

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**CAFE RESTAURANT AND CATERING AWARD - STATE
(EXCLUDING SOUTH-EAST QUEENSLAND) 2012**

Following the Declaration of the General Ruling in the 2015 State Wage Case (matter numbers B/2015/15 and B/2015/16), the Cafe Restaurant and Catering Award - State (Excluding South-East Queensland) 2012 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 Cafe Restaurant and Catering Award - State (Excluding South-East Queensland) 2012 as at 1 September 2015.

Dated 1 September 2015.

[L.S.] J. Steel
Industrial Registrar

**CAFE RESTAURANT AND CATERING AWARD - STATE
(EXCLUDING SOUTH-EAST QUEENSLAND) 2012**

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Cafe Restaurant and Catering Award - State (Excluding South-East Queensland) 2012.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 31 August 2012.

1.4 Award coverage

1.4.1 This Award applies as follows:

- (a) To all employers and their employees in cafés, restaurants, coffee shops, refreshment rooms, commercial dance

halls, discotheques and cabarets, entertainment lounges, and/or other places of entertainment, milk bar, bistros, side walk cafés, food bars, fish and oyster saloons, including those businesses independently operated within any other type of establishment in or from which food and/or drink are prepared and/or sold for consumption on or off the premises, including residential colleges and the like:

Provided that the coverage of tuck shops by genuine volunteers shall be as set out in the letter of exchange between the parties dated 12 October 1992;

- (b) To all employers and their employees in take-away food establishments and the like; and
- (c) To all employers and their employees engaged in the business of catering including those catering businesses operating within any other type of establishment, whether of the type described in clauses 1.4.I(a) or (b), or not.

1.4.2 The Award has application throughout the State of Queensland including all islands off the coast with the exception of that portion of the State 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 meridian 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 situated south of 24 degrees 30 minutes of south latitude and within the State of Queensland and:

Provided that any employee working in establishments covered by this Award and who is exclusively or principally engaged in the sale or delivery by hand of any goods, food-stuffs, etc., for sale by retail shall be classified as a shop assistant and be paid the appropriate rate for such as is prescribed under the Retail Industry Interim Award - State 2002 applying to the area wherein the premises are located and in addition be subject to all terms and conditions of such Award for the time being in force or as may be amended from time to time.

1.4.3 This Award shall not apply to persons subject to any other award or industrial agreement

1.4.4 This Award does not apply to employers and their employees bound by the provisions of the Hotels, Resorts and Certain Other Licensed Premises Award - State (Excluding South-East Queensland).

1.4.5 This Award does not apply to employers and their employees bound by the provisions of the Garage and Service Station Attendants Award - State (Excluding South-Eastern District) 2003.

1.5 Area of operation

1.5.1 Division

For the purposes of this Award the following divisions shall apply:

Northern Division - That portion of the State north of a line commencing at the junction of the 21st parallel of south latitude with the sea-coast; then by that parallel of latitude due west to the 147th degree of east longitude; then by that meridian of east 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, including all islands north of the 21st parallel of south latitude which are within the State of Queensland.

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 south latitude and within the State of Queensland.

Southern Division - That portion of the State not included in the Northern or Mackay Divisions and excluding that area 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 meridian 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 situated south of 24 degrees 30 minutes of south latitude and within the State of Queensland.

1.5.2 Districts

For the purposes of this Award the following districts shall apply:

- (a) Northern Division:

Eastern District - That portion of the Northern Division along or east of 144 degrees 30 minutes of east longitude.

Western District - That portion of the Northern Division west of 144 degrees 30 minutes of east longitude, including Thursday Island.

(b) Southern Division:

Eastern District - 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; from that longitude due north to 25 degrees of south latitude; from that latitude due west to 147 degrees of east longitude; from that longitude due north to the southern boundary of the Mackay Division.

Western District - The remainder of the Southern Division.

1.6 Definitions

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

1.6.2 "Appropriate Level of Training" means:

(a) Completion of a training course deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification, such course to be accredited by the Australian Hospitality Review Panel.

(b) That the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in clause 1.6.2(a), such assessment to be undertaken by a qualified skills assessor.

(c) Any dispute arising in relation to clause 1.6.2 shall be resolved in accordance with clause 3.1 (Grievance and dispute settling procedure).

1.6.3 "Caterer (other than Industrial Caterer)" means any employer carrying on the business of catering for wedding receptions, parties, dances, conventions, seminars, social functions, sports grounds, race, trotting and greyhound meetings, Agricultural or Industrial shows, or any similar functions or events.

1.6.4 "Commission" means the Queensland Industrial Relations Commission.

1.6.5 "Full Day Off" means 24 hours from 12 midnight to 12 midnight.

1.6.6 "Half Day Off" means the balance of the day from 1.30 p.m. till the time of starting next day; ordinary time worked on such half-day shall not exceed 4 hours.

1.6.7 "Industrial Caterer" means any employer carrying on the business of catering and/or providing accommodation for any number of persons involved in Industrial Undertakings on location where catering is provided for on the basis of a minimum of 2 main meal times per day.

1.6.8 "Introductory Level" shall be applicable if an employee has not achieved the Appropriate Level of Training and has less than 3 months experience either in the restaurant and catering industry or in another industry where the employee performed work similar to that which the employee is required to perform under this Award.

1.6.9 "Junior Employee" means those employees under the age of 20 years:

Provided that employees engaged and/or employed on duties normally performed by a drink waiter/waitress or bar attendant shall not be regarded as a Junior Employee for the purposes of this definition.

1.6.10 "Union" means The Australian Workers' Union of Employees, Queensland.

1.7 Parties bound

This Award is legally binding upon the employers and employees as prescribed by clause 1.4.1, and upon 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 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 the 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

3.2 Consultation

- 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 enterprise, the employer, the employees and the Union commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure and needs of that 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 Contract of employment

4.1.1 Employees may be engaged on a full-time, part-time or casual basis, provided that the nature of the employment contract is specified at the time of engagement.

4.1.2 Employers shall at the time of engagement provide to their employees in writing the following details:

- (a) The classification under which the employee has been engaged, including the level;
- (b) The rate of pay applicable to the position under this Award;
- (c) Confirmation of the date of employment; and
- (d) All other conditions of employment applicable within the property in which the employee is to be employed.

4.2 Two or more classes of work

4.2.1 Where any employee on any one day performs 2 or more classes of work to which a differential rate fixed by this Award is applicable, such employee, 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 of 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.

4.2.2 Clause 4.2.1 shall have no application where the employee concerned is performing duties at a higher level as part of an accredited course which has an on-the-job training component.

4.3 Part-time employment

4.3.1 A part-time employee is an employee who:

- (a) shall be engaged for a minimum of 12 hours and a maximum of 40 hours in any one week and shall work on not more than 5 days in any one week; and
- (b) receives, on a *pro rata* basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

4.3.2 An employer is required to roster a part-time employee for a minimum of 3 hours on any one day and a maximum of 10 hours on any one day. The hours of work shall be continuous subject to clause 6.2 (Meal Breaks).

4.3.3 A part-time employee shall be paid per hours at the rate of 1/40th of the weekly rate prescribed for the class of work performed.

Provided that a part-time employee who was in receipt of a 10% all purpose loading as at the date of this Award is to continue to receive that loading for all ordinary hours worked.

4.3.4 *Hours*

- (a) Part-time employees who work in excess of 8 hours per day (or in the case of employees to whom clause 6.1.3 applies, any work in excess of 10 hours per day) shall be entitled to be paid overtime in accordance with clause 6.4 (Overtime) for such excess hours.
- (b) In the case of part-time employees who receive the 10% loading mentioned in clause 4.3.3, any time worked in excess of 40 hours per week shall be classed as overtime and paid in accordance with clause 6.4 (Overtime).
- (c) In the case of all other part-time employees any time worked in excess of the ordinary daily or weekly hours prescribed by the roster, shall be classed as overtime and paid in accordance with clause 6.4 (Overtime).

4.3.5 Where an employee and the 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 such 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.

4.3.6 All provisions of this Award not expressly amended by clause 4.3 shall have application to part-time employees.

4.4 Casual employment

4.4.1 A casual employee means an employee engaged as such, who is employed by the hour in the classification of work for which the employee is engaged, with a minimum of 4 hours' pay for each engagement

4.4.2 The hourly rate for such employees to be ascertained by dividing the appropriate weekly rate prescribed in clause 5.2 for full-time employees of the same class by 40 and adding thereto the following loadings:

(a) 50% for work performed Monday to Saturday;

(b) 100% for work performed on Sundays and for work performed after 12 midnight, and prior to 6.00 a.m. the following day; and

(c) 150% for work performed on public holidays.

4.5 Incidental and peripheral tasks

4.5.1 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.

4.5.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).

4.5.3 Any direction issued by an employer pursuant to clauses 4.5.1 and 4.5.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.6 Trainees

Trainees shall be engaged in accordance with the *Order - Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

4.7 Anti-discrimination

4.7.1 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, relationship status, family responsibilities, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality 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.

4.7.2 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.

4.7.3 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.

4.7.4 Nothing in clause 4.7 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 Australian Human Rights Commission/Anti-Discrimination Commission Queensland

4.8 Termination of employment

4.8.1 *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.

4.8.2 *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.

4.8.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. 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 4.8.2.

4.8.4 *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.

4.9 Introduction of changes

4.9.1 *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.

4.9.2 *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 4.9.1.
- (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.

4.10 Redundancy

4.10.1 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 4.10.1(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.

4.10.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.10.1 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 4.8.
- (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.

4.10.3 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 4.10.3, '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.

4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, 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.

4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1, 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.

4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1(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.

4.10.7 *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.

4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(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.

4.10.9 *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.

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

Clause 4.10 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.

4.10.11 *Employees exempted*

Clause 4.10 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.

4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer that employs 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.

4.10.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.10.6 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 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.10.14 *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.

4.11 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 Definitions of classifications

5.1.1 *Food and beverage stream*

- (a) "Food and Beverage Attendant Grade 1" means an employee who is engaged in any of the following:
 - (i) picking up glasses;
 - (ii) emptying ashtrays;

- (iii) general assistance to Food and Beverage Attendants of a higher grade, not including service to customers;
 - (iv) removing food plates;
 - (v) setting and wiping down tables;
 - (vi) monitoring, cleaning and tidying of associated areas during normal opening hours where such duties are incidental to the employees main duties.
- (b) "Food and Beverage Attendant Grade 2" means an employee who has not achieved the Appropriate Level of Training, and who is engaged in any of the following:
- (i) supplying, dispensing and mixing of liquor;
 - (ii) undertaking of general waiting duties of both foods and/or beverages including cleaning of tables and restaurant equipment;
 - (iii) receipt of monies;
 - (iv) selling of specialist stock lines;
 - (v) attending a snack bar;
 - (vi) engaged on delivery duties;
 - (vii) general receivable and distribution of goods;
 - (viii) taking reservations, greeting and seating guests under general supervision;
 - (ix) assist in maintenance of dress standards and good order of the establishment;
 - (x) setting up on site for small parties.
- (c) "Food and Beverage Attendant Grade 3" means an employee who has the Appropriate Level of Training and is engaged in any of the following:
- (i) supplying, dispensing or mixing of liquor,
 - (ii) undertaking all general waiting duties of both food and liquor, including cleaning of tables;
 - (iii) receipt of monies;
 - (iv) selling of specialist stock lines;
 - (v) taking reservations, greeting and seating guests;
 - (vi) general security including security of keys and supervision of dress standard maintenance and good order in the establishment;
 - (vii) assisting in the training and supervising of Food and Beverage Attendants of a lower grade;
 - (viii) setting up on site for small parties.
- (d) "Food and Beverage Attendant Grade 4" means an employee who has the Appropriate Level of Training and is engaged in any of the following:
- (i) full control of cellar or liquor storeroom (including the receipt, delivery, recording and ordering of goods within such an area);
 - (ii) mixing a range of sophisticated drinks;
 - (iii) supervision and training of Food and Beverage Attendants of a lower grade.
- (e) "Food and Beverage Attendant Grade 5" means an employee who has completed an apprenticeship in waiting, or who has been accredited as such, or who is assessed as having skills of a similar level and who is engaged in the following:
- (i) general and specialised skilled duties in a fine dining room or restaurant.

- (f) "Food and Beverage Attendant Grade 6" means an employee who has the Appropriate Level of Training including a supervisory course, and who is engaged in any of the following:
 - (i) responsibility for the supervision, training and co-ordination of food and beverage staff;
 - (ii) stock control for bar or bars including administrative and accounting activities;
 - (iii) responsibility for the maintenance of service and operational standards.

5.1.2 *Kitchen stream*

- (a) "Kitchen Attendant Grade 1" means an employee engaged in any of the following:
 - (i) general cleaning duties within a kitchen or food preparation area and scullery, including the cleaning of cooking and general utensils, used in a kitchen and restaurant;
 - (ii) assisting employees who are cooking;
 - (iii) preparation of salad ingredients and/or distribution to a salad bar;
 - (iv) general pantry duties.
- (b) "Kitchen Attendant Grade 2" means an employee who has the Appropriate Level of Training, and who is engaged in any of the following:
 - (i) specialised in non-cooking duties in a kitchen or food preparation area;
 - (ii) assisting in the supervision and training of Kitchen Attendants;
 - (iii) general receipt and distribution of goods.
- (c) "Kitchen Attendant Grade 3" means an employee who has the Appropriate Level of Training including a supervisory course, and who is engaged in the following:
 - (i) responsibility for the supervision, training and co-ordination of Kitchen Attendants of a lower grade.
- (d) "Cook Grade 1" means an employee who is engaged in the following:
 - (i) cooking of breakfasts and snacks, baking, pastry cooking or butchering.
- (e) "Cook Grade 2" means an employee who has the Appropriate Level of Training and who is engaged in any of the following:
 - (i) cooking duties including baking, pastry cooking or butchering;
 - (ii) setting up of an on-site kitchen.
- (f) "Cook (Tradesperson) Grade 3" means an employee who has completed an apprenticeship or who has passed the appropriate trade test, and who is engaged in any of the following:
 - (i) cooking, baking, pastry cooking or butchering duties;
 - (ii) setting up of an on-site kitchen.
- (g) "Cook (tradesperson) Grade 4" means an employee who has completed an apprenticeship or has passed the appropriate trade test, and who is engaged in any of the following:
 - (i) general or specialised cooking, butchering, baking or pastry cooking duties;
 - (ii) supervision and training of other cooks or kitchen employees.
- (h) "Cook (Tradesperson) Grade 5" means an employee who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchering, baking or pastry cooking and has completed additional appropriate training and who performs any of the following:
 - (i) general and specialised cooking, butchering, baking or pastry cooking duties;

- (ii) supervision and training of other cooks and kitchen employees;
- (iii) ordering and stock control;
- (iv) sole responsibility for other cooks and kitchen employees including co-ordination in a single kitchen establishment.

5.2 Classifications and wage rates

5.2.1 Adult employees

The minimum rates of wages payable to the following classes of employees in the Southern Division (Eastern District) shall be:

Classification	Excess Payment Per Week \$	Total Wage Rate Per Week \$
1. Kitchenhand	6.00	694.00
2. Bar Attendant		704.00
Drink Waiter/Waitress		704.00
Food Waiter/Waitress		704.00
Receptionist		704.00
Cashier		704.00
Singlehand Cook	2.10	705.50
Other Cook		704.00
3.		711.00
4. Head Waiter		723.50
5. Qualified Cook		734.00
6. Second Cook		745.00
7. Chef or Chief Cook		761.50
Persons not otherwise provided for		694.00
Introductory Level		688.00

5.2.2 Junior rates

The minimum rates of wages payable to Junior Employees as defined shall be calculated as follows:

	Of the Minimum Adult Rate for the Respective Division and/or District %
Under 17 years of age	55
17 and under 18 years of age	65
18 and under 19 years of age	75
19 and under 20 years of age	85

And thereafter at the appropriate rate prescribed for adults in the class of work being performed.

- (a) 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.
- (b) Any employee aged 18 or 19 years who is engaged to dispense and/or mix and/or sell alcoholic beverages shall be paid at a minimum rate of \$447.30 per week in the case of full-time employees and in the case of casual and part-time employees at the appropriate hourly rate on the weekly rate in clause 5.2.1.

5.3 Allowances

5.3.1 Supervisory allowances

Employees other than chefs or chief cooks, second cooks, and head waiters who are appointed to supervise the work of other employees shall be paid the following additional allowances:

<i>In charge of -</i>	\$
1 to 8 employees	14.50
9 to 16 employees	19.00

5.3.2 *Divisional and district allowances*

Adult employees in the Mackay Division shall be paid 90c per week and adult employees in the Eastern district of the Northern divisions shall be paid \$1.05 per week in addition to the rates prescribed in clause 5.2.1.

5.3.3 *Late work rates*

Employees, other than casuals, required to work any ordinary hours between 8.00 p.m. and midnight Monday to Friday shall be paid \$5.00 on each such occasion.

5.4 Payment of wages

5.4.1 Wages may be paid either weekly or fortnightly and at the discretion of the employer by one of the following means:

- (a) Payment directly by electronic funds transfer into an account nominated by the employee without cost to the employee;
- (b) Cash; or
- (c) Cheque.

5.4.2 Where electronic funds transfer is the method of payment of wages, wages must be available to an employee prior to the normal ceasing time on the normal pay day. In all other instances employees shall be paid in the employer's time.

5.4.3 The employer may stipulate the completion day for each pay cycle and payment to employees shall be made not later than 3 days after the completion of this stipulated pay cycle.

5.4.4 In the case of dismissal of an employee, or of an employee leaving the service of the employer after the prescribed notice has been given, the employee shall be paid all wages due within half an hour of ceasing work. If such wages are not paid within the time prescribed, all waiting time in excess of half an hour shall be paid for at the ordinary time rate of pay with a maximum of 8 hours payment on anyone day.

In the event of an employee being dismissed without notice, or in the event of an employee leaving without giving the prescribed notice, the employee shall be paid on the next bank trading day.

5.4.5 The employer shall provide the employee with the following written details at the time of payment of wages:

- (a) the date of payment;
- (b) the period covered by the payment;
- (c) the number of hours covered by the payment -
 - (i) ordinary rate of pay;
 - (ii) overtime rate of pay.
- (d) the ordinary hourly rate and the amount paid at that rate;
- (e) the overtime hourly rate and the amount paid at that rate;
- (f) the gross amount of wages payable;
- (g) the net amount of wages paid;
- (h) details of any deductions made;
- (i) the amount of contribution paid to an occupational superannuation fund.

5.4.6 Casual employees may, by mutual agreement, be paid in accordance with clause 5.4.1 or in the absence of such agreement, at the termination of each engagement.

5.5 Shift Work

5.5.1 In addition to the rates of pay prescribed by clause 5.2 (Classifications and wage rates), employees whilst engaged on afternoon shift and night shift, as established pursuant to clause 6.1.7 (Hours of work), shall be paid an additional penalty rate for each shift as follows:

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

5.5.2 For the purposes of clause 5.5:

- (a) "Afternoon shift" means any shift finishing after 6.00 p.m. and at or before midnight;
- (b) "Night Shift" means any shift finishing after midnight and at or before 8.00 a.m., or where the majority of hours worked in the shift falls between midnight and 8.00 a.m.;
- (c) The percentages which are quoted in clause 5.5.1 are the amounts that are payable for each shift in addition to the employee's ordinary time rate of pay.

5.6 Occupational superannuation

5.6.1 Local Government Employees

All Local Governments and Local Government Entities subject to this Award must comply with superannuation arrangements prescribed in the *Local Government Act 2009* and *Local Government (Operations) Regulation 2010*.

Local Governments and their Entities employing persons defined as being "non-contributory members" of the LG Super Scheme pursuant to s. 223 of the *Local Government Act 2009*, shall on behalf of such employees, contribute an amount to the LG Super Scheme that must be made to avoid being required to pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* in respect of such employees.

5.6.2 Non-Local Government Employees

In all other circumstances, in addition to all other entitlements pursuant to this Award, all eligible employees (as defined in clause 5.6.2(a)(ii)) who are not otherwise employed by a Local Government or Local Government Entity for which the LG Super Scheme applies, shall be entitled to occupational superannuation contributions paid by the relevant employer. Such contributions shall be paid into an approved fund (as defined in clause 5.6.2. (a)(i)) in accordance with clause 5.6.2.

5.6.2(a) Definitions

- (i) An "approved fund" means:
 - (A) Host Super;
 - (B) Sunsuper;
 - (C) MTAA Industry Superannuation fund;
 - (D) Metway Super;
 - (E) A fund to which the employer was at 24 May 1989, contributing superannuation payments on behalf of the employer's employees and which complies with the requirements of the relevant Commonwealth occupational superannuation legislation;
 - (F) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which already has practical application to the majority of Award employees of that employer.
- (ii) "Eligible employee" for clause 5.6.2 means an employee who is covered by this Award, and who has been employed by an employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of this period, superannuation contributions shall then be made in accordance with clause 5.6.2(b) effective from the commencement of that qualifying period.
- (iii) "Ordinary time earnings" for the purposes of clause 5.6.2 means the gross ordinary pay the employee receives for the ordinary hours of work performed in the relevant pay period and includes supervisory allowances, shift allowances as prescribed in clause 5.5 and Divisional and District allowances, where applicable.

5.6.2(b) Contributions

- (i) 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%.

- (ii) The employer may suspend contributions on behalf of an employee for any period when the employee is absent from work on unpaid leave:

Provided that in relation to an eligible employee an employer shall continue to make contributions in respect of any period during which an employee is absent from work on workers' compensation up to a maximum of 26 weeks.

5.6.2(c) *Future movements*

The amount of contribution as prescribed in clause 5.6.2(b) shall be adjusted to accord with movements in the applicable rate of wage as set out in clause 5.2 for the particular classification of employee. Such contribution shall be rounded off to the nearest 10 cents.

5.6.2(d) *General*

- (i) The employer shall remit contributions to the approved fund on a monthly basis.
- (ii) Eligible employees may personally make contributions to the approved fund in addition to the employer contributions prescribed by clause 5.6.2(b). The employer shall, at the employee's written request, make arrangements for such authorised deductions from the employee's pay to be forwarded to the administrators of the approved fund.
- (iii) No additional amount shall be charged by the employer for the establishment, administration, management or any other charges in connection with the approved fund.
- (iv) Nothing in clause 5.6.2 shall act to diminish the rights and responsibilities of the Trustees of an approved fund as set out in accordance with the Deed of Trust and Rules thereto as amended from time to time.

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

6.1 Hours of work

- 6.1.1 Except for as hereinafter provided the ordinary hours of work of all employees shall not exceed 40 in any one week or 8 in any one day. The ordinary hours shall be worked on no more than 5 days out of 7 and the days off shall wherever practicable, be consecutive.
- 6.1.2 The ordinary daily working hours in all establishments shall be worked between 6.00 a.m. and 12 midnight. The ordinary working hours shall be worked over a spread not exceeding 12 hours on any one day. There shall be not more than one break (exclusive of meal breaks) on any one day.
- 6.1.3 By agreement between the employer and the majority of employees concerned, full-time and part-time employees may work up to a maximum of 10 ordinary hours per day without the payment of overtime.
- 6.1.4 A roster for all employees showing normal starting and finishing times and the surname and initial of each employee shall be prepared by the employer and shall be posted in a place accessible to the employees concerned. The roster shall be alterable by mutual consent at any time or by amendment with 7 days' notice for full-time and part-time employees. Where practicable, 2 weeks' notice of rostered days off shall be given:

Provided however, that rosters may be altered with less than 2 days' notice in the case of sickness or absenteeism on the part of employees.

The roster for all employees shall provide for a minimum of 10 hours' break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day.

6.1.5 *Establishments operating over 6 days per week*

- (a) The ordinary weekly working hours of employees in establishments or businesses which only operate over a period of 6 days a week shall be worked within a period of 5 1/2 days:

Provided that where the hours of work of an establishment are worked within a period of 5 1/2 days, an

employee's ordinary working hours on a-half day shall not exceed 4 hours and shall be completed at no later than 1.30 p.m. on such day:

Provided further that employees working a 5 1/2 day week in accordance with clause 6.1.5(a) shall not be required to work on their rostered days or half-days off duty, but in the event of an employee consenting to so work, such time shall be paid for at the ordinary time rate of pay in clause 5.2 with a minimum payment of 4 hours at such rates for any such work performed on a Monday.

(b) By agreement between the employer and the majority of employees concerned, full-time and part-time employees may work up to a maximum of 10 ordinary hours per day without the payment of overtime.

(c) The roster for all employees shall provide for a minimum of 10 hours break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day.

6.1.6 Where employees cease work and their usual means of transport are not available the employer shall pay any reasonable additional amount incurred by those employees in reaching home.

6.1.7 Shift work may be performed in accordance with a roster to be drawn up by mutual agreement between the employer and the employees and approved by the Union in writing:

Provided that such roster shall provide for not more than 5 shifts of 8 continuous hours per day, including crib breaks to be worked in any one week with 2 consecutive days off duty.

6.2 Meal breaks

6.2.1 Every employee shall be entitled to an unpaid meal break of not less than 30 minutes nor more than one hour for breakfast, lunch or dinner. No employee shall work for more than 6 hours without a meal break except where overtime of one hour's duration or less is being worked immediately following an employee's ordinary ceasing time.

6.2.2 Where an employee is required to work through the employee's normal break the employee shall be paid at the rate of double time for all work so performed and such double time shall continue to be paid until such time as a meal break of the usual duration can be taken or until the employee ceases work for the day.

6.2.3 Any employee who is required to work overtime for more than 2 hours beyond the rostered ceasing time shall be provided with an adequate meal by the employer, or, in the event of the employer being unable to provide such meal, be paid an allowance of \$12.10 in lieu thereof.

6.2.4 Meals

Meals may be taken at the option of the employee and where practicable notice shall be given by the employee on the previous day whether meals are required for the following day. The sum of \$2.00 may be deducted for any meal taken.

6.3 Rest pauses

6.3.1 Employees who work a minimum of 4 consecutive ordinary hours but less than 8 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 8 or up to 10 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

6.3.2 Rest pauses shall be taken in the employer's time.

6.3.3 Rest pauses shall be taken at times to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity is necessary.

6.3.4 Notwithstanding clause 6.3.1, where employees are rostered to work not less than a 9 hour day and there is agreement between the employer and the majority of employees concerned, the rest pauses may be combined into one twenty minute rest pause, so that the day is divided into 3 approximately equal work periods.

6.4 Overtime

6.4.1 Except as provided in clauses 6.1.3 and 6.1.5, and as hereinafter provided all time worked by employees in excess of 8 hours on any full day or 4 hours on any half-day or 40 hours in any one week or outside the daily spread of working hours or outside the daily and/or weekly rostered hours shall be deemed overtime and except as hereinafter provided shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.

6.4.2 All time worked on an employee's days or half-day off shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter with a minimum payment as for 2 hours worked:

Provided, however, that the 2 hour minimum payment shall not apply to employees who continue working on their half-day off.

- 6.4.3 All overtime worked on Sundays shall be paid for at the rate of double time.
- 6.4.4 All time worked after 12 midnight and prior to 6.00 a.m. the following day shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter.
- 6.4.5 Overtime on any day shall stand alone.
- 6.4.6 All time worked by a shift worker in excess of 40 hours per week or 8 hours per day or outside of the rostered hours of work shall be deemed to be overtime and shall be paid for at the rate of double time.
- 6.4.7 Notwithstanding the provisions of clause 6.4, there may be an agreement in writing between the employee and the employer to take time off with pay in lieu of payment of overtime. 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 12 months from the time of accrual and at a time mutually agreed between the employee and the employer. Outstanding accrued overtime shall be paid at the appropriate rate in full at the time of termination, for any reason, by either party.

6.5 Weekend penalty rates

Payment at the rate of time and a-half for all time worked between midnight Friday and midnight Sunday, not being overtime within the meaning of clause 6.4 (Overtime) shall be made to all employees other than casuals.

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 7.1.5) 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 5.2, at that excess rate; and
 - (b) In every other case, at the ordinary time rate of pay payable under clause 5.2 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 is deemed to have given the leave to the employee from the date of the termination of the employment and must immediately pay to the employee, in addition to all other amounts due to the employee, such employee's pay, calculated in accordance with clause 7.1.5, for 4 or 5 weeks as the case may be and also the employee's 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 is to be paid, in addition to all other amounts due an amount equal to 1/9th of such employee's pay for the period of employment in the case of a shift worker, and 1/12th of such employee's pay for the period of employment in all other cases, 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 holiday shifts.
- (b) Supervisors etc. - Subject to clause 7.1.5(c), supervisory 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 7.1.5(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 in clause 5.2 for the period of the annual leave (excluding shift premiums and weekend penalty rates);
 - (ii) Supervisory allowance prescribed in clause 5.3 or amounts of a like nature;
 - (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) shall 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
 - 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.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, and school based apprentices and trainees, is entitled to 8 days' 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 one day's 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 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 anyone 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, 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 **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.

Portability of long service leave entitlements for Local Government employees is provided pursuant to Division 4; Part 3; Chapter 5 - Administration, of the *Local Government (Operations) Regulation 2010*.

7.4 **Family leave**

The provisions of the *Family Leave Award 2012* apply to and are deemed to form part of this Award.

7.4.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the *Family Leave Award 2012*;
- (b) a copy of the *Family Leave Award 2012* is required to be displayed in accordance with section 697 of the Act.

7.4.2 The *Family Leave Award 2012* also provides for the terms and conditions of leave associated with:

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

7.5 **Bereavement leave**

7.5.1 Full-time and part-time employees shall, on the death of a member of their immediate family or household 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.

7.5.2 *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.
- (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 7.5.2(a)

7.5.3 "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.

7.5.4 *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 this and the period of bereavement leave entitlement provided above is insufficient

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);
- 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 *Labour Day*

All employees covered by this Award shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee shall be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary rate prescribed for such work with a minimum of 4 hours.

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

7.6.4 *Double time and a-half*

For the purposes of clause 7.6, where the rate of wages is a weekly rate, "double time and a-half" shall mean one and one-half day's wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

7.6.5 *Extra payment for work outside certain hours*

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 this Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

7.6.6 *Stand down*

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when the employee was terminated or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and the 1st January (New Year's Day) occurring during the period on and from the date of the employee's termination or standing down to and including the date of re-employment.

7.6.7 *Holidays in lieu*

Should any of the holidays mentioned in clause 7.6.1, 7.6.2 and 7.6.3 fall on an employee's rostered day off or Half Day Off such employee shall receive another day off or Half Day Off in lieu thereof or alternatively one day's wage or a half day's wage as the case may be shall be paid in addition to the weekly wage:

Provided that clause 7.6.7 shall not apply to part-time employees.

7.6.8 *Employer and employees may agree on other method of payment*

Notwithstanding the provisions of clause 7.6, by agreement in writing between the employer and the employee, a full-time and a part-time employee may be paid at the rate of time and a-half for time worked on a public holiday and receive time off with pay equivalent to the time so worked. Such time off with pay shall be taken at a mutually agreeable time within 6 months of its accrual. Outstanding accrued time shall be paid in full at the time of termination, for any reason by either party.

7.7 **Jury service**

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) "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

8.1 Fares

Every employee shall be allowed any fares actually paid by the employees in getting from the place of engagement to the place of employment if such employees faithfully fulfil their duties for 3 months or for such less period for which they may be engaged. Every employee shall be allowed return fare from the place of employment to their place of engagement if such employees faithfully fulfil their duties for not less than 12 months, such return fare to be paid on termination of their employment after such period of 12 months:

Provided that the employer may make the employer's own arrangements for the conveyance of the employees in which event no fares shall be payable.

8.2 Travelling expenses

Employees (other than casuals) engaged in catering work away from the employer's regular place of business shall be paid:

- (a) reasonable travelling expenses where the employer does not provide means of conveyance; and
- (b) for all time occupied in travelling to and from such employment.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Training

9.1.1 A training program commensurate with the needs of the establishment and/or industry shall be developed by consultation between the employer and the employees consistent with:

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operation of the enterprise;
- (c) the need to develop vocational skills relevant to the enterprise and the industry and will be, where appropriate, provided through courses conducted by accredited educational institutions and providers, accredited industry training courses, and internal employer training which qualifies under the Training Guarantee Act provisions.

9.1.2 A training program developed in accordance with clause 9.1.1 will have the objectives consistent with:

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

9.1.3 *Additional training*

- (a) Where it is agreed between the employer and an employee that training in accordance with the program

developed pursuant to clause 9.1.1 should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay.

- (b) Any costs associated with such training, including standard fees 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 and/or completion of the course.

- (c) Travel costs incurred by an employee undertaking training in accordance with clause 9.1.3 which exceed those normally incurred in travelling to and from work may be reimbursed by the employer.

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

10.1 Dressing and meal rooms, and staff amenities

Employers shall provide reasonable accommodation and amenities for employees for dressing and consuming meals as prescribed under the relevant legislative provisions.

10.2 Board and lodging

Where employees of Industrial Caterers are provided with board and lodging the sum of \$2.50 per week may be deducted from the employees' wages:

Provided that if board only is provided to employees the sum of \$1.50 per week may be deducted.

10.3 Uniforms - aprons

10.3.1 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 and shall be returned to the employer upon termination of employment in good order or condition, subject to fair wear and tear.

10.3.2 When, upon termination, an employee does not return to the employer a uniform/s the employer may withhold \$40.00 per uniform from any money owing to that employee.

10.3.3 Where an employer does not launder a uniform or clothing which is provided, then the employer shall pay in lieu thereof an allowance of \$2.00 per week, in the case of full-time employees, and 40c per day in the case of casual or part-time employees.

10.3.4 Where an employer requires an employee to wear a uniform, full-time employees shall be issued with a minimum of 3 uniforms and casual and part-time employees shall be issued with one uniform.

10.3.5 Such uniforms shall be replaced on a fair wear and tear basis:

Provided that casual and part-time employees shall be provided with further uniforms as required, dependent upon the regularity of shifts worked.

10.4 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

10.5 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 *Work Health and Safety Act 2011*, relating to such first aid cabinets.

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 the 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 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) 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 Justice and Attorney-General, 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 Posting up award

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

11.4 Union encouragement

11.4.1 Clause 11.4 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.

11.4.2 At the point of engagement, an employer 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.

11.5 Deductions from wages

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

APPENDIX 1 Specific Terms and Conditions of Employment- employees of Industrial Caterers

1. The term "Industrial Caterer" means and includes the definition provided for in clause 1.6.7 - "Industrial Caterer" of the Award.
2. *Contract of Employment*
 - (a) Except as hereinafter provided employment shall be by the week. An employee not specifically engaged as a

casual employee shall be deemed to be employed by the week.

- (b) An employee shall perform such work as the employer shall, from time to time, reasonably require.
- (c) An employee not attending for duty shall, except as provided in this Award, lose pay for the actual time of such non-attendance.
- (d) (i) Subject to the provisions of the Act, employment shall be terminated by 2 days' notice on either side given at any time during the week or by the payment or forfeiture of 2 days' wages as the case may be. This shall not affect the right of the employer to dismiss an employee without notice for malingering, inefficiency, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any time an employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.
 - (ii) An employee who has given or been given notice as mentioned in clause 2(d)(i) shall continue in employment until the date of expiration of such notice. An employee who, without reasonable cause (proof whereof shall lie with the employee), is absent from work during such period, shall be deemed to have abandoned employment and shall not be entitled to payment for work done within that period.
- (e) *Casual employment* - A casual employee means an employee engaged and paid as such and who is employed for a minimum of 2 hours on each separate engagement.
- (f) *Late comers* - Notwithstanding anything elsewhere contained in this Award the employer may select and utilise for time-keeping purposes any fractional or decimal proportion of an hour (not exceeding a quarter of an hour) and may apply such proportion in calculation of the working time of an employee who without reasonable cause promptly communicated to the employer, reports for duty after the appointed starting time or ceases duty before the appointed finishing time.

If the employer adopts a proportion for the aforesaid purpose the employer shall apply the same proportion for the calculation of overtime.

(g) *Incidental or peripheral tasks* -

- (i) 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 consistent with the classification structure of this Award provided that such duties are not designed to promote de-skilling:
- (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- (iii) Any direction issued by an employer pursuant to clauses 2(g)(i) and (ii) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

(h) *Mixed functions* -

- (i) An employee engaged for a total of more than 4 hours on any day or shift on duties carrying a higher rate than the employee's usual classification shall be paid the higher rate for the entire day or shift.
- (ii) An employee engaged for 4 hours or less on any day or shift on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for the time so worked.

3. The hours of work for employees of Industrial Caterers shall be as follows:

- (a) The ordinary hours of work shall not exceed an average of 40 hours per week or 160 hours per month.
- (b) The spread of ordinary hours for day workers shall be between 4.00 a.m. and 9.00 p.m.
- (c) The daily working hours of all employees may be worked within a daily spread of 12 hours.
- (d) Meal breaks for day workers shall be not less than 30 minutes nor longer than 60 minutes.
- (e) *Variation of Working Hours* - Where the ordinary time of commencing and of finishing work has been determined such times may be varied by agreement between the employer and the accredited representative of the Union to suit the circumstances of the establishment, or, in the absence of agreement, by 2 days' notice of alteration given by the employer to the employer's employees.
- (f) *Night Work* - Shall be work performed on any shift finishing after 9.00 p.m. and before 4.00 a.m.

(g) *Week-end Work* - For employees other than casual employees the following week-end penalty rates apply:

- (i) Midnight Friday to midnight Saturday, time and one-half;
 - (ii) Midnight Saturday to midnight Sunday, double time.
- (h) Except at regular change over of shifts an employee shall not be required to work more than one shift in each 24 hours.
- (i) Shift workers shall be entitled to a 20 minute crib break that shall be counted as time worked.
- (j) Shift rosters shall be posted for observance by all and shall specify the commencing and finishing times of ordinary hours of the respective shifts.

The method of working shifts may in any case be varied as to all or a section of the employees by agreement by the employer and the accredited representative of the Union to suit the circumstances of the establishment

The time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the accredited representative of the Union to suit the establishment, or, in the absence of agreement, by 7 days' notice of alteration given by the employer to its employees.

Rostered overtime shifts, usually referred to as the 21st shift in a continuous shift roster, are to be treated in the following manner:

- (i) They are paid at the rate of double time;
- (ii) They are part of the normal roster cycle;
- (iii) When calculating annual leave entitlements one rostered overtime shift payment is to be taken into account regardless of the fall of the leave on the roster.

4. Subject to the allowances to this Award as to additional payments therein named, the minimum rates of wages payable to the following grades of employees working in industrial catering establishments shall be:

Classification	Level Range	
Qualified Cook	6	
Single Hand Cook	4-6	
Cook	4-6	
Bar Attendant	2-4	
All Others	2-3	
Entry Level- Classification	1	

	Wage Relativities	Total Wage Rate Per Week
	%	\$
Level 1	82	704.50
Level 2	88	729.50
Level 3	91	742.50
Level 4	95	759.50
Level 5	97	768.00
Level 6	100	786.00

5. (a) *Split Shift Allowance* - employees working on a shift having a spread of hours greater than 9, but no more than twelve, shall be paid an allowance calculated as 7.5% of the daily rate of the All Other classification in clause 4 hereof for each shift so worked.
- (b) *Night Shift Allowance* - employees working a night shift as defined in clause 5.5.2(b) shall be paid an allowance calculated as 15% of the daily rate of the All Other classification in clause 4 of appendix 1 for each shift so worked.

By the Commission,
 [L.S.] J. STEEL,
 Industrial Registrar.