



SOUTH  
AUSTRALIAN  
EMPLOYMENT  
TRIBUNAL

## SA PUBLIC SECTOR CAFES AND RESTAURANTS ADELAIDE CONVENTION CENTRE 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 04:05:2011 on and from

This Award shall be known as the SA Public Sector Cafes and Restaurants Adelaide Convention Centre Award.

#### CLAUSE 1.2 ARRANGEMENT

OPDATE 04:15:2011 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, persons bound and locality
- 1.4 Definitions
- 1.5 Continuous service
- 1.6 Period of operation

#### **Part 2 – Award flexibility**

- 2.1 Flexibility of work

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

- 3.1 Introduction of change
- 3.2 Dispute settlement procedure
- 3.3 Consultative mechanism

#### **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 employment
  - 4.2.3 Casual employment
  - 4.2.4 Trainees
  - 4.2.5 Number of apprentices and junior employees
  - 4.2.6 Supported wage employees
  - 4.2.7 School based apprentices
- 4.3 Termination of employment
- 4.4 Redundancy
- 4.5 Transmission of business

*Clause No. Title*

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

**Part 5 – Wages and related matters**

- 5.1 Wages and classifications
- 5.2 Allowances
- 5.3 Mixed functions
- 5.4 Payment of wages
- 5.5 Safety net adjustments
- 5.6 Economic incapacity applications

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

- 6.1 Hours of work
- 6.2 Operation of 38 hour week
- 6.3 Time off
- 6.4 Meal breaks
- 6.5 Overtime
- 6.6 Saturdays
- 6.7 Sundays
- 6.8 Public holidays
- 6.9 Additional payment for shift work

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

- 7.1 Annual leave
- 7.2 Personal leave – injury and sickness
- 7.3 Bereavement leave
- 7.4 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 Christmas Day falling on a Saturday or Sunday
- 7.9 Blood donors leave

**Part 8 – Transport, 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, tools and amenities**

- 10.1 First-aid kit
- 10.2 Supply of uniforms

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

- 11.1 Posting up of Award
- 11.2 Notice boards
- 11.3 Right of entry
- 11.4 Time and wage records

## Schedules

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

### 1.2.2 In alphabetical order

*Clause No. Subject matter*

- 6.9 Additional payment for shift work
- Sch. 2 Allowances
  - 7.1 Annual leave
  - 4.7 Anti-discrimination
  - 1.2 Arrangement
  - 7.3 Bereavement leave
  - 7.9 Blood donors leave
  - 4.2.3 Casual workers
  - 7.8 Christmas Day falling on a Saturday or Sunday
- Sch. 3 Classification definitions
  - 3.3 Consultative mechanism
  - 1.5 Continuous service
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  - 3.2 Dispute settlement procedure
  - 5.6 Economic incapacity applications
  - 8.2 Fares and travelling time
  - 10.1 First-aid kit
  - 2.1 Flexibility of work
  - 6.1 Hours of work
  - 3.1 Introduction of change
  - 6.4 Meal breaks
  - 5.3 Mixed functions
  - 11.2 Notice boards
  - 4.2.5 Number of apprentices, improvers or juvenile workers
  - 6.2 Operation of 38 hour week
  - 6.5 Overtime
  - 7.5 Parental leave
  - 4.2.2 Part-time employees
  - 5.4 Payment of wages
  - 1.6 Period of operation
  - 7.2 Personal leave – injury and sickness
  - 7.4 Personal leave to care for a family member
  - 11.1 Posting up of Award
  - 7.6 Public holidays
  - 7.7 Public holidays and personal leave falling on rostered day off
  - 4.4 Redundancy
  - 11.3 Right of entry
  - 6.6 Saturdays
  - 5.5 Safety net adjustments
  - 4.2.7 School based apprentices
  - 1.3 Scope, persons bound and locality
  - 4.6 Service provisions (termination, change and redundancy)
  - 6.7 Sundays
  - 10.2 Supply of uniforms

*Clause No. Subject matter*

Sch. 4	Supported wage provisions (also 4.2.6)
4.3	Termination of employment
6.3	Time off
11.4	Time records
1.1	Title
Sch. 5	Traineeships (also 4.2.4, 9.2)
9.1	Training of employees
Sch. 5	Training wage arrangements (also 9.2)
4.5	Transmission of business
8.1	Transport
5.1	Wages and classifications
Sch. 1	Wages and classifications

**CLAUSE 1.3 SCOPE, PERSONS BOUND AND LOCALITY**

OPDATE 01:10:2019 on and from

- 1.3.1 This Award is binding upon the Chief Executive, Department of Treasury and Finance in respect to employees of the Adelaide Convention Centre who are employed in the occupations in Schedule 3 of this Award.
- 1.3.2 This Award shall apply throughout the State of South Australia.
- 1.3.3 This Award shall not be binding on those persons who for the time being are subject to an enterprise agreement within the meaning of the Act, but only to the extent of any inconsistency.

**CLAUSE 1.4 DEFINITIONS**

OPDATE 01:10:2019 on and from

For the purposes of this Award, the following definitions shall apply:

- 1.4.1 Where the import of this Award indicates the masculine gender the same shall, unless the context otherwise indicates, imply the feminine gender.
- 1.4.2 **Act** shall mean the *Fair Work Act 1994*.
- 1.4.3 **Continuous service** means service as set out in clause 1.5.
- 1.4.4 **Ordinary hourly rate** means the appropriate total weekly rate prescribed in Schedule 1 divided by 38 and then rounded off to the nearest cent.
- 1.4.5 **Spouse** includes a defacto spouse but, except in relation to parental leave, does not include a Spouse from whom the employee is legally separated.
- 1.4.6 **Tribunal** means the South Australian Employment Tribunal.
- 1.4.7 **Union** shall mean the Shop, Distributive and Allied Employees Association, South Australian Branch and the union known as the United Workers Union.
- 1.4.8 **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.

1.4.9 ***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:

- (a) Absence of the employee from work in accordance with the employee's contract of employment or any provision of this Award.
- (b) Absence of the employee from work for any cause by leave of the employer.
- (c) Absence from work on account of illness, disease or injury.
- (d) Absence with reasonable cause. Proof of such reasonable cause lies with the employee.
- (e) Interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by this Award, the ***Act*** or the *Long Service Leave Act 1987*.
- (f) Interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute.
- (g) Transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transmittee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer.
- (h) Interruption or termination of the employee's service by the employer for any reason other than those referred to in this clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated.
- (i) Any other absence from work for any reason other than those referred to in this clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than 14 days after the end of the period of absence.

#### 1.5.2 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:

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

Note:

1. Clause 1.5.1 deals with the circumstances where continuity of an employee's service with an employer is preserved (i.e.) not broken.
2. Clause 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 PERIOD OF OPERATION**

OPDATE 01:10:2019 on and from

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

## **PART 2 – AWARD FLEXIBILITY**

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

OPDATE 13:03:2007 on and from

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 INTRODUCTION OF CHANGE

OPDATE 13:03:2007 on and from

#### 3.1.1 Notification of intended changes

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

3.1.1.2 **Significant effects** include:

- (a) termination of employment;
- (b) major changes in the composition, operation or size of the 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.

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

#### 3.1.2 Consultation with employees and their union

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

- (a) the introduction of the changes referred to in 3.1.1.1;
- (b) the effects the changes are likely to have on employees;
- (c) measures to avert or mitigate the adverse effects of such changes on employees.

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

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

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

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

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



**CLAUSE 3.2 DISPUTE SETTLEMENT PROCEDURE**

OPDATE 01:10:2019 on and from

3.2.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the dispute is to be as follows:

- (a) the employee and their immediate supervisor or manager will meet and confer on the matter; and
- (b) If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and the employee's nominated representative, if any, and more senior levels of management.
- (c) If the matter is still not resolved a discussion shall be held between the representative of the employer and the **Union** or other employee representative.
- (d) If the matter cannot be resolved it may then be referred to the **Tribunal** for resolution in accordance with the **Act**.

3.2.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his/her health and safety.

**CLAUSE 3.3 CONSULTATIVE MECHANISM**

OPDATE 13:03:2007 on and from

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.

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

### CLAUSE 4.1 CONTRACT OF HIRING

OPDATE 13:03:2007 on and from

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, for the first week of service, the contract of employment shall be by the hour.

#### 4.1.2 Unavoidable stoppages

4.1.2.1 Subject to 4.1.2.2 and 4.1.2.3, 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.

4.1.2.2 However, where 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 at the **ordinary hourly rate**.

4.1.2.3 An employee having started work on any day shall be entitled to be paid for a minimum of 2 hours at the **ordinary hourly rate**.

### CLAUSE 4.2 EMPLOYMENT CATEGORIES

OPDATE 01:10:2019 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 by the week for 38 ordinary hours per week.

#### 4.2.2 Part-time employment

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 Such employee shall be paid a proportion of the wage prescribed in clause 5.1 for 38 hours work according to the number of ordinary hours actually worked. However, any hours worked on Saturdays, Sundays or the public holidays named in clause 7.6 shall incur the penalty elsewhere prescribed for those days.

4.2.2.3 The working roster of part-time employees working less than 18 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.

4.2.2.4 Such employees shall be entitled to all paid leave entitlements as prescribed in the Award, on a pro-rata basis.

4.2.2.5 If such employee usually works on a day of the week in which a public holiday falls and is not required to work on that day s/he shall be paid for the hours which s/he would normally have worked on that day at the **ordinary hourly rate**.

#### 4.2.3 Casual employment

4.2.3.1 A **casual employee** shall mean an employee whose contract of hiring is by the hour.

#### 4.2.3.2 General conditions

4.2.3.2(a) Subject to 4.2.3.2(b), casual employees shall be paid a minimum rate higher by twenty per centum (25%) than the hourly rate to be determined by calculating 1/38th of the appropriate weekly rate prescribed in clause 5.1.

4.2.3.2(b) For all time worked between the times of commencement and the times of finally ceasing work, notwithstanding any interruption (other than for a meal break during such time), a casual employee shall be paid at a rate higher by 35 per centum of the ordinary rate prescribed by Schedule 1 in lieu of the 25 per centum prescribed in clause 4.2.3.2(a),

(i) where the major portion of the ordinary hours of duty on any day, Monday to Friday extend beyond 6.00 p.m. or

(ii) where the ordinary hours of duty on any day, Monday to Friday commence at or after 6.00 p.m.

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

4.2.3.4 When on any day a casual employee having ceased work is required to return to work later the same day, such employee shall receive 30 cents extra on each occasion they are recalled for duty in addition to other penalties so prescribed in this Award.

4.2.3.5 With the exception of clause 4.3.3, the provisions of clauses 4.3 and 4.4 shall not apply to casual employees.

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

#### 4.2.4 **Trainees**

Provisions in relation to trainees are set out in Schedule 5 – Training Wage Arrangements.

#### 4.2.5 **Number of apprentices or junior employees**

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

4.2.5.2 The maximum number of junior employees who may be employed shall be one for every one **adult employee**. However, any employer may employ at least one junior employee. In the case of junior cooks, the proportion shall be one to every three, or fraction of three, adult cooks, whether weekly hired 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	
5	2
6	

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

#### 4.2.6 Supported wage employees

Provisions in relation to employees engaged on a Supported Wage are set out in Schedule 4 – Supported Wage Provisions.

#### 4.2.7 School based apprentices

##### 4.2.7.1 Definitions

- (a) A **School-based apprentice** is a person who is undertaking an apprenticeship in accordance with this clause 4.2 while also undertaking a course of secondary education.
- (b) **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.

##### 4.2.7.2 Wages and training

- (a) The hourly rates for full-time junior and adult apprentice cooks as set out in Schedule 1 will apply to **School-based apprentices** for total hours worked including time deemed to be spent in **off-the-job training**.
- (b) For the purposes of 4.2.7.2(a), where an apprentice is a full-time school student, the time spent in **off-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.
- (c) 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.
- (d) 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.

##### 4.2.7.3 Progression

- (a) **School-based apprentices** will progress through the wage scale of the rate of 12 months progression for each two years of employment as an apprentice.
- (b) These rates are based on a standard full-time apprenticeship of four years. 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.

4.2.7.4 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**.

4.2.7.5 **School-based apprentices** are entitled pro-rata to all the entitlements available to employees covered by this Award.

**CLAUSE 4.3 TERMINATION OF EMPLOYMENT**

OPDATE 04:05:2011 on and from

**4.3.1 Notice of termination by employer**

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

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

4.3.1.2 In addition to the notice in 4.3.1.1, employees over forty-five years of age at the time of the giving of notice, with not less than 2 years **continuous service**, are entitled to additional notice of one week.

4.3.1.3 Payment in lieu of the notice prescribed in 4.3.1.1 and/or 4.3.1.2 and/or 4.4.3, must be made if the appropriate notice period is not given. Employment may be terminated by part of the period of notice specified and part payment in lieu.

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

4.3.1.5 The period of notice in 4.3.1.1 does not apply in the case of:

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

**4.3.2 Time off during notice period**

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

**4.3.3 Statement of employment**

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

**4.3.4 Payment in lieu**

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

**4.3.5 Notice of termination by employee**

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

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

#### CLAUSE 4.4 REDUNDANCY

OPDATE 01:10:2019 on and from

##### 4.4.1 Definitions

4.4.1.1 **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.

4.4.1.2 **Weeks pay** is defined in clause 1.4.

##### 4.4.2 Discussions before terminations

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

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

##### 4.4.3 Period of notice of termination on redundancy

4.4.3.1 If the services of an employee are to be terminated due to **redundancy** such employee shall be given notice of termination as prescribed by clause 4.3 provided that employees to whom notification of termination of service is to be given on account of the introduction or proposed introduction by the employer of automation or other like technological changes in the industry in relation to which the employer is engaged shall be given not less than three months notice of termination.

4.4.3.2 Should the employer fail to give notice of termination as required in clause 4.4.3.1 the employer shall pay to that employee an amount calculated in accordance with the ordinary rate of pay for a period being the difference between the notice given and that required to be given. The period of notice to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1987*, as amended.

##### 4.4.4 Notification to Centrelink

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

#### 4.4.5 Severance pay

4.4.5.1 Employees are entitled to severance pay as prescribed below in addition to the period of notice prescribed for termination in 4.3.1 and 4.4.3.

##### 4.4.5.2 Severance pay

An employee 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>Period of notice</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>

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

In addition to the severance pay in 4.4.5.2 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.

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

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

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

#### 4.4.6 Time off during notice period

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

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

4.4.6.3 The time off during notice period entitlements under this clause 4.4.6 apply in lieu of the provision of 4.3.2.

#### 4.4.7 **Alternative employment**

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

#### 4.4.8 **Employee leaving during notice period**

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

#### 4.4.9 **Written notice**

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

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

#### 4.4.10 **Payment in lieu treated as service**

If an employer makes payment in lieu for all or any of the period of notice prescribed by clause 4.4.3, then the period for which such payment is made shall be treated as service for the purposes of computing any service related entitlements of the employee arising pursuant to this Award and shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1987*, as amended.

#### 4.4.11 **Transfer to lower paid duties**

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

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

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



#### 4.4.13 Employees exempted

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

#### 4.4.14 Incapacity to pay

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

#### 4.4.15 Transmission of business

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

#### 4.4.16 Contrived arrangements

Subject to an order of the *Tribunal*, where an employer contrives arrangements wholly or partly to deprive employees of the severance pay set out in 4.4.5.2 or 4.4.5.3 then the employees will be entitled to the severance pay set out in these clauses .

### CLAUSE 4.5 TRANSMISSION OF BUSINESS

OPDATE 04:05:2011 on and from

#### 4.5.1 Transmission of business

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

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

#### 4.5.2 Acceptance of employment with transmittee

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

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

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

#### 4.5.3 Offer of employment with the transmittee

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

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

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

#### **CLAUSE 4.6 SERVICE PROVISIONS (TERMINATION, CHANGE AND REDUNDANCY)**

OPDATE 04:05:2011 on and from

##### **4.6.1 Continuity of service**

For the purpose of clauses 4.3, 4.4 and 4.5 **service** means **continuous service** (as defined in clause 1.5).

##### **4.6.2 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 4.3 and 4.4.

#### **CLAUSE 4.7 ANTI-DISCRIMINATION**

OPDATE 01:10:2019 on and from

- 4.7.1 It is the intention of the parties to this Award to achieve the principal object of section 3(m) of the **Act** by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 4.7.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavour to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.7.3 Nothing in this clause is to be taken to affect:
- 4.7.3.1 Any different treatment (or treatment having different effects) which is specifically exempted under the State or Commonwealth anti-discrimination legislation;
  - 4.7.3.2 Until considered and determined further by the **Tribunal**, the payment of different wages for employees who have not reached a particular age;
  - 4.7.3.3 An employee, employer or registered organisation, pursuing matters of discrimination in the State or Federal jurisdiction, including by application to the Australian Human Rights Commission.
- 4.7.4 Nothing in this clause is to be taken to prevent:
- 4.7.4.1 A matter referred to in 4.7.1 from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position.

- 4.7.4.2 A matter referred to in 4.7.1 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 CLASSIFICATIONS

OPDATE 13:03:2007 on and from

- 5.1.1 Persons employed in Classifications pursuant to this Award shall be paid the appropriate wages as set out in Schedule 1 of this Award.
- 5.1.2 Classification definitions are set out in Schedule 3.

### CLAUSE 5.2 ALLOWANCES

OPDATE 04:05:2011 on and from

#### 5.2.1 **Vehicle allowance**

An employee who by agreement with the employer uses his/her own motor vehicle on the employer's business shall be paid the allowance specified in Schedule 2.

#### 5.2.2 **Meal allowance**

An employee entitled to a meal allowance in accordance with Clause 6.5 Overtime, shall be paid an allowance as specified in Schedule 2.

### CLAUSE 5.3 MIXED FUNCTIONS

OPDATE 13:03:2007 on and from

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 04:05:2011 on and from

- 5.4.1 Subject to clause 5.4.2, wages shall be paid weekly and during the working hours of an employee.
- 5.4.2 Wages may however be paid fortnightly and may be paid in arrears. Any change from weekly pays to fortnightly pays is to be 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 pay-slip in accordance with S102(8) of the **Act** and, where practicable, show the calculation of gross earnings, deductions, and the amount of net pay.
- 5.4.4 Notwithstanding clause 5.4.3, when the amount of gross earnings and/or net pay changes, an employer shall supply to each employee details of such change.

### CLAUSE 5.5 SAFETY NET ADJUSTMENTS

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

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.

#### **CLAUSE 5.6 ECONOMIC INCAPACITY APPLICATIONS**

OPDATE 01:10:2019 on and from (S99 Review)

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

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 the South Australian Employment Tribunal.

Any decision to temporarily postpone or reduce an increase will be subject to a further review, the date of which will be determined by the South Australian Employment Tribunal 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 the South Australian Employment Tribunal in the circumstances of each case.

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

### **CLAUSE 6.1 HOURS OF WORK**

OPDATE 13:03:2007 on and from

- 6.1.1 Subject to Clause 6.2 Operation of 38 Hour Week, the ordinary hours of work shall not exceed 38 hours per week.
- 6.1.2 Ordinary daily hours shall not exceed 10 hours per shift, within a spread of 12 hours from starting time to finishing time.
- 6.1.3 For all time worked in ordinary hours before 6.00 a.m. or after 6.00 p.m. Monday to Friday, an additional 10 per centum penalty shall be paid.

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

OPDATE 13:03:2007 on and from

- 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 day off in each 4 week period; or by the working of a 9 1/2 hour day for each of four days as directed by the employer in any week.
  - (b) a shorter working day of not more than 4 hours work in ordinary time on one day in each 2 week period.
  - (c) a shorter working day of not more than 6 hours work in ordinary time on one day in each week.
  - (d) a shorter working day of not more than 7.6 hours work in ordinary time on any day.
- 6.2.2 Despite the provisions contained in 6.2.1(a) to (d), the rostering arrangements may by mutual agreement in writing between the employer and an employee be altered to facilitate the implementation of a 10 hour spread of hours per day pursuant to clause 6.1.2.
- 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 are 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 TIME OFF**

OPDATE 13:03:2007 on and from

- 6.3.1 Each employee shall be allowed off two whole days in seven commencing at the time fixed for starting work on any one day and extending to the time fixed for starting work two days later on days to be appointed by the employer within seven days of the commencement of employment.
- 6.3.2 Where an employee is required to work on a day off the employee shall be paid at the rate of double time in addition to their weekly rate.

- 6.3.3 The employee's day(s) off may be changed by mutual agreement between the employer and the employee. Where such agreement is not reached the employer may change the employee's day(s) off provided that seven clear days notice of the change is given.
- 6.3.4 No employer shall change an employee's day(s) off if the change has the effect of avoiding payment for a public holiday.
- 6.3.5 No employee shall suffer a reduction in pay where a public holiday falls on that employee's day off.

#### CLAUSE 6.4 MEAL BREAKS

OPDATE 04:05:2011 on and from

- 6.4.1 Every employee shall be allowed a meal break of not less than thirty minutes nor more than one hour in respect of each five hours continuous work, during any one day or shift.
- 6.4.2 Where an employee does not receive a meal break as and when prescribed, they shall be paid at double the **ordinary hourly rate** from the time when the meal break becomes due, until such time as it is given.

#### CLAUSE 6.5 OVERTIME

OPDATE 01:10:2019 on and from

- 6.5.1 Subject to the provisions of this Award relating to Sundays and Public Holidays for all time worked outside of or in excess of the daily or weekly hours prescribed by this Award shall be overtime and be paid for at the rate of time and one half for the first 3 hours and double time thereafter at the **ordinary hourly rate**.
- 6.5.2 Casual employees working overtime as outlined in 6.5.1, shall be paid at the rate of 175% for the first 3 hours and 225% thereafter of the relevant **ordinary hourly rate**.
- 6.5.3 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 specified in Schedule 2 during that or the next day. However, where an employee is given at least 24 hours notice by the employer that the employee will be required to work pursuant to this subclause 6.5.3, the specified meal allowance shall not be payable to the employee.

#### CLAUSE 6.6 SATURDAYS

OPDATE 01:10:2019 on and from

- 6.6.1 For work performed in ordinary hours on a Saturday (not being the day after Good Friday) employees, other than casual roadhouse employees, shall receive the following payments based on **ordinary hourly rate**:
- 6.6.1.1 Employees on weekly hiring
- Saturday up to 1.00p.m. - an additional 25 per centum per hour.
- Saturday after 1.00p.m. until midnight - an additional 50 per centum per hour.
- 6.6.1.2 Casual employees
- (a) *Saturday up to 1.00p.m.* - an additional 50 per centum per hour in lieu of 25 per centum prescribed in clause 4.2.3.2(a).
- (b) *Saturday after 1.00p.m. until midnight* - an additional 75 per centum per hour in lieu of 25 per centum prescribed in clause 4.2.3.2(a).

- 6.6.1.3 The additional payments prescribed in clauses 6.6.1.1 and 6.6.1.2 shall be in lieu of all other penalty payments prescribed elsewhere in this Award.

#### CLAUSE 6.7 SUNDAYS

OPDATE 01:10:2019 on and from

- 6.7.1 Subject to clause 6.7.2 for all time worked on a Sunday the following penalties shall apply:

- (a) Employees on weekly hiring - an additional 100 per centum per hour.
- (b) Casual employees - an additional 125 per centum per hour in lieu of 25 per centum prescribed in clause 4.2.3.2(a).

- 6.7.2 The payments prescribed in 6.7.1(a) and (b) are to be based on the **ordinary hourly rate**.

#### CLAUSE 6.8 PUBLIC HOLIDAYS

OPDATE 13:03:2007 on and from

Public Holidays and payments associated with Public Holidays are prescribed in clauses 7.6, 7.7 and 7.8.

#### CLAUSE 6.9 ADDITIONAL PAYMENT FOR SHIFT WORK

OPDATE 13:03:2007 on and from

##### 6.9.1 Definitions

- 6.9.1.1 For the purposes of this clause, **a shift** shall mean a day's roster of hours, whether the shift extends over midnight or not.

- 6.9.1.2 **Afternoon shift** or **night shift** shall mean a shift commencing between midday of any one day and 6 a.m. on the following morning.

- 6.9.1.3 **Day shift** shall mean a shift which is neither an afternoon shift or a night shift.

- 6.9.2 For all work performed on any **afternoon shift** or **night shift**, an additional payment shall be made at the following rates:

- (a) Where the employee is usually, week by week, on either **afternoon** or **night shift** - 15 per centum based on the **appropriate ordinary hourly rate**.
- (b) Where the **afternoon or night shift** alternates with a **day shift** - 10 per centum based on the appropriate **ordinary hourly rate**.

- 6.9.3 This clause shall not apply to catering staff, nor to casual employees.



## PART 7 – LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

### CLAUSE 7.1 ANNUAL LEAVE

OPDATE 13:03:2007 on and from

#### 7.1.1 Entitlement to annual leave

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

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

#### 7.1.2 Annual leave exclusive of public holidays

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

#### 7.1.3 Accrual of annual leave entitlement

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

7.1.3.1(a) *Full-time employee*: 152 hours per annum

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

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

#### 7.1.4 Time of taking annual leave

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

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

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

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

### 7.1.5 Payment for annual leave

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

7.1.5.2 Upon termination of employment, an employee must be paid for leave accrued in accordance with 7.1.3, which has not been taken.

### 7.1.6 Annual leave loading

7.1.6.1 An employee is also entitled to payment of a loading equivalent to 17.5% of the payment provided for in 7.1.5 at the time that payment is made.

7.1.6.2 Where an employee would have received shift loadings had the employee not been going on leave during the relevant period and such loadings would have entitled the employee to a greater amount than the loading of 17.5%, then the shift loadings are to be substituted for the 17.5% loading prescribed in 7.1.6.1.

7.1.6.3 Annual leave loading payment is payable on leave accrued in accordance with 7.1.3.2.

### 7.1.7 Shut down

7.1.7.1 Where an employer requires the business operation, or part of it, to be temporarily shut down the employer may require the employee to take annual leave by giving the employee notice of the requirement at least 2 months before the period of annual leave is to begin.

7.1.7.2 No more than two shut downs can occur in one calendar year.

7.1.7.3 Where:

(a) an employee is unable to attend work because of a shut down; and

(b) that employee has not accrued a full year of entitlement to annual leave;

that employee must be allowed to take pro rata annual leave calculated in accordance with the formula specified in 7.1.3.2.

7.1.7.4 Where an employee is required to take leave in accordance with 7.1.7.1, and the employee does not have a full or pro rata credit of leave, the employee may be stood off without pay during the period of the shut down for any time in excess of the employee's leave credit.

7.1.7.5 All time that the employee is stood off without pay for the purposes of 7.1.7.4 is deemed to be time of service in the next 12 monthly qualifying period.

## CLAUSE 7.2 PERSONAL LEAVE – INJURY AND SICKNESS

OPDATE 01:10:2019 on and from

### 7.2.1 Entitlement to personal leave

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

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

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

7.2.1.3 The word sick or sickness includes personal injury but does not include an injury for which compensation is payable under the *Return to Work Act 2014* (as amended).

## 7.2.2 Accrual of personal leave entitlement

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

7.2.2.1(a) For the first year of **continuous service** - at the rate of 1.46 hours for each completed 38 ordinary hours of work to a maximum of 76 hours.

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

(i) a full-time employee accrues 76 hours.

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

$$\frac{76}{38} \times \begin{array}{l} \text{average weekly ordinary hours} \\ \text{over the previous 12 months.} \end{array}$$

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

## 7.2.3 Conditions for payment of personal leave

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

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

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

7.2.3.2 The employee is entitled to payment at the employee's **ordinary hourly rate** for a period of personal leave.

## CLAUSE 7.3 BEREAVEMENT LEAVE

OPDATE 13:03:2007 on and from

### 7.3.1 Entitlement to leave

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

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

is entitled, on reasonable notice, to leave up to and including the day of the funeral of the relative. This leave is **without 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.

### 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 13:03:2007 on and from

### 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) a **spouse**;
- (b) a child or step child;
- (c) a parent or parent in-law;
- (d) any other member of the person's household;
- (e) a grandparent or grandchild;
- (f) any other person who is dependent on the person's care.

7.4.1.3 **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:

- (a) due to personal injury; or
- (b) for the purposes of caring for a family member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency,

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

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 7.1.4 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 sick and requires 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 13:03:2007 on and from

##### 7.5.1 Definitions

In this clause, unless the contrary intention appears:

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

7.5.1.2 **Adoption leave** means adoption leave provided under 7.5.3.4.

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

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

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

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

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

7.5.1.5 **Extended adoption leave** means adoption leave provided under 7.5.3.4(b).

7.5.1.6 **Extended paternity leave** means paternity leave provided under 7.5.3.3(b).

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

7.5.1.8 **Maternity leave** means maternity leave provided under 7.5.3.2.

7.5.1.9 **Medical certificate** means a certificate as prescribed in 7.5.5.1.

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

7.5.1.11 **Paternity leave** means paternity leave provided under 7.5.3.3.

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

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

7.5.1.14 **Short adoption leave** means **adoption leave** provided under 7.5.3.4(a).

7.5.1.15 **Special adoption leave** means **adoption leave** provided under 7.5.10.

7.5.1.16 **Special maternity leave** means **maternity leave** provided under 7.5.9.1.

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

## 7.5.2 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.

## 7.5.3 Eligibility for and entitlement to parental leave

7.5.3.1 Subject to the qualifications in 7.5.4, the provisions of this clause apply to full-time, part-time and **eligible casual employees** but do not apply to other employees.

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

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

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

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

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

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

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

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

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

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

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

#### 7.5.4 Qualifications on entitlements and eligibility

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

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

- (a) in the case of **maternity leave**, the expected date of birth; or otherwise
- (b) the date on which the leave is due to commence.

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

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

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

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

#### 7.5.5 Certification required

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

- (a) names the employee or the employee's **spouse**, as appropriate;
- (b) states that the employee or the employee's **spouse** is pregnant; and
- (c) states:
  - (i) the expected date of birth;
  - (ii) the expected date of termination of pregnancy; or
  - (iii) the date on which the birth took place,

whichever is appropriate.

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

7.5.5.2(a) *Parental leave*

- (i) The particulars of any period of **parental leave** sought or taken by the employee's **spouse**, and where appropriate;
- (ii) That the employee is seeking the leave to become the **primary care-giver** of a **child**.

7.5.5.2(b) *Adoption leave*

- (i) In the case of **adoption leave**, a statement from a **Government authority** giving details of the date, or presumed date, of **adoption**; and



- (ii) That for the period of the leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

## 7.5.6 Notice requirements

### 7.5.6.1 Maternity leave

7.5.6.1(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;
- (ii) Give not less than four weeks notice in writing to her employer of the date of which she proposes to commence **maternity leave** stating the period of leave to be taken; and
- (iii) Notify the employer of any change in the information provided pursuant to 7.5.5 within two weeks after the change takes place.

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

### 7.5.6.2 Paternity leave

An employee must:

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

7.5.6.2(b) Notify the employer of any change in the information provided pursuant to 7.5.5 within two weeks after the change takes place.

### 7.5.6.3 Adoption leave

An employee must:

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

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

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

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

#### 7.5.6.4 Unforeseen circumstances

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

- (a) the birth occurring earlier than the expected date; or
- (b) the death of the mother of the **child**; or
- (c) the death of the employee's **spouse**, or
- (d) the requirement that the employee accept earlier or later placement of the **child**,

so long as, where a living **child** is born, the notice is given not later than two weeks after the birth.

#### 7.5.7 **Taking of parental leave**

- 7.5.7.1 No employee may take **parental leave** concurrently with such leave taken by the employee's **spouse**, apart from **paternity leave** of up to one week at the time of the birth of the **child** or **adoption leave** of up to 3 weeks at the time of the placement of the **child**.
- 7.5.7.2 Subject to complying with any relevant provision as to the taking of annual leave or long service leave, an employee may, instead of or in conjunction with **parental leave**, take any annual leave or long service leave to which the employee is entitled.
- 7.5.7.3 Paid personal leave or other paid absences are not available to an employee during the employee's absence on **parental leave**.
- 7.5.7.4 A period of **maternity leave** must be taken as one continuous period and must include, immediately following the birth of the **child**, a period of 6 weeks of compulsory leave.
- 7.5.7.5 Subject to 7.5.4 and unless agreed otherwise between the employer and employee, an employee may commence **parental leave** at any time within six weeks immediately prior to the expected date of birth.
- 7.5.7.6 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the **child**, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 7.5.7.7 Where leave is granted under 7.5.7.5, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- 7.5.7.8 **Maternity leave** and **paternity leave** cannot extend beyond the **child's** first birthday.
- 7.5.7.9 **Adoption leave** cannot extend beyond the **child's** fifth birthday.
- 7.5.7.10 **Extended adoption leave** cannot extend beyond the first anniversary of the initial placement of the **child**.

### 7.5.8 Variation and cancellation of parental leave

7.5.8.1 Without extending an entitlement beyond the limit set by 7.5.3, **parental leave** may be varied as follows:

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

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

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

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

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

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

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

(b) the employee gives the employer notice in writing stating that the employee desires to resume work;

the employer must allow the employee to resume work within four weeks of receipt of the notice.

7.5.8.4 **Parental leave** may be cancelled by agreement between the employer and the employee.

### 7.5.9 Special maternity leave and personal leave

7.5.9.1 If:

(a) an employee not then on **maternity leave** suffers illness related to her pregnancy she is entitled to take leave under 7.2; or

(b) the pregnancy of an employee not then on **maternity leave** terminates after 28 weeks otherwise than by the birth of a living **child**,

she may take such paid personal leave as she is then entitled to and such further unpaid leave (to be known as **special maternity leave**) as a legally qualified medical practitioner certifies to be necessary before her return to work. Provided that the aggregate of paid personal leave, **special maternity leave** and **maternity leave** must not exceed the period to which the employee is entitled under 7.5.3.2 and she is entitled to take unpaid **special maternity leave** for such periods as a registered medical practitioner certified as necessary.

7.5.9.2 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 or, or in addition to, **special maternity leave**.

7.5.9.3 An employee who returns to work after the completion of a period of such leave is entitled to the position which she held immediately before commencing such leave, or in the case of an employee who was transferred to a safe job, to the position she held immediately before such transfer.

7.5.9.4 If that position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, she is entitled to a position, as nearly as possible, comparable in status and pay as that of her former position.

#### 7.5.10 **Special adoption leave**

7.5.10.1 An employee who has received approval to **adopt** a **child** who is overseas is entitled to such unpaid leave as is reasonably required by the employee to obtain custody of the **child**.

7.5.10.2 An employee who is seeking to **adopt** a **child** is entitled to such unpaid leave not exceeding five days as is required by the employee to attend such interviews, workshops, court attendances or examinations as are necessary as part of the **adoption** procedure.

7.5.10.3 The leave under this clause 7.5.10 is to be known as **special adoption leave** and does not affect any entitlement under 7.5.3.

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

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

#### 7.5.11 **Transfer to a safe job – maternity leave**

7.5.11.1 If, in the opinion of a legally qualified medical practitioner:

- (a) illness or risks arising out of the pregnancy, or
- (b) hazards connected with the work assigned to the employee;

make it inadvisable for the employee to continue her present work, the employee must, if the employer considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of **maternity leave**.

7.5.11.2 If the transfer to a safe job is not considered practicable, the employee is entitled, or the employer may require the employee, to take leave for such period as is certified necessary by a legally qualified medical practitioner.

7.5.11.3 Leave under this clause 7.5.11 will be treated as **maternity leave**.

#### 7.5.12 **Part-time work**

An employee who is pregnant or is entitled to **parental leave** may, by agreement with the employer, reduce the employee's hours of employment to an agreed extent subject to the following conditions:

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

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

#### 7.5.13 **Communication during parental leave**

7.5.13.1 Where an employee is on **parental leave** and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

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

7.5.13.2 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of **parental leave** to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

7.5.13.3 The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 7.5.13.1.

#### 7.5.14 Return to work after parental leave

7.5.14.1 An employee must confirm the employee's intention to return to work, by notice in writing, to the employer given at least four weeks before the end of the period of **parental leave**.

7.5.14.2 On returning to work after **parental leave** an employee is entitled:

- (a) to the position which the employee held immediately before commencing **parental leave**; or
- (b) in the case of an employee who was transferred to a safe job, to the position which she held immediately before the transfer.

7.5.14.3 If the employee's previous position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee is entitled to a position as nearly as comparable in status and pay to that of the employee's former position.

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

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

#### 7.5.15 Right to request

7.5.15.1 An employee entitled to **personal leave** pursuant to clause 7.5.3, may request the employer to allow the employee:

- (a) to extend the period of simultaneous unpaid leave provided for in clause 7.5.3.3(a) and 7.5.3.4(a) up to a maximum of eight weeks;
- (b) to extend the period of unpaid **parental leave** provided for in 7.5.3.2 by a further continuous period of leave not exceeding 12 months;
- (c) to return to work from a period of **parental leave** on a part-time basis until the **child** reaches school age,

to assist the employee in reconciling work and parental responsibilities.

- 7.5.15.2 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 staff, loss of efficiency and the impact on customer service.
- 7.5.15.3 The employee's request and the employer's decision made under 7.5.15.1(b) and (c) must be recorded in writing.
- 7.5.15.4 Where an employee wishes to make a request under 7.5.15.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from **parental leave**.

#### 7.5.16 Termination of employment

- 7.5.16.1 An employee on **parental leave** may terminate their employment at any time during the period of leave by giving the required notice.
- 7.5.16.2 An employer must not terminate the employment of an employee on the ground of her pregnancy or an employee's absence on **parental leave**. Otherwise the rights of an employer in relation to termination of employment are not affected by this clause.

#### 7.5.17 Replacement employees

- 7.5.17.1 A **replacement employee** is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on **parental leave**.
- 7.5.17.2 Before an employer engaged a **replacement employee** the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

### CLAUSE 7.6 PUBLIC HOLIDAYS

OPDATE 13:03:2007 on and from

- 7.6.1 Employees whose contract of hiring is by the week are entitled to the following public holidays **without loss of pay**:

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

and any other day which by Act of Parliament or proclamation may be created a public holiday or may be substituted for any such holidays.

- 7.6.2 All time worked by an employee (which shall include travelling time) on any public holiday prescribed in clause 7.6.1 on the specific instruction of an employer shall be paid at the rate of **double time**.

- 7.6.3 Double **time** on public holidays shall mean payment at the rate of single ordinary pay in addition to the weekly wage for the first 8 hours worked on any public holiday and thereafter at the rate of double ordinary pay. For the purposes of this clause 7.6.3 the hourly rate of "ordinary pay" shall be the amount of the ordinary weekly wage divided by 38.
- 7.6.4 If an employer gives notice to any employee that s/he is required and the employee refuses to work as required such employee shall not be paid for such day, and for the time worked during that week shall be paid only for the number of hours actually worked.
- 7.6.5 If in respect of any public holiday referred to in clause 7.6.1 the employee does not work on each of the days next before and next after the public holiday on which his/her place of employment is open for business the employee shall not be entitled to payment for that holiday unless s/he was so absent under circumstances authorised by his employer or by any clause of this Award.
- 7.6.6 When a public holiday falls upon a day when the employee would normally work and the employee is not required to work on such day, s/he shall be paid at the ordinary rate of pay for such public holidays, as if s/he had actually worked the normal number of hours on that day.
- 7.6.7 Casual employees required to work on public holidays shall in lieu of the penalty rates set out in clause 4.2.3, receive a 100 per centum penalty.

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

OPDATE 13:03:2007 on and from

When a public holiday falls on an employee's rostered day off, the employee shall by mutual agreement with his or her 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.

In the absence of mutual agreement between the employee and his/her employer the provision contained in paragraph (a) above shall apply. No additional payment shall be made to an employee if he/she is ill on his/her day off or half day off duty.

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

#### **CLAUSE 7.8 CHRISTMAS DAY FALLING ON A SATURDAY OR SUNDAY**

OPDATE 13:03:2007 on and from

##### **7.8.1 Applicability**

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

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

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

### 7.8.2 Full-time employees

- 7.8.2.1 An employee rostered and not required to work on the **actual day** will be paid for that day at **ordinary hourly rate** but will not be entitled to the **substitute day**;
- 7.8.2.2 An employee rostered and required to work on the **actual day** will be entitled to:
- (a) in addition to the normal Saturday or Sunday payment (as appropriate), a Christmas Day loading of one half of an ordinary day's pay, and
  - (b) the **substitute day** as a holiday. However, where the **substitute day** falls on a non-working day, the employee is entitled to either an additional day's pay or an additional day's leave with pay at the **ordinary hourly rate**.
- 7.8.2.3 An employee rostered and required to work both on the **actual day** and also on the **substitute day** will be entitled to:
- (a) for the **actual day**, the payment described in 7.8.2.2, and,
  - (b) for the **substitute day**, either public holiday rates or be granted an additional day's leave in lieu of the public holiday rates.

### 7.8.3 Part-time employees

- 7.8.3.1 An employee rostered and not required to work on the **actual day** will be paid for that day at **ordinary hourly rate** but will not be entitled to the **substitute day**.
- 7.8.3.2 An employee rostered and required to work on the **actual day** will be entitled to:
- (a) the payment described in 7.8.2.2; and
  - (b) another day, which may or may not be the **substitute day**, as a holiday, or payment at the **ordinary hourly rate** for an additional day of equal length.
- 7.8.3.3 If the benefits of 7.8.3.1 or 7.8.3.2 apply, an employee who works on the **substitute day**, will be paid at **ordinary hourly rate** for such day.

## CLAUSE 7.9 BLOOD DONORS LEAVE

OPDATE 13:03:2007 on and from

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 employee's ordinary working hours, is entitled **without loss of pay** up to a maximum of two hours on each occasion and subject to a maximum of four separate absences for the purpose of donating blood each calendar year.

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

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 the satisfaction of the employer.

Further the employee shall notify the employer as soon as possible of the time and date upon which she/he is requesting to be absent for the purpose of donating blood.



## **PART 8 – TRANSPORT, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

### **CLAUSE 8.1 TRANSPORT**

OPDATE 13:03:2007 on and from

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 13:03:2007 on and from

When an employee is required to travel anywhere on the business of the employer in the course of employment during the day the employee shall receive all fares so incurred.

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

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

OPDATE 13:03:2007 on and from

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 13:03:2007 on and from

Refer to Schedule 5.

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

OPDATE 01:10:2019 on and from (heading)

### **CLAUSE 10.1 FIRST-AID KIT**

OPDATE 01:10:2019 on and from

A first-aid kit shall be provided by the employer, pursuant to Regulations under the *Work Health and Safety Act 2012* (as amended).

### **CLAUSE 10.2 SUPPLY OF UNIFORMS**

OPDATE 13:03:2007 on and from

If an employer requires an employee to wear a garment distinctive to the employer's establishment, or any part of it, the employer, at no cost to the employee, shall provide, maintain and (if necessary) launder such garment, which shall remain the property of the employer. However, nothing in this clause shall require an employer to supply an employee with an ordinary dress or suit of dark material.

## PART 11 - AWARD COMPLIANCE AND ASSOCIATION RELATED MATTERS

### CLAUSE 11.1 POSTING UP OF AWARD

OPDATE 13:03:2007 on and from

A copy of this Award shall be made available in accordance with Section 103 of the **Act**.

### CLAUSE 11.2 NOTICE BOARDS

OPDATE 13:03:2007 on and from

11.2.1 An employer bound by this Award shall permit an accredited **Union** 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.

11.2.2 Provided however, that such notices shall only contain information relevant to this Award and **Union** activity in connection with the Award.

11.2.3 Provided further that any notice deemed offensive by the employer may be removed.

11.2.4 The provisions of this clause shall only apply to an employer of nine or more employees bound by this Award.

### CLAUSE 11.3 RIGHT OF ENTRY

OPDATE 01:10:2019 on and from

11.3.1 An official of an association of employees may enter an employers premises at which one or more members of the association work and:

11.3.1.1 Inspect time books and wages records; and

11.3.1.2 Inspect the work carried out at the workplace and note the conditions under which the work is carried out; and

11.3.1.3 If specific complaints of non-compliance with the award have been made, interview any person who works at the workplace about the complaints.

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

11.3.3 A person exercising these powers must not interrupt the performance of work at the workplace or:

11.3.3.1 Harass an employer or employee; or

11.3.3.2 Address offensive language to an employee or an employer; or

11.3.3.3 Hinder or obstruct an employee in carrying out a duty of employment; or

11.3.3.4 Use or threaten to use force in relation to an employer, an employee or any other person.

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

**CLAUSE 11.4 TIME AND WAGE RECORDS**

OPDATE 13:03:2007 on and from

Every employer shall keep time records as required by Section 102 of the **Act**.

**SCHEDULE 1 - WAGES**OPDATE 01:07:2019 1<sup>st</sup> pp on or after**CLAUSE S1.1 ADULTS**

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

<i>Adults</i>	<i>Total weekly rate</i> \$
Cook (Tradesperson)	880.10
Cook (Unqualified)	834.90
Counter assistant/ Cashier	833.30
Food and Beverage Attendant (Level 1)	787.20
Food and Beverage Attendant (Level 2)	817.50
Employee, irrespective of age, in charge of an establishment and working alone	835.50
Kitchen hand	781.00

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).

**CLAUSE S1.2 SUPERVISORY RATES**

With the exception of Cook (Tradesperson), 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>Per week</i> <i>total</i> \$
Directing 1 to 5 employees	27.77
Directing 6 to 10 employees	37.67
Directing 11 or more employees	46.11

**CLAUSE S1.3 APPRENTICE COOKS****S1.3.1 Junior Apprentice Cooks**

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

<i>Year of Apprenticeship</i>	<i>%</i>	<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

**S1.3.2 Adult Apprentice Cooks**

The minimum weekly wage rates for work in ordinary time for adult apprentices is set out below:

<i>Year of apprenticeship</i>	<i>\$</i>
First Year	754.30
Second Year	754.30
Third Year	754.30
Fourth Year	781.20

**CLAUSE S1.4 JUNIORS**

Junior employees are to be paid a percentage of the adult rate for their classification. These percentages are as follows:

	<i>%</i>
Under 17 years	50
17 years of age	60
18 years of age	70
19 years of age	85
20 years of age	90

Note: The above rates for apprentices, improvers and juniors 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.

**SCHEDULE 2 - ALLOWANCES**

OPDATE 04:05:2011 on and from

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

<i>Clause no.</i>	<i>Description</i>	<i>Amount</i>		<i>Operative date</i>
5.2.1	Vehicle allowance	\$0.60	Per km	01:04:2008 1 <sup>st</sup> pp on or after
6.4.3	Meals	\$0.40	Per meal	12:05:1986 on and from
6.5.3	Overtime meals	\$10.95	Per meal	29:07:2009 1 <sup>st</sup> pp on or after



### SCHEDULE 3 – CLASSIFICATION DEFINITIONS

OPDATE 04:05:2011 on and from

- S3.1 **Cashier** - is a person appointed by the employer to remain at a cash register for the purpose of accepting payment.
- S3.2 **Kitchen Hand** – is a person employed in the 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 maintaining of the working area at a standard of cleanliness determined by the management.
- S3.3 **Cook** – is a person employed to perform the cooking of food other than a Cook (tradesperson).
- S3.4 **Cook (Tradesperson)** – is a person who is 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.
- S3.5 **Food & Beverage Attendant (Level 1)** means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:
- Supplying, dispensing or mixing or liquor
  - Assisting in the cellar
  - Undertaking general waiting duties of food and / or beverage including cleaning of tables
  - Receipt of monies and / or attending a snack bar

All employees in the industry shall be deemed as having the appropriate level of training if they perform one or more of the duties described in S3.6 and have accumulated 2 years experience with the same employer.

- S3.6 **Food & Beverage Attendant (Level 2)** means an employee who:
- Supervises Food and Beverage Attendants of a lower level; or
  - Trains Food and Beverage Attendants of a lower level; or
  - Mixes a range of sophisticated drinks; or
  - Is a Food and Beverage Attendant Level 1 who operates a mechanical lifting device; or
  - Is a Food and Beverage Attendant Level 1 working up to four hours per day (averaged over the relevant work cycle) in the cellar without supervision; or
  - Has the appropriate level of training and is engaged in any one of the following:
    - Supplying, dispensing or mixing liquor
    - Assisting in the cellar. Cellar duties could include working up to four hours per day (averaged over the relevant work cycle) without supervision;
    - Undertaking general waiting duties of food or liquor, including cleaning of tables;
    - Receipt of monies;
    - Taking reservations, greeting and seating guests; or
    - Engaged on delivery duties

## SCHEDULE 4 - SUPPORTED WAGE PROVISIONS

OPDATE 01:10:2019 on and from (S99 Review)

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

### CLAUSE S4.1 DEFINITIONS

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

- (a) **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".
- (b) **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**.
- (c) **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.
- (d) **Assessment instrument** means the form provided for under the **Supported Wage System** that records the assessment of the productive capacity of the person to be employed under the **Supported Wage System**.

### CLAUSE S4.2 ELIGIBILITY CRITERIA

Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a **Disability Support Pension**.

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their current employment).

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* (as amended) 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 *Disability Services Act 1986* (as amended) and the Standards contained therein, as amended from time to time.

### CLAUSE S4.3 SUPPORTED WAGE RATES

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

<i>Assessed capacity (clause S2.4)</i>	<i>% of prescribed Award rates</i>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$89.50 per week).

\* Where a person's assess capacity is 10% they shall 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:

- (a) the employer and a union party to the Award in consultation with the employee or, if desired by any of these;
- (b) the employer and an **accredited assessor** 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 clause, including the appropriate percentage of the Award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the **Tribunal**.

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

#### **CLAUSE 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 shall 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 shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this Award paid on a pro rata basis.

**CLAUSE S4.8 WORKPLACE ADJUSTMENT**

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

**CLAUSE 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 clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- S4.9.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- S4.9.3 The minimum amount payable to the employee during the trial period shall be not 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 shall be entered into based on the outcome of assessment under clause S4.4.

## SCHEDULE 5 - TRAINING WAGE ARRANGEMENTS

OPDATE 01:10:2019 on and from (S99 Review)

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

### CLAUSE S5.1 TITLE

This Schedule shall be known as the SA Public Sector Cafes and Restaurants Adelaide Convention Centre Award Training Wage Arrangements Schedule.

### CLAUSE S5.2 ARRANGEMENT

*Clause No. Title*

S5.1	Title
S5.2	Arrangement
S5.3	Application
S5.4	Operation
S5.5	Definitions
S5.6	Training conditions
S5.7	Employment conditions
S5.8	Wages
S5.9	Disputes settling procedures
S5.10	Dispute settlement over traineeship schemes
S5.11	Part-time traineeships

Section A Allocation of traineeships to wage levels

Section B Traineeship schemes excluded from this Award

### CLAUSE S5.3 APPLICATION

S5.3.1 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.

S5.3.2 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 S5.3.2.

S5.3.3 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**.

S5.3.4 Nothing in this Schedule shall be taken to replace the prescription of training requirements in the Award.

### CLAUSE S5.4 OPERATION

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

**CLAUSE S5.5 DEFINITIONS**

- S5.5.1 **Act** means the *Training and Skills Development Act 2008* or any successor legislation.
- S5.5.2 **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.
- S5.5.3 **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.
- S5.5.4 **T&SC** means the Training and Skills Commission under the **Act**.
- S5.5.5 **Award** means the SA Public Sector Cafes and Restaurants Adelaide Convention Centre Award.
- S5.5.6 **Trainee** is an individual who is a signatory to a **Training Agreement** registered with the **T&SC** and is involved in paid work and structured training, which may be on or off the job. **Trainee** does not include an individual who already has the competencies to which the **Traineeship** is directed.
- S5.5.7 **Traineeship** means a system of training which has been approved by the **T&SC**, which meets the requirements of a National **Training Package** developed by a National Industry Training Advisory Board and endorsed by the National Training Quality Council, which leads to an Australian Qualifications Framework qualification specified by that National **Training Package**, and includes full-time **Traineeships** and part-time **Traineeships** including school-based **Traineeships**.
- S5.5.8 **Training Agreement** means a Contract of Training for a **Traineeship** made between the employer and a **Trainee**, which is registered with the **T&SC**.
- S5.5.9 **Training Package** means the competency standards, assessment guidelines and Australian Qualifications Framework qualification endorsed for an industry or enterprise by the National Training Quality Council and placed on the National Training Information Service with the approval of Commonwealth and State Ministers responsible for vocational education and training.
- S5.5.10 **Training Plan** means a programme of training which forms part of a **Training Agreement** registered with the **T&SC**.
- S5.5.11 **Traineeship Scheme** means an approved **Traineeship** applicable to a group or class of employees or to an industry or sector of an industry or an enterprise, which has been approved by the **T&SC**.
- S5.5.12 **Tribunal** means the South Australian Employment Tribunal.
- S5.5.13 **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 S5.6 TRAINING CONDITIONS**

- S5.6.1 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**.

- S5.6.2 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.
- S5.6.3 The employer shall provide a level of supervision in accordance with the **Traineeship Agreement** during the **Traineeship** period.
- S5.6.4 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 S5.7 EMPLOYMENT CONDITIONS

- S5.7.1 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 S5.11 Part-Time Traineeships, of this Schedule.
- S5.7.2 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.
- S5.7.3 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**.
- S5.7.4 The **Trainee** shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the **Approved Training**.
- S5.7.5 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.
- S5.7.6 **Trainees working overtime**
- S5.7.6.1 Reasonable overtime may be worked by the **Trainee** provided that it does not affect the successful completion of the **Approved Training**.
- S5.7.6.2 No **Trainee** shall work overtime or shiftwork on their own unless consistent with the provisions of the Award.
- S5.7.6.3 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**.

- S5.7.6.4 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.
- S5.7.7 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.
- S5.7.8 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 S5.8 WAGES

- S5.8.1 The weekly wage payable to full-time **Trainees** shall be provided in S5.8.4, S5.8.5 and S5.8.6 of this Schedule and in accordance with Clause S5.7 Employment Conditions.
- S5.8.2 These wage rates will only apply to **Trainees** while they are undertaking an **Approved Traineeship**, which includes **Approved Training** as defined in this Schedule.
- S5.8.3 The wage rates prescribed by this clause do not apply to complete trade level training, which is covered by the Apprenticeship system.
- S5.8.4 **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		



### S5.8.5 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		

### S5.8.6 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		

### S5.8.7 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.

### S5.8.8 Wage rates for Certificate IV Traineeships

S5.8.8.1 **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.

S5.8.8.2 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

S5.8.9 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**.

S5.8.10 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.

S5.8.11 Section A sets out the Wage Level of a **Traineeship**.

S5.8.12 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:

S5.8.12.1 Include any period of schooling beyond **Year 10**, which was not part of nor contributed to a completed year of schooling;

S5.8.12.2 Include any period during which a **Trainee** repeats in whole or part of a year of schooling beyond **Year 10**;

S5.8.12.3 Not include any period during a calendar year in which a year of schooling is completed; and

S5.8.12.4 Have effect on an anniversary date being January 1 in each year.

S5.8.13 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 S5.9 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 S5.10 DISPUTE SETTLEMENT OVER TRAINEESHIP SCHEMES

S5.10.1 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.

S5.10.2 The party shall:

S5.10.2.1 Notify the relevant parties of an intention to dispute the particular **Traineeship Scheme**, identifying the scheme.

S5.10.2.2 Request the parties with an interest in the scheme to meet with them at a mutually agreed location.

- S5.10.2.3 If agreement cannot be reached the matter may be referred to the **Tribunal** for conciliation.
- S5.10.2.4 If agreement is not reached during conciliation then an application may be made to include the **Traineeship** scheme in Section B.

### CLAUSE S5.11 PART-TIME TRAINEESHIPS

S5.11.1 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**.

S5.11.1.1 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.

S5.11.1.2 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.

#### S5.11.2 Wages

S5.11.2.1 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)

	<i>Year of schooling</i>	
	<i>Year 11</i>	<i>Year 12</i>
	\$	\$
Wage Levels A, B and C	11.19	12.27
20% loading [S5.11.6.2]	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

S5.11.3 The hours for which payment shall be made are determined as follows:

- S5.11.3.1 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.
- S5.11.3.2 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.
- S5.11.3.3 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 S5.8, 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**.

- S5.11.3.4 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**.
- S5.11.3.5 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.

#### S5.11.4 General formula

S5.11.4.1 For **Traineeships** not covered by S5.11.2.1, 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:

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

\* 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 S5.8.4, S5.8.5, S5.8.6 and S5.8.7 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:

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

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.

#### S5.11.5 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.

#### S5.11.6 Employment conditions for all part-time trainees

- S5.11.6.1 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.
- S5.11.6.2 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.
- S5.11.6.3 A part-time **Trainee** may, by agreement, transfer from a part-time to a full-time **Traineeship** position should one become available.
- S5.11.6.4 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
Financial Services	III
Food Processing Industry	III
Hospitality Industry	III
Information Technology	II
	III
Retail	III
Tourism	I
	II
	III
Transport and Distribution	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
National Community Recreation Industry	II
	III
National Outdoor Recreation Industry	II
	III
Public Safety	II
Printing and Graphic Arts	II
Transport and Distribution	I
	II

**Wage Level C**

None identified

**Part B, Old Traineeships Titles and Wage Levels****Wage Level A**

Certificate III in Office Administration  
 Communications - Cabling/Equipment Installation  
 Tourism Traineeship - Streams

**Wage Level B**

Baking  
 Food Services (State PS)

**Wage Level C**

None identified

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

Nil

**APPLICATIONS FILED**

<i>Case No</i>	<i>Description</i>
<b>5253/2010</b>	<b>AWARD REVIEW S99</b> Award varied. Cl. 1.1 Title (previously: Cafes and Restaurants (South Australia) Award); Cl. 1.3 Scope of Award & Locality (retitled Scope, Persons Bound & Locality); delete Cl. 1.4 Persons Bound; Cl. 1.5 Definitions (renumbered Cl. 1.4); Cl. 1.6 Continuous Service (renumbered Cl. 1.5); Cl. 1.7 Period of Operation (renumbered Cl. 1.6); Cl. 4.2 Employment Categories; delete Cl. 4.3 Catering Staff; Cl. 4.4 Termination of Employment (renumbered Cl. 4.3); Cl. 4.5 Redundancy (renumbered Cl. 4.4); Cl. 4.6 Transmission of Business (renumbered Cl. 4.5); Cl. 4.7 Service Provisions (TCR) (renumbered Cl. 4.6); Cl. 4.8 Anti-Discrimination (renumbered Cl. 4.7); Cl. 5.2 Allowances; Cl. 5.4 Payment of Wages; delete Cl. 5.5 Superannuation; Cl. 5.6 Safety Net Adjustments (renumbered Cl. 5.5); Cl. 5.7 Economic Incapacity Applications (renumbered Cl. 5.6); Cl. 6.4 Meal Breaks; Sch. 1 Wages; Sch. 2 Allowances; Sch. 3 Classification Definitions; Sch. 5 Training Wage Arrangements. Update 04/05/2011.
<b>4404/2011</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2011. Update ppc 01/10/2011.
<b>5897/2011</b>	<b>AWARD VARIATION</b> Award varied by 2344/2012.
<b>2344/2012</b>	<b>AWARD VARIATION</b> Award varied. Cl. 4.2 Employment Categories, Cl. 6.5 Overtime, Cl. 6.6 Saturdays, Cl. 6.7 Sundays re Casual Loading Case. Update 21/06/2012.
<b>2783/2012</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2012. Update ppc 01/07/2012.
<b>3300/2013</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2013. Update ppc 01/07/2013.
<b>4452/2014</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2014. Update ppc 01/07/2014.
<b>6467/2015</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2015. Update ppc 01/07/2015.
<b>3230/2016</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2016. Update ppc 01/07/2016.
<b>3376/2017</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2017. Update ppc 01/07/2017.



<i>Case No</i>	<i>Description</i>
<b>4347/2018</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2018. Oupdate ppc 01/07/2018.
<b>ET-19-01422</b>	<b>AWARD VARIATION</b> Award varied. Cl.5.5 Safety Net Adjustments, Cl.5.6 Economic Incapacity Applications, Sch.1 Wages, Sch. 4 Supported Wage Provisions, Sch. 5 Training Wage Arrangements re SWC 2019. Oupdate ppc 01/07/2019.
<b>ET-19-00577</b>	<b>S99 REVIEW OF AWARD</b> Award varied. Cl. 1.3 Scope, Persons Bound and Locality, Cl. 1.4 Definitions, Cl. 1.6 Period of Operation, Cl. 3.2 Dispute Settlement Procedure, Cl. 4.2 Employment Categories, Cl. 4.4 Redundancy, Cl. 4.7 Anti-Discrimination, Cl. 4.8 Anti-Discrimination (deleted), Cl. 5.6 Economic Incapacity Applications, Cl. 6.5 Overtime, Cl. 6.6 Saturdays, Cl. 6.7 Sundays, Cl. 7.2 Personal Leave – Injury and Sickness, Part 10 – Occupational Health and Safety Matters, Equipment, Tools and Amenities (heading), Cl. 10.1 First-Aid Kit, Cl. 11.3 Right of Entry, Sch. 4 Supported Wage Provisions (cl. S4.2 Eligibility Criteria, cl. S4.5 Lodgement of Assessment Instrument), Sch. 5 Training Wage Arrangements (cl. S5.5 Definitions, cl. S5.10 Dispute Settlement over Traineeship Schemes). Oupdate 01/10/2019.