

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**FOOTWEAR MANUFACTURING AWARD - STATE 2005**

Following the Declaration of the General Ruling for Overtime Meal Allowance (matter numbers B/2010/34 and B/2010/38), the Footwear Manufacturing Award - State 2005 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 Footwear Manufacturing Award - State 2005 as at 1 January 2011.

Dated 1 March 2011.

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

**FOOTWEAR MANUFACTURING AWARD - STATE 2005**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Footwear Manufacturing Award - State 2005.

**1.2 Arrangement**

Subject Matter	Clause No.
<b>PART 1 - APPLICATION AND OPERATION</b>	
Title	1.1
Arrangement	1.2
Date of operation	1.3
Award coverage	1.4
Definitions	1.5
Parties bound	1.6
Divisions and Districts	1.7
<b>PART 2 - FLEXIBILITY</b>	
Enterprise flexibility	2.1
Procedure when implementing facilitative provisions	2.2
<b>PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION</b>	
Procedures for the avoidance of industrial disputes	3.1
Consultative mechanism	3.2
<b>PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS</b>	
Contract of employment	4.1
Types of employment	4.2
Termination of employment	4.3
Redundancy	4.4
Introduction of change	4.5
Continuity of service - transfer of calling	4.6
Stand-down of employees	4.7

Subject Matter	Clause No.
<b>PART 5 - WAGES AND WAGES RELATED MATTERS</b>	
Classifications and wage rates	5.1
Skill levels - skill based classification structure, skill level descriptors	5.2
Allowances	5.3
Payment by results	5.4
Payment of wages	5.5
Superannuation	5.6
Supported wage system	5.7
<b>PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK</b>	
Hours of work	6.1
Breaks	6.2
Overtime	6.3
Shift work	6.4
Weekend work	6.5
<b>PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS</b>	
Annual leave	7.1
Sick leave	7.2
Bereavement leave	7.3
Long service leave	7.4
Family leave	7.5
Parental leave	7.6
Public holidays	7.7
<b>PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK</b>	
Court attendance	8.1
<b>PART 9 - TRAINING AND RELATED MATTERS</b>	
Commitment to training	9.1
Trade Union training leave	9.2
<b>PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES</b>	
Accident pay	10.1
<b>PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS</b>	
Right of entry	11.1
Time and wages record	11.2
Union encouragement	11.3
Posting of Award	11.4

### **1.3 Date of operation**

This Award takes effect from 7 February 2005.

### **1.4 Award coverage**

- 1.4.1 This Award applies to employers and employees throughout the State of Queensland engaged in wholly or partly manufacturing footwear of every description, or cutting or preparing half soles, tip fillers or top pieces.
- 1.4.2 This Award does not apply to employees on footwear repair work except where such repair work involves the repair of a factory fault and such repair is being made in the factory where the footwear was manufactured or except where half soles, tip fillers or top pieces are being cut for repair work other than that performed in the shop or factory where such work is cut.
- 1.4.3 This Award does not apply to employees covered by clause 1.3 (Application of Award) of the Surgical Bootmaking, Bespoke Bootmaking and Boot Repairing Award - State 2003 except where such work is only

incidental to the employer's main business of manufacturing footwear by machine or mass production methods.

## **1.5 Definitions**

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

1.5.2 "Commission" means the Queensland Industrial Relations Commission.

1.5.3 "Union" means the Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees.

## **1.6 Parties bound**

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

## **1.7 Divisions and Districts**

For the purposes of this Award the State of Queensland, inclusive of the portion specified in clause 1.4 as being the area of operation of this Award, shall be divided into the following Divisions and Districts:

### *1.7.1 Divisions*

- (a) Southern Division - That portion of the State of Queensland north of the border of Queensland and New South Wales, commencing at the sea coast then westward along the border to the junction of the border with 145 degrees east longitude, then due north by that degree of longitude to its junction with 24 degrees 30 minutes of south latitude, then due east by that parallel of latitude to the sea coast, then by the coast southerly to the border.
- (b) Central Division - That portion of the State of Queensland north of a line running along the parallel of 24 degrees 30 minutes of south latitude from the sea coast to its junction with 145 degrees of east longitude, then due north by that degree of longitude to its junction with 22 degrees 30 minutes of south latitude, then along that parallel of latitude, due east to its junction with 147 degrees of east longitude then due north by that degree of longitude to its junction with 22 degrees of south latitude, then by that parallel of latitude due east to the sea coast, then down the coast in a southerly direction to its junction with 24 degrees 30 minutes of south latitude.

### *1.7.2 Districts*

- (a) Eastern District - That portion of the Divisions east of 147 degrees longitude.
- (b) Western District - That portion of the Divisions west of 147 degrees longitude.

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

2.1.1 Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the Award should be amended so as to make the enterprise or workplace operate more efficiently according to its particular needs, the following process will apply:

- (a) A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace will be established in accordance with clause 3.2.
- (b) For the purpose of the consultative process the employees may nominate the Union or other representative to represent them.
- (c) Any proposal must be communicated to affected employees. The proposal is to be expressed in a manner that enables the proposal to be understood by those employees, having regard to employees from a non-English speaking background.
- (d) Employees must be given adequate time to consider the proposal.
- (e) Where agreement is reached, an application will be made to the Commission.

### **2.2 Procedure when implementing facilitative provisions**

2.2.1 This Award contains facilitative provisions which allow agreement between an employer and employees about

how specific Award provisions are to apply at the workplace or section or sections of it. An index of facilitative provisions in this Award is provided in clauses 2.2.3, 2.2.4, 2.2.5 and 2.2.8.

2.2.2 The specific Award provisions establish both the standard award condition and the framework within which agreement can be reached as to how the particular provisions should be applied in practice. Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this Award.

#### 2.2.3 *Facilitation by individual agreement*

(a) The following facilitative provisions can be utilised by agreement between an employer and an employee provided that the agreement complies with clause 2.2.1.

Clause number	Subject matter
4.2.2(f)	Any variation to regular pattern of work
5.5.1(b)	Payment by cheque of wages re Annual leave

(b) Where agreement has been reached with an individual to implement a facilitative provision in clause 2.2.3(a), the employer may not implement that provision unless:

(i) The proposed terms of the agreement are to be expressed in a manner which enable proposals to be understood by the employee/s, in particular having regard to employees from a non-English speaking background. The consultative mechanism referred to in clause 3.2, will consider having the proposal translated into the main languages spoken at the workplace.

(ii) The agreement reached must be recorded in the time and wages record kept by the employer in accordance with s.366 of the Act.

(iii) If an employee is a member of a union, the employee may be represented by the Union in meeting and conferring with the employer about the implementation of the facilitative provisions.

(iv) The union must be given a reasonable opportunity to participate in negotiations regarding the proposed implementation of a facilitative provision. Union involvement does not mean that the consent of the union is required prior to the introduction of the facilitative provisions.

#### 2.2.4 *Facilitation by majority or individual agreement*

(a) Subject to clauses 2.2.5 and 2.2.6, the following facilitative provisions can be utilised by agreement between the employer and a majority of employees in the workplace or a section or sections of it or an employer and individual employee:

Clause number	Award provision
6.1.1(b)	Arrangement of working 38 hour week
6.1.1(c)(i)	Rostered day substitution
7.7.1(b)	Changing public holidays

#### 2.2.5 *Majority agreement*

(a) Where agreement has been reached with a majority of employees in a workplace or a section or sections of it, to implement a facilitative provision in clause 2.2.4(a), the employer may not implement that provision unless:

(i) The proposed terms of the agreement are to be expressed in a manner which enable proposals to be understood by the employee/s, in particular having regard to employees from a non-English speaking background. The consultative mechanism referred to in clause 3.2 will consider having the proposal translated into the main languages spoken at the workplace.

(ii) The agreement reached must be recorded in the time and wages record kept by the employer in accordance with s.366 of the Act.

(iii) If an employee is a member of a Union, the employee may be represented by the union in meeting and conferring with the employer about the implementation of the facilitative provisions.

(iv) The Union must be given a reasonable opportunity to participate in negotiations regarding the proposed implementation of facilitative provisions. Union involvement does not mean that the consent of the Union is required prior to the introduction of the facilitative provisions.

(v) Where specified the requirements of clause 2.2.8 must also be met.

### 2.2.6 Individual agreement

An employer may only seek individual agreement in relation to the clauses listed in clause 2.2.4 if the following conditions are satisfied:

- (a) no agreement has been sought by the employer with the majority of employees in accordance with clause 2.2.5; and
- (b) the agreement complies with clause 2.2.3(b)(ii); and
- (c) the agreement is only with an individual employee or a number of individuals less than the majority in the workplace or a section or sections of it; and
- (d) where specified the requirements of clause 2.2.8 must also be met.

### 2.2.7 Facilitation by majority agreement

- (a) The following facilitative provisions may only be utilised by agreement between the employer and the majority of employees in the workplace or a section or sections of it:

Clause number	Award provision
5.4.4	Operation of a PBR System
5.4.5(c)	Calculation of PBR
5.4.7(b)(iv)	Alteration of time standard re PBR
5.5(a)	Method of payment of wages
5.5 (b)	Method of payment of wages
6.4.3(c)	Sunday night start to shift may not incur penalty rates by agreement.
7.1.11(e)	Annual leave close down

- (b) Where agreement has been reached with the majority of employees in the workplace, or a section or sections of it, to implement a facilitative provision in clause 2.2.7(a) that agreement shall be binding on all such employees, provided that:
  - (i) where specified the requirements of clause 2.2.8 have been met;
  - (ii) the proposed terms of the agreement are to be expressed in a manner which enable proposals to be understood by the employee/s, in particular having regard to employees from a non-English speaking background. The consultative mechanism referred to in clause 3.2 will consider having the proposal translated into the main languages spoken at the workplace;
  - (iii) the agreement reached must be recorded in the time and wages record kept by the employer in accordance with s.366 of the Act;
  - (iv) if an employee is a member of a union, the employee may be represented by the Union in meeting and conferring with the employer about the implementation of the facilitative provisions; and
  - (v) the Union must be given a reasonable opportunity to participate in negotiations regarding the proposed implementation of a facilitative provision. Union involvement does not mean that the consent of the Union is required prior to the introduction of the facilitative provisions.

### 2.2.8 Additional safeguards

- (a) An additional safeguard applies to:

Clause number	Award provision
5.4.5(c)	Calculation of PBR
5.4.7(b)(iv)	Alteration of time standards

- (i) The additional safeguard requires that the Union which is party to the Award and which have members employed at the enterprise covered by the Award shall be informed by the employer of the intention to use the facilitative provisions and shall be given reasonable opportunity to participate in the negotiations regarding its use. Union involvement does not mean that the consent of the Union is required prior to the introduction of agreed facilitative arrangements at the enterprise.

### 2.2.9 Majority vote at the initiation of the employer

A vote of employees in the workplace, or a section or sections of it, taken in accordance with clause 2.2.4 and/or clause

2.2.7, to determine if there is majority employee support for the implementation of a facilitative provision, will be of no effect, unless taken with the agreement of the employer.

#### 2.2.10 *Dispute over facilitation*

In the event that a dispute or difficulty arises over the implementation or continued operation of a facilitative provision, the matter will be resolved in accordance with the dispute resolution procedure provided in clause 3.

### **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

#### **3.1 Procedures for the avoidance of industrial disputes**

3.1.1 A procedure for the avoidance or resolution of disputes will apply in all enterprises covered by this Award. The mechanism and procedures for resolving industrial disputes will include, but not be limited to, the following:

(a) The employee/s concerned will first meet and confer with their immediate supervisor. The employee/s may appoint a representative to act on their behalf which may be a shop steward or delegate of their Union.

(i) Subject to clauses 3.1.4 and 3.1.5 where the shop steward or delegate is involved they will be allowed the necessary paid time during working hours to interview the employee(s) and the supervisor.

3.1.2 If the matter is not resolved at such a meeting the parties will arrange further discussions between the employee and the employee's nominated representative, if any, and more senior management. The employee may invite a Union official to be involved in the discussions. The employer may also invite into the discussions an officer of the employer organisation to which the employer belongs.

(a) The shop steward or delegate will be allowed at a place designated by the employer, a reasonable period of paid time during working hours to interview the duly accredited Union officials of the Union to which they belong.

3.1.3 If the matter remains unresolved, the employer may refer it to a more senior level of management or to a more senior national officer within the employer organisation. The employee may invite a more senior union official to be involved in the discussions. In the event there is no agreement to refer the matter to a more senior level or it is agreed that such a reference would not resolve the matter the parties will jointly or individually refer the matter to the Commission for resolution.

3.1.4 In order to facilitate the procedure in clause 3.1.1:

(a) the party with the grievance must notify the other party at the earliest opportunity of the problem;

(b) throughout all stages of the procedure all relevant facts must be clearly identified and recorded; and

(c) sensible time limits must be allowed for completion of the various stages of discussion. However, the parties must co-operate to ensure that the dispute resolution procedures are carried out as quickly as possible.

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

#### 3.1.6 *Dispute resolution training*

A Union delegate/shop steward or another employee workplace representative shall be entitled to, and the employer shall grant, up to 5 days' leave with pay each year, non-cumulative, to attend courses conducted by a recognised training provider:

(a) the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute resolution procedure;

(b) reasonable notice (or specified amount) is given by the Union delegate/shop steward or another workplace representative;

(c) the taking of leave is arranged having regard to the operational requirements of the employer;

(d) the Union delegate/shop steward or another workplace representative taking such leave shall be paid all ordinary time earnings which normally become due and payable during the period of leave, to be calculated in accordance with Part 5 of the Award; and

(e) leave of absence granted pursuant to clause 3.1.6 shall count as service for all purposes of this Award.

### **3.2 Consultative mechanism**

- 3.2.1 At each enterprise covered by this Award the employer and employees, and, if appropriate an employee representative, including a Union representative, may establish a mechanism and procedures which enables them to communicate and consult about matters arising out of this Award, in particular clauses 2.1 and 2.2, which would assist in achieving and maintaining co-operative workplace relations and mutual beneficial work practices.
- 3.2.2 To facilitate work related communication between employees and their Union and/or employee representatives at the workplace, the employer will permit the use of notice boards. The employer retains the right to reject and remove the posting of any material which is not in relation to agreements or Award related issues.

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

### **4.1 Contract of employment**

- (a) Employees covered by this Award may be employed on a full-time, regular part-time or casual basis.
- (b) Employment under this Award will be on an hourly basis for the first 2 weeks of employment.

### **4.2 Types of employment**

#### *4.2.1 Full-time employment*

An employer may employ an employee on a full-time basis of 38 hours per week.

#### *4.2.2 Regular part-time employment*

A regular part-time employee is an employee who is a day or shift worker and:

- (a) works less than full-time hours of 38 hours per week;
- (b) has predictable hours of work;
- (c) receives on a *pro rata* basis, equivalent pay and conditions of those full-time employees who do the same kind of work;
- (d) at the time of engagement the employer and regular part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day;
- (e) any variation to the regular pattern of work must be agreed and recorded in writing in accordance with 2.2.3;
- (f) an employer is required to roster a regular part-time employee for a minimum of 3 consecutive hours on any day or any shift;
- (g) an employee who does not meet the definition of regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 4.2.4; and
- (h) all time worked in excess of the hours mutually agreed in accordance with clauses 4.2.2(e) and 4.2.2(f) will be overtime and paid for at the rates prescribed in clause 6.3.

#### *4.2.3 A regular part-time employee must be paid at least:*

- (a) if time workers:
  - (i) at the rate of 1/38th of the weekly wage prescribed for the appropriate skill level for the work performed;  
or
- (b) if payment by results workers:
  - (i) at the appropriate payment by results system rate in accordance with clause 5.4, provided that the payment is not less than the hourly rate for their skill level for the time worked;
- (c) when calculating an employee's *pro rata* entitlement to annual leave and sick leave, they must be paid in proportion to the average number of hours worked in the previous 6 months. If there is not a 6 month period of employment then the calculation will be based on the average number of hours worked each week for the

actual period of employment; and

- (d) where a part-time employee works on a public holiday payment shall be calculated in accordance with clause 6.3.

#### 4.2.4 *Casual employment*

- (a) A casual employee is an employee who is engaged in relieving work or work of a casual, irregular or intermittent nature, but does not include an employee who could properly be classified as a full-time or regular part-time employee.
- (b) An employee will not be engaged as a casual employee to avoid any obligations of this Award.
- (c) A casual employee will be paid per hour 1/38th of the weekly award wage prescribed for the relevant classification plus a loading of 23%. This payment will compensate for payment of sick leave, annual leave and public holidays.
- (d) On each occasion a casual employee is required to work, the employee is entitled to a minimum payment for 3 hours' work.
- (e) Casual employees are entitled to penalty payments for overtime, shift work and work on public holidays in accordance with the provisions of this Award as they apply to permanent employees.
- (f) Casual employees must be paid at the end of each day, but may agree to be paid weekly.
- (g) Casual employees are entitled to superannuation payments in accordance with 5.6.
- (h) A casual employee will be engaged by the hour. Employment can be terminated by either the giving of one hour's notice by either party or the payment or forfeiture of one hour's wages.

#### 4.2.5 *Employees employed for a specified period of time*

- (a) Temporary employees may be employed for a specified period of time provided that period is at least 3 weeks and not more than 15 weeks within a calendar year.
- (b) Full-time temporary employees are entitled to payment of wages not less than the weekly Award rate for the skill level in which the employees are employed, or for regular part-time employees, on a *pro rata* basis.
- (c) Temporary employees are entitled to all entitlements provided to employees under this Award.

#### 4.2.6 *Apprentices*

- (a) An apprentice means any person employed and registered in the form prescribed by the relevant State Apprenticeship Authority.
- (b) Apprentices may be engaged in trades or occupations provided for in this Award where declared or recognised by an Apprenticeship Authority.
- (c) Subject to appropriate state legislation, an employer must not employ an unapprenticed junior in a trade or occupation provided for in this Award.
- (d) In order to undertake trade training a person must be a party to a contract of apprenticeship training agreement in accordance with the requirements of the Apprenticeship Authority or state legislation. The employer must have provided and/or provide access to training consistent with the contract or training agreement without loss of pay.
- (e) The probationary period of an apprentice must be as set out in the training agreement or contracts of apprenticeship consistent with the requirements of the apprenticeship authority and with state legislation but must not exceed 3 months.
- (f) An apprentice who is under 21 years of age on completion of their apprenticeship and who is employed in the occupation to which they were apprenticed will be paid not less than the adult rate prescribed for that classification.
- (g) An employer must allow an apprentice to take time off during working hours to attend available classes. In order to be entitled to the time off the apprentice must produce a card showing their attendance at school for the period.



#### 4.2.7 Juniors

An employer may employ junior employees and must pay juniors in accordance with clause 5.1.4.

### 4.3 Termination of employment

#### 4.3.1 Statement of employment

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

#### 4.3.2 Termination by employer

(a) The 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 clause 4.3.2(a), employees 45 years of age 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 casual employees, or employees engaged by the hour or day, or an employee engaged for a specific period or task.

#### 4.3.3 Notice of termination by employee

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

(b) 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 4.3.2(d) for a period of notice of one week.

(c) Should any employee whose engagement has exceeded 2 months be discharged or dismissed from employment, other than an account of dishonesty, disobedience, or drunkenness within 14 days of Christmas Day, the employee shall be paid for Christmas Day, Boxing Day and New Year's Day at ordinary rates, and if so dismissed within 14 days of Good Friday, the employee shall be paid for Good Friday and Easter Monday at ordinary rates.

(d) Annual leave will not be used to provide the notice prescribed in clause 4.3.2 unless mutually agreed.

### 4.4 Redundancy

#### 4.4.1 Consultation before terminations

(a) Where an employer has made a definite decision 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.

- (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 4.4.1(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, 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 an employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

#### 4.4.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.4.1 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 4.3.
- (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.

#### 4.4.3 *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 4.4.3 "business" includes trade, process, business or occupation and includes 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.

#### 4.4.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.4.1, 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.

#### 4.4.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.4.1 the employer shall notify Centrelink as soon as possible giving 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.

#### 4.4.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.3.2, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.4.1 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.

#### 4.4.7 *Superannuation benefits*

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

- (a) an 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.

#### 4.4.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.4.1 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.

#### 4.4.9 *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.

#### 4.4.10 *Employees with less than one year's service*

Clause 4.4.6 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.

#### 4.4.11 *Employees exempted*

Clause 4.4 shall not apply:

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

#### 4.4.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.4 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 annum, 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.

#### 4.4.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.4.6 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 (transmitter) 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 transmitter, and any prior transmitter, to be continuous service of the employee with the transmittee; or
  - (ii) where the employee rejects an offer of employment with the transmittee:
    - 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 transmitter; and
    - which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.4.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.4.14 *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.

### **4.5 Introduction of change**

#### 4.5.1 *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.
- (b) "Significant effects" include 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 this Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

#### 4.5.2 *Employer's duty to discuss change*

- (a) The employer shall discuss with the employees affected and, where relevant their Union, 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 effects of such changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.5.1.
- (c) For the purpose of such consultation, the employer shall provide in writing to the employees concerned and,

where relevant, their Union, 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 the employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

#### **4.6 Continuity of service - transfer of calling**

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

#### **4.7 Stand-down of employees**

4.7.1 An employer may deduct payment for any time the employee cannot be usefully employed because of any power stoppage, strike or through any breakdown of machinery or stoppage of work by any cause for which the employer cannot reasonably be held responsible, subject to the following conditions:

- (a) Prior to any stand-down there is consultation with the relevant employees which will include the duration and the reasons for the stand-down, the number of employees affected and arrangements for ongoing communications between the employees and the employer. Employees may be represented during the consultation by their union or other representative;
- (b) Prior to any stand-down there is a written agreement reached between the affected employees and the employer, a copy of which is inserted into the time and wages records;
- (c) An employer may not deduct payment from an employee who has been given notice of termination when no work is offering; and
- (d) Employees cannot be stood-down due to lack of work on a public holiday.

4.7.2 When an employee is stood-down:

- their continuity of service is not broken for the purposes of annual leave, public holidays and sick leave; and
  - their annual leave, public holidays and sick leave continue to accrue.
- (a) If an employee attends for work but cannot be usefully employed and is stood-down in accordance with clause 4.7.2, they must be paid for at least 2 hours' work at time rates. The employer does not have to pay the 2 hours' pay if they can demonstrate that an attempt was made to notify the employee that they need not attend for work.
  - (b) If an employee is requested by the employer to remain at work in excess of 2 hours, they are entitled to payment at time rates.
  - (c) Where an employee commences work they will be entitled to be paid for at least 3 hours work on that day.

4.7.3 *Stand down due to electricity shortage*

- (a) An employer who is unable to carry on business during all the working hours of a day due to a failure or shortage of electricity may deduct payment, in excess of 20 minutes, for any part of the day that an employee cannot be usefully employed.
- (b) An employee who attends for work but for whom there is no work provided in accordance with clause 4.7.3(a) must be paid 2 hours' pay. If the employee has commenced work, the employee is entitled to 4 hours' work or payment in lieu of 4 hours' work.

4.7.4 *Absence from duty*

An employee who is absent from duty who is not on leave as provided in this Award will lose their pay for the actual time of such non-attendance. Deduction in wages may only be made for such time as is actually lost by an employee. Deduction must not be made from the wages of apprentices, except in accordance with their Indenture of Apprenticeship.

### **PART 5 - WAGES AND WAGE RELATED MATTERS**

#### **5.1 Classification and wage rates**

5.1.1 *Wage rates*

- (a) An adult employee in a classification or class of work (other than an apprentice, junior or employee on a supported wage in accordance with clause 5.7), specified in the table below must not be paid less than the rates as set out in the table below:

Classification Skill Level	Minimum weekly Award wage rate* (\$)
Trainee	588.20
1	604.90
2	627.40
3	648.30
4	682.00
5	723.70

\*The weekly Award wage rate for ordinary hours combines the base rate, supplementary payment and arbitrated safety net adjustments and State Wage Case decisions awarded since the October 1993 Review of Wage Fixing Principles.

#### 5.1.2 Arbitrated safety net adjustment

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

#### 5.1.3 Apprentice - wage rates

- (a) The minimum weekly rates of pay to be paid to 3 year term apprentices will be as follows:

		% of Skill Level 3 (Skill Level 3 = \$648.30)	Minimum weekly Award rate \$
1st year	1st 6 months	60%	389.00
	2nd 6 months	65%	421.40
2nd year	1st 6 months	75%	486.20
	2nd 6 months	80%	518.65
3rd year	1st 6 months	90%	583.45
	2nd 6 months	95%	615.90

- (b) The total wage must be calculated to the nearest 5 cents, any fraction of 5 cents in the result not exceeding 2 cents must be disregarded.

#### 5.1.4 Junior wage rates

- (a) The minimum Award rates to be paid to junior employees, other than apprentices will be as follows:

	% of Skill Level 1 (Skill Level 1 = \$604.90)	Minimum weekly Award rate \$
Under 16 years of age	44%	266.15
16 years and under 17 years	55%	332.70
17 years and under 18 years	66%	399.25
18 years and under 19 years	77%	465.75
19 years and under 20 years	86%	520.20
20 years and under 21 years	94%	568.60
At 21 years of age	Appropriate Adult Rate	

- (b) The total wage must be calculated to the nearest 5 cents, any fraction of 5 cents in the result not exceeding 2 cents to be disregarded.

- (c) Changes in rates will be effective from the beginning of the first pay period to commence after the attainment of the prescribed age.
- (d) A junior employee who has 3 years' experience in this industry or upon attaining the age of 21 years must be paid the appropriate adult rate for an adult employee in the classification in which they are employed.

## **5.2 Skill levels - skill based classification structure, skill level descriptors**

### *5.2.1 Trainee - 78%.*

- (a) Employees at this level:
  - (i) will be new entrants into the industry;
  - (ii) will for a period of up to 3 months undergo approved (including induction) training so as to enable them to achieve the level of competence required to be classified at Skill Level 1; and
  - (iii) will work under the following conditions:
    - totally defined procedures and methods;
    - constant direct supervision;
    - constant direct training; and
    - progressive assessment and feedback.
- (b) Training for new entrants will be determined in accordance with the needs of the enterprise, but will involve instruction aimed at assisting trainees to achieve the range of competencies required at Skill Level 1, including:
  - (i) the knowledge and skills required to apply relevant Occupational Health and Safety practices and procedures;
  - (ii) the knowledge and skills required to apply specified quality control standards to their own work;
  - (iii) the knowledge and skills required to apply specified operation practices and procedures and to meet efficiency requirements; and
  - (iv) the knowledge and skills required to apply minor equipment/machine maintenance relevant to the equipment involved in the performance of their own work.

### *5.2.2 Skill level 1*

- (a) Employees at this level:
  - (i) will work to defined procedures/methods either individually or in a team environment; and
  - (ii) will exercise skills to perform basic tasks; and
  - (iii) will be aware of and apply basic quality control skills in the receipt and completion of their own work to the specified quality standards.
- (b) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
  - (i) may be required to exercise the skill necessary to assist in providing basic on-the-job instruction by way of demonstration and explanation;
  - (ii) may be required to record basic information on production and/or quality indicators as required;
  - (iii) may be required to apply minor equipment/machine maintenance;
  - (iv) may be required to exercise key pad skills;
  - (v) may be required to exercise the level of English literacy and numeracy skills to effectively perform their tasks; and
  - (vi) May commence training in additional skills required to advance to a higher skill level.

### *5.2.3 Skill level 2*

- (a) Employees at this level exercise the skills required to be graded at Skill Level 1 and:
- (i) will work to defined procedures/methods, either individually or in a team environment; and
  - (ii) will exercise the skills to perform intermediate tasks; and
  - (iii) will understand and apply quality control skills in their own work and component parts (including understanding of the likely cause/s of deviations to specified quality standards in their own work).
- (b) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
- (i) may be required to exercise the skill necessary to assist in providing on-the-job instruction to employees in skills required at Skill Level 2 and below by way of demonstration and explanation;
  - (ii) may be required to record detailed information on production and/or quality indicators as required;
  - (iii) may be required to exercise team work skills;
  - (iv) may be required to identify and rectify minor equipment/machine faults, and report problems that cannot be rectified to a mechanic or supervisor;
  - (v) may be required to use basic computer skills; and
  - (vi) may commence training in additional skills required to advance to a higher skill level.

#### 5.2.4 Skill level 3

- (a) Employees at this level exercise the skills required to be graded at Skill Level 2; and
- (i) will exercise discretion, initiative and judgment on the job in their own work, either individually or in a team environment; and
  - (ii) will exercise skills to:
    - perform a complex task/s; or
    - perform a series of different operations on a machine/s; or
    - use a variety of machine types three of which require the exercise of level 2 skills; and
- (b) will be responsible for quality assurance in their own work and assembly of component parts including having an understanding of how this work relates to subsequent production processes and its contribution to the final appearance of the shoe.
- (c) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
- (i) may be required to investigate causes of quality deviations to specified standards and recommend preventative action;
  - (ii) may be required to exercise the skills necessary to assist in providing on-the-job-instruction to employees in skills required at Skill Level 3 and below by way of demonstration and explanation;
  - (iii) may be required to record detailed information on, and recommend improvements to, production and/or quality;
  - (iv) may be required to take a co-ordinating role for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedures and methods), where the members of the group or team are at Skill Level 3 and below;
  - (v) may be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults); and
  - (vi) may commence training in additional skills required to advance to a higher skill level.

#### 5.2.5 Skill level 4

- (a) Employees at this level exercise the skills required to be graded at Skill Level 3 and have a comprehensive knowledge of product construction.



- (b) Employees at this level will also:
- (i) apply skills and knowledge, equivalent to that of a qualified tradesperson, that have been acquired as a result of training or experience; or
  - (ii) hold a relevant trade certificate; and
  - (iii) will work largely independently (including developing and carrying out of a work plan to specifications); and
  - (iv) will exercise a range of skills involving planning, investigating and resolution of problems, and/or training, and/or supervision, and/or specialised technical tasks; or
  - (v) will make a whole shoe to specifications, or exercise equivalent skills.
- (c) In addition, according to the needs and operational requirements of the enterprise, employees at this level:
- (i) may be required to apply quality control/assurance techniques to their work group or team;
  - (ii) may have designated responsibility for the training of other employees (and if so will be trained trainers);
  - (iii) may be responsible for quality and production records relating to their own work group or team;
  - (iv) may be required to take a co-ordinating role for a group of workers or in a team environment (which includes contributing to the identification and resolution of the problems of others and assisting in defining work group procedures and methods), where the members of the group or team are at Skill Level 4 and below;
  - (v) may be required to exercise advanced equipment maintenance and problem solving skills (including identification of major equipment faults and organisation of performance of necessary repair); and
  - (vi) may commence training in additional skills, required to advance to a higher skill level.

#### 5.2.6 *Explanation of terms*

(a) Basic tasks

Uncomplicated tasks which are easily learned and involve little decision making whether machine or non-machine.

Basic machine tasks are those where the positioning of work may be controlled by guide bars and sensor lights or other such guiding devices or where there is uncomplicated feeding of the material.

(b) Intermediate tasks

Tasks which are more difficult to learn and involve more decision making than Skill Level 1 tasks and which may require material or component knowledge whether machine or non-machine.

Intermediate machine tasks require skill in positioning feeding and handling of work involving directional changes or critical stopping points or require feeding and handling skills beyond those of a Skill Level 1 operator because of material variation.

Intermediate non-machine tasks require skills to perform a sequence of related tasks.

(c) Complex tasks

Tasks which are more difficult to learn and involve a higher level of decision making than Skill Level 2 tasks whether machine or non-machine.

Complex machine tasks require material manipulation skills and knowledge beyond those of Skill Level 2 operator or the operator performs more difficult tasks or handles and aligns the sections while ensuring correct shaping of the end result because of the complexity of combining parts or because of frequent variation in materials.

(d) Series of different operations on a machine/s

Performing a sequence of different operations on a machine/s to complete the majority of a complex component assembly or complex upper.

(e) Machine

Any piece of equipment which performs a significant part of an operation in:

- design/grading of patterns
- cutting
- sewing
- making
- finishing
- packing
- last making
- component manufacture

and which is powered by an external source i.e. electricity, steam or compressed air or a combination of these.

Hand tools are not machines and refer to those items which are primarily powered by the operator e.g. scissors, shears, staples, tagging guns, tape dispensers.

(f) Variety of machines

Three or more different types of machines which are sufficiently different in their own operation to require the exercise of different skills (i.e. all flat bed machines are the same machine type for this purpose and all post machines are the same type for this purpose).

(g) Whole upper machinist or equivalent skills

A machinist who works largely independently in producing a complex upper from written specifications and patterns. Examples of "equivalent skills" include:

- sample machinist;
- a fully multi-skilled operator who is required to perform any of the operations involved in the making of a complex whole upper or a complex component to specification; and
- an operator who performs each of the operations required to complete a complex component assembly or a complex whole upper from specifications.

(h) Skill

The application of a combination of abilities, knowledge and attributes to competently perform a given activity or activities.

(i) Competence

The ability to perform a particular activity or activities to a prescribed standard (or standards) and under a prescribed set of circumstances.

(j) Component parts

The parts of the product which the operator receives in order to perform their job.

(k) Key pad skills

Ability to use a small panel of keys, either numerical or with symbols, to operate equipment.

(l) Basic computer skills

Use of a computer to enter, retrieve and interpret data.

(m) Co-ordinating role

A role which involves responsibility for organising and bringing together the work and resource requirements of a work group or team.

(n) Defined procedures/methods

Specific instructions outlining how an operator is to do their job.

(o) Largely independently

Where the employee is accountable for own results including:

- carrying out assigned tasks;
- co-ordinating processes; and
- setting and working to deadlines.

(p) Designated responsibility

Identified by management as a person with a specific role or responsibility.

(q) Minor equipment/machine maintenance

Includes cleaning and minor adjustments to the equipment involved. In the case of sewing machines for example, it may include:

- changing needles;
- cleaning;
- lubrication; and
- tension and stitch adjustment.

(r) On-the-job instruction

Demonstrating, showing, explaining and/or guiding other employees as to how to perform a particular task or operation to a competent standard.

(s) Quality assurance

The overall system and plans used to provide confidence that goods and services will satisfy given requirements.

(t) Quality control

The activities used to check that materials and products meet quality specifications; includes the grading of product into acceptable and unacceptable categories.

(u) Quality deviations

Departures from a quality standard.

(v) Quality indicators

Information used to determine whether a quality standard has been met.

(w) Specified quality standards

Detailed standards against which quality is measured.

(x) Team environment

An environment involving work arrangements in which a group of people work closely, flexibly and in co-operation with each other to ensure efficient and effective performance.

(y) Shoe

A shoe is to include all forms of foot covering that is generally made in the footwear industry and shall encompass shoes, boots, and complex sandals.

### 5.3 Allowances

#### 5.3.1 *Leading hand allowance*

(a) Definition

Leading hand means an adult employee appointed as such by the employer and who, while working under supervision, gives instructions to and/or is responsible for work done by other employees.

- (i) An employee appointed by the employer to act as a leading hand will be paid the following amount in addition to the highest rate prescribed for employees under their control:

Number of employees in charge of:	Weekly allowance
	\$
3 to 10	25.45
11 to 20	38.95
21 or more	48.95

### 5.3.2 Higher duties allowance

- (a) An employee engaged for 2 hours or more on any day on duties carrying a higher rate than their ordinary skill level will be paid the higher rate for the whole of the day, and if so engaged for less than 2 hours of one day the employee will be paid the higher rate for the time worked.
- (b) The employer must keep a record of the times of which an employee is temporarily transferred to a higher skill level than that which the employee is usually employed.

### 5.3.3 Meal allowance

A meal allowance of \$12.10 will be paid in accordance with clause 6.3.

### 5.3.4 Change of shift allowance

An employee who is required to change from one shift to another without 2 working days' notice of such change of shifts will be paid \$15.35 extra as compensation, but this will not apply during any period where power restrictions are operating.

### 5.3.5 First aid attendants

An employee who is appointed by the employer as a first aid attendant will be paid an allowance, depending on the number of employees at the workplace, as follows:

Number of employees at the workplace	Allowance per week
	\$
1 to 50 employees	11.50
51 employees or more	14.45

### 5.3.6 Protective gloves or cream

Where the employer requires an employee to provide protective gloves or a protective cream to handle chemicals, solvents, solutions or dyes, the employer must reimburse the employee for the actual cost of providing such equipment. The provision of clause 5.3.6 will not apply where the employer supplies such items without cost to the employee.

### 5.3.7 Clothing, equipment and tools allowance

Where the employer requires an employee to provide all tools necessary for the work to be performed, the employer must reimburse the employee for the actual cost of providing such equipment. The provision of clause 5.3.7 will not apply where the employer supplies such items without cost to the employee.

### 5.3.8 Hospital allowance

An employee who suffers an injury arising out of and in the course of their employment, which does not give rise to an entitlement to worker's compensation, which necessitates their attendance during working hours at a doctor or hospital is entitled to reimbursement by the employer for all expenses reasonably incurred in connection with such attendance.

## 5.4 Payment by results

### 5.4.1 Definition

- (a) For the purposes of clause 5.4, the Incentive System is defined as Austral Unit type systems where each operation is given a time standard which is used to measure the operator's efficiency as a basis for their bonus.

- (b) For the purposes of clause 5.4, obligations concerning the discussion and/or the implementation (or proposed implementation) of Austral Unit type and other types of payment by results systems are located at clause 5.4.2.

#### 5.4.2 *Implementation of an incentive system*

An employer who introduces or plans to introduce or alters a payment by results system must provide all employees and their Union or employee representative with the details of any payment by results system(s) to be introduced or altered at their enterprise(s).

#### 5.4.3 *Commitment to payment by results*

An employer may maintain, alter or institute a system of individual or group payment by result consistent with the skills based classification structure, subject only to the provisions and limitations set out in clause 5.4.

#### 5.4.4 *Operation of payment by results systems*

An employer may maintain, alter or institute a system of individual or group payment by results, provided that:

- (a) agreement is reached in accordance with clause 2.2.7; and
- (b) the system is in accordance with clause 5.4.

#### 5.4.5 *Payment by results calculations*

- (a) Bonuses should be calculated on a weekly basis.
- (b) The employer must calculate the minute pay rate for each standard time minute by dividing the total Award wage for the appropriate skill level by 2280 wherever appropriate.
- (c) By agreement between the employer, the payment by results employees, in accordance with clauses 2.2.7 and 2.2.8. Any proposal which is put to employees must be reduced to written form for their consideration prior to the taking of a vote.
- (d) Where an employer is currently paying a bonus minute rate higher than the above, the higher rate will continue to be applied and will not be increased until such time as it reaches the minute pay rate as specified in clause 5.4.5(b).
- (e) An employer must calculate the payment by results earnings of an employee in accordance with clauses 5.4.5(b) or 5.4.5(d) by multiplying the minute pay rate by the excess of the standard time produced over real time worked under payment by results.
- (f) An employer must pay the employee their payment by results earnings calculated in accordance with clauses 5.4.5(b) or 5.4.5(d) in addition to the total Award rate appropriate to their skill level.
- (g) Where an employee earns payment by results earnings for work performed in any week, such earnings must be credited to the employee and must not be reduced because the employee fails to earn payment by results earnings in any other week.
- (h) Where an employee has worked part of the week on payment by results, they must be entitled to their earnings in full for the actual time worked on payment by results if the earnings are higher than the appropriate award rate for such time.
- (i) Where an employee working under a payment by results system (as defined) is denied the opportunity to pursue the bonus because of the unavailability of work for that employee, waiting time will be paid to the employee at Award rates, for the period during which work remains unavailable. Waiting time will be paid only from the time the relevant employee reports the unavailability of work to their appropriate supervisor.
- (j) An employer subject to the provisions of clause 5.4.7 may fix or alter a time standard in respect of any footwear product or part of a footwear product, or any article or part of an article, provided such time standard is set consistent with an employee of average capacity (excluding trainees being new entrants to the footwear industry employed as trainees for up to 3 months) in any given period earn at least 10% more than the total Award rate for their respective skill level.

#### 5.4.6 *Apprentices/Juniors*

An apprentice or a junior employed under 5.1.3 and 5.1.4 respectively of this Award must have their task set and be deemed to be producing bonus minutes when they have produced that number of minutes in proportion to the ordinary

daily adult task or number of minutes as their rate of pay is in proportion to the appropriate adult award rate.

#### 5.4.7 *Time standards*

An employer must calculate the time standard allowed for the performance of work according to the following:

- (a) An employer must consult with the payment by results employees and Union representative(s) prior to the finalisation of any time standard fixed under clause 5.4 and must provide to those employees and where relevant, the Union representative(s) the basis upon which the Payment By Results system is calculated, including appropriate allowances.

The employer must make available the basis of such a system to all affected employees.

- (b) Once a time standard has been fixed under clause 5.4.7, it must not be altered except where any of the following circumstances occur:
  - (i) there is a change in the manufacturing methods;
  - (ii) there is a change in the machines or equipment or materials used;
  - (iii) to correct an agreed error in the existing time standard; and
  - (iv) by agreement between the employer, the payment by results employees, in accordance with clauses 2.2.7 and 2.2.8. Any proposal which is put to employees must be reduced to written form for their consideration prior to the taking of a vote.
- (c) An employer must clearly display a copy of the time standard for each payment by results operation in each work area in each enterprise. The copy of the time standard must be updated within 24 hours of any changes to the time standards.
- (d) Once a time standard has been fixed under clause 5.4.7, it must be recorded in a register and signed and dated by the employer and Union representative(s).
- (e) The employer must also display in each work area in each enterprise a conversion table to enable an employee to convert time standards into monetary amounts. An example of how the system operates must also be displayed in each work area.
- (f) As far as practicable different grades of work will be equitably divided between payment by results employees.

#### 5.4.8 *Overtime*

The overtime provisions of clause 6.3 must be applied to employees working under clause 5.4.

#### 5.4.9 *Training*

An employer implementing a payment by results system pursuant to clause 5.4 must provide each employee with appropriate training to ensure that individual performance is the only variable distinguishing employees within a skill level in this Award.

#### 5.4.10 *Dispute settling*

Any dispute arising out of clause 5.4 will be dealt with according to the provisions of clause 3.1.

### **5.5 Payment of wages**

5.5.1 Wages will be paid on Wednesday or Thursday in each week, or, if there is an agreement between the employer and a majority of employees in accordance with clause 2.2.7 wages may be paid on any other day agreed.

5.5.2 Payment will be in cash, or where a majority of employees agree, in accordance with clause 2.2.7 wages may be paid by cheque or electronic funds transfer to the employees account:

Provided that in the week prior to Easter, such transaction must be made no later than close of business on the Wednesday.

5.5.3 Not more than one day's wages will be kept in hand, except where the banks are closed, or a public holiday as prescribed by this Award occurs on the actual pay day and banking facilities are available, the working day before will be substituted as the pay day:

Provided that payments under any form of incentive system in accordance with clause 5.4, payment by results must be paid on the pay day occurring one week after they were earned.

5.5.4 On termination of the employment, wages due to an employee, must be paid to the employee on the day of the termination, provided that in cases of summary termination such wages may be forwarded to the employee by post on the next working day.

#### 5.5.5 *Payment of wages*

Pursuant to sections 370(1) and (2) of the Act, the employer will provide the employee with a pay slip which includes details of any payments by results earnings.

- (a) Employees, paid by cash or cheque, kept waiting for their pay after ceasing work at the usual hour, must be paid at overtime rates for all the time they are kept waiting.
- (b) Where it is mutually agreed (in accordance with clause 2.2.3) between the employer and the employee, payment of annual leave at annual close down in excess of one week may be paid by cheque, provided that payment is made not less than 4 days prior to the time of taking leave.

## 5.6 **Superannuation**

### 5.6.1 *Preamble*

#### Superannuation Legislation

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

### 5.6.2 *Definitions*

- (a) The fund for the purpose of clause 5.6 means:
  - (i) Australian Retirement Fund established and governed by a trust deed 11 July 1986, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto; or
  - (ii) subject to the agreement of the relevant State Secretary of the Union and its members, an employer sponsored fund established prior to 1 July 1987, which complies with the *Superannuation Industry (Supervision) Act 1993* as amended from time to time; or
  - (iii) any fund agreed between an employer and an employee.
- (b) If the employee is a member of a Union bound by this Award, the employee may be represented by that Union in meeting and conferring with the employer about the matter and the employer must give the union a reasonable opportunity to meet and confer about the matter. Note: the consent of the Union is not required on any agreement between the employer and employee.
- (c) The agreement must be recorded in the time and wages records kept by the employer in accordance with s. 366 of the Act.
- (d) If a dispute or difficulty arises over the implementation or continued operation of clause 5.6, it must be handled in accordance with the dispute resolution procedure in clause 3.1.
- (e) Ordinary time earnings for the purposes of clause 5.6 means and includes:
  - (i) Award skill level or classification rate;
  - (ii) supplementary payment (where relevant);
  - (iii) over-award payment;
  - (iv) shift loading including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;
  - (v) the payment for work performed by weekend employees exclusively and wholly during their ordinary

hours on Saturdays and Sundays;

(vi) payment by results earnings; and

(vii) all non-reimbursable allowances payable under the Award.

#### 5.6.3 *Employers to become a party to the fund*

- (a) A respondent employer will make application to the fund to become a participating employer in the fund and will become a participating employer upon acceptance by the Trustee of the fund.
- (b) A respondent employer will provide each employee who is not a member of the fund with a membership application form upon commencement of clause 5.6 and thereafter upon commencement of employment.
- (c) Each employee will be required to complete the membership application and the employer will forward the completed application to the fund by the end of the calendar month of commencement of clause 5.6 or commencement of employment.

#### 5.6.4 *Eligibility of employees*

- (a) Each employee will be eligible to join the fund upon commencement of employment.
- (b) Each employee will be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in clause 5.6.3(c) was forwarded to the fund.

#### 5.6.5 *Employer contributions on behalf of each employee*

- (a) A respondent employer will contribute to the fund in respect of each employee such contributions as required to comply with the Superannuation Guarantee (Administration) Act 1992 and Superannuation Guarantee Charge Act 1992 as amended from time to time. Failure to comply with clause 5.6.5 will constitute a distinct and separate breach of clause 5.6.5.

In accordance with the requirements of the relevant acts, as mentioned, a respondent employer will not be required to pay superannuation contributions in respect of employees who earn less than \$450.00 in a calendar month or upon reaching the age of 65.

- (b) Such contribution will be made monthly by the last day of the month following, the total of the weekly contribution amounts accruing in the previous month in respect of each employee.

The amount of contributions to the fund will be calculated to the nearest 10 cents, and any fraction below 5 cents will disregarded.

- (c) The fund and the amount of contributions paid in accordance with clauses 5.6.5 and 5.6.8 will be included in pay advice notices provided by employers to each employee.
- (d) Contributions will continue to be paid in accordance with clause 5.6 during any period in respect of which an employee is entitled to receive accident pay.

#### 5.6.6 *Unpaid absences*

Except as where specified in the rule of the fund, contributions by respondent employers in respect of unpaid absences will be proportional to the wage received by the employee concerned in a particular pay period. For the purposes of clause 5.6.6, each pay period will stand alone. Accordingly, unpaid absences in one pay period will not carry over to another pay period.

#### 5.6.7 *Cessation of contributions*

A respondent employer's obligation to make contributions on behalf of the employee ceases on the last day of employment with the employer.

#### 5.6.8 *Employee contributions*

- (a) An employee may make contributions to the fund in addition to those made by the respondent employer under clause 5.6.5.
- (b) An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the fund trust deed and rules.



- (c) An employer who receives written authorisation from the employee, must commence making payments into the fund on behalf of the employee within 14 days of receiving the authorisation.
- (d) An employee may vary their additional contributions by a written authorisation and the employer must alter the additional contributions within 14 days of receiving the authorisation. An employee may only vary their additional contributions once each month.
- (e) Additional employee contributions to the fund requested under clause 5.6.8 will be expressed in whole dollars.

#### 5.6.9 Exemptions

A respondent employer may make application for exemption from clause 5.6.5 in respect of contributions to the fund for employees who are not members of the Union.

### 5.7 Supported wage system

5.7.1 Clause 5.7 defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this Award. In the context of clause 5.7, the following definitions will apply:

- (a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in Supported Wage System: Guidelines and Assessment Process.
- (b) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.
- (c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) "Assessment Instrument" means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

#### 5.7.2 Eligibility criteria

- (a) Employees covered by clause 5.7 will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
- (b) Clause 5.7 does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Award relating to the rehabilitation of employees who are injured in the course of their employment.
- (c) Clause 5.7 does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under section 10 or under section 12A of the Disability Services Act, or if a part only has received recognition, that part.

#### 5.7.3 Supported wage rates

- (a) Employees to whom clause 5.7 applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Award for the class of work which the person is performing according to the following schedule:

Assessed capacity (clause 5.7.4)	% of prescribed award rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%

80%  
90%

80%  
90%

(b) Provided that the minimum amount payable shall be not less than \$60 per week.

(c) \*Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

#### 5.7.4 *Assessment of capacity*

For the purpose of establishing the percentage of the award rate to be paid to an employee under this Award, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument by either:

(a) The employer and a Union party to the award/agreement, in consultation with the employee or, if desired by any of these;

(b) The employer and an accredited assessor from a panel agreed by the parties to the Award and the employee.

#### 5.7.5 *Lodgement of assessment instrument*

(a) All assessment instruments under the conditions of clause 5.7, including the appropriate percentage of the Award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Queensland Industrial Relations Commission.

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

#### 5.7.6 *Review of assessment*

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the supported wage system.

#### 5.7.7 *Other terms and conditions of employment*

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of clause 5.7 will be entitled to the same terms and conditions of employment as all other workers covered by this Award paid on a *pro rata* basis.

#### 5.7.8 *Workplace adjustment*

An employer wishing to employ a person under the provisions of clause 5.7 shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

#### 5.7.9 *Trial period*

(a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of clause 5.7 for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

(b) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(c) The minimum amount payable to the employee during the trial period shall be no less than \$60 per week.

(d) Work trials should include induction or training as appropriate to the job being trialled.

(e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 5.7.3.

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

### **6.1 Hours of work**

The ordinary hours of work shall be an average of 38 hours per week, Monday to Friday inclusive between the hours of 7.00 a.m. and 7.00 p.m., spread over up to 4 weeks.

- (a) Each employer may fix starting and finishing times for their own factory, and such starting and finishing times, when fixed, shall not be altered except on 14 days' notice to the employees concerned.

#### 6.1.1 *Arrangement of ordinary working hours*

- (a) The ordinary working hours will be an average of 38 hours and may be arranged in any of the following methods:
  - (i) by employees working less than 8 ordinary hours each day (e.g. 7.6 hours per day);
  - (ii) by employees working more than 8 ordinary hours on 4 days of the week, and less than 8 ordinary hours on the 5th day of the week. (e.g. 8 1/4 hours on 4 days and 5 hours on the 5th day of the week);
  - (iii) by employees working a 9 day fortnight (e.g. 8 1/2 hours on 8 days and 8 hours on the 9th day);
  - (iv) by fixing one day on which employees will be off during a particular work cycle (e.g. the plant shuts down for a day once each four weeks and eight hours are worked on the other 19 weekdays of those 4 weeks);
  - (v) by rostering employees off on various days of the week during particular work cycles so that each employee has one day off during that cycle (e.g. as in clause 6.1.1(a)(iv) except that employees take various days off according to a roster so as to avoid a plant shut down); and
  - (vi) any agreed variation to the above methods (e.g. accumulation of the 0.4 hours per day may be allowed for a period of not more than a 20 week work cycle when such accumulation may be taken at the one agreed time i.e. seven days at one time).
- (b) The arrangement of the 38 hour week must be implemented and altered by mutual agreement in accordance with clause 2.2.4.
- (c) Where by virtue of the arrangement of the ordinary working hours an employee, in accordance with clauses 6.1.1(a)(iv) and 6.1.1(a)(v), is entitled to a day off during the work cycle, such employee will be advised by the employer at least 4 weeks in advance of the work day the employee is to take off. Where a system of working is adopted to allow one rostered day off in each 2 or 4 weeks, an employee will not be entitled to more than 12 or 24 such rostered days off respectively in any 12 month period.
  - (i) The day scheduled to be the day off in accordance with clauses 6.1.1(a)(iv) and 6.1.1(a)(v) may be worked as an ordinary working day without penalty when substituted by another day by agreement between the employer and employee concerned, or where a number of employees are concerned by agreement between the employer and a majority of the employees in respect of when a substitute day off is sought, provided such agreement is in accordance with clause 2.2.4.
  - (ii) Notwithstanding the contents of clause 6.1.1(c)(i), where an employee is called upon to work on the employee's rostered day off without another day being substituted, the employee will be paid in accordance with the provisions of clauses 6.5.1(a), 6.5.1(b), and 6.5.1(c).
  - (iii) Notwithstanding clauses 6.1.1(c)(i) and 6.1.1(c)(ii) where an employee who is employed under the provisions of clause 6.1.1(a)(ii) is required to work overtime on the employee's "short" day and is notified the day prior to working such overtime, the employee will not be entitled to receive meal money unless that overtime continues for more than 2 hours past the normal finishing time for the other 4 days.

## **6.2 Breaks**

### 6.2.1 *Meal times*

- (a) Not less than 30 minutes nor more than 60 minutes shall be allowed on each working day for a midday meal.
- (b) An employee shall not work or be worked for more than 5 hours consecutively without a break for a meal.
  - (i) However where an employee works a six hour day, a twenty minute crib period (10 minutes paid rest period and 10 minutes unpaid) may be substituted for a meal break.
- (c) An employee working on production called upon to work during the employee's meal break shall be paid at the rate of double time for the time so worked and such payment shall be continued until the employee has been relieved for a meal.

### 6.2.2 *Rest period*

- (a) All employees shall be allowed a morning rest period of 10 minutes at a time to be mutually arranged in each factory.
- (b) Employees engaged on shift work shall be allowed a rest period of not less than 10 minutes, provided that such period shall not be allowed within one hour of starting or finishing work, or their meal break.

### 6.3 **Overtime**

- 6.3.1 (a) All time worked by an employee before their starting time or after their finishing time on Mondays to Fridays shall be paid for at the rate of time and a-half for the first 2 hours and double time thereafter.
- (b) In computing overtime each day's work shall stand alone.
  - (c) No apprentices under the age of 18 years shall be required to work overtime or shift work unless they so desire. No apprentice shall, except in emergency, work or be required to work overtime or shift work at times which would prevent their attendance in training consistent with the contract or training agreement.
  - (d) Employees called upon to work overtime exceeding 2 hours Mondays to Fridays, and shift workers whose normal shift finishes on a Saturday, will be allowed at least 30 minutes for a meal, and will in addition to any overtime payable be paid a meal allowance in accordance with clause 5.3.3.
  - (e) Subject to clause 6.3.1(f) an employer may require an employee to work reasonable overtime at overtime rates.
  - (f) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
    - (i) any risk to employee's health and safety;
    - (ii) the employee's personal circumstances including any family responsibilities;
    - (iii) the need of the workplace or enterprise;
    - (iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
    - (v) any other relevant matter.

### 6.3.2 *Call back*

An employee required to work overtime after leaving their employer's business premises (whether notified before or after leaving the premises) will be paid for a minimum of 3 hours' work at the appropriate rate for each time the employee is so recalled.

### 6.3.3 *Time off in lieu of overtime*

- (a) Notwithstanding the provisions of clause 6.3.1(a) an establishment and/or plant, or section or sections of a plant, or an individual, where that individual is operating on an independent basis, may agree to arrangements where overtime which has been planned may be compensated with time off in lieu of payment for overtime subject to the following:
  - (i) the employee may always elect to be paid at the relevant overtime rate for any overtime worked, rather than have time off in lieu;
  - (ii) substitute time may be banked to a maximum of 38 hours at any time;
  - (iii) it will only apply to time worked Monday to Friday;
  - (iv) overtime worked will qualify for an equal number of ordinary hours time off, e.g. 4 hours worked equals 4 hours off;
  - (v) 2 weeks' notice will be given about the working of overtime;
  - (vi) overtime worked on the basis of time off in lieu will be worked;

(vii) time off accrued when taken is to be paid at the current Award rate of pay ruling at the date of taking that time off; and

(viii) if called upon to work at any agreed time off period the following will apply:

(A) the employer and the employee may agree upon an alternative period of time to be taken off in substitution; or

(B) if there is no agreement to an alternative period of time to be taken off in substitution then the following will apply:

- employees will be paid at the appropriate overtime rate for that period of the time accrued worked; and
- the time banked will remain unchanged;

(ix) any untaken time off will be taken and paid for at a time mutually agreed or at the Christmas annual leave period or upon termination.

## **6.4 Shift work**

6.4.1 An employer may maintain, institute or reinstitute any system of shift work subject only to the provisions and limitations set out in clause 6.4.1.

### *6.4.2 Definitions*

For the purposes of clause 6.4.2:

- (a) day shift means any shift worked between the hours of 7.00 a.m. and 5.00 p.m.;
- (b) morning shift means any shift commencing on or after 4.00 a.m. but before 7.00 a.m.;
- (c) afternoon shift means any shift finishing after 5.00 p.m. and at or before midnight;
- (d) night shift means any shift finishing after midnight and at or before 8.00 a.m.; and
- (e) rostered shift means a shift for which the employee concerned has had at least 48 hours' notice.

### *6.4.3 Afternoon or night shift allowances*

- (a) Subject to clause 6.4.3(b), a full-time shift worker whilst on morning, afternoon shift will be paid an additional amount of 15% of the weekly award wage for the classification concerned.
- (b) An employee engaged on permanent night shift duties will be paid an additional amount of 30% of the weekly award wage for the classification concerned.
- (c) A full-time shift worker who works on a morning, afternoon or night shift which does not continue for at least 5 successive mornings, afternoons or nights or for at least the number of ordinary hours prescribed as a week's work will be paid an additional amount of 50% of the weekly award wage for the classification concerned.
- (d) A shorter shift of adult employees may be worked on any shift other than the day shift, by mutual agreement between an employer and employees. Payment for such work will be calculated in accordance with clause 6.4.3 on a pro rata basis related to the time actually worked as a proportion of the ordinary weekly hours.

### *6.4.4 Hours of work*

- (a) Subject to clause 4.2.2, clause 6.1 and clause 6.4.3(c) the hours of work for shift workers will be 38 hours per week or an average of 38 per week to be worked between 11.00 p.m. Sundays and 8.00 a.m. Saturdays, in accordance with the provisions of clause 6.4.2.
- (b) All time worked by shift workers between midnight on Sunday and 7.00 a.m. on Monday will be paid for at the rate of time and one-half for the first 2 hours and double time thereafter.
- (c) Where an employee begins the week's hours on Sunday night, the employee will receive double time for all work performed on Sunday.
  - (i) However, an employer and the majority of employees in an enterprise or part of an enterprise, may agree to arrange shifts so that they commence on Sunday night instead of Monday with ordinary rates to be

paid for Sunday work, provided that agreement is in accordance with clause 2.2.7.

#### 6.4.5 *Meal breaks*

The ordinary hours of work will be worked continuously except for meal breaks which at the discretion of the respondent employer may be either an unpaid meal break of not less than 30 minutes or a paid crib period of 20 minutes which will be counted as time worked. Meal breaks will be counted as time worked. Meal breaks will be given and taken no later than 5 hours after the commencement of the relevant shift.

- (a) All employees will be allowed a rest period in accordance with clause 6.2.

#### 6.4.6 *Junior workers: night shift*

Employees under the age of 18 years will not work on night shift.

#### 6.4.7 *Rosters*

- (a) Shift rosters will specify the commencing and finishing times of ordinary working hours of the respective shifts.
- (b) An employee who is required to change from one shift to another without 2 days' notice of such change of shifts will be paid the change of shift allowance in clause 5.3.4, but this will not apply during any period where power restrictions are operating.
- (c) Rosters will be displayed on a notice board easily accessible by the employees concerned.
- (d) No employee will exchange their rostered duty with another employee without the approval of their immediate supervisor.
- (e) Except for the regular change-over of shifts, no employee will be required to change from one shift to another without a break of at least 10 hours.

#### 6.4.8 *Variation by agreement*

The method of working shifts and the time of commencing and finishing shifts once having been determined may be varied by agreement between the employer and the majority of employees concerned to suit the circumstances of the establishment or in the absence of agreement by 7 days' notice of alteration given by the employer to the employees.

#### 6.4.9 *Sundays and holidays*

- (a) Where shifts commence between 9.00 p.m. and midnight on a Sunday or holiday, the time so worked before midnight will not entitle an employee to the Sunday or holiday rate provided that the time worked by an employee on a shift commencing before midnight on the day preceding a holiday and extending into the holiday will be regarded as time worked on such holiday.
- (b) Where shifts fall partly on a holiday, that shift, the major portion of which falls on the holiday, will be regarded as the holiday shift.
- (c) Where a shift roster normally involves a night shift which finishes on Saturday morning, for the week in which Easter occurs a shift may be substituted for the Saturday morning shift to be worked as a normal shift commencing on the previous Sunday night and finishing on Monday morning at the ordinary shift rate.

#### 6.4.10 *Daylight saving*

- (a) Notwithstanding anything contained elsewhere in this Award, in any area where by reason of the legislation of a State, summer time is prescribed as being in advance of the standard time of that State, the length of any shift:
  - (i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; and
  - (ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period

will be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

- (b) In clause 6.4.10 the expressions "standard time" and "summer time" will bear the same meaning as are

prescribed by the relevant State legislation.

## **6.5 Weekend work**

- 6.5.1 (a) All time worked by an employee on a Saturday shall be paid at the rate of time and a-half for the first 2 hours and double time thereafter:

Provided that time worked on a Saturday in alteration or removal of plant or machinery necessary for resumption of work, the next working day, or for the purposes of stock-taking, shall be paid for at the rate of time and a-half.

- (b) An employee called upon to work on a Saturday shall be paid for a minimum of 4 hours' work at the appropriate overtime rates unless the employee elects to work less than 4 hours on each Saturday.
- (c) Provided further, that a meal allowance as provided in clause 5.3.3 shall be payable if the work exceeds beyond the normal time for ceasing work for the midday meal.
- (d) All time worked on a Sunday shall be paid for at the rate of treble time, payment being made for a full day, namely eight hours, whether such full day is worked or not:

Provided that time worked on a Sunday in alteration or removal of plant or machinery necessary for resumption of work the next working day, or for the purpose of stock-taking shall be paid for at the rate of double time:

Provided further, that a meal allowance as provided in clause 5.3.3 shall be payable if the work exceeds beyond the normal time for ceasing work for the midday meal.

- (e) Meal breaks on a Sunday shall be counted as time worked.

## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **7.1 Annual leave**

#### *7.1.1 Period of leave*

- (a) A full-time or part-time employee is entitled to a period of 28 consecutive days leave (i.e. 4 weeks) after 12 months' continuous service (less the period of annual leave) with an employer. Casual employees are not entitled to annual leave.
- (b) The annual leave will accrue at the rate of 2.923 hours for each 38 ordinary hours worked.

#### *7.1.2 Payment for period of leave*

Subject to annual close down, employees before going on leave are to be paid the wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. This amount will be calculated as follows:

- (a) Time workers:
- (i) the wages paid must be worked out on the basis of what the employee would have been paid under the Award for working ordinary hours during the period of leave during the relevant period including any over award payment;
- (ii) the employee is not entitled to payments in respect of overtime, shift work or penalty rates.
- (b) Payment by results:
- (i) In the case of employees employed under any system of payment by results, the rate will be at the time workers rate:

Provided that they will be entitled to receive an additional payment based on the average weekly incentive payment earned in excess of the appropriate award wage for the classification concerned. The average will be calculated on the previous 12 months' service for employees who have completed 12 months' continuous service and in cases where employees have completed less than 12 months' continuous service the average for the time so worked.

- (ii) The employee is not entitled to payments in respect of overtime, shift work or penalty rates.
- (c) Over-award payments on annual leave:

- (i) an employee who is not working under an incentive scheme based on production, and who is receiving a weekly over-award payment will be entitled to receive the whole of such weekly over-award payment for each week of annual leave to which the employee is entitled;
- (ii) all amounts paid in respect of overtime, shift work or penalty rates will be excluded;
- (iii) the over-award payment will not apply where the employee receives *pro rata* payment in lieu of annual leave of termination of employment with less than 12 months' service, except where:
  - the employee has more than 6 months' service with an employer and is terminated for reasons other than for misconduct;
  - an employee terminates during the year on account of personal illness, substantiated by a medical certificate;
  - an employee terminates on the day that the factory closes down for annual leave; and
- (iv) where an employee has accrued a full entitlement to annual leave after the qualifying 12 month period and the employee's employment ceases for any reason before the whole or any part of such leave entitlement has been taken, the weekly over-award payment referred to in clause 7.1.2(c)(i) will apply in respect to that full entitlement.

#### 7.1.3 *Loading on annual leave*

- (a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed by clause 5.2.
- (b) An employee employed on day work or shift work will receive the loading which will be 17 1/2%.
- (c) The loading prescribed by clause 7.1.3 does not apply to proportionate leave on termination.

#### 7.1.4 *Calculation of continuous service*

- (a) Except for the following, any absences from work are not to be taken into account and will not count as time worked in calculating the leave entitlement:
  - (i) any interruption or termination of the employment by the employer which has been made with the intention of avoiding obligations under clause 7.1;
  - (ii) any absence from work on account of personal sickness or accident or on account of leave granted by the employer or absence due to long service leave; or
  - (iii) any absence with reasonable cause, proof of which will be upon the employee.
- (b) Any absence with reasonable cause (proof of which will be upon the employee) which does not count as time worked in calculating the leave entitlement does not break continuity of service for the purpose of this Award.

#### 7.1.5 *Public holidays falling during annual leave*

- (a) If any public holiday prescribed by clause 7.6 falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there must be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.
- (b) Where a holiday or holidays fall in a period of annual leave and the employee without reasonable excuse is absent from their employment on the working day prior to the commencement of their annual leave, or fails to resume work at the ordinary starting time on the working day immediately following the last day of the period of the employee's annual leave, the employee will not be entitled to payment for the public holidays.

#### 7.1.6 *Annual leave to be taken in one or more continuous periods*

- (a) Annual leave will be given and taken in one or 2 continuous periods.
- (b) If the employer and an employee so agree, the annual leave entitlement may be taken in more than 2 periods.

#### 7.1.7 *Leave to be taken*

The annual leave provided for by clause 7.1 must be taken and except as provided by clauses 7.1.10 and 7.1.11, payment will not be made or accepted in lieu of annual leave.



### 7.1.8 *Time of taking leave*

Annual leave will be given at a time fixed by the employer within a period not exceeding 10 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

### 7.1.9 *Leave allowed before due date*

- (a) An employer may allow an employee to take annual leave either wholly or partly in advance before the leave becomes due. In such case a further period of annual leave will not commence to accrue until after the expiration of the 12 months in respect of which the annual leave or part of it had been taken before it accrued.
- (b) Where annual leave or part of it has been granted before the leave is due, and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, and the amount paid by the employer to the employee for the annual leave or part so taken in advance exceeds the amount which the employer is required to pay to the employee under clause 7.1.10, the employer will not be liable to make any payment to the employee under clause 7.1.10 and is entitled to deduct the amount of excess from any remuneration payable to the employee upon the termination of employment.

### 7.1.10 *Proportionate leave on termination*

An employee other than a casual who after one month's continuous service in any qualifying 12 monthly period with an employer lawfully leaves the employment of the employer or is terminated by the employer will be paid 2.923 hours for each 38 ordinary hours worked at the appropriate rate of wage calculated in accordance with 7.1.2.

### 7.1.11 *Annual close down*

Where an employer closes down the enterprise, or part of it, for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part of it, the following will apply:

- (a) the employer may, by giving not less than one month's notice of the intention to do so, stand off for the duration of the close-down all employees in the enterprise or part of it concerned and allow to those who are not then qualified for a full entitlement to annual leave for 12 months' continuous service paid leave on a proportionate basis at the appropriate rate of wage as prescribed by clauses 5.2 and 5.3 for 2.923 hours for each 38 ordinary hours worked;
- (b) an employee who has then qualified for a full entitlement to annual leave for 12 months' continuous service and has also completed a further week or more of continuous service will be allowed leave, and will subject to clause 7.1.5, also be paid for 2.923 hours in respect of each 38 ordinary hours worked service since the close of the employee's last 12 month qualifying period;
- (c) the next 12 monthly qualifying period for each employee affected by such close down will commence from the day on which the enterprise or part of it concerned is re-opened for work. All time during which an employee is stood off without pay for the purposes of clause 7.1.11 is deemed to be time of service in the next 12 monthly qualifying period;
- (d) an employer may close down the enterprise or part of it for one or 2 separate periods for the purpose of granting annual leave; and
- (e) an employer may close down the enterprise or part of it in 3 separate periods:

Provided that:

- (i) at least a 75% majority of the employees in the enterprise or part of it concerned agree with the employer to do so and the date upon which the third closure will be made;
- (ii) that the employees concerned be given at least one month's notice of the proposed closure; and
- (iii) that the longest of the 3 periods of leave will be at least 12 working days exclusive of public holidays prescribed by this Award.

## 7.2 **Sick leave**

### 7.2.1 *Definition*

Sick leave is leave to which an employee other than a casual is entitled without loss of pay because of their personal illness or injury.

### 7.2.2 *Entitlement*

- (a) An employee will be entitled to paid leave of absence of not more than 60.8 hours of working time during their first year of service. The amount of personal leave an employee may take as sick leave depends on how long the employee has worked for the employer and accrues as follows:

Length of time worked for the employer (hours)	Rate of accrual of paid sick leave
Less than 1 month	0
At the end of the first month	7.6 hours
At the end of the second month	an additional 15.2 hours
At the end of the third month	an additional 15.2 hours
Each year thereafter	64 hours

- (b) Accumulated personal leave may be used as sick leave if the current sick leave entitlement is exhausted.
- (c) Service before the date of the commencement of clause 7.2 will be counted as service for the purpose of qualifying thereunder.

#### 7.2.3 *Employee must give notice*

- (a) Before taking sick leave, an employee will, within 48 hours, of the commencement of such absence, inform the employer of the inability to attend for duty.
- (b) As far as practicable the notice of absence must include:
- (i) the nature of the injury or illness (if known); and
  - (ii) how long the employee expects to be away from work.

#### 7.2.4 *Evidence supporting claim*

The employee will prove to the satisfaction of the employer that the employee was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed. For such purpose the employer may require the employee to make a statutory declaration or present other reasonable evidence which is satisfactory to the employer, justifying the absence.

#### 7.2.5 *The effect of workers' compensation*

If an employee is receiving workers' compensation payments, the employee is not entitled to sick leave.

### **7.3 Bereavement leave**

#### 7.3.1 *Paid leave entitlement*

An employee other than a casual is entitled to use up to 16 hours personal leave as bereavement leave on any occasion on which a member of the employee's immediate family or household dies.

#### 7.3.2 *Unpaid leave entitlement*

Where an employee has exhausted all personal leave entitlements, including accumulated leave entitlements, the employee is entitled to take unpaid bereavement leave. The employer and the employee should agree on the length of the unpaid leave. In the absence of agreement, the employee is entitled to take up to 16 hours unpaid leave.

#### 7.3.3 *Evidence supporting claim*

The employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household.

### **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. Clause 7.5 applies to full-time and regular part-time employees, but does not apply to casual employees.

#### 7.5.1 It is to be noted that:

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

7.5.3 *Amount of paid personal leave*

- (a) Paid personal leave is available to an employee when the employee is absent due to:
  - (i) personal illness or injury (sick leave); or
  - (ii) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or
  - (iii) because of bereavement on the death of an immediate family or household member (bereavement leave).
- (b) The amount of personal leave to which an employee is entitled depends on how long the employee has worked for the employer and accrues as follows:

Length of time worked for the employer	Personal leave
less than 1 month	16 hours
at the end of the first month	23.6 hours
at the end of the second month	an additional 31.2 hours
at the end of the third month	an additional 31.2 hours
Each year thereafter	64

- (c) In any year unused personal leave accrues at the rate of the lesser of:
  - (i) 64 hours less the total amount of sick leave and carer's leave taken during the year; or
  - (ii) the balance of the year's unused personal leave.
- (d) Personal leave may accumulate to a maximum of 640 hours.

7.5.4 *Immediate family or household*

- (a) The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:
  - (i) a member of the employee's immediate family; or
  - (ii) a member of the employee's household.
- (b) The term "immediate family" includes:
  - (i) spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse) of the employee. A *de facto* spouse means a person of the opposite sex to the employee who lives with the employee as husband or wife on a *bona fide* domestic basis; and
  - (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.5.5 *Carers leave*

- (a) Paid leave entitlement:

An employee other than a casual is entitled to use up to 40 hours personal leave each year to care for members of the employee's immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carers leave where another person has taken leave to care for the same person.

- (b) Notice required:

Before taking carers leave, an employee must give at least 2 hours' notice before the employee's next rostered starting time, unless the employee has a good reason for not doing so.

The notice must include:

- (i) the name of the person requiring care and support and his/her relationship to the employee;
- (ii) the reasons for taking such leave; and
- (iii) the estimated length of absence.

If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity.

(c) Evidence supporting claim:

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

(d) Unpaid Leave:

An employee may take unpaid carer's leave by agreement with the employer.

## **7.6 Parental leave**

The provisions of clause 7.6 apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.

An eligible casual employee employed by their current employer, on or prior to 1 January 1998, shall be entitled to parental leave under the term of the Award as of 4 July 2001.

An eligible casual employee employed on or after 4 July 2001 shall be entitled to parental leave under the term of the Award as of 1 July 2002.

### *7.6.1 Definitions*

- (a) For the purpose of clause 7.6 "child" means a child of the employee under the age of one year except for adoption of a child where child means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.
- (b) Subject to clause 7.6.1(c), spouse includes a de facto or former spouse.
- (c) In relation to clause 7.6.5, spouse includes a de facto spouse but does not include a former spouse.
- (d) For the purpose of clause 7.6, an eligible casual employee means a casual employee:
  - (i) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
  - (ii) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- (e) For the purposes of clause 7.6 "continuous service" is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

### *7.6.2 Basic entitlement*

- (a) After 12 months' continuous service, parents are entitled to a combined total of 52 weeks' unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (b) Subject to clause 7.6.3(f), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
  - (i) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

### *7.6.3 Maternity leave*

- (a) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- (i) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant), at least 10 weeks;
  - (ii) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken, at least 4 weeks.
- (b) When the employee gives notice under clause 7.6.3(a)(i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (c) An employee will not be in breach of clause 7.6.3 if failure to give the stipulate notice is occasioned by confinement occurring earlier than the presumed date.
- (d) Subject to clause 7.6.2(a) and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within 6 weeks immediately prior to the expected date of the birth.
- (e) Where an employee continues to work within the 6 week period immediately prior to the expected date of birth, or where the employee elects to return to work within 6 weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (f) Special maternity leave:
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
  - (ii) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
  - (iii) Where an employee not then on maternity leave suffers an illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- (g) Where leave is granted under clause 7.6.3(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed 4 weeks from the recommencement date desired by the employee.

#### 7.6.4 *Paternity leave*

- (a) An employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave, with:
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and
  - (ii) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
  - (iii) a statutory declaration stating:
    - he will take that period of paternity leave to become the primary care-giver of a child;
    - particulars of any period of maternity leave sought or taken by his spouse; and
    - that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- (b) The employee will not be in breach of clause 7.6.4(a) if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

#### 7.6.5 *Adoption leave*

- (a) The employee will notify the employer at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a

child takes place earlier.

- (b) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - (i) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - (iii) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (c) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding 4 weeks from receipt of notification for the employee's return to work.
- (e) An employee will not be in breach of clause 7.6.5 as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- (f) An employee seeking to adopt a child is entitled to take unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employer is entitled to take up to 2 days' unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such paid leave instead.

#### *7.6.6 Variation of period of parental leave*

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least 4 weeks prior to the commencement of the changed arrangements.

#### *7.6.7 Parental leave and other entitlements*

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave which they have accrued, subject to the total amount of leave not exceeding 52 weeks.

#### *7.6.8 Transfer to a safe job*

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

#### *7.6.9 Returning to work after a period of parental leave*

- (a) An employee will notify of their intention to return to work after a period of parental leave at least 4 weeks prior to the expiration of the leave.
- (b) Subject to clause 7.6.9(c), an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 7.6.8, the employee will be entitled to return to the position they held immediately before such transfer. Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.
- (c) An eligible casual employee who is employed by a labour hire company who performs work for a client of the labour hire company will be entitled to the position which they held immediately before proceeding on parental leave. Where such a position is no longer available, but there are other positions available that the employee is qualified for and is capable of performing, the employer shall make all reasonable attempts to return the employee to a position comparable in status and pay to that of the employee's former position.

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

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

(ii) The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with clause 7.6.9.

#### 7.6.10 *Replacement employees*

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

### **7.7 Public holidays**

#### 7.7.1 *Entitlement*

(a) Permanent employees in Queensland will be entitled to the following holidays without loss of pay:

- New Year's Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Monday
- Anzac Day
- Sovereign's Birthday
- Labour Day
- Christmas Day
- Boxing Day
- Show Day

or such other day as is generally observed in the locality as a substitute for any of the days respectively.

- (b) By agreement between any employer and the majority of employees other days may be substituted for a said day or days or any of them as to that employer's undertaking.
- (c) Employees will be entitled to an additional public holiday without loss of pay, to be observed as a holiday for all purposes of the Award.
- (d) No employee will be entitled to payment more than once for the same holiday whilst working in the industry and will be in breach of the Award in accepting a double payment without informing the employer in relation thereto.
- (e) Where an employee is absent from employment on the working day before or after a holiday without reasonable excuse or without the employer's consent, the employee will not be entitled to payment for such holiday.
- (f) Where an employee is rostered for duty on 4 days of the week rather than 5, Monday to Friday inclusive, or is rostered for less than 8 hours on any one of those days and for longer than 8 hours on the other days to make up 38 hours per week, then such an employee will not be denied the full benefit of a public holiday falling on any day Monday to Friday inclusive. In a case where, say, a holiday falls on Monday and that day is not normally a full working day because of excess hours worked on one or other week days the employee will be paid additional pay so as to be equal with other employees in the amount of time actually worked in that particular week.
- (g) An employee, other than a casual employee, who works on Christmas Day, New Year's Day, or both, will be paid at the appropriate holiday rate as provided in the Award; and if such an employee also works on the substitute day or days, the employee will be paid at the normal award rate for work on this day or these days.
- (h) In addition to the benefit provided by clause 7.7.1(f), an employee who works on Christmas Day or New Year's Day will either be allowed a substitute holiday at a time convenient to the employer or receive an extra day's wages at ordinary rates.

#### 7.7.2 *Penalty rates for public holidays*

- (a) Any weekly employee who works on any holiday provided for in clause 7.7.1(a) will for all time worked on that day be paid at the rate of double time and a-half.
- (b) Any employee working under any system of payment by results who works on any holiday provided for in clause 7.7 will for all time worked on that day be paid their ordinary earnings under such system of payment by results and in addition an amount calculated on the basis of time and a-half of the ordinary rate for the class of work being performed.
- (c) The minimum payment for work performed on a public holiday will be as for 4 hours worked.

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

### **8.1 Court attendance**

#### *8.1.1 Jury Service*

- (a) An employee other than a casual employee required to attend for jury service during their ordinary working hours will 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 amount of the ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service.
- (b) An employee will notify the employer as soon as possible for the date upon which they are required to attend for jury service.
- (c) Further, the employee will give the employer proof of attendance, the duration of such attendance and the amount paid in respect of such jury service.

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

### **9.1 Commitment to training**

- (a) The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this Award, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled and flexible workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the use of skills acquired.
- (b) Relationship To National Training Wage Award 1994:
  - (i) a party to this Award will comply with the terms of the National Training Wage Award 1994 [Print N4816 [N0277CR] as amended, as though bound by clause 3 of that Award;
  - (ii) the appropriate training rate of the State Training Wage Award will be Skill Level B.

### **9.2 Trade Union training leave**

- (a) Subject to clause 9.2(a), a Union delegate or elected employee work place representative shall, upon application in writing, 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 efficiency with the footwear industry.
- (b) Employers may approve leave in accordance with clause 9.2 subject to the following limitations:
  - (i) where the employer employs up to and including 49 employees, 5 Union delegates or elected work place representatives may be granted 5 days' leave per annum which is available within any 12 month period.
  - (ii) where the employer employs between 50 and 150 employees inclusive, 10 Union delegates or elected work place representatives may be granted 5 days' leave per annum which is available within any 12 month period.
  - (iii) where the employer employs 150 or more employees, 15 Union delegates or elected work place representatives may be granted 5 days' leave per annum which is available within any 12 month period:

Provided the numbers contained in clause 9.2(b) may be varied by mutual agreement between the Union and an employer.



- (c) The granting of such leave shall be subject to the employee or the Union giving not less than one calendar month's notice of the intention to attend such course or such lesser period as may be agreed between the employer, Union and employee concerned:

Provided that the taking of such leave shall be arranged so as to minimise any adverse effect on the employer's operations.

- (d) Each employee on leave approved in accordance with clause 9.2 shall be paid all ordinary time earnings which normally become due and payable during the period of the leave.
- (e) All expenses (such as travel, accommodation and meals) associated with or incurred by the employee attending a training course during leave approved pursuant to clause 9.2 shall be the responsibility of the employee or the Union unless otherwise agreed between the employer, the Union and the employee concerned.
- (f) Should an employee granted leave pursuant to the clause fail to attend the nominated course, the employer shall be notified by the Union as soon as practicable, and no payment is to be made by the employer in respect of leave for the employee concerned pursuant to clause 9.2.
- (g) In the event that a scheduled rostered day off resulting from a work arrangement established by local agreement falls within a period of leave approved pursuant to clause 9.2, no alternative day off shall be substituted in lieu.
- (h) Employees granted leave pursuant to clause 9.2 should inform their employer after the completion of the course of the nature of the course and their observations on it.

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

### **10.1 Accident pay**

#### *10.1.1 Definitions*

For the purposes of clause 10.1 the following definitions will apply:

- (a) "Accident make-up pay" means a weekly payment of an amount equal to the difference between the weekly amount of compensation paid to an employee pursuant to the relevant legislation and the award rate to which such employee is entitled, or, where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the award rate for that period.
- (b) "Relevant legislation" means the Workers' Compensation Act in the State such employee is employed, as varied from time to time.
- (c) "Injury" means any injury occurring at the place of employment, but otherwise will be given the same meaning and application as applying under the respective legislation. No injury occurring at the place of employment will result in the application of accident make-up pay unless an entitlement exists under the relevant legislation.
- (d) "Week(s)" means any week in which accident make up pay is paid even if a payment is only for part of a week.

#### *10.1.2 Entitlements*

- (a) Other than in the State of Queensland, an employer will pay and an employee will be entitled to receive accident make-up pay in accordance with clause 10.1.
- (b) Accident pay will be paid for a maximum period of 26 weeks in respect of any one injury or until the incapacity ceases whichever event will first occur.
- (c) An employee will only be entitled to weekly payments of accident make up pay whilst an employee remains employed by an employer. An entitlement will continue subject to clause 10.1 where:
  - (i) the employee is employed by another employer because suitable employment could not be provided by an employer; or
  - (ii) the employee has been terminated on the decision of an employer and the termination is not due to serious and/or willful misconduct; or
  - (iii) the employee has been terminated and the termination does not arise from the liquidation/bankruptcy of

the employer. Where a termination arises from a declaration of liquidation of the company the employee's entitlement will be determined by the appropriate State legislation.

- (iv) If an employee on partial incapacity cannot obtain suitable employment from their employer but such alternative employment is available with another employer then the relevant amount of accident pay will still be payable.
- (v) In order to qualify for the continuance of accident pay on termination an employee will if required to provide evidence to their employer of the continuing payment of weekly workers compensation payments.

#### 10.1.3 *Application of accident make-up pay*

- (a) Accident make-up pay is not payable in respect of the first 5 normal working days of incapacity;
- (b) Accident make-up pay is not payable in respect of any incapacity occurring during the first 4 weeks of employment unless such incapacity continues beyond the first 4 weeks and then, accident pay will apply only to the period of incapacity after the first 4 weeks;
- (c) Accident make-up pay is not payable where the injury for which the employee is receiving weekly compensation payments is a pre-existing injury which work has contributed to by way of recurrence, aggravation, acceleration or deterioration and the employee deliberately or knowingly failed to disclose the injury on engagement following a request to do so by the employer in circumstances where the employee knew or ought to have known about the nature of the injury;
- (d) Accident make-up pay is not payable where in accordance with the relevant Act a medical practitioner provides a certificate to an employer of an employee's fitness for work or specifies work for which an employee has a capacity and such work is made available by the employer but not commenced by the employee; and
- (e) An employee will not be entitled to any payment under clause 10.1 in respect of any period of paid annual leave or long service leave or for any paid holiday.

#### 10.1.4 *Calculating the amount of accident make up pay*

- (a) The amount of weekly accident make-up pay entitlement will comprise a weekly payment of an amount representing the difference between:
  - (i) on the one hand, the total amount of compensation paid to the employee during incapacity pursuant to the respective Act for the week in question together with the average weekly amount the employee is earning or is able to earn in some suitable employment or business; and
  - (ii) on the other hand, the total weekly award rate and weekly overaward payment if any, being paid to such employee at the date of the injury together with any variation in award rates which would have been applicable to the classification of such employee for the week in question if the employee had been performing their normal duties.
- (b) In making such calculation any payment for overtime earnings, shift premiums attendance bonus, incentive earnings under any system of payment by results, fares and travelling time allowances, penalty rates and any other ancillary payments payable by the employer will not be taken into account.
- (c) Where an employee receives accident pay and such pay is payable for incapacity for part of a week the amount will be a direct pro rata.

#### 10.1.5 *Changes to the compensation*

Any changes in the rate of compensation due to the operation of the respective legislation will not increase the amount of accident make-up pay above the amount that would have been payable had the rate of compensation remained unchanged.

#### 10.1.6 *Furnishing of evidence*

An employee who has suffered any injury for which the employee is receiving payment or payments for incapacity in accordance with the provisions of the respective Act will furnish evidence to the employer from time to time as required by the employer of such payment and compliance with this obligation will be a condition precedent to any entitlement under clause 10.1.

#### 10.1.7 *Medical examination*

- (a) Nothing in clause 10.1 will in any way be taken as restricting or removing the employer's rights under the respective Act to require the employee to submit themselves to examination by a legally qualified medical

practitioner, provided and paid by the employer or in the State of Queensland paid for by the Workers Compensation Act or authorised self-insurer as defined.

- (b) If an employee refuses to submit themselves to such examination or in any way obstructs the same, their right to receive or continue to receive accident pay will be suspended in like manner as their right to compensation is suspended pursuant to the respective Act until such examination has taken place.
- (c) Where in accordance with the respective Act a medical referee gives a certificate as to the condition of the employee and their fitness for work or specifies work for which the employee is fit and such work is made available by the employer and refused by the employee or the employee fails to commence the work, accident pay will cease from the date of such refusal or failure to commence the work.
- (d) Where an employee refuses to conform to the requirements in relation to medical examinations under the relevant Act, accident pay will cease from the date of such refusal or failure to commence the work.
- (e) Where a medical referee in accordance with the relevant Act certifies that an employee is fit for work or specifies work that the employee can perform, and the employer makes it available and the employee refuses to do the work or fails to resume duty, accident pay will cease from the date of such refusal or failure to commence the work.

#### 10.1.8 *Transfer to new employer*

Any employer taking over a business will be responsible for the payment of accident pay to employees receiving same.

### **PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS**

#### **Preamble**

Clauses 11.1 and 11.2 replicated 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 established 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 s. 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
  - (i) is ineligible to become a member of the Union; or

- (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
  - (iii) has made a written request to the employer that they do not want their record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

#### 11.1.4 *Discussions with employees*

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

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

#### 11.1.5 *Conduct*

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

### **11.2 Time and wages record**

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

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

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer;
- (f) if a casual employee's entitlement to long service leave is worked out under s. 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement related, 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 s. 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 give effect to s. 110 of the Act in its entirety. Consistent with s. 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages employees to join 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 Posting of Award**

This Award must be exhibited by each employer on their premises in a place accessible to all employees.

Dated 7 February 2005.

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

Operative Date: 7 February 2005  
Repeal and New Award - Footwear Manufacturing Award - State 2005  
Released: 21 March 2005