



SOUTH  
AUSTRALIAN  
EMPLOYMENT  
TRIBUNAL

## **LOCAL GOVERNMENT TOURISM, HOSPITALITY AND RETAIL AWARD**

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

### **PART 1 - APPLICATION AND OPERATION OF AWARD**

#### **CLAUSE 1.1 TITLE**

OPDATE 06:11:2019 on and from

This Award shall be known as the "Local Government Tourism, Hospitality and Retail Award".

#### **CLAUSE 1.2 ARRANGEMENT**

OPDATE 06:11:2019 on and from

1.2.1 This Award is arranged as follows:

*Clause no. Title*

#### **Part 1 - Application and operation of Award**

- 1.1 Title
- 1.2 Arrangement
- 1.3 Scope and persons bound
- 1.4 Definitions
- 1.5 Continuous service
- 1.6 Commencement date of Award and period of operation

#### **Part 2 - Award flexibility**

- 2.1 Flexibility of work

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

- 3.1 Consultative mechanism
- 3.2 Dispute avoidance/grievance process
- 3.3 Introduction of change

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

- 4.1 Contract of hiring
- 4.2 Employment categories
  - 4.2.1 Full-time employment
  - 4.2.2 Part-time employees
  - 4.2.3 Casual employees
  - 4.2.4 Number of junior workers and apprentices
  - 4.2.5 Apprentices
  - 4.2.6 Trainees
  - 4.2.7 Employees on supported wages
- 4.3 Catering staff
- 4.4 Termination of employment
- 4.5 Redundancy

*Clause no. Title*

- 4.6 Transmission
- 4.7 Service provisions (termination, change and redundancy)
- 4.8 Anti-discrimination

**Part 5 - Wages and related matters**

- 5.1 Wages and classification definitions
- 5.2 Allowances
- 5.3 Mixed functions
- 5.4 Payment of wages
- 5.5 Superannuation
- 5.6 Traineeships
- 5.7 Supported wage provisions

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

- 6.1 Hours of work (day workers)
- 6.2 Operation of 38 hour week
- 6.3 Overtime
- 6.4 Shift work
- 6.5 Saturdays and Sundays
- 6.6 Public holidays
- 6.7 Meals
- 6.8 Daylight saving

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

- 7.1 Annual leave
- 7.2 Personal leave – injury and illness
- 7.3 Bereavement leave
- 7.4 Personal leave to care for a family member
- 7.5 Parental leave
- 7.6 Public holidays
- 7.7 Public holidays and personal leave falling on rostered day off
- 7.8 Blood donors leave
- 7.9 Trade union training leave
- 7.10 Leave to deal with Family and Domestic Violence

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

- 8.1 Transport
- 8.2 Fares and travelling time

**Part 9 - Training and related matters**

- 9.1 Training of employees
- 9.2 Training wage arrangements

**Part 10 - Occupational health and safety matters, equipment, tool and amenities**

- 10.1 Supply of uniforms
- 10.2 First-aid kit

**Part 11 - Award compliance and association related matters**

- 11.1 Posting up of award
- 11.2 Time and wages records
- 11.3 Right of entry

## 11.4 Notice boards

**Schedules**

- Sch. 1 Wages and classification definitions
- Sch. 2 Allowances
- Sch. 3 Training wage arrangements
- Sch. 4 Supported wage provisions
- Sch. 5 Parental Leave

1.2.2 **In alphabetical order**

*Clause no. Subject matter*

- Sch 2 Allowances (also 5.2)
- 7.1 Annual leave
- 4.8 Anti-discrimination
- 4.2.5 Apprentices
- 1.2 Arrangement
- 7.3 Bereavement leave
- 7.8 Blood donors leave
- 4.2.3 Casual employees
- 4.3 Catering staff
- 1.6 Commencement date of Award and period of operation
- 3.1 Consultative mechanism
- 1.5 Continuous service
- 4.1 Contract of hiring
- 6.7 Daylight saving
- 1.4 Definitions
- 3.2 Dispute avoidance/grievance process
- 4.2.7 Employees on supported wages
- 4.2 Employment categories
- 8.2 Fares and travelling time
- 10.2 First-aid kit
- 2.1 Flexibility of work
- 4.2.1 Full-time employment
- 6.1 Hours of work (day workers)
- 3.3 Introduction of change
- 7.10 Leave to deal with Family and Domestic Violence
- 6.6 Meals
- 5.3 Mixed functions
- 11.4 Notice boards
- 4.2.4 Number of junior workers and apprentices
- 6.2 Operation of 38 hour week
- 6.3 Overtime
- Sch. 5 Parental leave (also 7.5)
- 1.4 Parties bound
- 4.2.2 Part-time employees
- 5.4 Payment of wages
- 7.2 Personal leave – injury and illness
- 7.4 Personal leave to care for a family member
- 11.1 Posting up of Award
- 6.6 Public holidays
- 6.7 Public holidays
- 7.7 Public holidays and personal leave falling on rostered day off
- 4.5 Redundancy
- 11.3 Right of entry
- 6.5 Saturdays and Sundays
- 1.3 Scope and parties bound
- 4.7 Service provisions (termination, change and redundancy)
- 6.4 Shift work

*Clause no. Subject matter*

10.1	Supply of uniforms
Sch. 4	Supported wage provisions (also 5.7)
4.4	Termination of employment
11.2	Time and wage records
1.1	Title
7.11	Trade union training leave
4.2.6	Trainees
5.6	Traineeships
9.1	Training of employees
Sch. 3	Training wage arrangements (also 9.2)
4.6	Transmission
8.1	Transport
Sch. 1	Wages and classification definitions (also 5.1)

**CLAUSE 1.3 SCOPE AND PARTIES BOUND**

OPDATE 06:11:2019 on and from

- 1.3.1 This Award applies to local government sector employers throughout the State of South Australia and their employees who are employed in work in connection with the trade or business of tourism, hospitality or retail.
- 1.3.2 This Award applies in respect of licensed and unlicensed premises covered by clause 1.3.1.
- 1.3.3 This Award shall not be binding on the Chief Executive, Department of the Premier and Cabinet or any public sector employees.

**CLAUSE 1.4 DEFINITIONS**

OPDATE 06:11:2019 on and from

- 1.4.1 In this Award except where otherwise indicated:
- 1.4.1.1 **Act** means the *Fair Work Act 1994*.
- 1.4.1.2 **Commission** means the South Australian Employment Tribunal acting as an Industrial Relations Commission.
- 1.4.1.3 **Continuous service** means service as prescribed in clause 1.5.
- 1.4.1.4 **Ordinary hourly rate of pay** means the appropriate total weekly wage rate prescribed in Clause 5.1/ Schedule 1 divided by 38 and then rounded off to the nearest cent.
- 1.4.1.5 **Spouse** includes a defacto spouse but, except in relation to parental leave, does not include a spouse from whom the employee is legally separated.
- 1.4.1.6 **Union** means the Shop, Distributive and Allied Employees Association, South Australian Branch. It also means the union known as United Voice, but only with respect to Industrial and Commercial Canteens.
- 1.4.1.7 **Weeks pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:
- overtime;
  - penalty rates;
  - disability allowances;
  - shift allowances;
  - special rates;
  - fares and travelling time allowances;

- bonuses; and
- any other ancillary payments of a like nature.

1.4.1.8 ***Without loss of pay*** means that the employee is entitled to payment at the ***ordinary hourly rate of pay*** for the normal number of ordinary hours that the employee normally works on that day.

### CLAUSE 1.5 CONTINUOUS SERVICE

OPDATE 04:05:2011 on and from

#### 1.5.1 Maintenance of continuous service

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

- absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.
- absence of the employee from work for any cause by leave of the employer.
- absence from work on account of illness, disease or injury.
- absence with reasonable cause. Proof of such reasonable cause lies with the employee.
- interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Award, the **Act** or the *Long Service Leave Act 1987*.
- 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.
- 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.
- 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.
- any other absence from work for any reason other than those referred to in this clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than 14 days after the end of the period of absence.

#### 1.5.2 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:

- to the extent that the employee receives or is entitled to receive pay for the period; or
- where the absence results from a decision of the employer to stand the employee off without pay.

**Note:**

1. Subclause 1.5.1 deals with the circumstances where continuity of an employee's service with an employer is preserved (i.e.) not broken.
2. Subclause 1.5.2 deals with whether the period of absence is to be counted as service for the purposes of calculating service based entitlements.

**CLAUSE 1.6 COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION**

OPDATE 06:11:2019 on and from

This Award as varied by section 99 review operates on and from 06:11:2019

## **PART 2 - AWARD FLEXIBILITY**

### **CLAUSE 2.1 FLEXIBILITY OF WORK**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Employees within each classification are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

## PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

### CLAUSE 3.1 CONSULTATIVE MECHANISM

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Enterprises are to establish a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity.

### CLAUSE 3.2 DISPUTE AVOIDANCE/GRIEVANCE PROCESS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

3.2.1 Any industrial dispute or grievance arising out of or relating to this Award must be dealt with in the following manner:

- 3.2.1.1 As soon as is practicable after the dispute or claim has arisen, the employee concerned must take the matter up with their immediate supervisor affording that supervisor the opportunity to remedy the cause of the dispute or grievance.
- 3.2.1.2 Where any such attempt at settlement has failed, or where the dispute or grievance is of such a nature that a direct discussion between the employee and the immediate supervisor would be inappropriate the employee may notify a representative of the union or other representative of the employees choice, who, if that representative considers that there is some substance in the dispute or grievance, will forthwith take the matter up with the employer or the employer's representative.
- 3.2.1.3 If the matter is not resolved at such meeting, the parties will arrange for further discussions involving senior management as appropriate. The employee may invite a Union official to be involved in discussions.
- 3.2.1.4 If the matter is not settled, either party has the right to take the matter to the **Commission** and the **Commission** has the power to conciliate and/or arbitrate the matter.
- 3.2.1.5 Without prejudice to either party, work shall continue in accordance with the status quo while the matters in dispute are being dealt with in accordance with this clause.

### CLAUSE 3.3 INTRODUCTION OF CHANGE

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

3.3.1 **Notification of intended changes**

- 3.3.1.1 Where an employer has made a firm decision to implement changes in production, program, organisation, structure or technology that are likely to have **significant effects** on employees, the employer must as soon as practicable notify the employees who may be affected by the proposed changes and their **Union**.
- 3.3.1.2 **Significant effects** include:
  - (a) termination of employment;
  - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required;
  - (c) the elimination or diminution of job opportunities, promotion opportunities or job tenure;



- (d) the alteration of hours of work;
- (e) the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

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

### 3.3.2 Consultation with employees and their union

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

- (a) the introduction of the changes referred to in 3.3.1.1;
- (b) the effects the changes are likely to have on employees;
- (c) measures to avert or mitigate the adverse effects of such changes on employees.

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

3.3.2.2 The discussions must commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in 3.3.1.1.

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

- (a) all relevant information about the changes, including the nature of the changes proposed; and
- (b) the expected effects of the changes on employees and any other matters likely to affect them.

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

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

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

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

4.1.1 The contract of hiring shall, in the absence of an express contract to the contrary, be deemed to be a hiring by the week, however upon commencement the following shall apply:

4.1.1.1 For the first week of service the contract of employment shall be by the hour;

4.1.1.2 During the first week of employment, one hour's notice may be given by either party to terminate the employment contract, subject to the following;

(a) In the event of the employee giving the employer one hour's notice, the employee is entitled to all hours worked at the **ordinary hourly rate of pay**.

(b) Should the employer give the employee one hour's notice, the employee shall be entitled to all hours worked at the **ordinary hourly rate of pay** plus an additional loading of 20%.

(c) Should the employment contract continue in excess of the first week, a weekly hired employee's records for all leave purposes of the Award shall be deemed to have commenced from the first day of their employment.

#### **4.1.2 Unavoidable stoppages**

An employee whose contract of hiring is by the week shall not be entitled to payment for time lost when work is unavoidably stopped because of a breakdown of plant and/or machinery or a failure of power or a shortage of material or a strike: Provided that in case an employee on any day reports for duty at the employee's usual place of employment without having received notice of such stoppage before leaving home for work the employee shall be paid in respect of that day not less than 2 hours pay; and provided that an employee having started work on any day shall be entitled to be paid for a minimum of 2 hours work.

### **CLAUSE 4.2 EMPLOYMENT CATEGORIES**

OPDATE 06:11:2019 on and from

#### **4.2.1 Full-time employment**

Subject to Clause 6.2 – Operation of 38 Hour Week, a full-time employee is a weekly hired employee specifically engaged for 38 ordinary hours per week.

#### **4.2.2 Part-time employees**

4.2.2.1 Employees specifically engaged by the week for a lesser specified number of ordinary hours than 38 (which shall be at least 12 hours per week) shall be deemed to be part-time employees.

4.2.2.2 Part-time employees shall be paid a proportion of the appropriate classification weekly rate prescribed In Schedule 1 for 38 hours work according to the number of ordinary hours actually worked.

4.2.2.3 Part-time employees shall be entitled to the penalties elsewhere prescribed in this Award.

- 4.2.2.4 Part-time employees shall be entitled to annual leave, personal leave, bereavement leave and trade union training leave, on a pro-rata basis in accordance with the relevant provisions of Part 7.
- 4.2.2.5 The working roster of part-time employees working less than 18 ordinary hours per week shall not exceed 5 daily starts (work commencements) in any one week period and shall not require such an employee to work less than 3 hours on any one occasion.
- 4.2.2.6 Where part-time employees usually work on a day of the week on which a public holiday occurs and they are not required to work on that day they shall be paid for the hours that they would have worked on that day.

#### 4.2.3 **Casual employees**

- 4.2.3.1 A casual employee shall mean an employee whose contract of hiring is by the hour and does not include a part-time employee as defined in clause 4.2.2.

##### 4.2.3.2 Loading

- 4.2.3.2(a) Casual Employees are entitled to receive a casual loading of 25%. In calculating the hourly rate for a casual employee, the weekly rate is increased by the 25% casual loading, divided by 38 and the result rounded off to the nearest cent.

- 4.2.3.3 The hourly rate as prescribed in 4.2.3.2 is to be used in calculating overtime rates as set out in Clause 6.3 in respect of casual employees.

- 4.2.3.4 Where the ordinary hours of duty on any day Monday to Friday commence at or extend beyond 6.00 p.m., the minimum hourly rate will be increased to 35% in lieu of 25%, for such hours worked beyond 6.00pm.

- 4.2.3.5 A minimum period of engagement of 3 hours will apply to casual employees.

- 4.2.3.6 Where shift work is performed, casual employees shall receive the normal shift penalties in addition to the casual penalty.

- 4.2.3.7 With the exception of clause 4.4.3, the provisions of clauses 4.4. and 4.5 shall not apply to casual employees.

- 4.2.3.8 Other conditions of employment for casual employees are as prescribed in this Award.

#### 4.2.4 **Number of junior workers and apprentices**

- 4.2.4.1 The maximum number of junior workers who may be employed shall be one for every one **adult employee**. However that any employer may employ at least one junior worker, and further provided that in the case of junior cooks, the proportion shall be one to every three, or fraction of three, adult cooks, whether permanent or casual.

The table below illustrates the maximum number of junior cooks that can be engaged:

<i>No. of Adult Cooks</i>	<i>No. of Junior Cooks</i>
1	
2	1
3	
4	2
5	

6	
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4.2.4.2 In the case of apprentice cooks, the maximum number employed shall be one for every one adult cook employed.

4.2.4.3 **Adult employee** within the meaning of this clause shall include a casual worker.

#### 4.2.5 Apprentices

4.2.5.1 The minimum weekly wages for apprentice cooks are set out in Schedule 1.

##### 4.2.5.2 School based apprentices

(a) *Definitions*

- (i) A **school based apprentice** is a person who is undertaking an apprenticeship in accordance with this clause while also undertaking a course of secondary education.
- (ii) **Off-the-job training** is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.

(b) *Wages and training*

- (i) The rates for full-time junior and adult apprentices as set out in s1.2.4 of Schedule 1 will apply to **school based apprentices** for total hours worked including time deemed to be spent in **off-the-job training**.
- (ii) For the purposes of 4.2.5.2(b)(i), where an apprentice is a full-time school student, the time spent in **off-the job training** for which the apprentice is paid is deemed to be 25 per cent of the actual hours worked on the job each week.
- (iii) A **school based apprentice** shall be allowed, over the duration of the apprenticeship, the same amount of time to attend **off-the-job training** as an equivalent full-time apprentice.
- (iv) The duration of the apprenticeship will be as specified in the training agreement or contract for each apprentice. Apprentice wage rates will apply for a maximum period of six years.

(c) *Progression*

- (i) **School based apprentices** will progress through the wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- (ii) These rates are based on a standard full-time apprenticeship of four year. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a **school based apprentice** undertaking the applicable apprenticeship.
- (d) Where an apprentice converts from school based to full-time, all time spent as a full-time apprentice will count as service for the purposes of progression through the wage scale, in addition to the progression achieved as a **school based apprentice**.
- (e) **School based apprentices** are entitled, to pro rata entitlements available to employees covered by this Award.

#### 4.2.6 **Trainees**

Provisions in relation to trainees are set out in Schedule 3 – Training Wage Arrangements.

#### 4.2.7 **Employees on supported wages**

Provisions in relation to employees on supported wages are set out in Schedule 4 – Supported Wage Provisions.

### **CLAUSE 4.3 CATERING STAFF**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

#### 4.3.1 **Catering employee** means any employee:

- 4.3.1.1 Who is employed in connection with any special breakfast, special dinner, luncheon, reception or similar social function; or
- 4.3.1.2 Who is employed in or about any restaurant, tea room, dining room, food stall, or cafe, at any racecourse, trotting ground, sports ground, showground or at any picnic.
- 4.3.2 If any catering employee is engaged for a period of 8 hours, the employee shall be paid for a period of 8 hours whether or not the full period is worked. Such an employee is also entitled to a loading of 25%. In calculating the hourly rate for a such an employee, the weekly rate is increased by the 25% loading, divided by 38 and the result rounded off to the nearest cent.
- 4.3.3 If any catering employee is not engaged by the day, such employee shall be deemed to be engaged by the hour, and shall be paid a loading of 66.6%. In calculating the hourly rate for a such an employee, the weekly rate is increased by the 66.6% loading, divided by 38 and the result rounded off to the nearest cent.
- 4.3.4 If any catering employee works for less than 3 hours on any day the employee shall be paid as prescribed in Clause 4.3.3 for 3 hours. If the employee attends at the place for which they are engaged to commence work and are not required to commence work, the employee shall be paid for one hour at the rate prescribed by Clause 4.3.3.
- 4.3.5 If any catering employee works more than 8 hours in any day, or if any catering employee works beyond 11.30 p.m. the employee shall be paid a loading of 100% for the time worked above 8 hours or worked beyond 11.30 p.m. as the case may be. In calculating the hourly rate for a such an employee, the weekly rate is increased by the 100% loading, divided by 38 and the result rounded off to the nearest cent.
- 4.3.6 The employer of any catering employee shall pay to such employee fares calculated from the General Post Office, Adelaide, which are reasonably incurred to and from his place of employment.
- 4.3.7 The provisions of Clause 6.3 Overtime and Clause 6.5 Saturdays and Sundays shall not apply to catering employees.

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

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

#### 4.4.1 **Notice of termination by employer**

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

*Period of continuous service**Period of notice*

Not more than 1 year

At least 1 week

More than 1 year but not more than 3 years

At least 2 weeks

More than 3 years but not more than 5 years

At least 3 weeks

More than 5 years

At least 4 weeks

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

4.4.1.3 Payment in lieu of the notice prescribed in 4.4.1.1 and/or 4.4.1.2, 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.

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

4.4.1.5 The period of notice in 4.4.1.1 and 4.4.1.2 does not apply in the case of:

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

#### 4.4.2 **Time off during notice period**

Where an employer has given notice of termination to an employee, the employee is entitled to up to 1 day of time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee, after consultation with the employer.

#### 4.4.3 **Statement of employment**

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

#### 4.4.4 **Payment in lieu**

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

#### 4.4.5 **Notice of termination by employee**

In order to terminate employment a weekly hired employee must give the employer the following notice:

*Period of continuous service**Period of notice*

Not more than 1 year

At least 1 week

More than 1 year

At least 2 weeks

or forfeit the wages appropriate to the notice period.

## CLAUSE 4.5 REDUNDANCY

OPDATE 04:05:2011 on and from

### 4.5.1 Definitions

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

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

**Weeks pay** is defined in 1.4.1.7.

### 4.5.2 Exclusions

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

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

### 4.5.3 Discussions before termination

4.5.3.1 Where an employer has made a firm decision that the employer no longer requires the job the employees have been doing done by anyone, and that decision may lead to termination of employment, the employer must have discussions, as soon as practicable, with the employees directly affected and with the **Union**. Discussions must include:

- (a) the reasons for the proposed terminations;
- (b) measures to avoid or minimise the terminations; and
- (c) measures to mitigate the adverse effects of any terminations on the employees concerned.

4.5.3.2 For the purpose of such discussion the employer must, as soon as practicable, provide in writing to the employees concerned and the **Union**, all relevant information about the proposed terminations, including:

- (a) the reasons for the proposed terminations;
- (b) the number and categories of employees likely to be affected;
- (c) the number of workers normally employed; and
- (d) the period over which the terminations are likely to be carried out.

No employer is required to disclose confidential information the disclosure of which, when looked at objectively, would be against the employer's interests.

### 4.5.4 Period of notice of termination on redundancy

4.5.4.1 If the services of an employee are to be terminated due to **redundancy** such an employee must be given notice of termination as prescribed by clause 4.4 of this Award.

4.5.4.2 Employees to whom notification of termination of service is to be given on account of the introduction or proposed introduction by the employer of automation or other like technological changes, in the industry in relation to which the employer is engaged, must be given not less than 3 months notice of termination.

4.5.4.3 Should the employer fail to give notice of termination as required in 4.5.4.1 or 4.5.4.2 in this Award the employer must pay to that employee the ordinary rate of pay for a period being the difference between the notice given and that required to be given. The period of notice to be given is deemed to be service with the employer for the purpose of the *Long Service Leave Act 1987*.

#### 4.5.5 Time off during notice period

4.5.5.1 During the period of notice of termination given by the employer an employee is entitled to up to 1 day off without loss of pay during each week of notice for the purpose of seeking other employment.

4.5.5.2 If the employee has been allowed paid leave for more than 1 day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview. If such proof is not produced the employee is not entitled to receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.5.5.3 The time off during notice period entitlements under this clause 4.5.5 apply in lieu of the provisions of 4.4.2.

#### 4.5.6 Notification to Centrelink

4.5.6.1 Where a decision has been made to terminate the employment of an employee, or of employees, on account of **redundancy** the employer must notify Centrelink accordingly as soon as possible, giving relevant information including:

- (a) a written statement of the reason(s) for the termination(s);
- (b) the number and categories of the employees likely to be affected; and
- (c) the period over which the termination(s) are intended to be carried out.

#### 4.5.7 Severance pay

4.5.7.1 Employees are entitled to severance pay as prescribed below in addition to the period of notice prescribed for termination in 4.4.1 and 4.5.4.

##### 4.5.7.2 Severance pay - employees of a small business

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

<i>Period of continuous service</i>	<i>Severance pay</i>
Less than 1 year	Nil
1 year and less than 2 years	4 <b>weeks pay</b>
2 years and less than 3 years	6 <b>weeks pay</b>
3 years and less than 4 years	7 <b>weeks pay</b>
4 years and over	8 <b>weeks pay</b>

##### 4.5.7.3 Severance pay - other than employees of a small business

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

<i>Period of continuous service</i>	<i>Severance pay</i>
Less than 1 year	Nil
1 year and less than 2 years	4 <b>weeks pay</b>
2 years and less than 3 years	6 <b>weeks pay</b>
3 years and less than 4 years	7 <b>weeks pay</b>



4 years and less than 5 years	8 <b>weeks pay</b>
5 years and less than 6 years	10 <b>weeks pay</b>
6 years and less than 7 years	11 <b>weeks pay</b>
7 years and over	12 <b>weeks pay</b>

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

In addition to the severance pay in 4.5.7.3 an employee with not less than 10 years **continuous service**, who is over the age of 45 years, is entitled to an additional 4 weeks severance pay.

4.5.7.5 Continuity of **service** will be calculated in the manner prescribed by clause 1.5.

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

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

4.5.8 **Incapacity to pay**

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

**Alternative employment**

An employer may make application to the **Commission** to have the severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

4.5.9 **Written notice**

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

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

4.5.10 **Transfer to lower paid duties**

Where an employee whose job has become **redundant** accepts an offer of alternative work by the employer, the **ordinary hourly rate of pay** for which is less than the

**ordinary hourly rate of pay** for the former position, the employee is entitled to the same period of notice of the date of commencement of work in the new position as if the employee's employment had been terminated. The employer may pay in lieu thereof an amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

#### 4.5.11 **Employee leaving during notice period**

An employee whose employment is terminated on account of **redundancy** may terminate employment during the period of notice. In this case the employee is entitled to the same benefits and payments under this clause as if remaining with the employer until the expiry of such notice. In such circumstances the employee is not entitled to payment in lieu of notice.

#### 4.5.12 **Transmission of business**

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

#### 4.5.13 **Contrived arrangements**

Subject to an order of the **Commission**, where an employer contrives arrangements wholly or partly to deprive employees of the severance pay set out in 4.5.7.3 or 4.5.7.4, then the employees will be entitled to the severance pay set out in those clauses in lieu of that set out in 4.5.7.2.

**CLAUSE 4.6 TRANSMISSION**OPDATE 01:04:2007 1<sup>st</sup> pp on or after**4.6.1 Transmission of business**

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

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

**4.6.2 Acceptance of employment with transmittee**

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

- (a) the period of service that the employee has had with the **transmittor** or any prior **transmittor** will be deemed to be service of the employee with the **transmittee** for the purpose of calculating any entitlement of the employee to service-related periods of notice or severance payments; and
- (b) the provisions of clause 4.5 do not apply in respect of the termination of the employee's employment with the **transmittor**.

**4.6.3 Offer of employment with the transmittee**

4.6.3.1 An employee is not entitled to benefits under clause 4.5 in respect of termination of employment resulting from **transmission** of the business, undertaking, establishment or part of it if:

- (a) the employee is offered employment by the **transmittee**;
- (b) the offer is made before the **transmission** of the business, undertaking, establishment or part of it;
- (c) the terms and conditions of the new employment offered:
  - (i) are not substantially different from those applying to the employment with the **transmittor**; or
  - (ii) are substantially different, but the offer constitutes an offer of suitable employment in relation to the employee; and
- (d) the employee unreasonably refuses to accept the offer.

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

OPDATE 04:05:2011 on and from

**4.7.1 Continuity of service**

For the purpose of clauses 4.4 and 4.5 **service** means **continuous service** (as defined in clause 1.5).

#### 4.7.2 **Service with two or more corporations**

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

#### **CLAUSE 4.8 ANTI-DISCRIMINATION**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 4.8.1 It is the intention of the parties to this Award to achieve the principal object in Section 3(m) of the **Act** by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 4.8.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavour to ensure that neither the Award provisions nor their operations are directly or indirectly discriminatory in their effects.
- 4.8.3 Nothing in this clause is to be taken to affect:
- 4.8.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation.
- 4.8.3.2 Until considered and determined further by the **Commission** the payment of different wages for employees who have not reached a particular age.
- 4.8.3.3 An employee, employer or registered organisation, pursuing matters of discrimination in the State or Federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.
- 4.8.4 Nothing in this clause is to be taken to prevent:
- 4.8.4.1 A matter referred to in 4.8.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.
- 4.8.4.2 A matter referred to in 4.8.1 from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith in order to avoid injury to the religious susceptibilities of adherents of the religion or creed.

## PART 5 - WAGES AND RELATED MATTERS

### CLAUSE 5.1 WAGES AND CLASSIFICATION DEFINITIONS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Persons bound by this Award shall be paid the appropriate wages as set out in Schedule 1 - Wages and Classification Definitions.

### CLAUSE 5.2 ALLOWANCES

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

#### 5.2.1 Vehicle allowance

An employee who by agreement with his employer uses his own motor vehicle on the employers business shall be paid an allowance as prescribed in Schedule 2.

#### 5.2.2 Cold work allowance

5.2.2.1 Employees principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages such as dairy cases or freezer cabinets shall be paid an allowance as prescribed in Schedule 2.

5.2.2.2 Provided that an employee required to work in a cold chamber where the temperature is below zero centigrade shall be paid in addition to the rate prescribed in clause 5.2.2.1 an allowance as prescribed in Schedule 2. (An aggregate of 20 minutes in the hour shall be regarded as 1 hours work).

#### 5.2.3 Meal allowance

An employee entitled to a meal allowance in accordance with Clauses 6.3.4 or 6.3.11.3 – Overtime, shall be paid an amount as prescribed in Schedule 2.

### CLAUSE 5.3 MIXED FUNCTIONS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

An employee who is required to perform duties that attract a higher **ordinary hourly rate** of pay than their normal work for at least half of the day or shift, will be paid at the higher rate for the whole of that day or shift.

### CLAUSE 5.4 PAYMENT OF WAGES

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

5.4.1 Subject to clause 5.4.2, wages shall be paid weekly.

5.4.2 However wages may be paid fortnightly and may be paid in arrears provided that any change from weekly pays to fortnightly pays is phased in by the giving of not less than 6 months notice to employees and introduced over a period of not less than 6 weeks.

5.4.3 The employer will supply each employee with a payslip in accordance with S102(8) of the Act and, where practicable, show the calculation of gross earnings, deductions in detail and amount of net pay.

5.4.4 An employer shall when the amount of gross earnings and/or net pay changes supply to each employee details of such change.

5.4.5 The employer may pay wages in forms other than cash provided that the employer shall be liable for any costs associated with the transfer of the non-cash payment.

## CLAUSE 5.5 SUPERANNUATION

OPDATE 04:05:2011 on and from

### 5.5.1 Definitions

5.5.1.1 The **Fund**: In this clause all references to The **Fund** shall mean the Retail Employees Superannuation Trust.

5.5.1.2 **Ordinary pay**: In this clause the term **ordinary pay** shall mean award wages and supervisory and/or buying allowances, casual loadings, and penalty rates.

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

### 5.5.2 Employer contributions

An employer will make contributions into the **Fund** in accordance with the legislative requirements in clause 5.5.3. These contributions will be based on the employee's **ordinary pay** earnings.

### 5.5.3 Superannuation legislation

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

### 5.5.4 Employee contributions

5.5.4.1 Employees who may wish to make contributions to the **Fund** additional to those being paid by the employer pursuant to clause 5.5.2 shall be entitled to authorise the employer to pay into the **Fund** from the employee's wages amounts specified by the employee.

5.5.4.2 Upon such authorisation the employer shall be required to make the deduction and forward it to the **Fund**.

5.5.4.3 Employee contributions to the **Fund** requested under these subclauses shall be subject to the following conditions:

(a) The amount of the contribution shall be expressed in whole dollars.

(b) After the first contribution, the amount of contribution shall only be adjusted from the first full pay period in July each year.

### 5.5.5 Existing superannuation arrangements

No employer shall be excluded from this clause on the basis of existing voluntary Superannuation arrangements.

## CLAUSE 5.6 TRAINEESHIPS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Traineeship rates are set out in Schedule 3.

## CLAUSE 5.7 SUPPORTED WAGE PROVISIONS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

The supported wage provisions are set out in Schedule 4 of this Award.

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

### **CLAUSE 6.1 HOURS OF WORK (DAY WORKERS)**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 6.1.1 This clause is subject to clause 6.2 Operation of the 38 Hour Week.
- 6.1.2 The maximum number of ordinary hours of work shall not exceed 38 hours per week.
- 6.1.3 Ordinary daily hours shall not exceed 9 hours per shift, within a spread of 12 hours from starting time to finishing time.
- 6.1.4 For work performed between 6.00 p.m. and midnight Monday to Friday an additional 10% shall be paid for the hours so worked. In calculating the hourly rate for a such an employee, the weekly rate is increased by the 10% loading, divided by 38 and the result rounded off to the nearest cent.
- 6.1.5 On any one day of the week (being the day in the week of late night trading or a day proclaimed under the shop Trading Hours Act in substitution thereof), the ordinary hours of employees working in fruit and vegetable shops, delicatessens and confectionery shops shall not exceed 12 hours. Provided that the loading prescribed by clause 6.1.4 will continue to apply after 6.00 p.m.
- 6.1.6 **Make up time**
- 6.1.6.1 Despite provisions elsewhere in the Award, the employer and the majority of employees at an enterprise may agree to establish a system of **make up time** provided that:
- (a) an employee may elect, with the consent of the employer, to work **make up time** under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award.
  - (b) an employee on shift work may elect, with the consent of the employer, to work **make up time** under which the employee takes time off during ordinary hours and works those hours at a later time at the shift work rate which would have been applicable to the hours taken off.
- 6.1.6.2 The provisions of clause 6.1.6.1 are subject to the employer informing the employee representative of the intention to introduce an enterprise system of **make up time**, and providing a reasonable opportunity for the representative to participate in negotiations.

### **CLAUSE 6.2 OPERATION OF 38 HOUR WEEK**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 6.2.1 The following provisions shall apply to the manner in which full-time employees are to work their ordinary hours:
- (a) a fixed or rotating rostered day off in each 4 week period or by the working of a 9½ hour day for each of four days, as directed by the employer in any week; or
  - (b) a shorter working day of not more than 4 hours work in ordinary time on one day in each 2 week period; or
  - (c) a shorter working day of not more than 6 hours work in ordinary time on one day in each week; or

- (d) a shorter working day of not more than 7.6 hours work in ordinary time on any day, or
  - (e) any other manner of working ordinary hours as agreed between an individual employee and an employer.
- 6.2.2 In the event of a dispute arising concerning the method of the 38 hour week and its application in a particular establishment, the dispute may be dealt with in accordance with clause 3.2 Dispute Avoidance/Grievance Process, or alternatively may be referred by either party to the Commission.
- 6.2.3 An employer may with the agreement of the majority of employees in an establishment or with the individual employee concerned substitute the day or part of the day that the employees or the individual employee is to take off. Such substituted day or part day is to be arranged and taken as soon as practicable and in any event prior to the next rostered day or part day off.
- 6.2.4 An employee may with the agreement of the employer substitute the day or part day that the employee is to take off. Such substituted day or part day is to be taken as soon as practicable and in any event prior to the next rostered day or part day off.

### CLAUSE 6.3 OVERTIME

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 6.3.1 Subject to clause 6.1 Hours of Work and clause 6.2 Operation of 38 Hour Week, all time worked in excess of 38 hours in any one week or 9 hours in any one day shall be paid at the rate of time and a half for the first 3 hours and double time thereafter. Overtime shall be paid in addition to the weekly rate payable to an employee even though the employee has not during that week worked 38 ordinary hours.
- 6.3.2 The basis for calculating overtime rates for full-time and part-time employees shall be the **ordinary hourly rate of pay** as defined in 1.5.1.4.
- 6.3.3 The basis for calculating overtime rates for casual employees is set out in 4.2.3.3.
- 6.3.4 When an employee is required to work overtime of more than one hour which necessitates eating a meal away from home, the employee will be provided with a suitable meal by the employer or a paid meal allowance as prescribed in Schedule 2 during that or the next day. Provided that where an employee is given at least 24 hours notice by the employer that the employee will be required to work pursuant to this sub-clause, the meal allowance shall not be payable to the employee.
- 6.3.5 An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 3 hours work at the appropriate rate for each time the employee is so recalled.
- 6.3.6 A day worker on a five-day week required to work overtime on a Saturday shall be afforded at least 3 hours work or paid for 3 hours at the appropriate rate.
- 6.3.7 An employee working overtime shall be allowed a meal break of 20 minutes without deduction of pay after 4 hours of overtime worked, if the employee continues work after such meal time.
- 6.3.8 However, where a day worker is required to work overtime on a Saturday the first meal time shall be paid at ordinary rates.
- 6.3.9 Unless the period of overtime is less than 1.5 hours an employee before starting overtime shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates.



- 6.3.10 An employer and an employee may mutually agree to any variation of clause 6.3.3 to meet the circumstances of the work in hand. Provided that the employer shall not be required to make any payment in respect of any time allowed in excess of 20 minutes.
- 6.3.11 Overtime for **shift workers** shall be as follows:
- 6.3.11.1 Subject to Clause 6.4 Shift Work, for all time worked in excess of 38 hours in any one week or 9 hours in any one day or on a shift other than an employee's rostered shift, an employee shall be paid at the rate of time and a half for the first 3 hours and double time thereafter.
- 6.3.11.2 The above overtime conditions for **shift workers** shall apply except in each case when the rostered shift is altered by arrangement between the employees themselves and with the concurrence of the employer.
- 6.3.11.3 A **shift worker** required to work overtime for more than 2 hours without being notified on the previous day or earlier that he or she will be so required to work shall either be supplied with a meal by the employer or paid a meal allowance as prescribed in Schedule 2 for each subsequent meal. However, such payment need not be made to employees living in the same locality as their place of business and who can reasonably be expected to return home for meals.
- 6.3.12 When an employee, after having worked overtime or a shift for which he has not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the employer shall provide the employee with a conveyance to the employee's residence or pay the cost of fares involved.
- 6.3.13 **Time off in lieu of payment for overtime**
- 6.3.13.1 Despite provisions elsewhere in the Award, the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:
- (a) an employee may elect, with the consent of the employer, to take time off in lieu of overtime at a time or times agreed with the employer.
  - (b) overtime taken as time off during ordinary time hours is to be taken at the ordinary time rate, that is an hour for each hour worked.
  - (c) an employer must, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked under this provision where such time has not been taken within four weeks of accrual.
- 6.3.13.2 Clause 6.3.13(1) is subject to the employer informing the employee representative of the intention to introduce an enterprise system of time off in lieu of overtime flexibility, and providing a reasonable opportunity for the representative to participate in negotiations.

#### **CLAUSE 6.4 SHIFT WORK**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

##### **6.4.1 Definitions**

For the purpose of this clause:

- (a) **Afternoon shift** means any shift finishing after 6.30 p.m. and at or before midnight;
- (b) **Day shift** means any shift that is not an Afternoon Shift or a Night Shift;

- (c) **Night shift** means any shift finishing subsequent to midnight and at or before 8.00a.m.;
- (d) **Shift worker** means an employee who works either an Afternoon Shift, a Night Shift or a Combination of Afternoon Shift, Night Shift and Day Shift.

Provided further that the penalty loading will still commence at 6.00 p.m.

6.4.2 The ordinary hours of such **shift workers** shall not exceed:

- 6.4.2.1 38 hours in any week, to be worked in five shifts of not more than 8 hours on any day, or
- 6.4.2.2 76 in any two week period, in which case an employee shall not without the payment for overtime be required for more than 8 consecutive hours on any shift or more than six shifts in any week.
- 6.4.2.3 Notwithstanding the foregoing, for the shift work hours the Award and/or agreement provisions applicable to the majority of the employees at the establishment at which the employee works at which the canteen is located shall apply to the employees pursuant to this Award.

#### 6.4.3 **Minimum rates for Saturday and Sunday shifts**

- 6.4.3.1 The minimum rate paid to any **shift worker** for work performed between midnight on Friday and midnight on Saturday shall be time and a half.
- 6.4.3.2 The minimum rate paid to any **shift worker** whose rostered shift falls on a Sunday shall be paid at the rate of double time.

#### 6.4.4 **General provisions**

- 6.4.4.1 For employees other than those on casual hire the ordinary shift work hours shall be worked continuously except for meal breaks.
- 6.4.4.2 Meal breaks shall be taken immediately prior to or immediately after the main trading period in the shift, unless by mutual agreement between the employee and the employer an alternative time for meals is determined.
- 6.4.4.3 An employee employed on shift work shall be provided with a shift roster specifying the commencing and finishing time of ordinary working hours of the respective shifts.
- 6.4.4.4 The method of working shifts may in any case be varied by agreement between the employer and an accredited representative of the Union to suit the circumstances of the establishment.
- 6.4.4.5 The basis of calculating shift work rates for full time and part time employees shall be the **ordinary hourly rate of pay**.
- 6.4.4.6 The basis of calculating shift work rates for casual employees is set out in 4.2.3.6.

#### 6.4.5 **Afternoon or night shift allowances**

**Shift workers** whilst on **afternoon** or **night shift** shall be paid 15% more than the ordinary rates for such shifts. An employee who:

- (a) during the period of engagement on shift, works **night shift** only, or
- (b) remains on **night shift** for a longer period than four consecutive weeks, or

- (c) works on a **night shift** which does not rotate or alternate with another shift or with day work so as to give him at least a third of his working time off night shift in each shift cycle, shall during such engagement period or cycle be paid at the rate of time and a quarter for all time worked during the ordinary working hours of such night shift.

6.4.6 Notwithstanding the foregoing, for the purposes of shift work premiums the Award and/or agreement provisions applicable to the majority of the employers at the establishment at which the employee works at which the canteen is located shall apply to the employees pursuant to this Award.

### **CLAUSE 6.5 SATURDAYS AND SUNDAYS**

OPDATE 06:11:2019 on and from

6.5.1 For work performed in ordinary hours by day worker on a Saturday (not being the day after Good Friday) and Sunday, shall receive the following payments based on **ordinary hourly rate of pay**:

6.5.1.1 Employees on weekly hiring

Saturday up to 12 noon - an additional 25% per hour.

Saturday after 12 noon until midnight - an additional 50% per hour.

Sunday all day - an additional 100% per hour.

6.5.1.2 Casual employees

6.5.1.2(a) Saturday up to 12 noon – an additional 50% per hour in lieu of 20% prescribed in clause 4.2.3.2.

6.5.1.2(b) Saturday after 12 noon until midnight – an additional 75% per hour of the 25% prescribed in clause 4.2.3.2.

6.5.1.2(c) Sunday all day – an additional 125% per hour in lieu of 25% prescribed in clause 4.2.3.2.

### **CLAUSE 6.6 PUBLIC HOLIDAYS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Public Holidays and payments associated with public holidays are prescribed in Clauses 7.6 and 7.7 of this Award.

### **CLAUSE 6.7 MEALS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

6.7.1 Every employee, other than a **shift worker**, shall be allowed a meal break of not less than 30 minutes nor more than 1 hour in respect of each 5 hours continuous work during any one day.

6.7.2 An employee who does not receive a meal break as and when prescribed, shall be paid at time and a half from the time when the meal break becomes due, until such time as the meal break is taken.

### **CLAUSE 6.8 DAYLIGHT SAVING**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

No employee shall be disadvantaged by the introduction or the ending of Daylight Saving.

## PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

### CLAUSE 7.1 ANNUAL LEAVE

OPDATE 04:05:2011 on and from

#### 7.1.1 Period of leave

7.1.1.1 Every employee (other than a casual employee) shall after 12 months **continuous service** (less the period of annual leave) be entitled to and allowed a period of 28 consecutive days paid leave.

7.1.1.2 Where a part-time employee works in excess of the ordinary hours in the contract of employment (other than overtime) such additional hours shall be duly recorded and specifically taken into account for the purpose of determining pay entitlements for annual leave or pro-rata on termination.

#### 7.1.2 Annual leave exclusive of public holidays

7.1.2.1 Subject to this clause 7.1.2 the annual leave prescribed by this clause shall be exclusive of any public holiday prescribed by this award and if any such holiday falls within any employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day for each such holiday falling as aforesaid.

7.1.2.2 Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon them to attend for work at their ordinary starting time on the working day immediately following the last day of the period of this annual leave they shall not be entitled to be paid for any such holiday.

#### 7.1.3 Calculation of continuous service

For the purpose of this clause service shall be deemed to be **continuous service** in accordance with clause 1.5.

#### 7.1.4 Definition of a month

For the purpose of this clause, a month commences with the beginning of the first day of the employment or period of employment in question and ends at the beginning of the day which in the following month has the same date number as the previous month. If there is no such day in such following month, it shall be reckoned as ending on the last day of the following month.

#### 7.1.5 Calculation of service

7.1.5.1 Service before the date of this award shall be taken into consideration for the **purpose of calculating annual leave but an employee shall not be entitled to leave** or payment in lieu thereof for any period in respect of which leave or payment in lieu thereof for any period has been allowed.

7.1.5.2 Where the employer is a successor or assignee or transmittee of a business, if any employee was in the employment of the employers' predecessor immediately prior to the time when he became such successor, assignee or transmittee the employee in respect of the period during which he was in the service of the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

### 7.1.6 Leave to be taken

The annual leave provided for by this clause shall be allowed and shall be taken and except in the case of termination of employment, payment shall not be made or accepted in lieu of annual leave.

### 7.1.7 Time of taking annual leave

7.1.7.1 Annual leave is to be taken at a time or times agreed between the employer and the employee. Notwithstanding the provisions of this clause and without the intention of disrupting continuous period(s) of annual leave, by agreement between the employer and employee, a full-time employee may take annual leave in single day periods not exceeding 10 days in any calendar year for the purposes of personal leave to care for a family member as set out in 7.4.

7.1.7.2 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 4 weeks before the period of annual leave is to begin.

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

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

### 7.1.8 Leave allowed before due date

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

7.1.8.2 Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months **continuous service** in respect of which the leave was granted, the employer may for each complete month of the qualifying period of 12 months not served by the employee deduct from whatever remuneration is payable upon the termination of the employment 1/12th of the amount of wage paid on account of the annual leave, which amount shall not include any sums paid for any of the holidays prescribed by clause 6.6.

### 7.1.9 Payment for annual leave

#### 7.1.9.1 Full annual leave

Every full-time or part-time employee who satisfies clause 7.1.1.1 shall be entitled to the following payments before going on leave.

(a) The ordinary weekly wage for the period of leave due or the prescribed weekly wage as set out in Schedule 1 for the period of leave due plus a loading of 17<sup>1</sup>/<sub>2</sub> %, whichever shall be the greater.

(b) For all days added to the period of leave in the place of public holidays (as provided by clause 7.1.2).

- (c) For the purposes of this clause, **ordinary weekly wage** includes penalty rates and shift allowances but does not include overtime payments.

#### 7.1.9.2 Pro Rata Annual Leave

Every full-time or part-time employee who completes one month **continuous service** in any qualifying twelve (12) month period shall on termination or resignation or dismissal for misconduct receive the following payments: -

- (a) The ordinary weekly wage for the portion of leave due or the prescribed weekly wage as set out in Schedule 1 for the portion of leave due plus a loading of 17<sup>1</sup>/<sub>2</sub> per cent whichever is the greater.
- (b) For the purpose of this subclause the portion of leave shall be calculated as a third of a week's wage in respect to each completed month of **continuous service** in respect of which leave has not been granted hereunder.

#### 7.1.9.3 Casual and temporary employees

- (a) Notwithstanding any other provisions of this Clause a casual employee temporarily transferred to full-time or part-time duties or an employee temporarily engaged on full-time or part-time duties for a period of less than a month shall be allowed a period of annual leave in respect to each completed week of service.
- (b) While so employed as a full-time employee, the annual leave allowed shall be 2.92 hours for each completed week. While so employed as a part-time employee, the annual leave credit allowed for each completed week shall be the proportion of 2.92 hours which the hours actually worked in that week bears to 38 hours.

#### 7.1.10 **Interpretation**

The days in a period of leave shall be deemed to be consecutive even though any of the public holidays named in clause 6.6 occur therein, provided that the necessary day or days are added as prescribed by clause 7.1.2.

#### 7.1.11 **Annual leave for part-time employees**

- 7.1.11.1 A part-time employee who has completed 12 month's **continuous service** with an employer is entitled to a period of 28 consecutive days' annual leave.
- 7.1.11.2 After the completion of each 12-month period of **continuous service** of a part-time employee, a calculation shall be made of average number of ordinary hours worked per week by the employee over the preceding 12-month period. Payment for each week of annual leave shall be made as if the employee normally worked per week the average number of ordinary hours calculated in accordance with this paragraph.
- 7.1.11.3 Payment for pro rata annual leave for a part-time employee whose employment is terminated shall be based on the average number of ordinary hours worked per week over the period for which a pro rata payment is to be paid.
- 7.1.11.4 For the purposes of this paragraph, a part-time employee includes an employee who has been employed for part of the year as a full-time employee and for part of the year as a part-time employee. (In other words, where an employee has been employed during a 12-month period partly as a part-time employee and partly as a full-time employee, the averaging provisions shall be implemented.)

**CLAUSE 7.2 PERSONAL LEAVE – INJURY AND ILLNESS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 7.2.1 Every full-time and every part-time employee who is unable to attend or remain at his place of employment by reason of **illness** and who complies with the conditions prescribed in clause 7.2.2 shall be granted by his employer paid leave not exceeding the personal leave credit of that employee.
- 7.2.2 The said leave shall be granted and the employee shall be entitled to pay in respect thereof on compliance with the following conditions -
- 7.2.2.1 An employee shall, as far as is practicable, either before or at the usual time of commencement (and in any event not later than 24 hours after the commencement of the absence), advise his or her employer of his or her inability to attend and, as far as is practicable, of the nature of the **illness** and the estimated duration of the absence.
- 7.2.2.2(a) If so required by his employer, the employee shall produce to the employer a medical certificate or other reasonable evidence to prove their inability to attend for duty on the day or days in respect of which personal leave is claimed.
- 7.2.2.2(b) Notwithstanding clause 7.2.2.2(a), an employee who does not or is unable to attend a medical practitioner shall if so required produce to their employer a Statutory Declaration stating that he/she was unable to attend for duty on account of personal **illness**. This provision shall apply only to absences of up to 3 consecutive days.
- 7.2.3 For the purposes of this clause the word **illness** includes personal injury but does not include an injury for which compensation is payable under the *Workers Rehabilitation and Compensation Act 1986*.
- 7.2.4 The employee's personal leave credit accumulates from year to year and any personal leave granted by the employer is deducted from the employee's personal leave credit.
- 7.2.5 In respect of:
- 7.2.5.1 The first year of service with an employer, a full-time employee shall be entitled to a grant of leave on full pay under this clause by that employer of 1.46 hours per week; and
- 7.2.5.2 The succeeding years of continuous service with that employer, such an employee shall, on or after the commencement of each such year, be entitled to a grant of leave under this clause by that employer equal to 10 days on full pay.
- 7.2.6 **Part-time employees**
- 7.2.6.1 A part-time employee (as defined in clause 4.2) shall be entitled to personal leave based on the quantum of leave as is prescribed by clause 7.2.5.1 for a full-time employee but calculated on a pro-rata basis according to the number of hours worked per week and as set out in the table hereunder:

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

7.2.6.2 In the calculation of the quantum of leave at the commencement of each succeeding year (see clause 7.2.5.2) of continuous service the hours then being worked by the employee, or which are agreed to be worked, each week shall be the basis of the calculation. If at the end of any such year the average number of hours worked each week is materially different from the number used in that calculation the credit shall be altered accordingly. For the purposes of calculating the quantum in respect of this paragraph see table in clause 7.2.6.1.

## 7.2.7 **Special provisions relating to personal leave on annual leave**

7.2.7.1 Where a full-time or part-time employee is ill while on annual leave (granted pursuant to clause 7.1) and the illness is such as would, if he were not on annual leave, have rendered him unable to attend at his place of employment for a period of not less than 3 consecutive days the employee shall, subject to compliance with the terms and conditions prescribed in clause 7.2.7.2 be granted personal leave as prescribed by this Clause not exceeding the personal leave credit of the employee.

7.2.7.2 Where an employee asserts an entitlement to paid leave of the kind referred to in clause 7.2.7.1, the employee should within 3 days of resuming work after taking such leave, deliver to the employer a certificate furnished by a legally qualified medical practitioner certifying that for a period of not less than 3 consecutive days specified in such certificate the employee would have been unable to attend or remain at his/her place of employment if he/she had been required to do so.

## **CLAUSE 7.3 BEREAVEMENT LEAVE**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

### 7.3.1 **Entitlement to leave**

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

- **spouse;**
- parent;
- parent-in-law;
- sister or brother;
- child or step-child;



- household member,

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

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### 7.3.2 Unpaid entitlement to leave

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

### 7.3.3 Effect of other leave

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

## CLAUSE 7.4 PERSONAL LEAVE TO CARE FOR A FAMILY MEMBER

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

### 7.4.1 Definitions

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

7.4.1.2 **Family** - the following are to be regarded as members of a person's family:

- a **spouse**;
- a child or step child;
- a parent or parent in-law;
- any other member of the person's household;
- a grandparent or grandchild;
- any other person who is dependent on the person's care.

7.4.1.3 **Personal leave** means leave provided for in accordance with clause 7.2.

### 7.4.2 Paid personal leave to care for a family member

7.4.2.1 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:

- due to personal injury; or
- for the purposes of caring for a family member who is ill 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.

7.4.2.2 By agreement between the employer and an individual employee, the employee may access an additional amount of their accrued **personal leave** for the purposes set out in this clause. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

7.4.2.3 The entitlement to use **personal leave to care for a family member** is subject to the employee being responsible for the care of the person concerned.

7.4.2.4 The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

- 7.4.2.5 In normal circumstances an employee must not take **personal leave to care for a family member** where another person has taken leave to care for the same person.
- 7.4.2.6 The employee must, where practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of the absence.
- 7.4.2.7 The amount of **personal leave to care for a family member** taken is to be deducted from the amount of the employees **personal leave** credit.
- 7.4.3 **Unpaid personal leave to care for a family member**
- 7.4.3.1 Where an employee has exhausted all paid **personal leave** entitlements, an employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a **family** member who is ill or who requires care due to an unexpected emergency.
- 7.4.3.2 The employer and the employee shall agree upon the period of unpaid **personal leave to care for a family member** which may be taken.
- 7.4.3.3 In absence of the agreement between the employer and the employee, the employee is entitled to take up to two days (of a maximum of 16 hours) of unpaid leave per occasion, provided that notice and evidentiary requirements are met.
- 7.4.4 **Single day absences**
- Single day absences may be taken for **personal leave to care for a family member** as provided for in Clause 7.1.7.1 Time of Taking Annual Leave.
- 7.4.5 **Casual employees caring responsibilities**
- 7.4.5.1 Casual employees are not entitled to **personal leave to care for a family member** or bereavement leave but subject to the notice and evidentiary requirements in 7.4 and 7.3, casuals are entitled to not be available to attend work, or to leave work:
- (a) to care for a member of their **family** who is ill and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
  - (b) upon the death of a **family** member.
- 7.4.5.2 The period for which the employee will be entitled to not be available to attend work for each occasion in clause 7.4.5.1 is:
- (a) the period agreed upon between the employer and the employee; or
  - (b) up to 48 hours (or 2 days) per occasion.
- 7.4.5.3 The casual employee is not entitled to any payment for the period of non-attendance under this clause.
- 7.4.5.4 An employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for under this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

7.4.5.5 This clause does not intend to alter the nature of casual employment and is without prejudice to any parties' arguments about the nature of casual employment.

#### **CLAUSE 7.5 PARENTAL LEAVE**

OPDATE 04:05:2011 on and from  
See Schedule 5.

#### **CLAUSE 7.6 PUBLIC HOLIDAYS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

7.6.1 Employees on weekly hire shall be entitled to the following public holidays **without loss of pay**:

- New Year's Day,
- Proclamation Day,
- Good Friday,
- the day after Good Friday,
- Easter Monday,
- Anzac Day,
- Adelaide Cup Day,
- Queen's Birthday,
- Labor Day,
- Christmas Day,
- Australia Day,

and any other day which by proclamation under the Holidays Act 1910 may be substituted for any of the above listed days or have been created a public holiday.

7.6.2 Provided that in any year in which Christmas Day falls on a Friday then Proclamation Day shall be observed on the following Monday and provided further in any year in which Christmas Day falls on a Saturday or a Sunday then Proclamation Day shall be observed on the following Tuesday.

7.6.3 When an employee is absent from his or her employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer the employee shall not be entitled to payment for such public holiday.

7.6.4 Weekly hired employees required to work on any of the holidays listed above shall receive double time for all time worked.

7.6.5 Casual employees required to work on public holidays shall in lieu of the penalty rates set out in clause 4.2.3 Casual Employees, receive 100 per centum penalty.

#### **CLAUSE 7.7 PUBLIC HOLIDAYS AND PERSONAL LEAVE FALLING ON ROSTERED DAY OFF**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

7.7.1 When a public holiday falls on an employee's rostered day off or part day off as prescribed in Clause 6.2 Operation of the 38 Hour Week, the employee shall by mutual agreement with the employer be paid by one of the following methods:

- (a) Payment of an **additional days** wages (as defined).
- (b) An **additional day** (as defined) to be added to the employee's annual leave; or

(c) an **additional day** (as defined) to be allowed off with pay to the employee within 14 days of the holiday falling.

7.7.2 In the absence of mutual agreement between the employee and the employer the provision contained in 7.7.1(a) shall apply.

7.7.3 No additional payment shall be made to an employee if the employee is sick on their day off or half day off duty.

7.7.4 For the purpose of this clause **additional days** shall mean an additional days pay or time off (as the case may be) equivalent to the ordinary number of hours worked in the same day of the previous week.

#### **CLAUSE 7.8 BLOOD DONORS LEAVE**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

7.8.1 A weekly hired employee who is absent during ordinary working hours for the purpose of donating blood, and who could not donate blood unless provision was made for an absence during the employees' ordinary working hours, is entitled **without a loss of pay** up to a maximum of 2 hours on each occasion and subject to a maximum of four separate absences for the purpose of donating blood each calendar year.

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

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

7.8.4 The employee shall also notify his employer as soon as possible of the time and date requested for such absence.

#### **CLAUSE 7.9 TRADE UNION TRAINING LEAVE**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

##### **7.9.1 General obligation to allow trade union training leave**

Employees who are members of the relevant **Unions**, shall be allowed leave **without loss of pay** for ordinary working hours (excluding penalty payments) to attend trade union training courses conducted or sponsored by the relevant **union**.

##### **7.9.2 General quantum of trade union training leave**

7.9.2.1 Where an employer employs full-time and/or part-time employees bound by this Award who work in total less than 380 hours per week, no leave need be granted.

7.9.2.2 Where an employer employs full-time and/or part-time employees bound by this Award who work in total between 380 and less 1,900 hours per week, a maximum of 5 days leave per annum shall be granted by that employer.

7.9.2.3 Where an employer employs full-time and/or part-time employees bound by this Award who work in total between 1,900 and less than 3,800 hours per week, a maximum of 10 days leave per annum shall be granted by that employer.

7.9.2.4 Where an employer employs full-time and/or part-time employees bound by this Award who work in total 3,800 or more hours per week, a maximum of 20 days leave per annum shall be granted by that employer.

### 7.9.3 **Additional trade union training leave for union delegates**

7.9.3.1 Employees who are recognised as job delegates by the employer shall be allowed additional leave without loss of pay for ordinary working hours (excluding penalty payments) in accordance with the following criteria:

7.9.3.2 Where an employer employs full-time and/or part-time employees bound by this Award who work in total less than 380 hours per week, no leave need be granted. Where an employer employs full-time and/or part-time employees bound by this Award who work in total between 380 and less than 1,900 hours per week, an additional 5 days leave per annum shall be granted by that employer.

7.9.3.3 Where an employer employs full-time and/or part-time employees bound by this Award who work in total between 1,900 and less than 3,800 hours per week, an additional 10 days leave per annum shall be granted by that employer.

7.9.3.4 Where an employer employs full-time and/or part-time employees bound by this Award who work in total 3,800 or more hours per week, an additional 15 days leave per annum shall be granted by that employer.

### 7.9.4 **Maximum amount of leave per year per employee**

An individual employee shall not be granted more than 5 days leave within any period of 12 consecutive months without the consent of the employer.

### 7.9.5 **Trade union training leave for casual employees**

Casual employees who have been employed for at least 12 months and who have worked an average of at least 20 ordinary time hours per week over the preceding 12 months shall, subject to this clause, be entitled to trade union training leave without loss of pay for the ordinary hours that would have been worked by those casual employees during the period of trade union training leave.

### 7.9.6 **Notice of application for leave**

An application for leave pursuant to this clause should, where possible, be made 8 weeks prior to the date of commencement of the course. If less than 4 weeks' notice is given, leave need not be granted.

### 7.9.7 **No disruption to employer's business**

Leave shall only be granted where the employer is able to make adequate staffing arrangements during the period of leave and so long as no disruption is likely to be caused to the conduct of the employer's business. The onus shall rest with the employer to demonstrate an inability to grant leave under this subclause.

### 7.9.8 **Employee service before entitlement to leave**

An employee must complete a period of 12 months service with an employer before becoming eligible for the leave. In the case of shops which have recently opened, a minimum of 6 months' service (rather than 12 months) must be completed. Should the employer demonstrate that allowing leave before completion of 12 months service will cause disruption, this provision will not apply.

### 7.9.9 **Maximum number of employees on leave at any one time**

At any one time, no more than one employee of any one establishment of an employer covered by this Award shall be on leave pursuant to this clause unless the employer agrees otherwise.

#### 7.9.10 **Employers exempted**

This clause shall not bind an employer who employs full-time or part-time employees bound by this Award who work in total less than 380 hours per week.

#### 7.9.11 **No liability for additional costs**

The employer shall not be liable for any additional costs (other than the payment of wages) to the employee while the employee is on leave except for the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee.

#### 7.9.12 **Applications for leave**

An application for leave pursuant to this Clause shall be made in writing by the Union to the employer and shall include the following details.

- (a) the name of the employee for whom leave is sought
- (b) period of time for which leave is sought (including daily commencing and finishing times)
- (c) title, description and agenda of the course or courses to be attended
- (d) the place or places where the course will be held
- (e) the name of the person or persons conducting the course
- (f) a copy of the syllabus or curriculum of the course to be attended, if available

#### 7.9.13 **Recall of employees from leave**

Where an employee attending a course pursuant to this clause is recalled to work by the employer because of reasons unforeseen at the time of granting leave, all time spent at the course prior to recall shall be reinstated as if no leave had been taken.

#### 7.9.14 **Employee failing to attend a course**

Where an employee fails to attend the course for which leave has been granted by the employer, the union shall notify the employer as soon as possible of both the non-attendance and the period of non-attendance. The employer shall not be required to pay wages for any period of leave during which the employee does not attend the designated course unless the employee demonstrates that failure to attend the course was due to illness.

#### 7.9.15 **Report by employees on course**

Employees granted leave shall, within 14 days after completion of the course for which leave was granted, provide the employer with a report outlining the nature of the course and the employees observations on it.

#### 7.9.16 **Continuous service**

Leave taken pursuant to this clause shall be counted as continuous service for all purposes of the Award and for the purposes of the *Long Service Act 1987*.

### **CLAUSE 7.10 LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE**

OPDATE 06:11:19 on and from

7.11.1 This clause applies to all employees, including casuals.

### 7.11.2 Definitions

(a) In this clause:

**family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

**family member** means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause 1.2(a) includes a former spouse or de facto partner.

### 7.11.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note:1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family domestic violence.

### 7.11.4 Taking unpaid leave

An Employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

### 7.11.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of services.

### 7.11.6 Notice and evidence requirements

**(a) Notice**

An employee must give their employer notice of the taking of leave by the employee under clause 7.10. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

**(b) Evidence**

An employee who has given their employer notice of the taking of leave under clause 7.10 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 7.10.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

**7.11.7 Confidentiality**

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 1.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Noting in clause 7.10 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

**7.11.8 Compliance**

An employee is not entitled to take leave under clause 7.10 unless the employee complies with clause 7.10



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

### **CLAUSE 8.1 TRANSPORT**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

When an employee's ***usual means of transport*** or public transport is not available after ceasing work (other than as a result of abnormal circumstances) the employer shall provide transport for such employee to his or her home or usual place of residence. ***Usual means of transport*** shall mean and include the employee's own vehicle or arrangements for private transport as agreed between the employer and employee.

### **CLAUSE 8.2 FARES AND TRAVELLING TIME**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

An employee who is required to travel anywhere on the business of the employer in the course of their employment during the day, shall receive all fares so incurred.

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

### **CLAUSE 9.1 TRAINING OF EMPLOYEES**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Notwithstanding anything contained in this Award, an employer shall be entitled to employ an employee for two periods of employment without the employee being entitled to a minimum period of engagement, provided that such period is for the sole purpose of training the employee in the duties to be performed whilst employed.

### **CLAUSE 9.2 TRAINING WAGE ARRANGEMENTS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

The training wage arrangements are set out in Schedule 3 of this Award.

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

### **CLAUSE 10.1 SUPPLY OF UNIFORMS**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

If an employer requires an employee to wear an item of clothing distinctive to the employer's establishment, the employer shall provide, maintain, and (if necessary) launder such clothing, which shall remain the property of the employer. Provided that nothing in this clause shall require an employer to supply an employee with an ordinary dress or suit of dark material.

### **CLAUSE 10.2 FIRST-AID KIT**

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

A first-aid kit shall be provided by the employer, pursuant to Regulations under the *Occupational Health, Safety and Welfare Act, 1986*.

## PART 11 - AWARD COMPLIANCE AND ASSOCIATION RELATED MATTERS

### CLAUSE 11.1 POSTING UP OF AWARD

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

A copy of this Award shall be displayed by the employer as required by section 103 of the **Act**.

### CLAUSE 11.2 TIME AND WAGE RECORDS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

Every employer shall keep time and wages records as required by section 102 of the **Act**.

### CLAUSE 11.3 RIGHT OF ENTRY

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

11.3.1 An **accredited representative of the relevant Union** must be permitted to enter **an employer's premises** at which one or more of the Union's members are employed for the following purposes:

- (a) to inspect time books and wage records as the employer is required to keep or cause to be kept at those premises under s102 of the **Act**.
- (b) to inspect the work carried out by the employees who are members of the Union and note the conditions under which the work is carried out;
- (c) if specific complaints of non-compliance with the Award or Enterprise Agreement have been made, interview employees who are members of the union about the complaints.

11.3.2 No right of entry shall be exercised under this clause for any purpose or purposes other than the purposes expressly enumerated in clause 11.3.1.

11.3.3 No right of entry shall be exercised under this clause unless:

- (a) an **accredited officer of the said Union** gives at least 24 hours notice to the employer whose premises are to be entered of that officer's intention to enter the said premises and states to the employer for which of the provisions of clause 11.3.1 the right of entry is sought.
- (b) the **accredited officer of the said Union** complies with all security and safety procedures and restrictions normally in force on the **employer's premises**.

11.3.4 Unless otherwise agree, the exercise of any right of entry under this clause on an **employer's premises** shall take place during the meal or tea breaks except in the following circumstances:

- (a) An employer shall not unreasonably withhold consent to a request from an **accredited officer of the said Union** to interview employees during working hours. For the purposes of this subclause an **employer's premises** shall mean each individual premises which an employer shall have under his care and control.
- (b) where it is not practicable for the **accredited officer of the said Union** to exercise a right of entry during meal or tea breaks on the **employer's premises**.

11.3.5 Unless otherwise agreed, no right of entry shall be exercised under this clause on the same premises on more than one occasion per week during working hours (exclusive of meal and tea breaks).

- 11.3.6 Unless otherwise agree, no more than one **accredited officer of the said Union** shall be on the premises at any one time during working hours (exclusive of meal and tea breaks).
- 11.3.7 The employer may nominate a representative who may accompany the **accredited officer of the said Union** throughout the period of that entry onto the **employer's premises** under this clause (except during the period in which the **accredited officer** is interviewing employees pursuant to clause 11.3.1(c)).
- 11.3.8 Where an **accredited officer of the said Union** seeks to interview employees either individually or as a group during meal or tea breaks at the premises of the employer, the accredited officer shall make such arrangements with the employer as to the time and place of such interview or interviews as are necessary to prevent disruption to the employer's business.
- 11.3.9 Interviews shall either be held in the meal/lunch room on the **employer's premises** or at such other suitable place as may be nominated by the employer. If no suitable place is nominated by the employer interviews may take place at an employee's work station.
- 11.3.10 Any interviews by an **accredited officer of the said Union** during working hours (exclusive of meal and tea breaks), shall be kept to the minimum time necessary for the proper effecting of the purposes of that interview.
- 11.3.11 No **accredited officers of the said Union** shall exercise the powers conferred by this Clause in such a manner so as to hinder or obstruct employees in the carrying out of their duties of employment or to interfere with the proper carrying on of the employer's business.
- 11.3.12 In this clause:
- 11.3.12.1 An **accredited officer of the relevant Union**, shall mean any officer of the said Union who produces to the employer an authorisation in writing by the President of the said Union and which authorisation bears a certificate in writing signed by the Industrial Registrar.
- 11.3.12.2 **Employer's premises** shall mean those premises which are subject to the employer's care and control.

#### CLAUSE 11.4 NOTICE BOARDS

OPDATE 01:04:2007 1<sup>st</sup> pp on or after

- 11.4.1 An employer bound by this Award shall permit an accredited official from the relevant Union to post formal Union notices signed by the State Secretary or the assistant secretary of the aforementioned Union posting it upon an appropriate notice board.
- 11.4.2 Provided however that such notices shall only contain information relevant to this Award and Union activity in connection with the Award.
- 11.4.3 Provided further that any notice deemed offensive by the employer may be removed, such action being subject to a right of review before the **Commission**.
- 11.4.4 The provisions of this clause shall only apply to an employer of nine or more employees bound by this Award.

**SCHEDULE 1 – WAGES AND CLASSIFICATION DEFINITIONS**

OPDATE 06:11:2019 on and from

S1.1 The wage relativities in this award have been established via the structural efficiency and minimum rates adjustment processes in accordance with the September 1989 State Wage Case decision (Print I.69/1989).

S1.2 The following is the minimum weekly wage for work in ordinary hours which shall be paid to employees whose classifications are listed below.

**S1.2.1 Adults**

	<i>Total weekly wage</i>
	\$
Cook (Tradesperson)	854.50
Senior Cook	834.90
General Cook	806.70
Food & Beverage Assistant	833.30
Shop Assistant	833.30
Kitchen Hand	781.50

**S1.2.2 Supervisory rates**

With the exception of Cook (Tradesperson) or Senior Cook the following supervisory rates shall be paid to an employee who has other employees under his or her direction. The rates are accumulative with the rates for the employee's classification and the total rate is to be used for all purposes of the award:

	<i>Total per week</i>	<i>Extra per hour</i>
	\$	\$
Directing 1 to 5 employees	28.20	0.74
Directing 6 to 10 employees	38.70	1.02
Directing 11 or more employees	47.30	1.24

**S1.2.3 Juniors**

The following rates are based on a percentage of the total weekly wage for an Adult Food and Beverage Assistant (\$833.30).

	%	<i>Total weekly wage</i>
		\$
Under 17 years	50	416.70
17 years of age	60	500.00
18 years of age	70	583.30
19 years of age	85	708.30
20 years of age	90	750.00

N.B. The above rates for apprentices, improvers and juveniles are calculated to the nearest 10 cents per week, any fraction less than 5 cents to go to the lower multiple and 5 cents or more to go to the higher.

#### S1.2.4 **Apprentice cooks**

The minimum weekly rates of wages for work in ordinary time shall be the percentages set out hereunder of the rate for a Cook (Tradesperson) (\$880.10).

		<i>Per week total</i>
	%	\$
First year of training	55	484.10
Second year of training	65	572.10
Third year of training	77.5	682.10
Fourth year of training	87.5	770.10

Provided that as from 1st pp on or after 01/07/2019 an adult apprentice must receive at least the State minimum Award Wage of \$754.30 per week (see clause S1.5).

#### S1.3 **General**

Any employee who works alone and is responsible for the day to day conduct of the business shall receive the sum of \$24.47 per week in addition to the classified wage rate.

#### S1.4 **Definitions**

**Cook (Tradesperson)** shall mean a qualified or recognised chef or cook who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in cooking, baking, pastry cooking or butchering duties.

**General Cook** is a person employed to perform the cooking of food other than a Cook (Tradesperson) or Senior Cook as defined.

**Food and Beverage Assistant** shall mean a person employed in a canteen, cafe or restaurant and who performs duties other than those of a Cook (Tradesperson), Second Cook, General Cook or Kitchen Hand, and including but not limited to clearing or wiping down tables, serving customers, undertaking general waiting duties of both food and beverages, receiving monies, taking reservations, greeting and seating guests, warming and presenting food, mixing and dispensing beverages, attending a snack bar or counter.

**Kitchen Hand** is a person employed in a kitchen to assist cooks in the preparation of food for cooking, the serving of food (other than carving), the cleaning of cooking utensils, cutlery, crockery, and glassware and the maintaining of the working area at a standard of cleanliness determined by the management.

**Restaurant** (for the purposes of Clause 11.3 Right of Entry) is a business conducted at a licensed premises and whose predominant purpose is the regular supply of meals for the public. Liquor shall not be consumed on the premises.

A **meal** means a genuine meal eaten by a person while seated at a table.

**Senior Cook** shall mean an employee, other than a Cook (Tradesperson) or General Cook, who carries out a wide range of cooking duties, such as a la carte cooking, baking, pastry cooking and butchering (a Senior Cook may be the only cook employed in an establishment).

**Shop Assistant** shall mean an employee whose principal function is to make direct sales to the public and in doing so accepts or arranges payment for goods sold.

**Tourism Officer** shall mean an employee who provides advice to visitors on the history of the area, sites to visit and accommodation to stay at.

## S1.5 State Minimum Award Wage

S1.5.1 Subject to the exceptions provided in clause S1.5.3, as from the first pay period to commence on or after 1 July 2019, a full-time adult employee must be paid no less than the State Minimum Award Wage of \$754.30 per week or \$19.85 per hour for work performed in ordinary time. Adult casual employees must be paid no less than \$24.81 per hour for work performed in ordinary time.

S1.5.2 Employees to whom junior rates apply in accordance with this Schedule will be paid no less than the following age based percentage of the State Minimum Award Wage:

<i>Age</i>	<i>Percentage</i>
Under 17 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

S1.5.3 The following categories of employees are not entitled to the State Minimum Award Wage as prescribed in clause S1.5.1:

- (a) Adult trainees undertaking a National Training Wage traineeship, subject to the terms of the traineeship.
- (b) Adult employees employed under Supported Wage Provisions in the Award.

## S1.6 Safety net adjustments

The rates of pay in this Award include the safety net adjustment payable under the *2019 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 *2019 State Wage Case and Minimum Standard for Remuneration* excepting those resulting from enterprise agreements or Award variations to give effect to enterprise agreements, are not to be used to offset safety net adjustments.

## S1.7 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 *2019 State Wage Case and Minimum Standard for Remuneration* on the grounds of serious economic adversity. The merit of such application will be determined in light of the particular circumstances of each case and the impact on employment at the enterprise level. The increase in labour costs is a significant factor to be taken into account in assessing the merit of any application. A party may make such an application under s 31A of the *South Australian Employment Tribunal Act 2014* (the SAET Act) in the form approved under rule 34 of the *South Australian Employment Tribunal Rules 2017*. It will then be a matter for the President to decide whether it should be dealt with by a Full Bench of SAET.



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

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

**SCHEDULE 2 - ALLOWANCES**OPDATE 28:03:2008 1<sup>st</sup> pp on or after

Note:- The allowances in this Schedule operated from the dates shown.

<i>Clause no.</i>	<i>Description</i>	<i>Amount</i>		<i>Operative date</i>
5.2.1	Vehicle Allowance	\$0.69	Per Km	28:03:2008 1 <sup>st</sup> pp on or after
5.2.2.1	Cold Work Allowance	\$0.13	Per Hour	on and from 1 April 2004
5.2.2.2		\$0.33		
5.2.3	Meal Allowance	\$7.95	Per meal	28:03:2008 1 <sup>st</sup> pp on or after

## SCHEDULE 3 - TRAINING WAGE ARRANGEMENTS

OPDATE 06:11:2019 on and from

### CLAUSE S3.1 TITLE

This Schedule shall be known as the Local Government Tourism, Hospitality and Retail Award Training Wage Arrangements Schedule.

### CLAUSE S3.2 ARRANGEMENT

<i>Clause No.</i>	<i>Title</i>
S3.1	Title
S3.2	Arrangement
S3.3	Application
S3.4	Operation
S3.5	Definitions
S3.6	Training conditions
S3.7	Employment conditions
S3.8	Wages
S3.9	Disputes settling procedures
S3.10	Dispute settlement over traineeship schemes
S3.11	Part-time traineeships
Section A	Allocation of traineeships to wage levels
Section B	Traineeship schemes excluded from this Award

### CLAUSE S3.3 APPLICATION

- S3.3.1 This Schedule shall apply to persons;
- (a) who are undertaking a **Traineeship** (as defined); and
  - (b) whose employment is, or otherwise would be, covered by the Award.
- S3.3.2 This Schedule does not apply to the apprenticeship system or any training programme, which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an Award as at 25 June 1997.
- This Schedule only applies to AQF IV **Traineeships** when the AQF III **Traineeship** in the **Training Package** is listed in Section A. Further, this Schedule also does not apply to any certificate IV training qualification that is an extension of the competencies acquired under a certificate III qualification, which is excluded from this Schedule due to the operation of this clause S3.3.2.
- S3.3.3 At the conclusion of the **Traineeship**, this Schedule ceases to apply to the employment of the **Trainee** and the Award shall apply to the former **Trainee**.
- S3.3.4 Nothing in this Schedule shall be taken to replace the prescription of training requirements in the Award.

### CLAUSE S3.4 OPERATION

This Schedule shall operate from the first pay period commencing on or after 1 July 2019.

**CLAUSE S3.5 DEFINITIONS**

- S3.5.1 **Act** means the **Training and Skills Development Act 2008** or any successor legislation.
- S3.5.2 **Adult Trainee** means for the purpose of this Schedule a **Trainee** who would qualify for the highest wage rate in Wage Level A, B or C if covered by that wage level.
- S3.5.3 **Approved Training** means that training which is specified in the **Training Plan**, which is part of the **Training Agreement**, which is registered with the **T&SC**. It includes training undertaken both on and off-the-job in a **Traineeship** and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a National **Training Package** or a **Traineeship Scheme** and leads to a qualification under the Australian Qualification Framework.
- S3.5.4 **T&SC** means the Training and Skills Commission under the **Act**.
- S3.5.5 **Award** means the Local Government Tourism, Hospitality and Retail Award.
- S3.5.6 **Commission** means the Industrial Relations Commission of South Australia.
- S3.5.7 **Trainee** is an individual who is a signatory to a **Training Agreement** registered with the **T&SC** and is involved in paid work and structured training, which may be on or off the job. **Trainee** does not include an individual who already has the competencies to which the **Traineeship** is directed.
- S3.5.8 **Traineeship** means a system of training which has been approved by the **T&SC**, which meets the requirements of a National **Training Package** developed by a National Industry Training Advisory Board and endorsed by the National Training Quality Council, which leads to an Australian Qualifications Framework qualification specified by that National **Training Package**, and includes full-time **Traineeships** and part-time **Traineeships** including school-based **Traineeships**.
- S3.5.9 **Training Agreement** means a Contract of Training for a **Traineeship** made between the employer and a **Trainee**, which is registered with the **T&SC**.
- S3.5.10 **Training Package** means the competency standards, assessment guidelines and Australian Qualifications Framework qualification endorsed for an industry or enterprise by the National Training Quality Council and placed on the National Training Information Service with the approval of Commonwealth and State Ministers responsible for vocational education and training.
- S3.5.11 **Training Plan** means a programme of training which forms part of a **Training Agreement** registered with the **T&SC**.
- S3.5.12 **Traineeship Scheme** means an approved **Traineeship** applicable to a group or class of employees or to an industry or sector of an industry or an enterprise, which has been approved by the **T&SC**.
- S3.5.13 **Year 10** - for the purposes of this Schedule, any person leaving school before completing Year 10 shall be deemed to have completed Year 10.

**CLAUSE S3.6 TRAINING CONDITIONS**

- S3.6.1 The **Trainee** shall attend an **Approved Training** course or **Training Program** prescribed in the **Training Agreement** or as notified to the trainee by the **T&SC** in accredited and relevant **Training Schemes**.

- S3.6.2 Employment as a **Trainee** under this Schedule shall not commence until the relevant **Training Agreement**, made in accordance with a **Training Scheme**, has been signed by the employer and the **Trainee** and lodged for registration with the **T&SC**, provided that if the **Training Agreement** is not in a standard format, employment as a **Trainee** shall not commence until the **Training Agreement** has been registered with the **T&SC**. The employer shall ensure that the **Trainee** is permitted to attend the training course or program provided for in the **Training Agreement** and shall ensure that the **Trainee** receives the appropriate on-the-job training.
- S3.6.3 The employer shall provide a level of supervision in accordance with the **Traineeship Agreement** during the **Traineeship** period.
- S3.6.4 The provisions of the **Act** dealing with the monitoring by officers of the **T&SC** and the use of training records or work books as part of this monitoring process shall apply to **Traineeships** under this Schedule.

### CLAUSE S3.7 EMPLOYMENT CONDITIONS

- S3.7.1 A full-time **Trainee** shall be engaged for a maximum of one year's duration, except in respect of AQF III and AQF IV **Traineeships** which may extend up to two years full-time, provided that a **Trainee** shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the **T&SC**, the Employer and the **Trainee** may vary the duration of the **Traineeship** and the extent of **Approved Training** provided that any agreement to vary is in accordance with the relevant **Traineeship Scheme**. A part-time **Trainee** shall be engaged in accordance with the provisions of Clause S3.11 Part-Time Traineeships, of this Schedule.
- S3.7.2 Where the **Trainee** completes the qualification in the **Training Agreement** earlier than the time specified in the **Training Agreement**, then the **Traineeship** may be concluded by mutual agreement.
- S3.7.3 Termination of employment of **Trainees** is dealt with in the **Training Agreement**, or the **Act**. An employer initiating such action shall give written notice to the **Trainee** at the time the action is commenced and to the **T&SC** in accordance with the **Act**.
- S3.7.4 The **Trainee** shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the **Approved Training**.
- S3.7.5 Where the employment of a **Trainee** by the employer is continued after the completion of the **Traineeship** period, such **Traineeship** period shall be counted as service for the purposes of the Award or any other legislative entitlements.
- S3.7.6 **Trainees working overtime**
- S3.7.6.1 Reasonable overtime may be worked by the **Trainee** provided that it does not affect the successful completion of the **Approved Training**.
- S2.7.6.2 No **Trainee** shall work overtime or shiftwork on their own unless consistent with the provisions of the Award.
- S3.7.6.3 No **Trainee** shall work shiftwork unless the shiftwork makes satisfactory provision for **Approved Training**. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork **Trainees**.

- S3.7.6.4 The **Trainee** wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the Award, unless the Award makes specific provision for a **Trainee** to be paid at a higher rate, or the employer and **Trainee** agree in writing that a **Trainee** will be paid at a higher rate, in which case the higher rate shall apply.
- S3.7.7 All other terms and conditions of the Award that are applicable to the **Trainee** or would be applicable to the **Trainee** but for this Schedule shall apply unless specifically varied by this Schedule.
- S3.7.8 A **Trainee** who fails to either complete the **Traineeship**, or who cannot for any reason be placed in full-time employment with the employer on successful completion of the **Traineeship**, shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions of the Award.
- Note: It is not intended that existing employees shall be displaced from employment by **Trainees**.

### CLAUSE S3.8 WAGES

- S3.8.1 The weekly wage payable to full-time **Trainees** shall be provided in S3.8.4, S3.8.5 and S3.8.6 of this Schedule and in accordance with Clause S3.7 Employment Conditions.
- S3.8.2 These wage rates will only apply to **Trainees** while they are undertaking an **Approved Traineeship**, which includes **Approved Training** as defined in this Schedule.
- S3.8.3 The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.
- S3.8.4 **Wage Level A**

Where the **Accredited Training** course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level A.

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	267.00 (50%)	333.00 (33%)	
	310.00 (33%)	373.00 (25%)	
	340.00	373.00	448.00
Plus 1 year <b>out of school</b>	373.00	448.00	518.00
Plus 2 years <b>out of school</b>	448.00	518.00	605.00
Plus 3 years <b>out of school</b>	518.00	605.00	692.00
Plus 4 years <b>out of school</b>	605.00	692.00	
Plus 5 or more years	692.00		

- S3.8.5 **Wage Level B**

Where the **Accredited Training** course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level B.

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	267.00 (50%)	333.00 (33%)	
	310.00 (33%)	373.00 (25%)	
	340.00	373.00	432.00
Plus 1 year <b>out of school</b>	373.00	432.00	499.00
Plus 2 years <b>out of school</b>	432.00	499.00	583.00
Plus 3 years <b>out of school</b>	499.00	583.00	665.00
Plus 4 years <b>out of school</b>	583.00	665.00	
Plus 5 or more years	665.00		

### S3.8.6 Wage Level C

Where the **Accredited Training** course and work performed are for the purpose of generating skills, which have been defined for work at Wage Level C.

	<i>Highest year of schooling completed</i>		
	<i>Year 10</i>	<i>Year 11</i>	<i>Year 12</i>
	\$	\$	\$
School Leaver	267.00 (50%)	333.00 (33%)	
	310.00 (33%)	373.00 (25%)	
	340.00	373.00	432.00
Plus 1 year <b>out of school</b>	373.00	432.00	487.00
Plus 2 years <b>out of school</b>	432.00	487.00	545.00
Plus 3 years <b>out of school</b>	487.00	545.00	607.00
Plus 4 years <b>out of school</b>	545.00	607.00	
Plus 5 or more years	607.00		

### S3.8.7 School Based Traineeships

	<i>Year of Schooling</i>	
	<i>Year 11</i>	<i>Year 12</i>
	\$	\$
School based <b>Traineeships</b> in Wage Levels A, B and C	340.00	373.00

\*Figures in brackets indicate the average proportion of time spent in **Approved Training** to which the associated wage rate is applicable. Where not specifically indicated, the average proportion of time spent in structured training, which has been taken into account in setting the rate, is 20 per cent.

### S3.8.8 Wage rates for Certificate IV Traineeships

S3.8.8.1 **Trainees** undertaking an AQF IV **Traineeship** shall receive the relevant weekly wage rate for AQF III **Trainees** at Wage Levels A, B or C as applicable with the addition of 3.8 per cent of that wage rate.

S3.8.8.2 An **Adult Trainee** who is undertaking a **Traineeship** for an AQF IV qualification shall receive the following weekly wage as applicable based on the allocation of AQF III qualifications:

<i>Wage Level</i>	<i>First year of Traineeship</i>	<i>Second year of Traineeship</i>
	\$	\$
Wage Level A	719.00	747.00
Wage Level B	691.00	718.00
Wage Level C	630.00	653.00

- S3.8.9 Where a person was employed by the employer under the Award immediately prior to becoming an **Adult Trainee** with the employer, such person shall not suffer a reduction in the rate of pay by virtue of becoming a **Trainee**.
- S3.8.10 Where a **Traineeship** is converted from an AQF II to an AQF III **Traineeship**, or from an AQF III to an AQF IV **Traineeship**, the **Trainee** shall move to the next higher rate provided in this Schedule, if a higher rate is provided for that new AQF level.
- S3.8.11 Section A sets out the Wage Level of a **Traineeship**.
- S3.8.12 For the purposes of this provision, **out of school** shall refer only to periods out of school beyond **Year 10**, and shall be deemed to:
- S3.8.12.1 Include any period of schooling beyond **Year 10**, which was not part of nor contributed to a completed year of schooling;
- S3.8.12.2 Include any period during which a **Trainee** repeats in whole or part of a year of schooling beyond **Year 10**;
- S3.8.12.3 Not include any period during a calendar year in which a year of schooling is completed; and
- S3.8.12.4 Have effect on an anniversary date being January 1 in each year.
- S3.8.13 Despite any other clause in this Schedule, **Trainees** may not be employed under this Schedule under the **Traineeship Schemes** and in the areas of employment listed in Section B.

### CLAUSE S3.9 DISPUTE SETTLING PROCEDURES

For matters not dealt with in accordance with the **Act**, the procedures to avoid industrial disputation contained in the Award will apply to **Trainees**.

### CLAUSE S3.10 DISPUTE SETTLEMENT OVER TRAINEESHIP SCHEMES

- S3.10.1 A party may initiate this procedure when that party wishes to argue that this Schedule should not provide for employment under a particular **Traineeship Scheme** despite the allocation of the scheme to a Wage Level by Section A.
- S3.10.2 The party shall:
- S3.10.2.1 Notify the relevant parties of an intention to dispute the particular **Traineeship Scheme**, identifying the scheme.
- S3.10.2.2 Request the parties with an interest in the scheme to meet with them at a mutually agreed location.
- S3.10.2.3 If agreement cannot be reached the matter may be referred to the **Commission** for conciliation.
- S3.10.2.4 If agreement is not reached during conciliation then an application may be made to include the **Traineeship** scheme in Section B.



**CLAUSE S3.11 PART-TIME TRAINEESHIPS**

S3.11.1 This clause shall apply to **Trainees** who undertake a **Traineeship** on a part-time basis by working less than full-time hours and by undertaking the **Approved Training** at the same or lesser training time than a full-time **Trainee**.

S3.11.1.1 A part-time **Trainee** (other than a school-based **Trainee**) will be engaged to work for no less than a minimum average of 15 hours per week.

S3.11.1.2 A part-time school-based **Trainee** may be engaged to work less hours than the minimum hours prescribed by this Schedule and the Award provided that the **Trainee** remains enrolled in compulsory education.

**S3.11.2 Wages**

S3.11.2.1 The tables set out below are the hourly rates of pay where the training is either fully off-the-job or where 20% of time is spent in **Approved Training**. These rates are derived from a 38 hour week.

Table 1: Trainees who have left school (\$ per hour)

Wage Level A	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	\$	\$	\$
School Leaver	11.19	12.27	14.73
Plus 1 year <b>out of school</b>	12.27	14.73	17.05
Plus 2 years <b>out of school</b>	14.73	17.05	19.88
Plus 3 years <b>out of school</b>	17.05	19.88	22.76
Plus 4 years <b>out of school</b>	19.88	22.76	
Plus 5 or more years	22.76		
 Wage Level B	 Year 10	 Year 11	 Year 12
	\$	\$	\$
School Leaver	11.19	12.27	14.20
Plus 1 year <b>out of school</b>	12.27	14.20	16.41
Plus 2 years <b>out of school</b>	14.20	16.41	19.18
Plus 3 years <b>out of school</b>	16.41	19.18	21.89
Plus 4 years <b>out of school</b>	19.18	21.89	
Plus 5 or more years	21.89		
 Wage Level C	 Year 10	 Year 11	 Year 12
	\$	\$	\$
School Leaver	11.19	12.27	14.20
Plus 1 year <b>out of school</b>	12.27	14.20	16.03
Plus 2 years <b>out of school</b>	14.20	16.03	17.92
Plus 3 years <b>out of school</b>	16.03	17.92	19.96
Plus 4 years <b>out of school</b>	17.92	19.96	
Plus 5 or more years	19.96		

Table 2: School based Traineeships (\$ per hour)

	Year of schooling	
	Year 11	Year 12
	\$	\$
Wage Levels A, B and C	11.19	12.27
20% loading [S3.11.6.2]	13.43	14.72

Table 3: Wage rates for part-time Certificate IV Traineeships (\$ per hour):

**Trainees** undertaking a part-time AQF IV **traineeship** shall receive the relevant hourly rate for AQF III trainees at Wage Levels A, B or C as applicable under Table 1 or 2 with the addition of 3.8 per cent of that wage rate.

An adult **trainee** (as defined) who is undertaking a part-time **traineeship** for an AQF IV qualification shall receive the following hourly rate as applicable based on the allocation of AQF III qualifications:

<i>Wage Level</i>	<i>First year of traineeship</i>	<i>Second year of traineeship</i>
	\$	\$
Wage Level A	23.64	24.53
Wage Level B	22.73	23.59
Wage Level C	20.72	21.52

S3.11.3 The hours for which payment shall be made are determined as follows:

S3.11.3.1 Where the **Approved Training** for a **Traineeship** (including a school based **Traineeship**) is provided off-the-job by a registered training organisation, for example at school or at TAFE, these rates shall apply only to the total hours worked by the part-time **Trainee** on-the-job.

S3.11.3.2 Where the **Approved Training** is undertaken solely on-the-job and the average proportion of time to be spent in **Approved Training** is 20% (i.e. the same as for the equivalent full-time **Traineeship**), then the total hours on-the-job shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

S3.11.3.3 Where the **Approved Training** the training is partly on-the-job and partly off-the-job and the average proportion of time to be spent in **Approved Training** is 20% (i.e. the same as for the equivalent full-time **Traineeship**), then the total of all hours spent in work and training shall be multiplied by the applicable hourly rate, and then 20 per cent shall be deducted.

Note: As noted in clause S3.8, 20 per cent is the average proportion of time spent in **Approved Training**, which has been taken into account in setting the wage rates for most full-time **Traineeships**.

S3.11.3.4 Where a person was employed part-time by an employer under this Award immediately prior to becoming a part-time adult **trainee** with that employer, such person shall not suffer a reduction in the hourly rate of pay by virtue of becoming a **trainee**.

S3.11.3.5 Where the normal full-time weekly hours are not 38 the appropriate hourly rate may be obtained by multiplying the rate in the table by 38 and then dividing by the normal full-time hours.

#### S3.11.4 **General formula**

S3.11.4.1 For **Traineeships** not covered by S3.11.2.1, the following formula for calculation of wage rates shall apply:

The wage rate shall be pro-rata the full-time rates based on variation in the amount of training and/or the amount of work over the period of the **Traineeship**, which may also be varied on the basis of the following formula:

$$\text{Full-time wage rate} \times \frac{\text{Trainee hours - average weekly training time}}{30.4^*}$$

\* Note: 30.4 in the above formula represents 38 ordinary full-time hours less the average training time for full-time **Trainees** (ie 20%). A pro-rata adjustment will need to be made in the case where the Award specifies different ordinary full-time hours: for example where the ordinary weekly hours are 40, 30.4 will be replaced by 32.

- (a) **Full-time wage rate** means the appropriate rate as set out in S3.8.4, S3.8.5, S3.8.6 and S3.8.7 of this Schedule.
- (b) **Trainee hours** shall be the hours worked per week including the time spent in **Approved Training**.
- (c) **Average weekly training time** is based upon the length of the **Traineeship** specified in the **Traineeship Agreement** or **Training Agreement** as follows:

$$\frac{7.6 \times 12}{\text{Length of the } \textit{traineeship} \text{ in months}}$$

Note 1: 7.6 in the above formula represents the **average weekly training time** for a full-time **Trainee** whose ordinary hours are 38 per week. A pro-rata adjustment will need to be made in the case where the Award specifies different ordinary time hours for example, where the ordinary weekly hours are 40, 7.6 will be replaced by 8.

Note 2: The parties note that the **Training Agreement** will require a **Trainee** to be employed for sufficient hours to complete all requirements of the **Traineeship**, including the on the job work experience and demonstration of competencies. The parties also note that this would result in the equivalent of a full day's on the job work per week.

#### S3.11.5 Example of the calculation for the wage rate for a part-time traineeship

A school student commences a **Traineeship** in year 11. The ordinary hours of work in the Award are 38. The **Training Agreement** specifies two years (24 months) as the length of the **Traineeship**.

**Average weekly training time** is therefore  $7.6 \times 12/24 = 3.8$  hours.

**Trainee hours** totals 15 hours; these are made up of 11 hours work which is worked over two days of the week plus 1-1/2 hours on the job training plus 2-1/2 hours off the job **Approved Training** at school and at TAFE.

So the wage rate in year 11 is:

$$\$340 \times \frac{15 - 3.8}{30.4} = \$125.26 \text{ (plus any applicable penalty rates under the Award)}$$

The wage rate varies when the student completes year 11 and passes the anniversary date of 1 January the following year to begin year 12 and/or if **trainee hours** changes.

**S3.11.6 Employment conditions for all part-time trainees**

- S3.11.6.1 A part-time **Trainee** shall receive, on a pro-rata basis, all employment conditions applicable to a full-time **Trainee**. All the provisions of the Award shall apply to part-time **Trainees** except as specified in this Schedule.
- S3.11.6.2 However, a **Trainee** undertaking a school based **Traineeship** may, with the agreement of the **Trainee**, be paid an additional loading 20 per cent on all ordinary hours in lieu of annual leave, sick leave, personal leave and public holidays. Notwithstanding this, where a **Trainee** is called upon to work on a public holiday the provisions of the Award shall apply.
- S3.11.6.3 A part-time **Trainee** may, by agreement, transfer from a part-time to a full-time **Traineeship** position should one become available.
- S3.11.6.4 The minimum engagement periods specified in the Award shall also be applicable to part-time **Trainees**.

**SECTION A**  
**Allocation of Traineeships to Wage Levels**

**Part A, New Training Package Titles**

Wage Levels that apply to Certificates under Training Packages

**Wage Level A**

<i>Training package</i>	<i>Certificate level</i>
Administration	I
	II
	III
Assessment and Workplace Training	III
Business Services	I
	II
	III
Food Processing Industry	III
Hospitality Industry	III
Retail	III
Tourism	I
	II
	III
Wholesale Training	III

**Wage Level B**

<i>Training package</i>	<i>Certificate level</i>
Asset Maintenance	II
	III
Asset Security	I
	II
	III
Australian Meat Industry	I
	II
	III
Entertainment Industry	I
	II
	III
Food Processing Industry	I
	II
Hospitality Industry	I
	II
Retail	II
Wholesale Training	II

**Wage Level C**

<i>Training package</i>	<i>Certificate level</i>
Seafood Industry	I
	II
	III

**SECTION B****Traineeship schemes excluded from this Award**

Nil

## SCHEDULE 4 – SUPPORTED WAGE PROVISIONS

OPDATE 01:07:2019 1<sup>st</sup> pp on or after

### CLAUSE S4.1 DEFINITIONS

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

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

**Assessment Instrument** means the form provided for under the **Supported Wage System** that records the assessment of the productive capacity of the person to be employed under the **Supported Wage System**.

**Disability Support Pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

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

### CLAUSE S4.2 ELIGIBILITY CRITERIA

- S4.2.1 Employees covered by this Schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a **Disability Support Pension**.
- S4.2.2 This Schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their current employment.
- S4.2.3 This Schedule does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a **Disability Support Pension** in accordance with the requirements of the *Disabilities Service Act 1986* and the Standards contained therein, as amended from time to time.

### CLAUSE S4.3 SUPPORTED WAGE RATES

- S4.3.1 Employees to whom this Schedule applies will be paid the applicable percentage of the minimum rate of pay prescribed by this Award for the class of work which the person is performing according to the following schedule:

<i>Assessed capacity (clause S3.4)</i>	<i>% of prescribed Award rates</i>
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

S4.3.2 Provided that the minimum amount payable will not be less than \$89.50 per week.

S4.3.3 Where a person's assessed capacity is 10% they will receive a high degree of assistance and support.

#### **CLAUSE S4.4 ASSESSMENT OF CAPACITY**

For the purpose of establishing the percentage of the Award rate to be paid to an employee under this Award, the productive capacity of the employee will be assessed in accordance with the **Supported Wage System** and documented in an **assessment instrument** by either;

S4.4.1 the employer and a Union party to the Award, in consultation with the employee or, if desired by any of these

S4.4.2 the employer and an **accredited assessor** acceptable to the employee and the employee's advisers and to the employer.

#### **CLAUSE S4.5 LODGEMENT OF ASSESSMENT INSTRUMENT**

S4.5.1 All **assessment instruments** under the conditions of this Schedule, including the appropriate percentage of the Award wage to be paid to the employee, will be lodged by the employer with the Registrar of SAET.

S4.5.2 All **assessment instruments** will be agreed and signed by the parties to the assessment, provided that where a Union which is party to the Award, is not a party to the assessment, it will be referred by the Registrar to the Union by certified mail and will take effect unless an objection is notified to the Registrar within 10 working days.

#### **CLAUSE S4.6 REVIEW OF ASSESSMENT**

The assessment of the applicable percentage should be subject to annual review, or earlier on the basis of a reasonable request for such a review. The process of review will be in accordance with the procedures for assessing capacity under the **Supported Wage System**.

#### **CLAUSE S4.7 OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

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

**CLAUSE S4.8 WORKPLACE ADJUSTMENT**

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

**CLAUSE S4.9 TRIAL PERIOD**

- S4.9.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this Schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- S4.9.2 During the trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
- S4.9.3 The minimum amount payable to the employee during the trial period will not be less than \$89.50 per week.
- S4.9.4 Work trials should include induction or training, as appropriate, to the job being trialled.
- S4.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment must be entered into based on the outcome of assessment under clause S4.4.



## SCHEDULE 5 – PARENTAL LEAVE

OPDATE 04:05:2011 on and from

### S5.1 Definitions

In this clause, unless the contrary intention appears:

- S5.1.1 **Adoption** includes the placement of a **child** with a person in anticipation of, or for the purposes of, adoption.
- S5.1.2 **Adoption leave** means adoption leave provided under S5.3.4.
- S5.1.3 **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.
- S5.1.4 **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.
- S5.1.5 **Extended adoption leave** means **adoption leave** provided under S5.3.4(b).
- S5.1.6 **Extended paternity leave** means **paternity leave** provided under S5.3.3(b).
- S5.1.7 **Government authority** means a person or agency prescribed as a government authority for the purposes of this definition.
- S5.1.8 **Maternity leave** means maternity leave provided under S5.3.2.
- S5.1.9 **Medical certificate** means a certificate as prescribed in S5.5.1.
- S5.1.10 **Parental leave** means **adoption leave, maternity leave, paternity leave, extended adoption leave** or **extended paternity leave** as appropriate, and is unpaid leave.
- S5.1.11 **Paternity leave** means paternity leave provided under S5.3.3.
- S5.1.12 **Primary care-giver** means a person who assumes the principal role of providing care and attention to a **child**.
- S5.1.13 **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).
- S5.1.14 **Short adoption leave** means **adoption leave** provided under S5.3.4(a).
- S5.1.15 **Special adoption leave** means **adoption leave** provided under S5.10.
- S5.1.16 **Special maternity leave** means **maternity leave** provided under S5.9.1.
- S5.1.17 **Spouse** includes a defacto spouse or a former spouse.

## S5.2 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.

## S5.3. Eligibility for and entitlement to parental leave

S5.3.1 Subject to the qualifications in S5.4, the provisions of this clause apply to full-time, part-time and **eligible casual employees** but do not apply to other employees.

S5.3.1(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).

S5.3.1(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.

S5.3.1(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.

S5.3.2 An employee who becomes pregnant is, on production of the required **medical certificate**, entitled to up to 52 weeks of **maternity leave**.

S5.3.3 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:

S5.3.3(a) An unbroken period of up to one week at the time of the birth of the **child**.

S5.3.3(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**).

S5.3.4 An employee is entitled to one or two periods of **adoption leave**, the total of which must not exceed 52 weeks, as follows:

S5.3.4(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**).

S5.3.4(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**).

#### S5.4 **Qualifications on entitlements and eligibility**

S5.4.1 An employee engaged upon casual or seasonal work is not entitled to **parental leave**.

S5.4.2 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.

S5.4.3 The entitlement to **parental leave** is reduced:

S5.4.3(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.

S5.4.3(b) In the case of **extended paternity leave**, by any period of **maternity leave** taken by the employee's **spouse**.

S5.4.3(c) In the case of **extended adoption leave**, by any period of **extended adoption leave** taken by the employee's **spouse**.

#### S5.5 **Certification required**

S5.5.1 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.

S5.5.2 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:

S5.5.2(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**.

S5.5.2(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.

## S5.6 Notice requirements

### S5.6.1 Maternity leave

S5.6.1(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 S5.5 within two weeks after the change takes place.

S5.6.1(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.

### S5.6.2 Paternity leave

An employee must:

S5.6.2(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**.

S5.6.2(b) Notify the employer of any change in the information provided pursuant to S5.5 within two weeks after the change takes place.

### S5.6.3 Adoption leave

An employee must:

S5.6.3(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.

S5.6.3(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**.

S5.6.3(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.

S5.6.3(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.

#### S5.6.4 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.

#### S5.7 **Taking of parental leave**

- S5.7.1 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**.
- S5.7.2 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.
- S5.7.3 Paid personal leave or other paid absences are not available to an employee during the employee's absence on **parental leave**.
- S5.7.4 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.
- S5.7.5 Subject to S5.4 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.
- S5.7.6 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.
- S5.7.7 Where leave is granted under S5.7.5, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- S5.7.8 **Maternity leave** and **paternity leave** cannot extend beyond the **child's** first birthday.
- S5.7.9 **Adoption leave** cannot extend beyond the **child's** fifth birthday.
- S5.7.10 **Extended adoption leave** cannot extend beyond the first anniversary of the initial placement of the **child**.

- S5.7.11 Notwithstanding the provisions of this clause, employees eligible for **parental leave** have the right to request **parental leave** as consistent with S5.15.
- S5.8 **Variation and cancellation of parental leave**
- S5.8.1 Without extending an entitlement beyond the limit set by S5.3, **parental leave** may be varied as follows:
- S5.8.1(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.
- S5.8.1(b) The leave may be lengthened or shortened by agreement between the employer and the employee.
- S5.8.2 **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.
- S5.8.3 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.
- S5.8.4 **Parental leave** may be cancelled by agreement between the employer and the employee.
- S5.9 **Special maternity leave and personal leave**
- S5.9.1 If:
- (a) an employee not then on **maternity leave** suffers illness related to her pregnancy she is entitled to take leave under 7.2; or
- (b) the pregnancy of an employee not then on **maternity leave** terminates after 28 weeks otherwise than by the birth of a living **child**,
- she may take such paid personal leave as she is then entitled to and such further unpaid leave (to be known as **special maternity leave**) as a legally qualified medical practitioner certifies to be necessary before her return to work. Provided that the aggregate of paid personal leave, **special maternity leave** and **maternity leave** must not exceed the period to which the employee is entitled under S5.3.2 and she is entitled to take unpaid **special maternity leave** for such periods as a registered medical practitioner certifies as necessary.
- S5.9.2 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**.
- S5.9.3 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.

S5.9.4 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.

#### S5.10 **Special adoption leave**

S5.10.1 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**.

S5.10.2 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.

S5.10.3 The leave under this clause S5.10 is to be known as **special adoption leave** and does not affect any entitlement under S5.3.

S5.10.4 **Special adoption leave** may be taken concurrently by an employee and the employee's **spouse**.

S5.10.5 Where paid leave is available to the employee, the employer may require the employee to take such leave instead of **special adoption leave**.

#### S5.11 **Transfer to a safe job - maternity leave**

S5.11.1 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**.

S5.11.2 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.

S5.11.3 Leave under this clause S5.11 will be treated as **maternity leave**.

#### S5.12 **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:

S5.12.1 Where the employee is pregnant, and to do so is necessary or desirable because of the pregnancy; or

S5.12.2 Where the employee is entitled to **parental leave**, by reducing the employee's entitlement to **parental leave** for the period of such agreement.

#### S5.13 **Communication during parental leave**

S5.13.1 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**.

S5.13.2 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.

S5.13.3 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 S5.13.1.

#### S5.14 **Return to work after parental leave**

S5.14.1 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**.

S5.14.2 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.

S5.14.3 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.

S5.14.4 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.

#### S5.15 **Right to request**

S5.15.1 An employee entitled to **parental leave** pursuant to clause S5.3, may request the employer to allow the employee:

- (a) to extend the period of simultaneous unpaid leave provided for in clause S5.3.3(a) and S5.3.4(a) up to a maximum of eight weeks;
- (b) to extend the period of unpaid **parental leave** provided for in S5.3.2 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.



- S5.15.2 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.
- S5.15.3 The employee's request and the employer's decision made under S5.15.1(b) and (c) must be recorded in writing.
- S5.15.4 Where an employee wishes to make a request under S5.15.1(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**.

#### S5.16 **Termination of employment**

- S5.16.1 An employee on **parental leave** may terminate their employment at any time during the period of leave by giving the required notice.
- S5.16.2 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.

#### S5.17 **Replacement employees**

- S5.17.1 A **replacement employee** is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on **parental leave**.
- S5.17.2 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.

**APPLICATIONS FILED**

<i>Case No</i>	<i>Description of Document</i>
<b>5259/2010</b>	AWARD REVIEW S99 Award varied. Cl. 1.1 Title changed FROM Delicatessens, Canteens, Unlicensed Cafes and Restaurants Etc. Award TO Local Government Cafes, Restaurants and Snack Bars Award, Cl. 1.3 Scope of Award and Locality retitled Cl. 1.3 Scope and Parties Bound, delete Cl. 1.4 Parties Bound, renumber Cl. 1.5 Definitions as Cl. 1.4, renumber Cl. 1.6 Continuous Service as Cl. 1.5, renumber Cl. 1.7 Commencement Date of Award & Period of Operation as Cl. 1.6, Cl. 4.5 Redundancy, Cl. 4.7 Service Provisions (TCR), Cl. 5.5 Superannuation, Cl. 7.1 Annual Leave, Cl. 7.5 Parental Leave, Sch. 3 Training Wage Arrangements, delete Sch. 5 Superannuation (Employers Exempted), renumber Sch. 6 Parental Leave as Sch. 5. Update 04/05/2011.
<b>4356/2011</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2011. Update ppc 01/10/2011.
<b>5886/2011</b>	AWARD VARIATION Award varied. Cl. 4.2 Employment Categories; Cl. 6.5 Saturdays & Sundays re Casual Loading Case. Update ppc 01/01/2012.
<b>2654/2012</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2012. Update ppc 01/07/2012.
<b>3040/2013</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2013. Update ppc 01/07/2013.
<b>4225/2014</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2014. Update ppc 01/07/2014.
<b>6422/2015</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2015. Update ppc 01/07/2015.
<b>3216/2016</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2016. Update ppc 01/07/2016.
<b>3355/2017</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2017. Update ppc 01/07/2017.
<b>4422/2018</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2018. Update ppc 01/07/2018.
<b>ET-19-01422</b>	AWARD VARIATION Award varied. Sch. 1 Wages & Classification Definitions, Sch. 3 Training Wage Arrangements, Sch. 4 Supported Wage Provisions re SWC 2019. Update ppc 01/07/2019.

<i>Case No</i>	<i>Description of Document</i>
<b>505/2019</b>	S99 – REVIEW OF AWARD Award varied. Cl. 1.1 Title changed FROM Local Government Cafes, Restaurants and Snack Bars Award TO Local Government Tourism, Hospitality and Retail Award, Cl 1.2 Arrangement, Cl 1.3 Scope and Parties Bound, Cl 1.4 Definitions, CL. 1.6 Commencement Date Of Award And Period Of Operation, Cl 4.2 Employment Categories, Cl 6.5 Saturdays and Sundays, New Cl 7.10 Leave to Deal with Family and Domestic Violence, Sch. 1 Wages and Classification Definitions, Sch. 3 Training Wage Arrangements. Oupdate 06/11/2019.