

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 698 - reprint of award

**AWARD FOR ACCOMMODATION AND CARE SERVICES EMPLOYEES FOR AGED PERSONS -
SOUTH-EASTERN DIVISION 2004**

Following the Declaration of the General Ruling in the 2011 State Wage Case (matter numbers B/2011/17 and B/2011/19), the Award for Accommodation and Care Services Employees for Aged Persons - South-Eastern Division 2004 is hereby reprinted, pursuant to s. 698 of the *Industrial Relations Act 1999*.

I hereby certify that the Award contained herein is a true and correct copy of the Award for Accommodation and Care Services Employees for Aged Persons - South-Eastern Division 2004 as at 1 September 2011.

Dated 1 December 2011.

[L.S.] G.D. Savill
Industrial Registrar

**AWARD FOR ACCOMMODATION AND CARE SERVICES EMPLOYEES FOR AGED PERSONS -
SOUTH-EASTERN DIVISION 2004**

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Award for Accommodation and Care Services Employees For Aged Persons - South-Eastern Division 2004.

1.2 Arrangement

Subject Matter Clause No.

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1.3 Date of operation

This Award takes effect from 2 August 2004.

1.4 Application of award

1.4.1 This Award applies to all employees, for whom classification and rates of pay are prescribed herein, employed in or in connection with the provision of accommodation for aged persons in hostels, retirement villages, garden settlements or any other residential accommodation facility (including clients' own home); and short and long

term respite and day respite care; and to their employers, and to contractors and/or subcontractors to the said establishments and their employees performing work to which this Award ordinarily is applicable. The Award also applies where care is coordinated from a hostel or aged care facility as outlined above.

1.4.2 This Award does not apply to employees of the Government of Queensland as identified in Chapter 15 of the Act.

1.4.3 This Award does not apply to work covered by the Hospital Nurses' Award - State 2003, and the Private Hospital and Nursing Home Industry Award - State 2003.

1.4.4 This Award only applies to the South-Eastern Division of Queensland (as defined):

Provided that the terms and conditions of employment of Hostel Managers shall be as agreed in writing between the employer or the employer's representative and the Secretary of the Union.

1.4.5 This Award does not apply to employees engaged by Spotless Services Australia Limited (formerly Spotless Catering Services Limited in the provision of catering services.)

1.4.6 This Award does not apply to employees engaged by Eurest (Australia) Pty Ltd in the provision of catering services as from 21 August 1998.

1.4.7 This Award does not apply to employees covered by the Blue Care Enterprise Award - State 2004

1.5 Area of operation

1.5.1 The South-Eastern Division of Queensland shall comprise the district within the following boundaries:

Commencing at Point Danger, and bounded then by the southern boundary of the State westerly to 151 degrees of east longitude; then by that degree of longitude bearing true north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to the sea-coast; and then by the sea-coast southerly to the point of commencement; and all islands comprised in any State or Federal electorate in the South-Eastern Division of Queensland.

1.6 Definitions

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

1.6.2 "Casual Employee" means an employee who is engaged as such and who is employed by the hour for not more than 32 hours in any one week.

1.6.3 "Commission" means the Queensland Industrial Relations Commission.

1.6.4 "Cook" means an employee who is employed substantially in the cooking and/or preparing of food. Employees engaged in cooking eggs or making toast, teas, coffee or similar drinks shall not be considered to be performing the work of a cook.

1.6.5 "Part-time Employee" means an employee who works for more than 10 hours and not more than 38 hours per week.

1.6.6 "Union" means the Liquor, Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.

1.7 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.4 and their employers, and the Union and its members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

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

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

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

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Grievance and dispute settling procedure

- 3.1.1 The objective of this procedure shall be to avoid disputes by the resolution of issues through measures based on consultation, co-operation and discussion and to avoid interruption to the performance of work and consequential loss of production and wages.

It is acknowledged that it is in the best interest of all parties that issues are identified and resolved in accordance with the agreed procedure.

- 3.1.2 The matters to be dealt with in this procedure shall include all grievances and disputes between an employee and an employer in respect to any industrial matter. Such procedure shall apply to any number of employees.

- 3.1.3 The procedures to be followed are

- (a) In the event of an employee/s having a grievance or dispute the employee shall, in the first instance, attempt to resolve the matter with the appropriate supervisor who shall respond to such request as soon as reasonably practicable under the circumstances.
- (b) If the issue is not resolved in the first instance, it shall be discussed between the employee, the local representatives of the employer and the local Organiser and/or District Secretary of the Union.
- (c) If the issue cannot be resolved at workplace or district level, the issue shall be discussed at State level between the Union and representatives of the Employer.
- (d) If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined.
- (e) Any issue which cannot be resolved after following the procedure prescribed above may be referred by either party to the Commission.
- (f) Without prejudice to either party, whilst the above procedure is being followed, work shall continue normally, except in a case of a genuine safety issue and neither party shall unduly delay the procedure.
- (g) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.

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

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

- 3.1.6 The parties give their genuine commitment to the procedure, particularly in the context of the need to avoid interruption to the performance of work and the consequential loss of production or wages.

- 3.1.7 This dispute avoidance procedure shall not prejudice either party exercising their rights before the Commission.

3.2 Consultative mechanisms and procedures in the workplace

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

- 3.2.2 At each plant or enterprise, an employer, the employees and their relevant Union commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or Union for consideration consistent with the objectives of clause 3.2.1 shall be processed through that consultative mechanism and procedures.

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

4.1 Employment categories

4.1.1 Each employee shall be engaged only on one of the following basis:

- (a) as a permanent employee; or
- (b) as a part-time employee; or
- (c) as a casual employee.

4.1.2 An employee shall on commencing employment or on transfer or promotion be provided by the employer with a written statement outlining the employee's:

- (a) classification and duties;
- (b) ordinary hours of employment and roster arrangements;
- (c) rate of pay;
- (d) date of appointment or transfer or promotion.

4.1.3 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training provided that such duties are not designed to promote de-skilling.

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

4.1.4 The assignment of incidental or peripheral tasks to an employee or a class of employees shall:

- (a) be consistent with the efficient performance of the employee's main tasks or functions;
- (b) be subject to the employee having the skills or competence to perform the initial tasks;
- (c) be consistent with the Employer's responsibilities to provide a safe and healthy working environment.

4.2 Two or more classes of work

4.2.1 Where any person on any one day performs 2 or more classes of work to which a differential rate fixed by this Award is applicable, such person, if employed for more than 4 hours on the class or classes of work carrying a higher rate, shall be paid in respect of the whole time during which the employee works on that day at the same rate, which shall be at the highest rate fixed by this Award in respect of any such classes of work, and if employed for 4 hours or less on the class or classes of work carrying a higher rate, the employee shall be paid at such highest rate for 4 hours.

4.3 Casual employees

4.3.1 Casual employees shall be paid 23% in addition to the rates as set out in clause 5.1:

Provided that any such employee on coming to work at the appointed time shall be engaged on the following basis:

- (a) the employee shall be provided with 3 hours' work, or if not provided with such work shall be paid for 3 hours in lieu, or
- (b) the employee shall be provided with 2 hours' work, or if not provided with such work, shall be paid for 2 hours in lieu:

Provided that an employee so employed shall be guaranteed at least 12 hours' work in any one week.

4.4 Part-time employees

4.4.1 The rate of pay for part-time employees shall be ascertained by dividing the appropriate weekly rate by 38.

4.4.2 Part-time employees shall receive a minimum payment of 3 hours per day for each day worked.

4.4.3 Part-time employees shall be entitled to *pro rata* holiday pay, sick leave, long service leave, and all public holidays on which the employee would otherwise have worked:

Provided that an employee who is engaged as a casual may not then be engaged as a part-time employee except by mutual consent.

4.5 Termination of employment

4.5.1 *Statement of employment*

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

4.5.2 *Termination by employer*

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

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

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

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

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

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

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

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

4.5.3 *Notice of termination by employee*

The notice of termination required to be given by a full-time or part-time employee shall be one week.

If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to one week.

4.5.4 *Time off during notice period*

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

4.6 Introduction of changes

4.6.1 *Employer's duty to notify*

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

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

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

4.6.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.6.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:

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

4.7 **Redundancy**

4.7.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.7.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

4.7.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.7.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
 - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
 - (iii) any other amounts payable under the employee's employment contract.

4.7.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.7.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.7.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.7.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.7.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.7.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.7.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.5.2, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.7.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay (weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

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

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

4.7.7 *Superannuation benefits*

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

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

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

4.7.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.7.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

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

4.7.9 *Alternative employment*

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

4.7.10 *Employees with less than one year's service*

Clause 4.7 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.7.11 *Employees exempted*

Clause 4.7 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.7.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.7 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A "company" shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.7.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.7.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:
 - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
 - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

- (b) The Commission may amend clause 4.7.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.7.14 *Incapacity to pay*

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

4.8 **Anti-discrimination**

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

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

4.8.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

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

4.8.4 Nothing in clause 4.8 is to be taken to affect:

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

4.9 **Continuity of service - transfer of calling**

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

4.10 **Trainees**

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

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 **Wages**

5.1.1 The minimum rates of wages payable to the following classes of employees shall be:

Current Classification	Relativity		Award Rate
	%		per week
Personal care attendant	87.4		\$ 651.40
Handyperson / maintenance	87.4		646.40
Laundry hand 1st year	87.4		642.60
Canteen assistant 1st year	87.4		644.15
Gardeners	87.4		646.40
Kitchenhands	87.4		645.40
Employees on washing machines, rinsers and Hydroextractors, and seamstresses - 1st year	87.4		644.15
Domestic, catering and all other adult employees 1st year	87.4		642.60
Laundry hand thereafter	91.0		651.40
Canteen assistant thereafter	91.0		653.40
Employees on washing machines, rinsers and			

Hydroextractors, and seamstresses - thereafter	91.0	653.40
Domestic, catering and all other adult employees thereafter	91.0	651.40
Cooks	100.0	685.10
Chief cooks	103.0	704.10

The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2011 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.2 Juniors

5.2.1 The minimum rates of wages for juniors shall be

	%
Under 18 years of age	65
18 and under 19 years of age	75

of the appropriate minimum adult wage.

5.2.2 Junior rates shall be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple.

5.2.3 Any junior employee required to perform the work of a head cook or other cook shall be paid the rates prescribed for such employees.

5.2.4 *Proportion of junior employees*

The proportion of junior employees to adult employees shall not exceed one to 4 or fraction of 4 (a junior being a person receiving less than a rate of pay prescribed for an adult employee):

Provided that where managers and/or proprietors are actively engaged in the work covered by this Award they may be included as adult employees for the purpose of clause 5.2.4:

Provided that one junior employee may be employed at junior rates of pay in any one establishment.

5.3 Allowances

5.3.1 *Late work allowance*

All employees who work ordinary hours between 6.00 p.m. and 10.00 p.m. shall be paid \$1.6805 per hour so worked. This allowance shall not be paid when an employee is entitled to receive the shift allowance prescribed by clause 5.3.2.

5.3.2 (a) In addition to the rates of pay prescribed by clause 5.1.1, employees whilst engaged on afternoon shift and night shift, as defined, shall be paid an additional penalty rate for each such shift as follows:

Afternoon shift	12.5% (or \$9.70 whichever is the greater)
Night shift	15% (or \$9.70 whichever is the greater)

This extra shift rate shall not apply to shift work performed on Saturday and Sunday where extra payments apply for weekend work.

(b) For the purpose of clause 5.3.2, the percentage which is quoted shall be the amount which is payable for each shift in addition to the employee's ordinary time wage rate.

(c) For the purpose of clause 5.3.2, afternoon shift is a shift where the greater part of the hours worked is between 4 p.m. and 10 p.m., and night shift is a shift where the greater part of the hours worked is between 10 p.m. and 8 a.m.

(d) In the event that a shift does not have a majority of hours falling in either category as described above, then the shift shall be paid on the basis of when the shift commenced or the flat rate of \$9.70, whichever is the greater.

5.3.3 Supervisory allowance

Supervisors directed by the employer to control staff shall be paid an additional allowance as follows:

	Per week
	\$
1 - 5 employees	14.90
6 - 10 employees	19.10
11 or more employees	24.40

5.3.4 On-call duty

- (a) Where an employee is required to sleep overnight on an employer's premises an allowance of \$7.97 shall be paid in respect of each such instance in addition to any other payments. No such instance of sleepover on an employer's premises shall exceed 8 hours, or 10 where there is mutual agreement. Where an employee commences ordinary work immediately following a period of sleepover, then the period of time between the commencement of the sleepover and the commencement of ordinary work may be extended to 8.5 hours for the provision of a half-hour meal break. All board and lodgings shall be provided free of charge from the employer in respect of each such sleepover.
- (b) Where an employee is required to sleep overnight on an employer's premises for a period in excess of 8 hours, or 10 where there is mutual agreement, any such time in excess of these hours shall be regarded as time worked and shall be paid for at the appropriate rates in accordance with clause 6.2.
- (c) An employee on-call shall be provided with at least 4 hours work or payment therefore, for each instance where the employee is required to remain on-call. Such work shall be performed immediately before or immediately after the on-call period. Any payment prescribed by clause 4.3 shall be in addition to the minimum payment prescribed by clause 5.3.4.
- (d) In the event of an employee on-call as provided herein, being required to perform work during the on-call period, the employee shall be paid for the time worked at the prescribed overtime rate with a minimum payment as for one hour worked. Where such work exceeds one hour, payment shall be made at the prescribed overtime rate for the duration of the work.
- (e) All time worked by an employee whilst on-call shall be deemed to be overtime for the purposes of clause 6.2.5.

5.3.5 All time worked by all employees, not being overtime within the meaning of clause 6.2 (Overtime) of the Award, between midnight Friday and midnight Sunday shall be paid for at the rate of time and a-half.

5.4 Occupational superannuation

5.4.1 In addition to the rates of pay prescribed in clause 5.1 of this Award, all employees employed under this Award or who are performing or executing work to which this Award ordinarily is applicable, shall be entitled to occupational superannuation provisions as prescribed in clause 5.4

5.4.2 Definitions

- (a) "The Fund" means Sunsuper as well as any other Occupational Superannuation Scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds under the *Occupational Superannuation Standards Act 1987*.
- (b) "Contributory Wage" means:
 - (i) the ordinary weekly rate of pay applicable to each employee's classification as provided in clause 5.1; or
 - (ii) the hourly rate of pay for casual employees as prescribed by clause 4.3.

5.4.3 Freedom of choice

Each employee shall be given equal access to information regarding Sunsuper as well as such other approved Occupational Superannuation Schemes made available by the employer for the employee's consideration, in order that the employee is able to make an informed choice as to which Occupational Superannuation Scheme the employee wishes the employer to contribute the amount specified in clause 5.4.5.

The respective employer associations, or individual independent employers as necessary, and Union, undertake to monitor co-operation and compliance with the intent of clause 5.4.3.

5.4.4 *Eligibility period*

An employer shall not be required to make contributions during the first 4 weeks of an employee's employment with that employer. However, after an employee has completed 4 weeks employment, the employer shall make such contributions as are prescribed by clause 5.4 and such contributions shall be backdated to the date the employee commenced employment with the employer.

Where an employee who works for an employer for a period of less than 4 weeks, then no payments under clause 5.4 shall be made.

5.4.5 *Contributions*

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

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

Provided that in any instance where the amount as calculated above represents less than \$5.00 per fortnight, no contribution will be payable by the employer:

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

5.4.6 The obligation upon an employer to make Occupational Superannuation contributions under clause 5.4, shall be in addition to and distinguishable from any contributions being made by such an employer in accordance with the Rules of any other particular Scheme prior to the introduction of clause 5.4.

5.4.7 *Cessation of contributions*

The employer shall not be required to make any further contributions on behalf of any employee after the end of the last day from which the employee's resignation or dismissal becomes effective.

5.5 Payment of wages

5.5.1 Wages shall be paid on the same day each week and not more than 2 days pay may be held by an employer.

Wages shall be paid fortnightly by cash, cheque, or electronic funds transfer at the discretion of the employer:

Provided that payment may only be made by electronic funds transfer where there is reasonable geographical access to a facility which enables the employee to withdraw some or all of their wages on the usual pay day.

5.5.2 Wages shall be paid in the employer's time and any employee who is not paid within 15 minutes of such employee's ordinary ceasing time shall be deemed to be working during the time the employee is kept waiting.

5.5.3 Casual employees may by mutual consent be paid in accordance with clause 5.5.1 or at the termination of each engagement.

5.6 Deductions from wages

The employer shall, on request in writing by an employee, pay to the Union, out of any money due to the employee, in respect of wages, the weekly contribution of such employee as a member of the Union.

5.7 Transition and implementation arrangements

The parties agree to trial the new classification structure in accordance with Schedule 1 of this Award. In order to ensure a co-operative and smooth transition to the new structure it is proposed the following arrangements apply:

5.7.1 On the date of implementation each employee will transfer to the classification which has a wage rate equal to the employees current wage rate or, if there is not such classification, to the classification which has the next highest rate above the employees current wage;

5.7.2 In determining the employees current wage all allowances shall be excluded.

5.7.3 Employees classified in accordance with the above are required to undertake the prescribed training where available to meet the competency standard for the skill level in which they are so classified.

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

6.1 Hours of work

6.1.1 Operation of 38 hour week

- (a) Subject to clause 6.1.2 and subject to the exceptions hereinafter provided, the ordinary hours of work shall be an average of 38 per week, to be worked on one of the following bases:
 - (i) 38 hours within a cycle not exceeding 7 consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding 28 days.
- (b) The ordinary hours of work shall not exceed 10 hours per day.
- (c) Where necessary, employees shall commence their ordinary hours and breaks at different times to ensure continuity of service.
- (d) The ordinary starting and finishing times may be altered to suit geographic, safety, climatic or traffic conditions by the employer with the agreement of the majority of employees concerned:

Provided further that any such altered starting and finishing time will not invoke any penalty payment that would not be payable if the Award spread of hours was observed.
- (e) Employees are required to observe the nominated starting and finishing times for the work day, including designated breaks to maximise available working time. Preparation for work and cleaning up of the employee's person shall be in the employee's time.
- (f) Where a rostered day falls on a public holiday, the following day may be taken where practicable in lieu of the employee and the employer may agree to an alternative day off duty as substitution.

(g) Pay averaging

Employees shall be entitled to a week's wages in accordance with clause 5.1 for each week of the cycle.

- (h) The entitlement to a rostered day off on full pay shall be subject to the following:
 - (i) Each day of paid leave taken (not including annual leave, long service leave) and any public holiday occurring during any cycle of 4 weeks shall be regarded as a day worked for accrual purposes.
 - (ii) An employee who has not worked a complete 4 week cycle in order to accrue a rostered day off shall be paid a *pro rata* amount for credits accrued for each day worked in such cycle payable for the rostered day off (i.e. an amount of 24 minutes for each 8 hour day worked or 2 hours for each 40 hours worked).

For the purposes of clause 6.1.1(h)(ii) "worked" includes paid leave referred to in clause 6.1.1(h)(i) above.
- (i) Sickness on a rostered day off which has resulted from the 19 days month work cycle - Where an employee is sick or injured on their rostered day off they shall not be entitled to sick pay nor shall their sick pay entitlement be reduced as a result of this sickness or injury on that day.

(j) Payment of wages

In the event that an employee by virtue of the arrangement of their ordinary working hours is rostered off duty on a day, which coincides with pay day, such employee shall be paid no later than the working day immediately following such pay day.

6.1.2 Implementation of a 38 hour week

- (a) The 38-hour week shall be implemented on one of the following bases, most suitable to each location, after consultation with and given reasonable consideration to the wishes of the employees concerned:

- (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each work cycle; or
 - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.
- (b) Subject to the provisions of clause 6.1, employees may agree that the ordinary hours of work are to exceed 8 on any day, thus enabling more than one work day to be taken off during a particular work cycle.
- (c) Notwithstanding any other provision in clause 6.1, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the employee concerned may agree to accrue up to a maximum of 5 rostered days off. Where such agreement has been reached, the accrued rostered days off shall be taken within 12 calendar months of the date, which the first rostered day off was accrued. Consent to accrue rostered days off shall not be unreasonably withheld by either party.
- (d) Different methods of implementation of the 38-hour week may apply to individual employees, groups or sections of employees in each location concerned.

6.1.3 *Procedure for discussions - 38 hour week*

- (a) The employer and all employees concerned in each establishment shall consult over the most appropriate means of implementing and working a 38 hour week.
- (b) The object of such consultation shall be to reach agreement on the method implementing and working the 38-hour week in accordance with clause 6.1.
- (c) The outcome of such consultation shall be recorded in writing.
- (d) In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their relevant employee or employer organisation.
- (e) Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer shall have the right to make the final determination as to the method by which the 38 hour week is implemented from time to time.
- (f) After implementation of the 38 hour week, upon giving 7 days' notice, or such shorter period as may be mutually agreed upon, the method of working the 38 hour week may be altered, from time to time, following negotiations between the employer and employees concerned, utilising the foregoing provisions of clause 6.1, including clause 6.1.3(e).

6.1.4 *Day workers*

The ordinary daily working hours shall be worked between the hours of 6.00 a.m. and 10.00 p.m.:

Provided that where practicable there shall be no broken shifts and the hours to be worked shall be arranged so that the schedule of the establishment is assisted.

6.1.5 Notwithstanding the provisions of clause 6.1, employees may be required to work in accordance with such other hours of work as are mutually agreed upon, in writing, between the employer and the Branch Secretary of the Union.

6.1.6 *Night shift workers*

Night shift workers shall work the same number of hours in unbroken shifts as day workers and the period of night duty shall not exceed 4 weeks in any one period and every employee coming off night duty shall have 24 hours' leave before again resuming duty. No employee shall be asked to again do night duty, unless the employee consents, until the employee has worked a period of at least 4 weeks on day work.

6.1.7 A roster setting out the employee's days off duty and starting and finishing times on such days shall be displayed in a place conveniently accessible to employees at least 3 days before the commencement of each fortnight, provided that the rostered days off may be changed by mutual consent at any time.

6.1.8 The ordinary hours of work shall not exceed 8 hours on any day:

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

6.1.9 Where shifts of 10 hours per day are rostered for work, employees working such hours shall not be rostered for work on more than 4 consecutive days without a break of at least 3 days off.

6.1.10 *Ten hour break between duty periods*

(a) Employees shall be allowed a break of not less than 10 hours between the termination of one duty period and the commencement of another duty period:

Provided that in lieu thereof, such break shall not be less than 8 hours in any of the following circumstances:

(i) to permit changes of shift rosters;

(ii) in any other case agreed upon by the employee and the Employer.

(b) Where agreement has been reached between the employer and the employee to reduce the 10 hour break between duty periods to an 8 hour continuous break, due consideration shall be given to recognise that fatigue prevention must be, at all times, paramount to ensure that standards of care are not reduced.

6.2 Overtime

6.2.1 All time worked outside of, or in excess of the ordinary working hours shall be deemed to be overtime and, except in the case of shift workers, shall be paid for at the rate of time and a-half for the first 3 hours on any one day and double time thereafter. All overtime worked by shift workers shall be paid for at the rate of double time.

6.2.2 Where an employee is called upon to work more than one hour before their ordinary commencing or after their ordinary ceasing time, they shall be supplied with a meal by the employer or shall be paid in lieu \$12.10 thereof, and shall be allowed one-half hour in the employer's time for such meal.

6.2.3 When an employee has provided themselves with customary meals because of receipt of notice of intention to work overtime, they shall be entitled an allowance of \$12.10 for each meal so provided in the event of the work not being performed or ceasing before the respective meal times.

6.2.4 (a) Employees, other than shift workers, required to work on the first rostered day off shall be paid at one and a-half times the ordinary rate for the first 3 hours and double time thereafter with a minimum payment of 2 hours.

(b) Employees, other than shift workers, required to work on the second rostered day off shall be paid at the rate of double time with a minimum payment of 2 hours.

(c) Double time shall be paid for all overtime worked on a Sunday or during a meal period.

6.2.5 An employee who works so much overtime between the termination of their ordinary work on the one day and the commencement of their ordinary work on the next day that they have not at least 10 consecutive hours off duty between those times shall, subject to clause 6.2.5, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instructions of their employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty, they shall be paid double rates until they are released from duty for such period, and they shall then be entitled to be absent until they have had 10 consecutive hours off duty, without loss of pay for ordinary working time occurring during such absence.

The provisions of clause 6.2.5 shall apply in the case of shift workers who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

(a) For the purpose of changing shift rosters; or

(b) Where a shift worker does not report for duty; or

(c) Where a shift is worked by arrangement between the employees themselves.

6.2.6 (a) Notwithstanding the provisions of clause 6.2, there may be an arrangement in writing between the employee and the employer to take time off with pay. Such time off shall be equivalent to the number of ordinary hours pay that the employee would have received for such overtime. Accumulated time must be taken within 3 months from the time of accrual and at a time mutually agreed between the employee and the employer:

Provided that outstanding accrued overtime shall be paid at the appropriate rate in full at the time of termination, for any reason, by either party.

(b) Subject to prior approval by the employer, an employee may be granted time off notwithstanding that such time has not been worked as overtime in accordance with clause 6.2.6(a).

(c) The employer shall pay the employees wages as if the employee worked ordinary hours during such time off, and the employee shall make up the time off by working authorised overtime within 4 weeks of the time off being taken. Where the employee has not made up the time off, the employees pay shall be reduced by the amount of the time off taken.

6.3 Meal breaks

6.3.1 All employees shall be allowed not less than 30 minutes nor more than one hour to be taken between the fourth and sixth hour after commencing work for a meal break, which time shall not be paid for.

6.3.2 All work performed during the ordinary meal break shall be paid for at the rate of double time, and the rate of double time shall continue to be paid until the meal break is taken and for which meal break no deduction of pay shall be made.

6.4 Rest pauses

6.4.1 All employees shall be entitled to a rest pause of 10 minutes' duration in the employer's time in the first and second half of their daily work. Such rest pauses shall be taken at such times as will not interfere with continuity of work, where continuity is necessary.

6.4.2 Notwithstanding clause 6.4.1, at the Employer's discretion (having regard to the employees' health and welfare, as well as taking into account peak periods of workload) one rest pause of 20 minutes in the first part of the working day may be taken.

6.5 Roster

6.5.1 A roster showing starting and ceasing times for the ordinary hours of duty of weekly employees and the times between which the period is allotted for each meal together with the surname and initials of each employee shall be prepared by the employer and posted in a conspicuous place or places accessible to the employees concerned. The roster shall be alterable by mutual consent at any time or by amendment of the roster on 7 days' notice. Where practicable, 2 weeks notice of rostered days off shall be given provided that the days off may be changed by mutual consent or is rendered necessary by the absence of other employees from duty, shortage of staff, or other cause over which the employer has no control and in which cases 12 hours notice shall be sufficient.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

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

(a) not less than 5 weeks if employed on shift work where 3 shifts per day are worked over a period of 7 days per week;

(b) not less than 4 weeks in any other case.

7.1.2 For the purpose of clause 7.1 "year of employment" means and includes any year of employment completed on or after 3 December 1973.

7.1.3 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.6) shall be paid for by the employer in advance:

(a) In the case of any and every employee in receipt immediately prior to that leave of ordinary pay at a rate in excess of the ordinary rate payable under this Award at the excess rate; and

(b) In every other case, at the ordinary rate payable to the employee concerned immediately prior to that leave under this Award.

7.1.4 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employees from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due to the employee, the employee's

pay, calculated in accordance with clause 7.1.6, for 4 or 5 weeks as the case may be and also their ordinary hours pay for any public holiday occurring during such period of 4 or 5 weeks.

7.1.5 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due to the employee, an amount equal to 1/9th of their pay for the period of their employment, if they were an employee to whom clause 7.1.1(a) applies, and 1/12th of their pay for the period of their employment if they were an employee to whom clause 7.1.1(b) applies, calculated in accordance with clause 7.1.6.

7.1.6 *Calculation of annual leave pay*

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

(a) Shift workers

Subject to clause 7.1.6(c) the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or holiday shifts.

(b) Leading hands etc.

Subject to clause 7.1.6(c), leading hand allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.

(c) All employees

Subject to the provisions of clause 7.1.6(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:

- (i) The employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and weekend penalty rates);
- (ii) Leading hand allowance or amounts of a like nature;
- (iii) A further amount calculated at the rate of 17.5% of the amounts referred to in clause 7.1.6(c)(i) and 7.1.6(c)(ii).

(d) The provisions of clause 7.1.6(c) shall not apply to the following:

- (i) Any period or periods of annual leave exceeding -
 - 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
 - 4 weeks in any other case.
- (ii) Employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.7 One month's notice of the commencement of annual leave shall be given to the employee:

Provided that such notice period may be varied by mutual agreement between employer and employee.

7.1.8 Except as hereinbefore provided, it shall not be lawful for the employer to give or for any employee to receive payment in lieu of annual leave.

7.1.9 Employees may take annual leave in single day amounts up to a maximum of 5 such days in any one calendar year.

7.2 **Sick leave**

7.2.1 *Entitlement*

- (a) Every employee, except casuals, pieceworkers, and school-based apprentices and trainees, is entitled to 60.8 hours sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of 7.6 hours sick leave after each 6 weeks of employment.

- (c) Payment for sick leave will be made based on the ordinary number of hours that would have been worked by the employee if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.
- (f) Part-time employees accrue sick leave on a proportional basis.

7.2.2 *Employee must give notice*

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

7.2.3 *Evidence supporting a claim*

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

7.2.4 *Accumulated sick leave*

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

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

The employees accumulate sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.5 *Workers' compensation.*

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

7.3 Bereavement leave

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

7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under clause 7.3.2.

7.3.3 "Immediate family" includes:

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

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

7.3.5 The employee shall be entitled to a maximum of 2 days leave without loss of pay on each occasion and on the production of satisfactory evidence of the death outside Australia of an employee's, spouse, father or mother, and where such employee travels outside of Australia to attend the funeral.

7.4 Long service leave

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

7.5 Family leave

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

7.5.1 It is to be noted that:

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

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

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

7.6 Public holidays

7.6.1 All work done by any employee on:

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

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

7.6.2 *Annual show*

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

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

7.6.3 All time worked on any of the aforesaid holidays outside the ordinary starting and ceasing times prescribed by this Award for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

Employees required to work on any of the aforesaid holidays shall be paid for a minimum of 4 hours' work at double time and a-half.

7.6.4 *Stand down*

Any and every employee, who having been dismissed or stood down by the employer during the month of December in any year, shall be re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall have been employed by that employer for a continuous period of 2 weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by the employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely, Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of the dismissal or standing down to and including the date of the re-employment as aforesaid.

7.6.5 Holidays in lieu

Should any of the holidays mentioned in clause 7.6.1 fall on an employee's day or days off such employee shall receive another one or 2 days off as the case may be in lieu, or one or 2 days shall be added to the employee's annual leave or alternatively, one or 2 days' wages, at ordinary rates shall be paid in addition to the weekly wage.

The provisions of clause 7.6.5 shall not apply to Easter Saturday unless the employee works ordinary hours in accordance with a roster, which provides for ordinary hours to be worked on a Saturday.

7.7 Jury service

An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.

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

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

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

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

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

No provisions inserted in this Award relevant to this Part.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training

9.1.1 The parties to this Award will co-operate in ensuring that appropriate in-service/external training and cross skilling is available for all employees and that such training will be provided at the expense of the employer. The parties also agreed to co-operate in encouraging employees to avail themselves of the benefits of such training.

Accordingly, the parties commit themselves to:

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

9.1.2 The provision of training to employees shall be consistent with:

- (a) the current and future skill needs of the facility;
- (b) the size, structure and nature of the operation of the facility;

- (c) the need to develop vocational skills relevant to the facility and the aged care industry and will be, where considered appropriate by the parties, provided through courses conducted by accredited educational institutions and providers.

9.1.3 The provision of in-service/external training to employees shall be consistent with:

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employees with career opportunities through appropriate in-service/external training; and
- (c) meeting the needs of the facility and/or the aged care industry.

9.1.4 The parties to this Award shall develop appropriate in-service/ external training programmes to facilitate skill enhancement based on the following procedures:

- (a) the need to develop vocational skills relevant to the aged care industry through in-service training courses and courses conducted by accredited external trainers and providers;
- (b) the intention of the parties to develop in-service training courses where practicable, and formally recognise an employee's successfully completing such training course/s;
- (c) all employees subject to clause 9.1.1 shall have access to training and no barriers shall be placed on employees accessing such training;
- (d) training may be undertaken either on or off the job, provided that where the training is undertaken during ordinary hours, the employee shall not suffer any loss of pay;
- (e) subject to negotiation, employees may be entitled to paid training leave to attend appropriate training programmes;
- (f) employees will be available to undertake, where required, training to gain the skills to perform the wider range of duties encompassed by the new classification structure;
- (g) employees will be available to undertake, where required, training to gain skills of any lower level within the employees classification and may be required to perform work exercising those skills;
- (h) because of the importance of training, on-the-job training of other employees in skills possessed by an appropriately trained employee shall be part of the scope of work of each employee. Where on-the-job training is for the purpose of gaining a certificate of competency, the employee performing that training shall hold the relevant certificate of competency.
- (i) if in-service training is undertaken outside ordinary working hours, the employee shall be entitled to payment in accordance with the provisions of the Award, provided that the provision of clause 6 of the 2nd Tier Agreement has been satisfied;
- (j) subject to negotiation between the employer and employee before the commencement of prescribed courses any costs associated with standard fees, including the Higher Education Contribution Scheme, for prescribed courses and prescribed textbooks incurred in connection with the undertaking of training may be reimbursed by the employer upon production of evidence of expenditure: Provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress;
- (k) subject to negotiation between the employer and employee before the commencement of prescribed courses travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work may be reimbursed by the employer.

9.1.5 A State Workplace Training Committee shall be established by the parties to provide for the following:

- (a) formulation of a training programme and availability of training course and career opportunities to employees;
- (b) dissemination of information on the training programme and availability of training courses and career opportunities to employees;
- (c) monitoring and advising management and employees on the on-going effectiveness of the training;
- (d) accredited educational institutions and providers.

9.1.6 The parties to this Award agree that the operation and effectiveness of clause 9.1 may be reviewed from time to time before the Commission.

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

10.1 Uniforms

10.1.1 Where employees are required to wear a uniform or any other distinctive type of clothing, such uniform or clothing shall be supplied, maintained, and laundered at the employer's expense, and shall be the property of such employer.

10.1.2 Where uniforms or clothing are not supplied or laundered by the employer as required by clause 10.1.1, the following allowances shall be paid:

- (a) Employees who supply their own uniforms or clothing shall receive an allowance at the rate of \$141 per annum, which shall be paid on a *pro rata* basis each pay day;
- (b) Employees required to launder their own uniforms or clothing shall be paid \$1.65 per week.

10.2 First aid

In all establishments a first aid cabinet shall be available for employees in cases of accident. Such first aid cabinet shall be kept and maintained in accordance with the provisions of the *Workplace Health and Safety Act 1995* relating to such first aid cabinets.

10.3 Breakages

Any employer shall not charge any sum against nor deduct any sum from the wages of any employee in respect of breakages of crockery or other utensils except in the case of wilful misconduct.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

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

11.1 Right of entry

11.1.1 Authorised industrial officer

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the employer that they do not want their record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 *Discussions with employees*

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

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

11.1.5 *Conduct*

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

11.2 Time and wages record

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

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

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and

- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

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

11.3 Union encouragement

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

11.3.1 Documentation to be provided by employer

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

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

11.3.2 Union delegates

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

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

11.3.3 Deduction of union fees

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

11.4 Trade Union training leave

11.4.1 Upon written application by an employee, or the Union on behalf of the employee, to an employer and giving to the employer at least one month's notice, such employee shall be granted up to 5 working days leave (non-cumulative) on ordinary pay, each calendar year, to attend courses and/or seminars conducted or accredited by the Union.

For the purposes of clause 11.4 'ordinary pay' shall mean the ordinary weekly rate paid to the employee exclusive of any disability allowances.

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

- (a) An employee must have at least 12 months' service with an employer prior to such leave being granted.
- (b) Clause 11.4 does not apply to an employer with an equivalent of less than 8 full-time employees bound by this Award.
- (c) The maximum number of employees of one and the same employer attending a course or seminar at the same time will be as follows:
 - (i) Where the employer employs between 8 and 30 employees: 1
 - (ii) Where the employer employs between 30 and 50 employees: 2
 - (iii) Where the employer employs between 50 and 100 employees: 3
 - (iv) Where the employer employs over 100 employees: 4

- (d) Where an employer has more than one place of employment in Queensland then the maximum number of employees entitled to attend a course at the same time shall be 2. This shall not stop an employer from agreeing to release additional employees.
- (e) The taking of leave shall be arranged so as to minimise any adverse affect on the employer's operation. Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular employee at a particular time (including where the employer may have previously advised of its ability to release such employee) the Union will not unnecessarily press its request for the release of that employee at that time. If the matter is not amicably resolved, it shall be processed in accordance with clause 3.1.
- (f) The scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations, industrial efficiency and workplace issues within the employer's operations.
- (g) In granting such paid leave the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee.
- (h) Leave granted to attend courses will not incur additional payment if such a course coincided with an employee's rostered day off.
- (i) The taking of leave will not affect other leave granted to employees under this Award, nor shall it adversely affect the employee's service for the calculation of leave entitlements.
- (j) Unless otherwise agreed by the parties, no employee shall be released more than once in an 18 month period to attend courses.

11.5 Posting up Award

A copy of this Award shall be posted up in a conspicuous place on the premises of the employer.

Schedule 1

1. New Wage and Classifications Structure

As at the date of making this order for variations, this Schedule is not an active and operating segment of the Award for Accommodation and Care Services Employees in Homes for Aged Persons - South-Eastern Division. Certain aspects of it remain for final settlement.

As well it can only be considered for transfer into the Award itself after having been fairly trialled, necessary changes being discussed and evaluated followed by a hearing before the Commission.

In the interim it is available for trialling to facilitate its intended transfer into the Award.

The parties are required to return to the Commission advising on the date of commencement of the trial, its length, and the names of the facilities where trials will be conducted. The parties are preparing a trialling manual in order to facilitate the trialling of the new structure.

2. Health Services Employee - Level 1 (Adult Trainee)

Undertaking up to 40 hours induction training which may include information on the health care facility; conditions of employment, introduction of supervisors and fellow workers, training and career path opportunities, workplace layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurances.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

- (1) performs simple, repetitive tasks;
- (2) exercises minimal judgement;
- (3) works under direct supervision; or
- (4) is undertaking structured training so as to enable them to work at Health Services Worker Level 2.

An employee shall have a maximum of 6 months service/experience in this level.

3. Health Services Employee - Level 2

An employee at this level performs above and beyond the skills of a trainee and to the level of their training:

- (1) performs tasks under direct supervision in accordance with strictly defined procedures;
- (2) is trained in and applies basic quality requirements;
- (3) able to exercise minimal judgement;
- (4) has knowledge of health and safety in relation to task performed;
- (5) performs a limited range of tasks of very low variety and complexity.

An employee shall have at least three months service but not more than 12 months experience/service in this level.

4. Health Services Employee - Level 3

An employee who has completed appropriate, accredited training so as to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at Level 2 and to the level of their training:

- (1) can perform tasks with general supervision, exercising limited discretion within defined procedures;
- (2) relies on supervision for problem solving and work direction;
- (3) is trained in and applies basic quality requirements;
- (4) has knowledge of health and safety in relation to tasks performed;
- (5) trained in a range of simple tasks within a skill stream;
- (6) may involve simple but direct contact with clients of the health care facility.

5. Health Services Employee - Level 4

An employee who has completed appropriate, accredited training so as to enable the employee to perform work within the scope of this level or an employee who has completed an appropriate level course in a skill stream and is able to exercise the skills and knowledge of that trade.

An employee at this level performs work above and beyond the skills of an employee at Level 3 and to the level of their training:

- (1) works from complex instructions and procedures;
- (2) assists in the provision of on-the-job training to a limited degree;
- (3) co-ordinates work in a team environment or works individually under general supervision;
- (4) is responsible for assuring the quality of their own work;
- (5) exercise good interpersonal, communication skills;
- (6) performs lower level tasks incidental to their work or performs work which, while primarily involving the skills of the employee's Level, is incidental or peripheral to the primary task and facilitates at the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.

6. Health Services Employee - Level 5

An employee who has completed an appropriate course in a skill stream and is able to exercise the skills and knowledge of that study or an employee who has advanced skill (either specialised or broadly based) in their trade or skill stream.

A Level 5 employee works above and beyond an employee at Level 4 and to the level of their training:

- (1) understands and applies quality control techniques to the point of being accountable and responsible for output and/or work area;
- (2) works under minimal supervision;

- (3) plans training on a periodic basis; assists in the provision of training;
- (4) capable of applying technical skills to solve all service unit problems;
- (5) exercises high level communication skills;
- (6) identifies and solves complex problems, including those of other employees.

7. Health Services Employee - Level 6

An employee who has completed appropriate, accredited training and is capable of applying skills learnt therefrom to the work.

A Level 6 employee works above and beyond an employee at Level 5 and to the level of their training:

- (1) is accountable and responsible for workplace output;
- (2) capable of working without supervision;
- (3) understands the Employer's entire operation;
- (4) plans training an establishment development in conformity with employer guidelines;
- (5) has well developed communication and analytical skills.

8. Health Services Employee - Level 7

An employee who meets the criteria for a Level 6 but works above and beyond an employee at Level 6 because of one or more of the following factors:

- (1) size of the workplace and consequent level of responsibility i.e. administrative responsibility; or
- (2) specialised skill in a particular field.

9. Rate of Wage (Draft)

Health Services Traineeship	Percentage of Adult Rate %
Health Services Employee - Level 1	95
Health Services Employee - Level 2	98
Health Services Employee - Level 3	100
Health Services Employee - Level 4	104
Health Services Employee - Level 5	108
Health Services Employee - Level 6	113
Health Services Employee - Level 7	131

10. Progression and Promotion

- (1) (a) Movement from Trainee Level to Health Services Worker Level 3 shall be by automatic progression subject to satisfactory performance, successful completion of necessary agreed training and work experience.
- (b) Progression to Levels 4 and above will be subject to either promotion on merit to a supervisory or multi-skilled position or attainment of necessary qualifications (e.g. trade certificate).
- (2) Training should be voluntary. Workers who choose not to undertake training shall not suffer victimisation or disadvantage however their progression to Level 3 may be retarded.
- (3) Any employee aggrieved by the provisions of clause 10 may seek the assistance of the Union consulting with the employer.

11. Training System

Consideration of the development of a training system to compliment the classification structure involves:

- (1) Recognition that the training system needs to be enclosed within some form of administrative/advisory structure with agreed levels of demonstrated competencies acquired from training at each level.
- (2) The State Workplace Training Committee as established, under clause 1 (Training and Education) will be responsible for the development of a training system to compliment the classification structure of this Award.

The Committee shall have the power to:

- (a) co-opt 'experts' as and when required;
 - (b) oversee the conduct of any skills analysis;
 - (c) establish working parties to examine particular skills development.
- (3) A local training committee may be established where 50 or more employees are engaged under this Award. Where less than 50 employees are engaged at any aged care facility under this Award the employer and all employees shall have equal access to the State Training Committee.
 - (4) The development of specific arrangements for delivery of training programmes. Factors such as general course curricula e.g. occupational health and safety, the role of the health care industry, interpersonal relationships between employees and residents of a facility, common law affecting employment, etc.
 - (5) The resolution of training/teaching issues i.e. detailed syllabus concerns such as modular or non-modular syllabus construction, assessment procedures, self faced or block-step teaching, competency testing/accreditation.

12 Job redesign and Multiskilling

The purpose of Job Redesign/Multiskilling is to provide the parties with access to a more flexible workforce, workplace efficiency, improved job satisfaction and better paid jobs.

Job Redesign/Multiskilling focuses on:

- (1) up-skilling where employees will have access to training structures which allow for the organisation of advances or higher skills and expanding their existing base;
- (2) cross-skilling involves the organisation of skills in a related or parallel work area enabling an employee to be available to perform a greater variety of functions associated within the skill stream.

The above process incorporates a reduction in Award classifications and the encouragement of:

- (a) clearly defined skill levels;
- (b) broadbanding of functions; and
- (c) access to training.

The following elements are essential for the successful negotiation and implementation of Job redesign/Multiskilling:

- (a) there must be a jointly recognised imperative for change;
- (b) there must be ongoing consultation and communication between all affected parties;
- (c) there must be a willingness to devote resources to the task;
- (d) there must be recognisable benefits to both Employer and employees.

Dated 26 July 2004.

By the Commission,
[L.S.] G.D. SAVILL,
Acting Industrial Registrar.

Operative Date: 2 August 2004