

CITATION: *Baking and Pastrycooking (Retail Stores) Award - Southern and Mackay Divisions 2002*
Reprint of Award - 1 November 2010
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**BAKING AND PASTRYCOOKING (RETAIL STORES) AWARD -
SOUTHERN AND MACKAY DIVISIONS 2002**

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the Baking and Pastrycooking (Retail Stores) Award - Southern and Mackay Divisions 2002 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 Baking and Pastrycooking (Retail Stores) Award - Southern and Mackay Divisions 2002 as at 1 September 2010.

Dated 1 November 2010.

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

**BAKING AND PASTRYCOOKING (RETAIL STORES) AWARD -
SOUTHERN AND MACKAY DIVISIONS 2002**

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Baking and Pastrycooking (Retail Stores) Award - Southern and Mackay Divisions 2002.

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1.3 Application of award

This Award will apply to all employees for whom classifications are provided, employed in Baking and Pastrycooking sections operated in retail department or chain stores, and to their employers who are members of the Retailers' Association of Queensland Limited, Union of Employers, within the Southern and Mackay Divisions of the State of Queensland.

1.4 Divisions and Districts

For the purpose of this Award, the Divisions and Districts will be as follows:

- 1.4.1 Southern District - That portion of the State south of a line commencing at the junction of sea-coast with 22 degrees of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State.

Eastern Division - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; then by that meridian of longitude due north to 25 degrees of south latitude; then by the parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due north to the southern boundary of the Mackay Division.

Western Division - The remainder of the Southern Division.

1.4.2 Mackay Division - That portion of the State within the following boundaries:

Commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea-coast; then by the sea-coast northerly to the point of commencement and including all islands situated between the 21st and 22nd parallels of such latitude and within the State of Queensland.

1.5 Definitions

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

1.5.2 "Bread and Pastry Room Staff" means employees who are engaged in the slicing, wrapping and packing of bread and/or cakes and/or pastry goods and the racking of bread and/or cakes and/or pastry goods into loads and assemble order and to the service of customers, and all other tasks relating to the preparation, production and sale of bread, cake and pastry goods not before specified.

1.5.3 "Commission" means the Queensland Industrial Relations Commission.

1.5.4 "Cake Decorator" means an employee who is trained, competent and is engaged to decorate birthday, wedding and special occasion cakes in creams and mixtures other than royal icing.

1.5.5 "Decorator" means an employee who has been trained and is competent to complete decorations on wedding, birthday, and special occasion cakes, individually made, and is principally employed on this work.

1.5.6 "Operative Baker" means an employee who is responsible for the formulating, preparing and evolving of doughmaking records and/or supervision of doughmaking processes and/or setting and regulating the speed and temperature of mechanical ovens and/or hand fashioning and finishing loaves of bread for at least 60% of their time.

1.5.7 "Pastrycook" means an employee who has not completed an apprenticeship, or who has not obtained an equivalent qualification, but who is employed on Pastrycook's work and is not competent to exercise all of the skills of the pastrycooking trade:

Provided that this definition will not be deemed to include employees principally employed in attending machines.

1.5.8 "Qualified Pastrycook" means an employee who has completed an apprenticeship or who has an equivalent qualification and who exercises the skills of the trade in making cake, pastry goods, or yeast raised products, by formulating, preparing and checking the mixes or doughs and/or the baking of such products.

1.5.9 "Single Hand Baker" means an Operative Baker who is the only person, other than an apprentice employed in a Bakehouse or bread factory in the manufacture of bread.

1.5.10 "Single Hand Pastrycook" means an employee who is the only Pastrycook employed in any place where cakes, pastry and/or yeast raised goods are manufactured.

1.5.11 "Union" means the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Queensland Branch, Union of Employees

1.6 Date of operation

This Award takes effect from 23 December 2002.

1.7 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.3 and their employers, and the Union and its members.

1.8 Exemption from coverage

With the exception of clauses 7.1 Annual leave, 7.6 Public holidays, 7.2 Sick leave and 7.4 Long service leave, certain employees performing managerial functions may be exempt from the Award, by virtue of a registered agreement between the Union and the Retailers' Association of Queensland Limited, Union of Employers.

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 accordance with 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

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

- 3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.1.3 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 at clause 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of the Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.1.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.

3.1.10 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 in accordance with the provisions of the Act.

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

4.1 Employment categories

4.1.1 Employees (except casual employees) covered by this Award shall be advised in writing of their employment category upon appointment. Employment categories are:

- (a) Full-time;
- (b) Part-time (as prescribed in clause 4.2); and
- (c) Casual (as prescribed in clause 4.3).

4.2 Part-time employment

4.2.1 A part-time employee is an employee who:

- (a) is employed for not less than 15 hours per week and for not more than 32 ordinary hours per week; and
- (b) is rostered for a minimum of 4 consecutive hours on any shift or day.

4.2.2 At the time of engagement the employer and the part-time employee will agree in writing the number of ordinary hours to be worked each week.

4.2.3 Any agreed variation to the number of ordinary hours worked will be recorded in writing.

4.2.4 A part-time employee roster may be varied in accordance with clause 6.1.

4.2.5 All time worked outside or in excess of the ordinary hours of work prescribed by this Award or outside of a part-time employees usual commencing and ceasing times shall be deemed to be overtime.

4.2.6 Part-time employee shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.

4.2.7 A part-time employee will receive, on a proportionate basis, equivalent pay and conditions to those of full-time employees.

4.2.8 A part-time employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted days leave:

Provided that that part-time employee would have been ordinarily rostered to work that day had it not been a public holiday.

4.2.9 Where a public holiday falls on a day upon which a part-time employee is normally engaged, that employee shall be paid their ordinary time rate of pay for the number of hours normally worked on that day.

4.2.10 Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and vice-versa, on a permanent basis or for a specified period of time. If an employee transfers from full-time to part-time (or vice-versa) all accrued award and legislative entitlements shall be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

4.2.11 All other provisions of this Award relevant to full-time employees shall apply to part-time employees.

4.3 Casual employment

4.3.1 A casual employee is an employee engaged as such and who is employed for not more than 30 ordinary hours in any one week.

4.3.2 The hourly rate of wages for casual employees shall be calculated as 1/38th of the appropriate weekly wage plus a loading of 23%.

4.3.3 Except as otherwise specifically provided for in this Award a casual employee shall be provided with a minimum payment of 3 hours for any day:

Provided that casual employees may be engaged for a minimum of 2 hours per week in the first 2 weeks of employment for the purpose of training.

4.4 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)*.

4.5 Flexibility of work

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

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

4.6 Anti-discrimination

4.6.1 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* as amended from time to time, 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 any of the above attributes;

(b) sexual harassment; and

(c) racial and religious vilification.

4.6.2 Accordingly, in fulfilling their obligations under the grievance and dispute 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.

4.6.3 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.

4.6.4 Nothing in clause 4.6 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*;

(b) an employee, employer or registered organization, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

4.7 Termination of employment

4.7.1 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.

4.7.2 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.

4.7.3 *Notice of termination by employee*

The notice of termination required to be given by an 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 the amount the employee would have received under clause 4.7.2(d) for a period of notice of one week.

4.7.4 *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.

4.8 Introduction of changes

4.8.1 *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.

4.8.2 *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 4.8.1.
- (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.

4.9 Redundancy

4.9.1 *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 4.9.1(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.

4.9.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.9.1 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 4.7.
- (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.

4.9.3 *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 4.9.3, '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.

4.9.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, 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.

4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, 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.

4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.7 *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.

4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(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.

4.9.9 *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.

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

Clause 4.9 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.

4.9.11 *Employees exempted*

Clause 4.9 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.

4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 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.

4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 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 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.9.14 *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.

4.10 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.

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 will be:

(a) Adults	Award Rate Per Week
Classification	\$
Qualified Pastrycook	682.00
Operative Baker	682.00

Cake Decorator	657.10
Bread and Pastry Room Staff	647.20

Note: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2010 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, Queensland workplace 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.

(b) Juniors - Junior rates will be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple:

Years of Age	Percentage of minimum adult rate for the respective District
Under 16 Years	45
16 and under 17 years	50
17 and under 18 years	55
18 and under 19 years	65
19 and under 20 years	75
20 and under 21 years	85

And thereafter at the appropriate rate of pay prescribed for adults

5.1.2 (a) Divisional Allowance - All employed in the Mackay Division will be paid 90 cents per week, in the case of adults, and 45 cents per week, in the case of juniors, in addition to the rates of wages before prescribed.

(b) District Allowance - All employees employed in the Western district of the Southern Division will be paid \$1.05 per week, in the case of adults, and 53 cents per week, in the case of juniors, in addition of the rates of wages before prescribed.

5.2 Allowances and extra rates

5.2.1 *Bakers and pastrycooks early start allowance* - Monday to Friday - Where an employee is required to commence their ordinary hours of work prior to 3.00 a.m.. the employee will be paid a loading of 12.5 % of the appropriate rate of pay for all time so worked, for all the ordinary rostered hours worked on that day. This allowance will be paid for all purposes of the Award

5.2.2 *Supervisory allowances* - Employees who are appointed to supervise the work of other employees will be paid the following allowances in addition to the highest appropriate rate of pay applicable to the work that they are supervising:

	Per Week \$
8 or less employee	15.60
9 or more employees	21.40

5.2.3 *Uniforms* - In any establishment where employees are ordered or required by the employer to wear any special uniform, such special uniform, will be supplied and laundered free by the employer and will remain the property of the employer:

Provided that where it is mutually agreed that the laundering will be done by the employee a laundry allowance of \$2.66 per week (or 53 cents per day in the case of part-time employees) will be paid:

Provided further that in any establishment where a uniform is provided by the employer and where the employer insists that the uniform be not worn outside the premises during lunch hours, the employee will be permitted to change out of and into the uniform in the employer's time.

5.3 Payment of wages

5.3.1 Payment of wages, overtime and allowances may be made on any day in each pay cycle.

5.3.2 Payment may be made by cash or electronic funds transfer:

Provided such payment to casual employees will be on the basis of actual hours worked in each week or fortnight:

Provided further such payment to weekly and part-time employees may relate to the average number of ordinary hours in accordance with a roster system:

Provided also that the employer will stipulate the completion date for each pay cycle which will be the same day for each pay cycle.

5.3.3 Where an employee is paid in cash, payment for work performed during such pay cycle will be made not later than 2 days after the completion of the stipulated pay cycle:

Provided further that where the employer elects to pay by electronic funds transfer payment to employees for work performed during such pay cycle will be made not later than 3 days after the completion of the stipulated pay cycle.

5.3.4 The employer may elect to convert to a fortnightly payment system either by paying one week in advance or, at the election of an existing employee, to a fortnightly pay without one week in advance. If the employee does not so elect the first fortnightly pay thereafter will include one week's pay in advance, with the additional week's pay able to be phased out progressively over a maximum period of 5 months, at the rate of one day after each completed month.

5.3.5 Employers will have the authority to deduct from any monies due to the employee, any outstanding pre-payments, in circumstances where for any reason an employment relationship is terminated in the interim.

5.3.6 An employer will not charge any sum against, nor deduct any sum from the wages of an employee in respect of any shortage in the amount charged by an employee, or in respect of an employee giving too much change, or (except in the case of wilful destruction) in respect of any breakages by an employee.

5.4 Occupational superannuation

5.4.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees, as defined, will be entitled to Occupational Superannuation Benefits, subject to the provisions of clause 5.4.

5.4.2 *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%.

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.

5.4.3 *Definitions*

(a) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.4.2 effective from the commencement of that qualifying period.

(b) "Minimum level of earnings" - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.

(c) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for the ordinary hours of work performed and includes supervisory allowances. Overtime, holiday penalty rates, laundry, disability allowance, fares and travelling time and other extraneous payments including bonuses and commission are not included in the calculation of ordinary time earnings.

(d) An "Approved Occupational Superannuation Scheme or Fund" will be:

(i) Sunsuper;

(ii) Retail Employees Superannuation Trust (REST);

(iii) Such other Scheme or Fund as may be agreed upon between an employer and the Union party to this Award and recorded in an approved Industrial Agreement.

(iv) In relation to any particular employer, any other scheme or fund to which that employer was already making superannuation contributions on behalf of the employees as at 20 February 1989 and which is approved under the Commonwealth legislation for superannuation funds;

(v) Coles Myer Employees Benefit Fund (CMEBF).

Provided that in the event of any dispute as to whether a Scheme or Fund satisfies the requirements of clause 5.4.3(d)(iv) above, the onus of proof will rest with the employer.

5.4.4 *Freedom of choice* - Except as otherwise provided, no employer will be required to make contributions into more than one fund at any time:

Provided that employees, including those in existing schemes or funds covered by clause 5.4.3(d)(iv) will have the right to choose to have contributions specified in clause 5.4.2 above paid into any scheme or fund provided for in clause 5.4.3(d) as decided by a majority of employees to whom these provisions apply.

5.4.5 The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.

(a) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.

(b) A person must not coerce someone else to make an agreement.

(c) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.

(d) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.1.

5.4.6 *Cessation of contributions* - An employer will not be required to make any further contributions to a Scheme or Fund in accordance with the provisions thereof.

5.4.7 Only those established Schemes or Funds to which a particular employer party to this Award was actually making genuine contributions on behalf of the employees concerned as at 20 February 1989 but on a retrospective basis, in respect of any period up to and including 20 February 1989, will not under any circumstances, bring a Scheme or Fund within the meaning of clause 5.4.3(d)(iv).

5.4.8 *No other deductions* - No additional amounts will be paid by the employer for the establishment, administration, management or any other charges in connection with the Scheme or Fund apart from remission of contributions on a monthly basis.

5.4.9 *Exemptions*

(a) An employer may apply to the Commission for exemption from the provisions of clause 5.4 on the grounds of:

(i) incapacity to pay the costs associated with its implementation: or

(ii) special or compelling circumstances peculiar to the business.

- (b) An employer may apply to the Commission for relief from the specification of Funds listed in clause 5.4.3(d) where employees working under this Award are a distinct minority within the workforce and/or an undue multiplicity of Funds would otherwise result.

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

6.1 Hours of work

6.1.1 Bread bakers and pastrycooks

- (a) Except as hereinafter provided, the ordinary working hours will be worked continuously, excluding meal breaks, and will not exceed 8 in any one day and will not exceed an average of 38 hours per week, and will be worked on no more than 5 consecutive days of the week, Monday to Sunday inclusive.
- (b) Where ordinary working hours of employees are worked in accordance with a roster, a copy of the roster will be exhibited in a conspicuous place easily accessible to all employees. Rostered starting and ceasing times will not be altered, except in emergencies, without 6 days prior notice:

Provided that the Union will be notified in such cases of emergency. Where such notice has not been given all hours worked outside of the roster, until clause 6.1.1(b) has been complied with, will be deemed overtime and paid accordingly.

- (c) By agreement between the majority of employees concerned and the employer, the ordinary daily working hours may be increased from 8 to 10 for full-time employees. Where a full-time employee is rostered to work more than 18 ordinary hours on 2 days in a week, the employee's ordinary weekly working hours will be rostered over not more than 4 days and the 3 days off duty will be consecutive, unless agreed otherwise in writing between the employer and the employee.

6.1.2 All other employees

- (a) Except as hereinafter provided the ordinary hours of work of all employees, other than Bakers and Pastrycooks will be the same as those applying to shop assistants in pursuance of the Retail Industry Interim Award - State.
- (b) Employees may commence their ordinary hours from 5.00 a.m..
- (c) All employees, other than casuals, who were employed prior to 8 July 1991 will be paid in addition to their ordinary rates of pay a loading of 25% for work in the spread of ordinary hours, between 5.00 a.m. and 7.00 a.m. Monday to Friday.
- (d) Weekly and casual employees who were employed prior to 8 July 1991 and who work ordinary hours between the hours of 5.00 a.m. and 7.00 a.m. on a Saturday, will be paid at the rate of time and one-half of the ordinary weekly hourly rate.

6.1.3 Rostering provision to apply to all employees

Each full-time weekly employee will be worked so that the maximum number of hours that will constitute an ordinary week's work and will not exceed on average 38 hours per week and may be worked in any one of the following forms:

- (a) 38 hours in one week;
- (b) 76 hours in 2 consecutive weeks;
- (c) 114 hours in 3 consecutive weeks;
- (d) 152 hours in 4 consecutive weeks;

and except as after provided will be worked on not more than 5 days in the week:

- 6.1.4 The hours in clause 6.1.3 will be worked within the range of prescribed ordinary hours on one of the following bases at the discretion of the employer:

- (a) not more than 19 days in each 4 week cycle with either fixed or rotating day off:

Provided that by mutual agreement between the employer and employee opportunity will exist for an accumulating day off in a 4 week work cycle, with a maximum of 5 days being accumulated in cycles:

- (b) a shorter working day of not more than 4 continuous hours work in ordinary time on one day in each 2 week work cycle:
- (c) a shorter working day of not more than 6 continuous hours in ordinary time on one day in each week; or
- (d) a shorter working day of not more than 7.6 hours work in ordinary time:
 - (i) in a shop employing on a regular basis 9 or less employees per week (other than *bona fide* partners);
 - (ii) by mutual agreement with an employee:

Provided that broken shifts will not be worked.

- 6.1.5 With the exception of Bakers and Pastrycooks when a short day is to be worked in accordance with clause 6.1.4(b), the 4 hour ordinary work period will either conclude by 12.30 p.m.. or not commence until 12 noon unless there is express and mutual agreement between the employer and individual employee to do otherwise:

Provided that the roster of employees other than tradespersons will be the same as operated under the Retail Industry Interim Award - State.

6.1.6 *Late night work - all employees other than bakers, pastrycooks and apprentices*

- (a) All time worked by a weekly or part-time employee bound by clause 6.1 after 6.00 p.m.. as part of their ordinary working week on the permitted day for late night trading will be paid at the rate of quarter time in addition to the ordinary weekly wage or proportion thereof.
- (b) On the permitted day for late night trading any weekly employee who works more than 8.5 hours as part of their ordinary working week and any part-time employee required to work overtime in excess on 30 minutes will, if required to continue such work in ordinary hours or overtime hours (as the case may be beyond 6.45 p.m.. be paid a meal allowance of \$9.60).

6.1.7 *Saturday work - All employees other than bakers, pastrycooks and apprentices*

Notwithstanding the provisions of clause 6.1.3, all employees, other than casuals, will be paid in addition to their ordinary rates of pay a loading of 25% for work in the spread of ordinary weekly hours which may be required to be performed on Saturday.

6.1.8 *Saturday work - bakers, pastrycooks and apprentices*

- (a) Saturday Work - Bakers, Pastrycooks and Apprentices commencing employment on or after 22 January 1990.
- (b) Bakers, Pastrycooks, and Apprentices required to commence work on a Saturday as part of their ordinary working hours and such work commences between the hours of 12 midnight and up to and including 4.30 a.m. will be paid a loading of 25% in addition to their ordinary rate of pay for the first 4 hours and ordinary rate plus 50% for the following 3 hours worked and double time thereafter, for any subsequent hours work.
- (c) All time worked which commences after 4.30 a.m. on a Saturday will be paid in addition to the ordinary rate of pay a loading of 50% for the first 3 hours and double time thereafter for any subsequent hours worked.
- (d) In relation to Saturday work, nothing in this Award will in itself be deemed or construed to reduce the wages of any employee employed at the date, or to withdraw benefits, concessions or privileges being received by such employee at such date.

Specifically an existing employee working a roster which provided for Saturday work will continue to work that roster, will continue to work their ordinary hours Monday to Friday and will be paid for all time worked on Saturday at overtime rates:

Provided however, all the provisions of this Award may apply to existing employees as at 23 November 1990 where there exists mutual agreement between the employee and the employer evidenced in writing:

Provided further the Union will be notified in writing 7 days prior to the implementation of such arrangements.

6.1.9 *Sunday work - All ordinary time worked by all employees on a Sunday will be paid for at the rate of double time.*

6.1.10 Weekly employees may be rostered to work ordinary hours on 6 days in one week and 4 days in the following week. Employees working on 6 consecutive days will be allowed 2 consecutive days off.

6.2 Meal breaks and allowances

6.2.1 Except as after provided every employee will be allowed a meal break of not less than 30 minutes nor more than one hour between the fourth and sixth hours of the employee's shift work:

Provided that where an employee is required to work through their meal break, such time will be deemed to be overtime and will be paid for at the rate of double time and such double time will continue to be paid until such time as the employee is allowed a 30 minutes paid crib break or ceases work for the day.

6.2.2 When an employee is required to work overtime for a period in excess of one hour after the ceasing time of their ordinary hours on any day such employee will be entitled to an unpaid meal break of not less than 30 minutes and a sum of not less than \$9.60 as meal money:

Provided employees may elect to forego the said 30 minutes meal break in circumstances where overtime does not exceed 2 hours.

6.2.3 When an employee is required to work overtime for a period in excess of one hour after the ceasing time of their ordinary hours on any day such employee will be entitled to an unpaid meal break of not less than 30 minutes and a sum of not less than \$9.60 as meal money. Clause 6.2.3 will only apply to part-time and casual employees who work as least 4 ordinary hours and who work in excess of 2 hours overtime in any one day:

Provided employees may elect to forego the said 30 minute meal break in circumstances where overtime does not exceed 2 hours. If an employee so elects the employee shall also forego the sum of not less than \$9.60 as meal money.

Clause 6.2.3 shall only apply to part-time and casual employees who work at least 4 ordinary hours and who work in excess of 2 hours overtime on any one day.

6.3 Overtime

6.3.1 All time worked in excess of or outside of the ordinary working hours as prescribed in clause 6.1 or outside of the usual commencing and ceasing times will be deemed to be overtime and will be paid for in accordance with the rates prescribed by clause 6.3.

6.3.2 Except as after prescribed, overtime will be paid for at the rate of time and a-half for the first 3 hours and double time thereafter on any one day.

6.3.3 All overtime worked on Sunday will be paid for at the rate of double time.

6.3.4 An employee will not be required to work on the rostered day off for that employee unless such employee elects to work on such day, and where an employee so elects, all time worked will be deemed to be overtime and paid for at not less than time and a-half for the first 3 hours and double time thereafter:

Provided that where an employee works on their rostered day off, the employee will be paid a minimum of 4 hours pay at the above overtime rate:

Provided further that on termination of employment an employee will be entitled to be paid, as overtime, any time in excess of 38 hours per week where the appropriate roster cycle has not been completed.

6.4 Rest pauses

6.4.1 *All employees* - Weekly, part-time and casual employees who work a minimum of 4 consecutive ordinary hours, but less than 7.6 consecutive ordinary hours on any one day will receive a rest pause of 10 minutes' duration. Employees who work a minimum of 7.6 consecutive ordinary hours (excluding the meal break) on any one day will receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

6.4.2 Rest pauses will be taken in the employer's time.

6.4.3 Rest pauses will be taken at times to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity, in the opinion of the employer, is necessary.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

- 7.1.1 Every employee (other than a casual employee) 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; and
 - (b) not less than 4 weeks in any other case.
- 7.1.2 Such annual leave is exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.3) must 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 wages at a rate in excess of the ordinary wages payable under clause 5.1, at that excess rate; and
 - (b) in every other case, at the ordinary time rate of pay payable under clause 5.1 to the employee concerned immediately prior to that leave.
- 7.1.3 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 employee from the date of termination of the employment and shall immediately pay to the employee, in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.5, for 4 or 5 weeks as the case may be and also their ordinary time rate of pay for any public holidays occurring during such period of 4 or 5 weeks.
- 7.1.4 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, an amount equal to 1/9th of their pay for the period of their employment in the case of a shift worker, and 1/12th of their pay for the period of their employment in the case of a day worker, calculated in accordance with clause 7.1.5.
- 7.1.5 *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 7.1.5(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 public holiday shifts.
 - (b) Leading hands etc. - Subject to clause 7.1.5(c), leading hand allowances 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 7.1.5(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 in clause 5.1 for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) leading hand allowance prescribed in clause 5.2;
 - (iii) a further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).
 - (d) Clause 7.1.5(c) does not apply to:
 - (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
 - exceeding 4 weeks in any other case; or
 - (ii) employers who are already paying an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.
- 7.1.6 Unless the employee agrees otherwise, the employer must give the employee at least 14 days' notice of the date from which the employee's annual leave will be taken.

7.1.7 Except as provided in clause 7.1.4, it is not lawful for the employer to give, or for the employee to receive, payment in lieu of annual leave.

7.1.8 An employee is only entitled to a maximum of 12 rostered days off in any 12 month period of employment except in the employees first year with the employer when annual leave is not taken for one year (52 weeks). In these circumstances a maximum of 13 rostered days off may accrue in the 12 month period.

7.2 Sick leave

7.2.1 Entitlement

(a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer:

Provided that part-time employees accrue sick leave on a proportional basis.

(b) This entitlement will accrue at the rate of 7.6 hours' sick leave for each 6 weeks of employment.

(c) Payment for sick leave will be made based on the number of hours which would have been worked 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.

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 the employer a doctor's certificate, or other reasonably acceptable evidence to the employer's satisfaction, about the nature and approximate duration of the illness.

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;

(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 employee accumulates 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

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 1 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) A 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 *Unpaid leave*

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 An 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 employees will be entitled to a day off, without deduction of pay, where the employee would ordinarily be rostered to work one of the following public holidays and is not required to perform any duties on that public holiday:

7.6.2 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.

7.6.3 All full-time and part-time employees will be paid 250% of the part-time hourly rate for all hours worked on a public holiday. All casual employees will be paid 250% of the casual rate for all time worked on a public holiday. There will not be any extra loadings paid for hours worked on a public holiday.

7.6.4 If there is a substituted day gazetted or proclaimed for a particular public holiday, the following will apply:

- (a) If an employee is ordinarily rostered to work on the actual public holiday and the substituted day, then that employee will elect which day is to be their public holiday and receive the standard public holiday benefits for that day. The other day will then be worked as a normal rostered day, without payment of any additional loadings unless the actual public holiday is 25 December. In this case an employee will be entitled to receive a loading of one-half of an ordinary day's wages for working on that day.
- (b) An employee who is rostered to work the substituted day and not the actual public holiday will receive public holiday loadings for work done on the substituted day. In this case, the employee will not receive any additional pay in relation to the actual public holiday.
- (c) An employee who is required to work on either the actual public holiday or substituted day will observe the day on which the employee is rostered to work as the public holiday.

7.6.5 A full-time employee whose non-working day falls on a public holiday will receive, by mutual agreement either:

- (a) an additional day's wages;
- (b) an additional day's annual leave; or
- (c) another day off with pay within 28 days after the holiday falls or during the week prior to the holiday; or
- (d) an additional day's wages if the employer and the employee are unable to reach agreement on one of the above 3 options:

Provided that, a part-time employee will also be entitled to the benefits of clause 7.6.5 if the public holiday falls on a day on which the employee works on any week of their roster cycle:

Provided further that a full-time or part-time employee who is regularly rostered to work Monday to Friday will not receive the benefit of a public holiday which falls on a Saturday unless a substituted day has been prescribed, in which case such an employee will receive the benefit of the substituted day as prescribed in clause 7.6.5.

7.6.6 A part-time employee whose normal roster includes a public holiday will either be paid for the ordinary hours that would ordinarily have been worked on that day, or will receive the appropriate public holiday rate for all work done on that day.

7.6.7 If a full-time or part-time employee:

- (a) is stood down or dismissed by an employer during December;
- (b) is re-employed by the employer before the end of the next January; and
- (c) was employed by the employer for a continuous period of at least 2 weeks immediately before being stood down, or dismissed,

then the employer must pay the employee at the ordinary rate payable to the employee immediately before the stand down or dismissal for the Christmas Day, Boxing Day and the 1st January (New Year's Day) public holidays between the stand down or dismissal and the re-employment.

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

NOTE: No provisions inserted in this Award relevant to this Part

PART 9 - TRAINING AND RELATED MATTERS

9.1 Commitment to training and careers

9.1.1 The parties acknowledge that varying degrees of training are provided to employees in the retail industry both via internal, on-the-job and through external training providers.

9.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.

9.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the retail industry and encourage both employers and employees to avail themselves of the benefits to both from such training.

9.1.4 The parties agree to continue discussions on issues raised by the Union relating to training.

9.1.5 The parties are committed to encouraging young people to view the retail industry as one which had the capacity to provide them with an interesting career as they progress not only through junior ranks but also as adults.

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

NOTE: No provisions inserted in this Award relevant to this Part

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 the employee does not want that employee's 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 each 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 Clause 11.4 will not apply to a shop where less than 380 ordinary hours per week are worked under this Award.

11.4.2 The Union delegate or duly elected or appointed Union representative will, upon written application by the Union in respect of which that person is a member, be granted up to 5 days' leave with pay each calendar year, non-cumulative, to attend courses conducted or approved by the Union which are designed to promote good industrial relations industrial efficiency in the retail industry. The Union will advise each of the employer Associations respondent to this Award of the details of such courses at least 3 months prior to their proposed conduct.

- 11.4.3 Other courses, which are agreed between the Union party to this Award and an employer, or employers, may be included under clause 11.4.2.
- 11.4.4 Any written application by the Union seeking release of a delegate or representative to attend a course will include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted. Such application will be made not less than 6 weeks before the intended course, or such lesser period as may be agreed between the employer, the Union and the employee concerned.
- 11.4.5 Each employer so approached by written application by the Union will respond to such application within 14 days of receipt of such application by advising whether the request for release of the Union delegate or representative is agreed to or otherwise. If the request is not agreed to the employer will state the reasons for such rejection.
- 11.4.6 Only employees who have completed 6 months of continuous service with their current employer will be eligible for leave. In the case where an employee has more than 6 months continuous service with the employer but is employed in a shop which has not been open for more than 6 months the employer will not be required to grant leave during the first 6 months of such new shop's operation.
- 11.4.7 Subject to other requirements of clause 11.4 the taking of leave will be arranged so as to minimise any adverse effect on the employer's operation. Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular Union delegate or representative at a particular time (including where the employer might have previously advised of its ability to release such Union delegate or representative) the Union will not unreasonably press its request for the release of that delegate/representative at that time.
- 11.4.8 The maximum number of ordinary hours of leave which an employer will be required to grant at each shop within any calendar year will be as follows:
- | No. of ordinary hours worked at a shop per week | No. of ordinary hours leave per calendar year |
|---|---|
| A 380 up to 1,140 hours | 38 hours |
| B 1,141 up to 2,280 hours | 76 hours |
| C 2,281 up to 3,800 hours | 114 hours |
| D more than 3,800 hours | 152 hours |
- 11.4.9 At each shop the maximum number of employees attending a course at the same time will be one in category A or 2 in categories B, C or D. This will not stop an employer from agreeing to release additional employees.
- 11.4.10 Leave of absence granted pursuant to clause 11.4 will count as service for all purposes of the Award.
- 11.4.11 Each employee on leave in accordance with clause 11.4 will be paid all ordinary time earnings which such employee would have been paid had the employee not been absent on such leave.
- 11.4.12 The employer will not incur any liability with respect to the costs of travel to and from the place where the courses are conducted, nor to any accommodation and associated costs during such leave.
- 11.4.13 No additional liability will be incurred by the employer should the course attended by an employee coincide with any other paid leave arising under this Award.
- 11.4.14 On completion of the course the employer will be provided with proof of attendance at the course and information on the nature of the course.
- 11.4.15 In the event that a scheduled rostered day off, resulting from a work arrangement established in accordance with this Award, or a Certified Agreement, falls within a period of leave approved pursuant to clause 11.4, no alternative day off will be substituted in lieu.
- 11.4.16 Should an employee granted leave fail to attend the nominated course or any part thereof, the employer will be notified by the employee or Union within 24 hours or as soon as practicable, and no payment is to be made by the employer pursuant to clause 11.4 in respect of such leave for the period of non-attendance by the employee concerned.
- 11.4.17 In determining the term "year" or "calendar year" such reference will be deemed to relate to the period between 1 January and 31 December each year.
- 11.4.18 A register will be kept by the Union detailing the attendance of employees at various courses.

Dated 23 October 2002.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 23 December 2002