapacitated for work for more than one year, the employer must, during each year of incapacity, review the income compensation for the purpose of making an adjustment to the amount of the income compensation under this Part.

Quantum of economic adjustments – industrial instruments

85. Subject to clause 87, the Notional Weekly Earnings of an eligible employee who is entitled to income compensation shall be adjusted to reflect any increase in the rates of remuneration applicable to the classification held by the employee (or where relevant, any successor classification) immediately prior to the particular injury occurring and prescribed by an award or enterprise agreement.

Notice requirements before economic adjustment decided

86. At least 28 days before deciding the quantum of an economic adjustment pursuant to this clause, the employer must give the eligible employee written notice of the following:
- 86.1 The increase in the rate of remuneration the employer says applies pursuant to clause 85 and how the proposed economic adjustment has been calculated by applying that increase to the eligible employee's pre-existing Notional Weekly Earnings.
- 86.2 The increase in the rate of remuneration the employer says would be applicable if an economic adjustment was made in accordance with the Wage Price Index for total hourly rates of pay excluding bonuses for South

Australia, and how an economic adjustment would be calculated by applying that increase to the eligible employee's pre-existing Notional Weekly Earnings, and the eligible employee's right to elect in writing to receive an economic adjustment on that basis rather than in accordance with clause 85.

- 86.3 The eligible employee's right to make written representations to the employer on the review within a reasonable time specified in the notice.

Election for economic adjustment based on Wage Price Index not Industrial Instrument

87. If an eligible employee elects in writing to have their Notional Weekly Earnings adjusted in accordance with the Wage Price Index for total hourly rates of pay excluding bonuses for South Australia, the employer must adjust the eligible employee's Notional Weekly Earnings accordingly.

Timing of economic increase based on Industrial Instrument

88. An economic increase reflecting changes to remuneration in an award or enterprise agreement operates from the date of the employer's decision on the review, back-dated to the date of the relevant changes in rates of remuneration.

Timing of economic increase based on Wage Price Index

89. An economic increase in accordance with clause 87 operates from the end of the year of incapacity in which the review is made.

Adjustments due to change from original arrangements

90. The employer may, on its own initiative and must at the written request of an eligible employee, review the calculation of the Average Weekly Earnings of the eligible employee (and therefore the Notional Weekly Earnings of the eligible employee) for the purpose of making an adjustment due to:
- 90.1 a change in a component of the eligible employee's remuneration used to determine Average Weekly Earnings (including a component constituted by a non-cash benefit); or
  - 90.2 a change in the equipment or facilities provided or made available to the eligible employee (if relevant to Average Weekly Earnings).
91. Before the employer begins a review under clause 90, the employer must give the eligible employee written notice informing the eligible employee of the proposed review and inviting the eligible employee to make written representations to the employer on the subject of the review within a reasonable time specified in the notice.
92. If the employer finds on a review under clause 90 that there has been a change that warrants an adjustment contemplated by clause 90, the employer shall make the relevant adjustment.
93. An adjustment under clause 90:
- 93.1 will take effect as an adjustment to the eligible employee's Notional Weekly Earnings (and may therefore increase or reduce income compensation under this Schedule); and
  - 93.2 operates from an appropriate date determined by the employer (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in income compensation).
94. For the purpose of a review under clause 90, the employer may, by notice in writing to the eligible employee to whom the review relates, require the eligible employee to furnish any information that the employer reasonably determines to be relevant to the review.
95. If an eligible employee fails to comply with a requirement under clause 94 within the time allowed in the notice, the employer may suspend income compensation payments to the eligible employee.
96. On completing a review under clause 90, the employer must give the eligible employee written notice setting out the employer's decision on the review and the eligible employee's right to dispute the employer's decision.
97. Clauses 90 through 103 do not limit the rights of the employer under any other clause of this Schedule.

General Review of weekly payments

98. The employer may, on its own initiative, and must if requested in writing by an eligible employee, review the amount of the weekly payments made to an eligible employee. The employer is not required to comply with a request for such a review if the request is made within 3 months of the completion of an earlier review.
99. If the employer begins a clause 98 review under this clause, the employer must give the eligible employee written notice informing the eligible employee of the proposed review and inviting the eligible employee to make a written representation to the employer on the subject of the review within a reasonable time specified in the notice.
100. If the employer finds on a clause 98 review that the eligible employee's entitlement to income compensation has ceased, or has increased or decreased, the employer must adjust and may discontinue the income compensation to reflect that finding.
101. For the purpose of a clause 98 review, the employer may, by notice in writing to an eligible employee who is receiving weekly payments, require the eligible employee to submit to an examination by an IMA nominated by the employer or require the eligible employee to furnish evidence of the eligible employee's earnings (other than earnings paid by the employer).
102. If an eligible employee fails to comply with a requirement under clause 101 within the time allowed in the notice, the employer may suspend income compensation payments to the eligible employee.
103. On completing a clause 98 review, the employer must give the eligible employee written notice setting out the employer's decision on the review, and the eligible employee's rights to dispute the employer's decision, in accordance with clause 104.

**PART 10 – DECISIONS ON CLAIMS**

104. The employer must provide its written decision on a claim for entitlements under this Schedule (including a decision to cease or reduce or suspend income compensation and decisions to review income compensation and decisions on recovery/return to work plans) to the person who made the claim (including by their representative). The written decision must include the information required by s31(8)(b) of the *RTW Act* and regulation 20 of the *RTW Regulations*.
105. The employer must decide claims for entitlements under this Schedule (including claims for the provision of a recovery/return to work plan) as quickly as reasonable practicable and where the claim is for income compensation must, wherever practicable, endeavour to decide the claim within 10 business days from receipt of the claim.
106. A person who believes there has been undue delay in deciding a claim or other matter affecting the person under this Schedule may apply to SAET for expedited determination of the matter.
107. An application for an expedited determination of a matter cannot be made until at least 10 business days after the matter was placed before the relevant decision maker.
108. On an application for expedited determination of a matter, SAET may (in addition to such other powers as SAET may have) give directions SAET considers necessary to expedite the determination of the matter or decide the matter itself.
109. If SAET decides a claim on an application for expedited decision, the decision is to be treated as a decision of the employer.

**PART 11 – DISPUTE RESOLUTION**

110. For the avoidance of doubt and without limiting such other legal rights as the employer and a person claiming an entitlement under this Schedule may have:
  - 110.1 disputes over the employer's decisions on entitlements under this Schedule may be resolved pursuant to chapter two part one of the Fair Work Act 1994 and/or chapter two part two of the Fair Work Act 1994 (including concurrently) and any successor legislation to those provisions; and
  - 110.2 proceedings and dispute resolution processes taking issue with the employer's decision/s on entitlements under this Schedule may be commenced by either the person claiming the entitlement or his or her union.

111. Proceedings in the SAET about the employer's decision/s on entitlements under this Schedule should, so far as is reasonable practicable, be heard together with such other proceedings between the same parties in the SAET as may exist.

## PART 12 – COSTS OF PROCEEDINGS

### General Entitlement to Costs

112. A party (other than the employer) is entitled, subject to this Schedule, to an award against the employer for the party's reasonable costs of proceedings for resolution of the matter before SAET.
113. Costs may also be awarded to cover the cost of representation by a legal practitioner or an employee or employee of the employee's union and disbursements incurred by a party to proceedings before SAET up to a reasonable amount reasonable incurred, subject to the qualification that costs for medical services reimbursed as disbursements in the proceedings are limited to the scale of charges applicable at the relevant time that apply for the purposes of s33 of the *RTW Act* or, if a service is not covered by a scale of charges under that section, to an amount determined in accordance with the principles under that section.
114. If SAET is of the opinion that a party:
- 114.1 has acted unreasonably:
- 114.1.1 in bringing proceedings before SAET; or
- 114.1.2 in view of an assessment or recommendation of a SAET member under s43(13) of the *South Australian Employment Tribunal Act 2014*; or
- 114.1.3 without limiting clause 114.1.2, in failing to discontinue or settle any proceedings before the conclusion of the hearing of a matter; or
- 114.1.4 in relation to any other aspect of the conduct of proceedings before SAET; or
- 114.2 has acted frivolously or vexatiously in bringing or in relation to the conduct of proceedings before SAET;
- SAET may:
- 114.3 decline to make an award of costs in favour of the party and may further (if it thinks fit) make an award of costs against the party; or
- 114.4 reduce the amount of the award of costs to which the party would otherwise have been entitled.
115. Subject to clause 116, an award of costs to cover professional advice or assistance may, if SAET considers appropriate, be made in favour of the person who provided the professional advice or assistance.
116. An award of costs to cover the cost of representation by an employee or employee's union is payable to the union.
117. An award of legal costs cannot exceed 85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

### Costs liability of representatives

118. If a professional representative acting for a party to proceedings before SAET under this Schedule (whether personally or through an employee or agent) has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default, SAET may order:
- 118.1 that all or any of the costs between the professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;
- 118.2 that the professional representative pay to his or her client all or any of the costs which his or her client has been ordered to pay to any party;

- 118.3 that the professional representative pay all or any of the costs of any party other than his or her client.
119. Without limiting clause 118, a professional representative is in default for the purposes of that subclause if any proceedings cannot conveniently be heard or proceed, or fail or are adjourned without any useful progress being made, because the professional representative failed to:
- 119.1 attend in person or by a proper representative; or
  - 119.2 file any document which ought to have been filed; or
  - 119.3 lodge or deliver any document for the use of SAET which ought to have been lodged or delivered; or
  - 119.4 be prepared with any proper evidence or account; or
  - 119.5 otherwise proceed.
120. SAET may not make an order against a professional representative under clause 118 unless SAET has informed the professional representative of the nature of the order proposed and allowed the professional representative a reasonable opportunity to make representations, and call evidence, in relation to the matter.
121. SAET may order that notice of any proceedings or order against a professional representative under clause 118 be given to the client in such manner as SAET directs.
122. SAET's power to make an order under clause 118 is exercisable by a presidential member of SAET or another member of SAET who is authorised by a presidential member of SAET to make the particular order.

### **PART 13 – MISCELLANEOUS**

#### Interest on Delayed Income Compensation

123. If:
- 123.1 Income compensation, or part of income compensation, is not paid as and when require to be paid under this Schedule; or
  - 123.2 the payment of income compensation is delayed pending resolution of a dispute over the employer's decision/s on an entitlement to income compensation under this Schedule; then
  - 123.3 interest will be paid on any arrears, however, no interest is payable under this clause if the delay is attributable to some fault on the part of the eligible employee.

#### Interim payments

124. A person may, pending the final determination of a claim, apply to the employer for interim payments of income compensation under this Schedule.
125. The employer must offer to make interim payments if it fails to determine the relevant claim within 10 business days after tile date of receipt of the claim unless the failure to determine the claim is:
- 125.1 due to the unreasonable failure or refusal of the person making the claim to attend a medical examination arranged by the employer; or
  - 125.2 because the employer has arranged an examination for the purposes of a work capacity review and that examination is yet to occur.
126. If on the final determination of a claim (if the employer rejects the claim, the claim is finally determined when any relevant proceedings have been completely finalised) an amount the employee was not entitled to has been paid under this clause, the employer may recover that amount as a debt in a Court of competent jurisdiction.

#### Income Compensation and Leave Entitlements

127. Section 50 of the *RTW Act* is incorporated into this Schedule. To the extent that s50 of the *RTW Act* is inconsistent with clauses 80 through 83, those clauses prevail.
128. The references to “weekly payments” in s50 of the *RTW Act* as incorporated into this Schedule are to be read as references to income compensation pursuant to this Schedule.

*Injuries that develop gradually*

129. The date when an injury that develops gradually or is a disease will be taken to have occurred will be determined in accordance with *RTW Act* s188.

*Costs associated with lump sum payment agreements*

130. If the employer offers an eligible employee a lump sum payment agreement, and the eligible employee incurs costs in having one or more of annexures A, B or C to such an agreement completed by a professional adviser, a financial adviser or a recognised health practitioner, the employer must reimburse the eligible employee for any such costs subject to any limits applicable at the time the relevant advice is obtained pursuant to ss53 and 54 of the *RTW Act*.

*Review & anomalies*

131. The employer and the relevant unions parties to the Award and the employer shall:
- 131.1 jointly review the operation of this Schedule with that review to commence 2 years after the order incorporating this Schedule in this Award is made and to conclude within 2 months of commencement; and
- 131.2 use their best endeavours to resolve perceived anomalies or perceived unfair situations arising out of the operation of this Schedule or the alteration to the rights of employees arising out of the change from the *WR&C Act* to the *RTW Act*.

**SCHEDULE 2**

**ATTACHMENT 1**

**RECOVERY/RETURN TO WORK PLAN**

**Recovery/Return to Work Plan**

**No:**

Boxes marked \* MUST be completed in full. This is not a prescribed or designated form.

Details	
Commencement date/action:	Completion date/action:
*Worker’s full name:	*Claim no:
Pre-injury occupation:	*Date of birth:
*Pre-injury employer:	*Date of injury:
Return to work coordinator:	*Nature of injury:
Is an interpreter required? Yes <input type="checkbox"/> No <input type="checkbox"/>	Preferred language:

**Objectives:**

**Mandatory:** Select at least one of the following objectives

- (i) The worker’s return to the pre-injury employment with the pre-injury employer;
- (ii) The worker’s return to different employment with the pre-injury employer;
- (iii) The worker’s return to the pre-injury employment but with a different employer;
- (iv) The worker’s return to different employment with a different employer;
- (v) The worker’s return to independence within the community;

Goal(s):	Actions and services required to meet the goals and objectives of this recovery/return to work plan	By whom (name) By when (date)

**Hourly wage rate to be paid by employer (section 19 —Payment of wages for alternative or modified duties): \$**  
 If an eligible employee who has been incapacitated for work in consequence of a work injury undertakes alternative or modified duties under employment or an arrangement that falls outside the eligible employee’s contract of service for the employment from which the injury arose, the employer must pay an appropriate wage or salary in respect of those duties.

<b>Stay at work/return to work arrangements:</b>						
<b>From</b>	<b>To</b>	<b>Days</b>	<b>Hours</b>	<b>Work activities</b>	<b>Considerations/Restrictions</b>	<b>Supervisor (name)</b>

**Important Notice to Eligible Employees**

- A failure to comply with an obligation under a recovery/return to work plan may lead to the discontinuance of weekly payments (see section 48(3)(d)(ii) of the Return to Work Act 2014);
- An application for a review of a provision of a recovery/return to work plan may be made but it does not suspend obligations imposed by the plan pending a determination of the review;
- A refusal or failure to undertake work that has been offered and that the worker is capable of performing, or to take reasonable steps to find or obtain suitable employment, may lead to the discontinuance of payments (see section 48 of the Return to Work Act 2014). This may also occur if a worker obtains suitable employment and then unreasonably discontinues the employment.

**Preparation details**

Prepared by:	Telephone:
Position:	Email:
Relevant comments by any party:	

**Agreement** (a signature confirms the party has been consulted in preparing this recovery/return to work plan)

<b>Parties involved</b>	<b>Print name</b>	<b>Signature (or reason if none)</b>	<b>Date</b>
Eligible Employee			
Employer			
Treating Doctor			

**Established/Approved**

<b>Recovery/return to work plan:</b>	<input type="checkbox"/> <b>Approved</b>	<input type="checkbox"/> <b>Not approved</b>
Employer Signature	Initials and surname	Date
Employer Comments:		

**SCHEDULE 2**

**ATTACHMENT 2**

**Lump Sum Agreement  
To  
EXTINGUISH RIGHTS**

[to income compensation and/or medical and/or related expense compensation]  
(amend as appropriate)

**Pursuant to Schedule 2 of the Chauffeurs (Ministerial) Public Service Award**

This is an agreement between:

[insert eligible employee’s name]  
“the eligible employee”

And

Chief Executive of the Department of the Premier and Cabinet  
“the employer”

**Background**

1. The eligible employee suffered an injury or injuries as follows (the injury or injuries)::

Injury Date	Injury Description

2. The employer has undischarged liabilities to the eligible employee to pay income compensation and compensation for medical and/or related expenses [delete “income compensation and” if appropriate] in respect of the injury or injuries in accordance with Schedule 2 of the Chauffeurs (Ministerial) Public Service Award (**the undischarged liabilities**).
3. Noting that no lump-sum payment agreement can be finalised unless the eligible employee has received competent professional advice about the consequences of this agreement, the eligible employee has received such advice, as appears from Annexure “A”.
4. Noting that no lump-sum payment agreement can be finalised unless the eligible employee has received competent financial advice about the investment or use of the lump sum payment, the eligible employee has received such advice, as appears from Annexure “B”.
5. Noting that no lump-sum payment agreement can be finalised unless a recognised health practitioner has certified that the extent of the eligible employee’s incapacity resulting from the Injury or Injuries can be determined with a reasonable degree of confidence and has advised the eligible employee about the future medical assistance of any kind that the eligible officer will or is likely to require on account of the Injury or Injuries and any related surgery, treatment or condition, a recognised health practitioner has so certified and has so advised as appears from Annexure “C”.
6. The eligible employee and the employer have reached an agreement for the employer to pay a lump sum to the eligible employee which payment will extinguish the undischarged liabilities.

**THE ELIGIBLE EMPLOYEE AND THE EMPLOYER HEREBY AGREE AND ACKNOWLEDGE**

7. That the matters set out in paragraphs 1 through 6 of this agreement are true and correct to the best of the eligible employee’s and the employer’s knowledge, understanding and belief.



**NOTIFICATION TO ELIGIBLE EMPLOYEE**

Under Section 33A of the *Health and Other Services (Compensation) Act 1995* (Medicare Act), you are advised that the employer intends to make an advance payment under Section 338 of the Medicare Act for compensation payable under a judgment or settlement as follows:

1. The employer intends to make an advance payment to the Commonwealth.
2. The amount of the advance payment will be 10% of the total redemption [insert dollar figure].
3. The Commonwealth can retain some or all of the advance payment for eligible benefits paid by the Commonwealth in respect of services and care rendered or provided in the course of treatment for, or as a result of, your compensable injury or injuries. If the amount specified in the notice under Section 33C of the Act is less than the amount of advance payment, the difference is payable by the Commonwealth to you.
4. You will be required to make an additional payment to the Commonwealth in respect of the eligible benefits if the amount specified by the written notice given to you under Section 33C of the Act is greater than the amount of the advance payment.

I acknowledge receipt of the above advice.

[insert name of eligible employee]

.....

Date

**ANNEXURE “A”**

**PROFESSIONAL ADVICE**

**SUBJECT: lump sum payment agreement under Schedule 2 of the Chauffeurs (Ministerial) Public Service Award**

I, [insert name of eligible employee], have received competent professional advice about the consequence of a lump-sum payment in the amount of

..... from .....

I have received advice on matters including the following:

- A. That on receipt of this lump-sum payment I have no entitlement to income compensation in respect of dates on or after receipt of that payment or payment of medical and/or related expenses incurred on or after receipt of that payment in relation to my injury/injuries described in paragraph 1 of the lump sum payment agreement.
- B. That on receipt of lump-sum payment in respect of medical and/or related expenses I may not be able to claim medical benefits from Medicare nor my health fund for treatment regarding my injury/injuries described in paragraph 1 of the lump sum payment agreement.
- C. Taxation implications of the lump sum payment, if any. In particular, I have been advised that it may seek a private ruling in accordance with the Income Tax Assessment Act 1997.
- D. Centrelink implications in relation to the lump-sum payment.

[Insert name of eligible employee]

Adviser’s name

[Insert address of eligible employee]

Adviser’s Company name and address:

.....

.....

Eligible employee’s signature

Adviser’s Signature

.....

.....

Date and time signed by eligible employee

Date and time signed by adviser:

**ANNEXURE "B"**

**FINANCIAL ADVICE**

**SUBJECT: Lump-sum payment agreement under Schedule 2 of the Chauffeurs (Ministerial) Public Service Award.**

I, [Insert name of eligible employee] have received competent financial advice from

.....  
About the investment or use of the lump-sum payment of [insert dollar figure]. I am satisfied the advice is appropriate to my circumstances

[Insert name of eligible employee]

Adviser's Name:

[Insert address of eligible employee]

Adviser's Company name and address:

.....  
Eligible employee's signature

.....  
Adviser's Signature

.....  
Date and time signed by eligible employee:

.....  
Date and time signed by adviser:

**ANNEXURE “C”**

**MEDICAL CERTIFICATE**

**SUBJECT: Lump-sum payment agreement under Schedule 2 of the Chauffeurs (Ministerial) Public Service Award**

I, ..... hereby certify that the extent of [insert name of eligible employee]’s, incapacity result from the following injury/injuries can be determined with a reasonable degree of confidence:

Injury date	Injury description	Employer

I also certify that [insert name of eligible employee] has received advice from me about the future medical services (and, if relevant, therapeutic appliances and other forms of assistance related to his or her future health) that [insert name of eligible employee] will or is likely to require on account of the work injury or injuries set out above and any related surgery, treatment or condition.

Signature:

Qualifications:

Address/contact details:

Date:

## APPLICATIONS FILED

<i>File No</i>	<i>Description</i>
<b>04093/2001</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2001. Oupdate ppc 15/07/2002.
<b>05067/2001</b>	AWARD VARIATION Application not proceeded with. Award varied by 4093/2001.
<b>08138/2001</b>	AWARD CONDITIONS re payment to employees recalled to work overtime. Question of Law referred to Court - decision [2003] SAIRC 43. Appealed to Full Court - decision [2004] SAIRC 20.
<b>04260/2002</b>	AWARD VARIATION Award varied (joined with 4339/2002). Sch. 1 Rates of Pay re SWC 2002. Oupdate ppc 15/07/2002.
<b>04339/2002</b>	AWARD VARIATION Award varied (joined with 4260/2002). Sch. 1 Rates of Pay re SWC 2002. Oupdate ppc 15/07/2002.
<b>04342/2003</b>	AWARD VARIATION Award varied. Schedule 1 Rates of Pay re SWC 2003. Oupdate ppc 15/07/2003.
<b>04643/2004</b>	AWARD VARIATION Award varied. Cl 1.3 Scope, Persons Bound, Sch. 1 Rates of Pay re SWC 2004 & addition of PSA as party bound. Oupdate ppc 15/07/2004.
<b>02326/2005</b>	AWARD VARIATION Award varied. Sch. 1 Salaries re SWC 2005. Oupdate ppc 15/07/2005.
<b>06497/2005</b>	AWARD VARIATION Award varied. Cl. 5.2 Overtime, New Cl. 5.2A Overtime Allowance. Oupdate 13/10/2005.
<b>01197/2006</b>	AWARD VARIATION Award varied. Cl. 3.6 Shut Down, New Cl. 8.1 Annual Leave, New Cl. 8.2 Personal Leave - Injury & Sickness, New Cl. 8.3 Bereavement Leave, New Cl. 8.4 Parental Leave, New Cl. 8.5 Personal Leave to Care for a Family Member, New Cl. 8.6 Continuous Service. Oupdate ppc 14/03/2006.
<b>04410/2006</b>	AWARD VARIATION Award varied. Sch 1 Rates of Pay re General Appln to Review Wages 2006. Oupdate ppc 15/07/2006.
<b>03138/2007</b>	AWARD VARIATION Award varied. Cl. 5.2A Overtime Allowance. Oupdates ppc 01/10/2006, 01/10/2007 & 01/10/2008.
<b>04669/2007</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2007. Oupdates ppc 15/07/2007 & 01/10/2007.
<b>05966/2008</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2008. Oupdate ppc 01/10/2008.
<b>05726/2009</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2009. Oupdate ppc 01/10/2009.

<i>File No</i>	<i>Description</i>
<b>04648/2010</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2010. Oupdate ppc 01/10/2010.
<b>05557/2010</b>	AWARD VARIATION Award varied. Cl. 5.2A Overtime Allowance. Oupdate ppc 01/10/2009.
<b>04201/2011</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2011. Oupdate ppc 01/10/2011.
<b>05876/2011</b>	AWARD VARIATION Award varied. Cl. 3.2 Employment Categories re Casual Loading Case. Oupdates ppc 01/01/2012, 01/07/2012, 01/07/2013, 01/07/2014.
<b>02755/2012</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2012. Oupdate ppc 01/07/2012.
<b>03105/2013</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2013. Oupdate ppc 01/07/2013.
<b>04265/2013</b>	AWARD VARIATION Award varied. Cl. 5.2A Overtime Allowance. Oupdate ppc 01/10/2012 (& 01/10/2013).
<b>04497/2014</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2014. Oupdate ppc 01/07/2014.
<b>06381/2015</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2015. Oupdate ppc 01/07/2015.
<b>03237/2016</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2016. Oupdate ppc 01/07/2016.
<b>03384/2017</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2017. Oupdate ppc 01/07/2017.
<b>00615/2018</b>	AWARD VARIATION Award varied. New Cl. 3.8 & new Sch. 2 Additional Compensation for Certain Work Related Injuries or Illnesses. Oupdate 30/09/1987.
<b>04273/2018</b>	AWARD VARIATION Award varied. Sch. 1 Rates of Pay re SWC 2018. Oupdate ppc 01/07/2018.