

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**HOTELS, MOTELS, RESORTS AND ACCOMMODATION AWARD - STATE (EXCLUDING SOUTH-EAST QUEENSLAND) 2005**

Following the Declaration of the General Ruling in the 2011 State Wage Case (matter numbers B/2011/17 and B/2011/19), the Hotels, Motels, Resorts and Accommodation Award - State (Excluding South-East Queensland) 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 Hotels, Motels, Resorts and Accommodation Award - State (Excluding South-East Queensland) 2005 as at 1 September 2011.

Dated 1 December 2011.

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

**HOTELS, MOTELS, RESORTS AND ACCOMMODATION AWARD - STATE (EXCLUDING SOUTH-EAST QUEENSLAND) 2005**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Hotels, Motels, Resorts and Accommodation Award - State (Excluding South-East Queensland) 2005.

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### 1.3 Date of operation

This Award takes effect from 1 July 2005.

#### **1.4 Award coverage**

1.4.1 In respect of the performance of any work in any capacity in or in connection with accommodation industry establishments (including restaurants, retail outlets and other similar establishments operating in association therewith) for which classifications and rates of wages are prescribed herein, this Award applies:

- (a) To all employers who operate accommodation industry establishments (as defined) and who are ordinary members (as defined) of the Queensland Motel Employers Association, Industrial Organization of Employers or any successor thereto;
- (b) To all employees of such employers and to all members of The Australian Workers' Union of Employees, Queensland for whom classifications and rates of wages are prescribed herein.

1.4.2 For the purposes of clause 1.4.1:

- (a) "Accommodation Industry Establishments" means and includes any of the following types of commercial accommodation establishments, whether licensed or unlicensed:

Resorts, hotels, motels, motor lodges, motor inns, apartment hotel/motels, motor courts, time share apartments, holiday farm ranch, backpackers, bed and breakfast, caravan parks, and any other type of accommodation which is provided for paying guests on a nightly, weekly or other basis, whether such establishments are owned on an individual, strata-title or time-share basis, and including any restaurant, retail shop/s, and other similar outlets conducted by or on behalf of the employer contained therein.

- (b) "Ordinary Member" means all corporations, partnerships, firms or Associations who or which operate a hotel, motel, resort or other accommodation establishments (as defined) and who have been admitted to membership of the Association and whose names appear in the Association's register of members.

1.4.3 For the purposes of this Award, the Divisions and Districts shall be as follows:

This Award shall have application throughout the State of Queensland, including all islands off the coast, excepting that portion of the State of Queensland within the following boundaries:

Commencing at Point Danger and bounded then by the southern boundary of the State westerly to 150 degrees of east longitude; then by that meridian of longitude bearing true north to 25 degrees of south latitude: then by that parallel of latitude due west to 147 degrees of east longitude: then by that meridian of longitude due north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude due east to the sea coast; then by the sea coast southerly to the point of commencement.

1.4.4 With the exception of clauses 5.7, 7.1, 7.2 and 7.4 the provisions of this Award do not apply to employees Grades 1 to 6 who are in receipt of a salary calculated at not less than 25% in addition to the wage applicable to the employee's classification.

#### **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 Australian Workers' Union of Employees, Queensland.

#### **1.6 Area of operation**

1.6.1 *Divisions*

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

Northern Division - That portion of the State north of a line commencing at the junction of the 21st parallel of south latitude with the sea coast; then by that parallel of latitude due west to the 147 degree of east longitude; then by that degree of east longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State, including all islands north of the 21st parallel of south latitude which are within the State of Queensland.

Mackay Division - That portion of the State within the following boundaries: Commencing at the junction of the sea coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude:

then by that parallel of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea coast; then by the sea coast northerly to the point of commencement; and including all islands situated between the 21st and 22nd parallels of south latitude and within the State of Queensland.

Southern Division - That portion of the State not included in the Northern or Mackay Divisions and excluding that area within the following boundaries:

Commencing at Point Danger, and bounded then by the southern boundary of the State westerly to 150 degrees of east longitude; then by that meridian of longitude bearing true north to 25 degrees of south latitude: then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to the sea coast; and then by the sea coast southerly to the point of commencement.

#### **1.6.2 Districts**

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

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

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

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

Western District - The remainder of the Southern Division.

### **1.7 Parties bound**

This Award is legally binding on the employer(s) and employees as prescribed by clause 1.4, the Union and its members.

### **1.8 Savings**

No employee shall suffer a reduction in wages or conditions of employment as a result of the introduction of this Award.

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

2.1.1 As part of the structural efficiency exercise and as an ongoing process, discussions concerning improvements in productivity and efficiency should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction, and positive assistance in the restructuring process and to encourage consultative mechanisms across the workplace to all employees in an enterprise and consideration of a single bargaining unit in all multi-union or multi-award workplaces.

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

2.1.3 Any proposed genuine agreement reached between an employer and employee(s) in any enterprise is contingent upon:

- (a) a majority of employees affected genuinely agreeing to the changes;
- (b) the agreement being consistent with the current State Wage Case principles;
- (c) the relevant union or unions (of employees or employers) being invited to participate in any discussions which involve alterations to Award conditions, (and may be a party to any resultant agreement);
- (d) changes sought in such agreements not affecting Award provisions reflecting currently established standards of the Commission;

- (e) parties to such agreements acknowledging that the Commission does not intend that any employee should lose any existing entitlement to earnings, award or overaward, for working ordinary hours of work as a result of any award changes made as part of the implementation of the Structural Efficiency Principle.

2.1.4 The relevant industrial organisations (of employees or employers) shall not unreasonably withhold consent to an agreement reached between the parties.

2.1.5 As the enterprise agreement purports to alter Award conditions:

- (a) It is to be the subject of an application to the Commission for approval and is to have no force or effect until approval is given;
- (b) The relevant industrial organisations of employees (and where appropriate of employers) are to be advised of such an application, its contents and the date of hearing.

2.1.6 Upon approval being given by the Commission the agreement shall be inserted as a certified agreement (as a schedule or otherwise) and take precedence over any provision of relevant and named Award to the extent of any inconsistency therewith:

- (a) thereafter the agreement will have the effect of a certified agreement and is to be posted and displayed as required;
- (b) if the agreement is not approved it shall have no force or effect but may be remitted to the parties for further consideration.

2.1.7 Upon exhaustion of grievance procedure processes any disputed areas are subject to conciliation, mediation or arbitration.

## **2.2 Local agreements**

2.2.1 As part of the structural efficiency exercise and as an on-going process and subject to clause 3.1, the parties agree that discussion should take place, at a local level to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction, and to suit the needs of each enterprise.

2.2.2 By agreement between the employer and employees, and in consultation with the signatories to this Award, local arrangements can be reached involving and not limited to the following matters:

- (a) term of engagement;
- (b) casual/ part-time employees;
- (c) hours;
- (d) meal breaks;
- (e) wage (classification structure over award);
- (f) payment of wages;
- (g) arrangement of overtime;
- (h) penalty rates;
- (i) weekend work;
- (j) annualised wages;
- (k) use of trainees;
- (l) multi-hiring.

2.2.3 The above represents a process for the parties to confer at the enterprise level. The agenda is not limited in the area as where discussions can occur to improve work place and enterprise flexibility and efficiency.

The introduction of local arrangements shall be based on the following conditions:

- (a) such arrangements shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the Award with no employee incurring an involuntary overall loss of income as a result of the conditions provided for in such arrangements;
- (b) the of employees must genuinely agree to the implementation of such arrangements;
- (c) the parties to this Award shall not unreasonably oppose any agreement;
- (d) agreements shall be recorded and be made available to any employee.

### **2.3 Enterprise aggregate wage agreements**

Pursuant to agreement between the parties to this Award, the employer, employees and the local Union representative, the wages and conditions provided for herein may be packaged to provide an aggregate or loaded weekly wage to apply in lieu of the prescription under the Award, and may apply to a single enterprise or a group of enterprises.

The agreements will be governed by the following requirements:

- (a) the ordinary working hours may be an average of 152 hours over a 4 week cycle, or over 52 weeks per year;
- (b) the method of calculation shall be determined by the employee's projected rostered hours of work;
- (c) the rates for penalty rates, week-end work and Public Holidays may be encompassed where appropriate in the aggregate rate;
- (d) applicable allowances may be incorporated into the agreed rate;
- (e) the agreement on aggregation may apply to full-time, part-time and casuals, and be averaged out on a weekly basis;
- (f) the agreement shall not be utilised as a means to reduce the existing conditions; and
- (g) the local agreement shall be recorded in writing and registered as a certified agreement.

### **2.4 Multi-hiring**

Full-time and part-time employees may be separately engaged as casual employees for duties in a separate section of the establishment from that in which the employee engages in their full-time or part-time employment. Such employees shall be paid the appropriate rate of pay for a casual employee engaged in the section of the establishment.

For the purposes of clause 2.4 a "section of the establishment" means a work location other than the employee's usual work location, or alternatively, means a discrete set of duties other than the employee's usual duties, provided such duties are not wholly or substantially performed in the employee's usual work location, and shall not apply to work where overtime would normally be performed.

### **2.5 Multi-skilling**

In recognition of the operational and efficiency requirements of respondent employers, and to create more varied better paid and interesting work, it shall be a condition of employment, subject to appropriate training and competency, that each employee shall be available to work as required on any work within the employee's skill, competence and training consistent with the classification structure of this Award (subject to prevailing statutory requirements) and that each employee shall acquire the skills and learn any other job as directed and shall provide instruction and or training as appropriate to another employee as required.

Any directions issued by an employer pursuant to the provisions of clause 2.5 shall be consistent with the employers' responsibilities to provide a safe and healthy working environment.

### **2.6 Two or more classes of work**

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

Clause 2.6 shall not apply where the employee concerned is performing duties of a higher level as part of an accredited course which has an on-the-job training component.

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

### **3.1 Consultative mechanisms and procedures in the workplace**

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

### **3.2 Grievance and dispute settling procedure**

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

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

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

### **4.1 Rosters**

A roster showing ordinary starting and ceasing times for ordinary hours of full-time or part-time employees together with the surname and initials of each employee shall be prepared by the employer and shall be posted in a conspicuous place or places accessible to the employees concerned:

Provided that the roster reflects an appropriate and consistent roster cycle within the guidelines of clause 6.1, the roster shall be alterable by mutual consent at any time or by amendment of the roster on 2 days' notice. Where practicable, 2 weeks' notice of rostered days off shall be given:

Provided further that the days off may be changed by mutual consent or if rendered necessary by the absence of other employees from duty, shortage of staff, or other cause over which the employer has no control and in which cases 12 hours' notice shall be sufficient.

#### **4.2 Deductions from wages**

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

#### **4.3 Employment relationship**

##### *4.3.1 Engagement*

Employees shall be engaged as full-time, part-time or casual employees. Full-time and part-time employees shall be advised in writing at the commencement of their employment as to the employee's:

- (a) classification;
- (b) rate of pay;
- (c) date of appointment or transfer or promotion

##### *4.3.2 Part-time employment*

"Part-time employee" means an employee not being a casual employee who is regularly employed for a minimum of not less than 15 hours each week and a maximum of 38 hours each week.

- (a) Part-time employees shall be engaged for not less than 3 hours per working day, nor in excess of 152 ordinary hours per 4 week period;
- (b) A part-time employee shall be paid at the rate of 1/38th of the weekly rate for the class of work performed;
- (c) Split shifts may be worked;
- (d) By agreement between the employer and the employee the arrangement of hours can be implemented as follows:

The specific number of hours shall be not less than 15 hours per week and not more than 152 hours per each 4 week period.

Subject to the following conditions:

- (i) not less than 3 hours each working day and not more than 19 days in each 4 week period;
- (ii) employees shall be entitled to a minimum of 8 days off per each 4 week period.

##### *4.3.3 Casual employees*

"Casual employee" means any employee engaged as such and who is employed by the hour on the class of work for which the employee is engaged with a minimum of 2 hours' pay for each engagement.

The hourly rates for such employees is to be ascertained by dividing the appropriate weekly rate prescribed for full-time employees of the same classification by 38 and adding thereto the following loadings which are payable separately and are not to be compounded:

- (a) 25% for work on Monday to Saturday inclusive;
- (b) 50% for work on Sunday;
- (c) 150% for work performed on public holidays as provided for in clause 7.6.
- (d) A casual employee shall be paid a minimum of 2 hours for each engagement. In addition to all other amounts payable to casual employees, casuals shall be paid a late work allowance of \$1.516 per hour or part of an hour payable to the nearest quarter of an hour for ordinary work performed between 11.00 p.m. and 6.00 a.m. Monday to Saturday inclusive.

The additional payments in clause 4.3.3 (d) shall have no application on Sunday, or to overtime or public



holidays where special rates may apply.

NOTE: This clause has been inserted as a result of an application to make the Award arising from the decision of the Full Bench of the Commission on 30 June 2004 and published at (2004 176 QGIG 494) to move to declare Industrial Agreements obsolete. Given the origin of this clause the provisions contained within it are not to be used as a precedent for any other matter whatsoever.

#### **4.4 Incidental or peripheral tasks**

- 4.4.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.
- 4.4.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.
- 4.4.3 Any direction issued by an employer pursuant to clauses 4.4.1 and 4.4.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment

#### **4.5 Anti-discrimination**

- 4.5.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:
  - (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
  - (b) sexual harassment; and
  - (c) racial and religious vilification.
- 4.5.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.2, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.5.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.5.4 Nothing in clause 4.5 is to be taken to affect:
  - (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
  - (b) an employee, employer or registered organisation pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

#### **4.6 Termination of employment**

##### *4.6.1 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.

##### *4.6.2 Termination by employer*

- (a) In order to terminate the employment of an employee the employer shall give 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 4.6.2(a), employees over 45 years of age at the time of giving of notice and with not less than 2 years' continuous service, 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 clause 4.6.2 shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

#### 4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned. If an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.6.2 (d).

### 4.7 **Introduction of changes**

#### 4.7.1 *Employer's duty to notify*

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

#### 4.7.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects of 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 way to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned, and where relevant, their Union or Unions, all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:

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

### 4.8 **Redundancy**

#### 4.8.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be

done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult with the employees directly affected and, where relevant, their Union or Unions.

- (b) The consultation shall take place as soon as it is practicable after the employer has made a definite decision which will invoke clause 4.8.1, and shall cover *inter alia*, the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the 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.

#### 4.8.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.8.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.6.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
  - (i) the ordinary working hours to be worked by the employee; and
  - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
  - (iii) any other amounts payable under the employee's employment contract.

#### 4.8.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of clause 4.8.3 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 transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.8.3, "business" includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

#### 4.8.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, 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.

#### 4.8.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a

written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.8.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.6.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.8.1(a), shall be entitled to the following amounts of severance pay:

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

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

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay:

Overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

#### 4.8.7 *Superannuation benefits*

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

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

#### 4.8.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.8.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

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

#### 4.8.9 *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.

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

Clause 4.8 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.

#### 4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

#### 4.8.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.8 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A "company" shall be defined as:
  - (i) a company and the entities it controls; or
  - (ii) a company and its related company or related companies; or
  - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

#### 4.8.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.8.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
  - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
  - (ii) where the employee rejects an offer of employment with the transmittee:
    - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
    - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.
- (b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.8.14 *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.

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

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

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

### **5.1 Definitions and classifications**

#### 5.1.1 *Definitions*

- (a) "Executive chef" means an employee who is employed under the terms of this Award and who is in total control and supervises all functions associated with kitchen services.
- (b) "Executive staff chef" means an employee appointed as such who is responsible for and has full control of a work section as set in Grade 6.
- (c) "Chef" means an employee who has the supervision of the work and of employees in any kitchen where there

is more than one cook continually employed.

- (d) "First in charge cook" means an employee who is placed in charge of a kitchen in the absence of a "Chef".
- (e) "Qualified cook" means a cook who has successfully completed and can produce appropriate documentary evidence to the employee's employer to the effect that the employee has successfully completed an apprenticeship in cooking at a recognised school or college.
- (f) "Cook employed alone" means a cook (other than a breakfast cook or other cook, chef or first cook, qualified cook second cook) employed in a kitchen where no other cook is employed.
- (g) "Breakfast cook or other cook" means an employee who is employed substantially in the cooking and/or preparing of food, but shall not be deemed to include other classes of cooks as defined herein.
- (h) "Kitchen hand" means an employee engaged in assisting a cook or cooks in any kitchen.
- (i) "Food Waiter" means an employee engaged in waiting upon tables for the purpose of serving food and refreshments (other than alcoholic beverages) and shall include counter hands and/or espresso bar attendants:

Provided that such employee may also be required to work in a pantry or scullery and to prepare, deliver and collect meal trays and any refreshments to and/or from units.

- (j) "Drink waiter" means an employee waiting upon tables for the purpose of serving alcoholic beverages.
- (k) "Qualified waiter" means an employee who has completed a recognised apprenticeship or its equivalent as a qualified waiter.
- (l) "Bar attendant" means an employee engaged in the dispensing and/or mixing of and/or sale of alcoholic beverages from a bar or other similar type of servery.
- (m) "Restaurant useful" means an employee (other than a kitchen hand) assisting, as required, in the restaurant on non-waiting duties.
- (n) "Restaurant receptionist/cashier" means an employee who is exclusively or principally engaged in attending the reception and/or cashier's desk in a motel restaurant:

Provided that this definition shall not be deemed to include an employee whose principal duties are the attending of any desk which is used for the reception of house guests.

- (o) "Baker" means an employee who has completed a recognised apprenticeship or its equivalent who produces breads and pastries for the kitchen.
- (p) "Butcher" means an employee who has completed a recognised apprenticeship or its equivalent who prepares meat, poultry and seafood for the kitchen.
- (q) "Porter" means an employee who attends to guests upon arrival and departure, conveys guests baggage to and from guests rooms, and other duties as required.
- (r) "Commissionaire" means an employee who attends to guests upon arrival and departure and may assist in portering.
- (s) "Storeperson" means an employee employed as such whose predominant duties are the receipt, control and distribution of goods used by the motel.
- (t) "Cellarperson" means any person employed as such who is responsible for the contents of the motel cellar.
- (u) "Assistant cellarperson" means an employee solely employed in assisting the Cellarperson.
- (v) "Butler" means an employee providing butler services, and basic food and beverage services, and other duties, including supervision of service staff as required.
- (w) "Supervisor housekeeper" means an employee who has the appropriate level of training and is responsible for the supervision and control of the work of household/domestic services.
- (x) "Laundry worker" means an employee engaged in general laundry work.
- (y) "Pantry worker" means an employee engaged in pantry duties, stock/inventory control as required by the motel.

- (z) "Messenger" means an employee required to collect and/or deliver guests' personal dry cleaning and laundry, linen and materials to and from accommodation areas.
- (aa) "Linen worker" means an employee engaged in attending to linen stock and providing clean linen to guests' rooms.
- (bb) "Shop attendant" means an employee employed in a retail outlet, in a lobby shop, snack bar, buffet or meal counter, and who may be involved in the receipt of monies, but who is not required to be responsible for stock ordering and control, and not otherwise covered by the Retail Industry Award - State.
- (cc) "Parking attendant" means an employee employed in the parking of guests vehicles and other duties as required.
- (dd) "Leisure activities attendant" means an employee who is responsible for setting up, distribution and care of leisure equipment, overseeing leisure activities for guests, providing instruction on the safe use of equipment, assisting guests in leisure activities, and other duties as required.
- (ee) "Guest movements co-ordinator" means an employee engaged in conveying guests to and from the motel as required.
- (ff) "Security officer" means any employee who is responsible for the safety and security of guests, staff and motel property.
- (gg) "Qualified gardener" means an employee who holds a recognised horticultural qualification and who is responsible for overseeing the maintenance, propagation, horticulture and display of indoor and outdoor plants and gardens.
- (hh) "Maintenance officer" means a non-trades employee required to install, maintain or repair a range of motel equipment.
- (ii) "Mobile plant operator" means an employee who has the appropriate certificate to operate all forms of mobile plant used by the motel.
- (jj) "Yardworker" means an employee who maintains motel grounds, paths, parking areas, leisure areas (including pool) and assists the maintenance officer or qualified gardener as required.
- (kk) "Utility worker" means an employee employed as such who maintains, washes, cleans and generally tidies motel guest areas (excluding guests rooms).
- (ll) "Handyperson" means any employee not being a relevant tradesperson who maintains basic motel equipment and as required assists a maintenance officer in the case of other items of equipment.

#### 5.1.2 Classifications

- (a) "Grade" means the skill and wages grade to which an employee is assigned and shall include any one or more functions defined in any lower grade at any time if required.
- (b) "Hospitality Services Grade 1" means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:
- cleaning, tidying and general assistant of kitchen, food preparation and customer service areas, including the cleaning of equipment, crockery and general utensils;
  - assembly and preparation of ingredients for cooking;
  - handling, storing and distributing goods, including pantry items and linen;
  - setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
  - taking telephone orders;
  - assisting employees who are cooking;
  - tray service to guests rooms;
  - laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;
  - the collection and/or delivery of guests personal dry cleaning and laundry, linen and associated materials to and from accommodation areas;
  - servicing accommodation areas and cleaning thereof;
  - performs general cleaning duties;
  - transferring guests baggage and/or property;
  - parking guests cars;

- persons not otherwise provided for, means any employee for which no specific classification exists in this Award and who has had more than 3 months service with the employer.
- (c) "Hospitality Services Grade 2" means an employee who has not achieved the appropriate level of training and who is primarily engaged in one or more of the following:
- preparing and/or cooking a limited range of basic food items such as breakfasts, grills and snacks and a cook employed alone;
  - undertaking general waiting duties in a restaurant of food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
  - supplying, dispensing or mixing of liquor, including the sale of liquor from the bottle department, cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
  - taking reservations, greeting and seating guests;
  - tray service to guests rooms;
  - assisting in dry-cleaning process;
  - assisting in the cellar;
  - receipt of monies/cashier;
  - attending a snack bar, buffet or meal counter;
  - operates a lobby shop/snack food outlet;
  - receiving, storing and distributing goods;
  - driving a passenger vehicle, tour vehicle or courtesy coach up to 16 passengers;
  - providing butler services, basic food and beverage services with personalized guest services;
  - information services and data entry;
  - receiving and assisting guests at the entrance to the establishment;
  - cleaning duties using specialized equipment and chemicals;
  - "handyperson" means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
  - security officer.
- (d) "Hospitality Services Grade 3" means an employee who has the appropriate level of training who has passed the appropriate test and who is primarily engaged in one or more of the following:
- undertaking general cooking duties, including a la carte cooking, baking, pastrycooking;
  - undertaking general waiting duties of both food and/or beverages, including the sale of liquor from the bottle department, cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables;
  - supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;
  - assisting in the cellar or bottle department;
  - receipt of monies/cashier;
  - taking reservations, greeting and seating guests;
  - receiving, storing and distributing goods;
  - assisting in the training, co-ordination and supervision of employees of lower grades;
  - basic task recording functions;
  - Driving a passenger vehicle, tour vehicle or courtesy coach of over 16 passengers;
  - major repair of linen and/or clothing including basic tailoring and major alterations and refitting;
  - information services and data entry;
  - dry-cleaning;
    - 'handyperson' means a person who is not a tradesperson and whose duties include the performance of routine repair work and maintenance in and about the employer's premises and other general duties such as pool, garden, etc.;
    - providing butler services, basic food and beverage services with personalized guest services;
    - full control of a cellar, including stock control and ordering, including the receipt, delivering and reordering of goods within such area;
    - designing and mixing a range of sophisticated cocktails and other drinks. May include stocktaking and ordering of stock;
    - supervising, training and co-ordination of employees of lower grades;
    - taking reservations, greeting and seating guests and taking telephone orders;
    - attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal;
    - the operation of a mechanical lifting device.
- (e) "Hospitality Services Grade 4" means an employee who has completed an apprenticeship or who has passed the appropriate trade test and who is engaged in any of the following:



- undertaking general cooking duties including a la carte, baking, pastry cooking duties, butcher;
  - waiting, butler, dry cleaning, tailoring, gardening and greenkeeping duties.
- (f) "Hospitality Services Grade 5" means an employee who has the appropriate level of training and who is primarily engaged in one or more of the following:
- (i) solely responsible for other cooks and other kitchen employees in a single kitchen establishment where no other trade qualified cooks are employed;
  - (ii) supervising, training and coordinating food and beverage staff including maintenance of service and operational standards, preparation of operational reports and staff rostering;
  - (iii) solely responsible for the operation of an area and in charge of the greenkeeping or gardening area where more than one tradesman is employed. An advanced skill and/or supervisory course will have been completed.
  - (iv) general or specialised cooking duties including the training and supervision of other cooks and kitchen staff and relieving Hospitality Services Grade 6 employees on their rostered days off or when on annual or other leave;
  - (v) supervising, training and co-ordinating the work of employees engaged in the housekeeping area.
- (g) "Hospitality Services Grade 6" means a chef de partie or equivalent who has completed an apprenticeship or has passed the appropriate trade test in cooking, butchery, baking or pastry cooking and has completed additional appropriate training and who performs any of the following:
- general and specialized duties including supervision or training of other trade qualified cooks, ordering and stock control;
  - solely responsible for other cooks and other kitchen employees in a single kitchen establishment where other trade qualified cooks are employed.
- (h) "Hospitality Leisure Attendant Grade 1" means a person who is primarily engaged in one or more of the following:
- acts as an assistant instructor;
  - does basic testing;
  - is responsible for setting up, distribution and care of equipment;
  - takes bookings and works at the front desk of a leisure facility;
  - provides information to guests on leisure activities and facilities;
  - is a pool attendant;
  - is a childminding attendant;
  - tests pools and spa waters for optimal levels;
  - is a power boat observer;
  - cares for the alignment;
  - maintenance and satisfactory condition of all sporting and playing areas and may be required to operate machinery or equipment and carry out minor repairs and maintenance thereto.
- (i) "Hospitality Leisure Attendant Grade 2" means a person who has the appropriate level of training and who is engaged in any of the following:
- takes classes;
  - directs leisure activities such as in sporting areas, health clubs and swimming pools;
  - leads tours and group activities;
  - is a childminding attendant;
  - develops programmes for individual guests;
  - gardening and greenkeeping duties.
- (j) "Hospitality Leisure Attendant Grade 3" means a person who has the appropriate level of training who plans and co-ordinates leisure activities and/or organizes activity programmes and may supervise other leisure attendants.
- (k) "Introductory Level" means a worker who enters the industry and is unable to meet the competency requirements of Level 1, and who will remain at this level for a maximum of 3 months. Provided that an additional 3 months may be served at this level by mutual agreement between the employer and employee and the union where such employee is a union member. Further, if any disagreement arises from this

provision it shall be determined in accordance with clause 3.2.

(l) "Appropriate level of training" means:

- (i) completion of a training course deemed suitable according to guidelines issued through Tourism Training Australia for that particular classification, such course to be accredited by the Australian Hospitality Review Panel;
- (ii) that the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in 5.1.2(l)(i), such assessment to be undertaken by a qualified skills assessor.

## **5.2 Payment of wages**

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

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

5.2.3 Casual employees may by mutual consent be paid in accordance with clause 5.2.1 or at the termination of each engagement.

5.2.4 Payment may be made by use of one of the following methods:

- (a) Cash;
- (b) Cheque;
- (c) Electronic funds transfer (EFT) directly into the employee's account in any financial institution nominated by the employee, which has that facility without cost to the employee.

5.2.5 (a) *Payment of wages* - In the event that an employee by virtue of the arrangement of the employee's ordinary working hours is rostered off duty on a day which coincides with pay day, such employee shall be paid not later than the working day immediately following such pay day.

(b) Where an employee's pay day falls on a public holiday, payment of wages may be made on the day after such holiday.

(c) In the case of dismissal of an employee or of an employee leaving the service of the employer, after the prescribed notice has been given, the employee shall be paid all wages due within 24 hours of ceasing work or the next banking day and shall receive their payment summary not later than 14 days after ceasing work.

(d) Where an employee has been paid by EFT, then in the case of dismissal of such employee, it shall be permissible for the wages due to be paid in accordance with clause 5.2.5 by EFT.

## **5.3 Wages and allowances**

5.3.1 *Adult rates*

Salary Level	Relativity %	Award rate per week \$
Introductory Level	78	610.20
LEVEL 1 Hospitality Services Grade 1	82	626.90
LEVEL 2 Hospitality Services Grade 2 Leisure Attendant Grade 1	88	652.00
LEVEL 3 Hospitality Services Grade 3 Leisure Attendant Grade 2	92	670.30
LEVEL 4 Hospitality Services Grade 4 Leisure Attendant Grade 3	100	705.20

Salary Level	Relativity %	Award rate per week \$
LEVEL 5 Hospitality Services Grade 5	110	748.30
LEVEL 6 Hospitality Services Grade 6	115	767.80

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

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

#### **5.4 Junior rates**

The minimum rates of wages for junior employees shall be the undermentioned percentages of the rates prescribed for the appropriate adult classification for the work performed for the area in which such a junior is working:

	%
Under 19 years of age	65
19 and under 20 years of age	75
20 and under 21 years of age	85

Thereafter the appropriate rate prescribed for the class of work being performed:

Provided that any junior employee who is engaged to dispense and/or mix and/or sell alcoholic beverages shall be paid either a minimum rate of the introductory level per week in the case of full-time employees, and in the case of casual and part-time employees, at the appropriate hourly rate based on the introductory level weekly rate, or the appropriate junior rate, whichever is the greater.

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

#### **5.5 Week-end rates**

- (a) Employees (other than casuals) whose ordinary working hours fall on a Saturday shall be paid a loading of 25%.
- (b) Employees (other than casuals) whose ordinary working hours fall on a Sunday shall be paid a loading of 50%.

#### **5.6 Allowances**

##### **5.6.1 Board and lodging**

Where lodging is provided for employees \$123.88 per week may be deducted from the wage rates prescribed in clause 5.3. If board is provided for employees \$6.58 per day may be deducted from the wage rates prescribed in clause 5.3:

Provided that it shall be optional whether the employee accepts the board and/or lodging as provided for in the Award.

Notwithstanding the provisions of clause 5.6.1, the amount fixed by this Award for board and/or lodging may be varied by agreement in writing between the employer and the union as circumstances warrant, to reflect the standard of accommodation supplied and meals.

##### **5.6.2 Supervisory allowance**

An employee in Grades 1 or 2 who is required to supervise other employees shall be paid at the next wage grade (as set out herein) applicable to the employees they are required to supervise.

##### **5.6.3 Evening and night work allowance**

All ordinary time worked by full-time and part-time employees between 8.00 p.m. and 6.00 a.m. Monday to Friday shall attract an additional late work allowance of \$1.516 per hour or part of an hour payable to the nearest quarter of an hour.

#### 5.6.4 *Broken time allowance*

All employees for whom the ordinary hours of duty are subject to a break in continuity, other than for the purpose of meal breaks and rest pauses, shall be paid, in addition to the ordinary rate prescribed, an allowance at the rate of 91.5 cents per day for each day so worked.

#### 5.6.5 *Divisional and District allowances*

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

Adult employees in the Western District of the Southern Division shall be paid \$1.05 per week and adult employees in the Western District of the Northern Division shall be paid \$2.20 per week in addition to the rates prescribed for the corresponding Eastern Districts.

### 5.7 **Superannuation**

5.7.1 (a) Application - In addition to the rates of pay prescribed by this Award, eligible employees as defined herein, shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.7.

(b) 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*.

Employers have an obligation to make occupational superannuation contributions on behalf of each eligible employee according to that legislation as varied from time to time. Such contributions shall be paid by the employer into a complying fund approved by a majority of employees regularly at least once each calendar month or in accordance with the requirements of the approved Fund's Trust Deed.

The choice of fund shall be made by the majority of employees of the employer and such fund shall be one that is a complying fund in terms of the governing legislation:

Provided that no employer shall have to make contributions into more than one fund at any one time, and provided further, that once a fund is selected by a majority of employees, it may not be changed within 3 years unless there is agreement with the employer to do so.

#### 5.7.2 *Contributions*

(a) Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in clause 5.7. Each such payment of contributions shall be rounded off to the nearest 10 cents:

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

(b) Regular payment - The employer shall pay such contributions to the credit of each such employee at least once each calendar month or in accordance with the requirements of the Approved Fund Trust Deed, but in any event at least once each calendar month.

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

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

(e) Other contributions - Nothing in clause 5.7 shall preclude an employee from making contributions to a fund in accordance with the provisions thereof.

(f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of

employment ceases to exist.

- (g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the Fund other than the remission of contributions as prescribed herein.

#### 5.7.3 Definitions

"Approved Fund" means a fund approved for the purposes of this Award by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by this Award. Such approved fund may be individually named or may be identified by naming a particular class or category.

"Eligible employee" means a full-time or part-time employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period, and in the case of casual employees, such employee shall have worked an average of 10 hours per week for 16 weeks. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.7.2 effective from the commencement of that qualifying period.

"Fund" means a superannuation fund as defined in the *Superannuation Industry (Supervision) Act 1993*, and satisfying the superannuation fund conditions in relation to a year of income, as specified in that Act and complying with the operating standards as prescribed by Regulations made under that Act. In the case of a newly established fund, the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.

"Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the

termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

#### 5.7.4 Approved Funds - For the purposes of this Award an Approved Fund shall be:

- (a) Sunsuper
- (b) Intrust Super Fund
- (c) Any named fund as is agreed to between the relevant employer/union parties to this Award and as recorded in an approved Industrial Instrument.
- (d) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award of, or an agreement approved by, an Industrial Tribunal, whether State or Federal jurisdiction, and already has practical application to the majority of award employees of that employer.
- (e) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship any Fund nominated by the employer and approved by the Brethren.
- (f) Any Fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a Fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of section 115.
- (g) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.7.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contributions.

#### 5.7.5 Challenge of a fund

- (a) An eligible employee being a member or a potential member of a fund, as well as an industrial organisation whose registered list of callings incorporates any of the classification/s of employees to whom this Award applies, may by notification of a dispute challenge a fund on the grounds that it does not meet the requirements of clause 5.7.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.7, the Commission may in its discretion and subject to any recommendation, direction or order it

may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause 5.7.2 up to and including the date of that determination.

- (c) In the event of any dispute over whether any fund complies with the requirements of clause 5.7, the onus of proof shall rest upon the employer.

#### 5.7.6 *Fund selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses 5.7.4(d), 5.7.4(e), 5.7.4(f) and 5.7.4(g), shall be determined by a majority decision of employees.
- (b) Employees to whom these provisions apply who as at the date of this amendment are members of an established fund covered by clause 5.7.4(g) shall have the right by majority decision to choose to have the contributions specified in clause 5.7.2 paid into a fund as provided for elsewhere in clause 5.7.4 in lieu of the established fund to which clause 5.7.4(g) has application.
- (c) The initial selection of a fund recognised in clause 5.7.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that subclause where the long term performance of the fund is clearly disappointing. Where clause 5.7.6 has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purposes of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation of this provision:

Provided that the provisions of clause 5.7 do not preclude the making at any time of an industrial instrument within the terms of clause 5.7.4(c).

#### 5.7.7 *Enrolment*

- (a) Each employer to whom clause 5.7 applies shall as soon as practicable as to both current and future eligible employees:
- (i) notify each employee of their entitlement to occupational superannuation;
  - (ii) consult as may be necessary to facilitate the selections by employees of an appropriate fund within the meaning of clause 5.7.4;
  - (iii) take all reasonable steps to ensure that upon the determination of an appropriate fund each eligible employee, receives, completes, signs and returns the necessary application forms provided by the employer to enable that employee to become a member of the fund; and
  - (iv) submit all completed application forms and any other relevant material to the Trustees of the Fund.
- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.7 shall:
- (i) complete and sign the necessary application forms to enable that employee to become a member of that fund; and
  - (ii) return such forms to the employer within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 5.7.2.
- (c) Where an employer has complied with the requirements of clause 5.7.7(a) and an eligible employee fails to complete, sign and return the application form within 28 days of the receipt by the employer of that form, then that employer shall:
- (i) Advise an eligible employee in writing of the non-receipt of the application form and further advise the eligible employee that continuing failure to complete, sign and return such form within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.7.
  - (ii) In the event that an eligible employee fails to complete, sign and return such application form within the specified period of 14 days be under no obligation to make any Occupational Superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which completed and signed application form is received by the employer.
  - (iii) In the event that an eligible employee fails to return a completed and signed application form within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed

application form is a pre-requisite to the payment of any occupational superannuation contributions.

- (iv) At the same time as advising the eligible employee pursuant to clause 5.7.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Secretary of the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.7.7(d)(i) and 5.7.7(d)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form in accordance with clause 5.7.7(a)(iii) such employer shall be obliged to make contributions as from the date of operation of this clause or from the date an employee became an "eligible employee" if that occurs thereafter provided that an eligible employee completes, signs and returns to the employer an application form within 28 days of being provided with the application form by the employer. Where an eligible employee fails to complete, sign and return an application form within such period of 28 days the provisions of clause 5.7.7(c) hereof shall apply.
- (e) Unpaid contributions - Subject to the Act and to clause 5.7.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.7.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.7.4, had they been paid on the due dates:

Provided that where an employer has paid the "Superannuation Guarantee Charge" under the *Superannuation Guarantee Charge Act 1992* and *Superannuation Guarantee Charge Amendment 2002 Act* on behalf of an eligible employee the amount paid shall be credited towards satisfying the requirements of this clause.

The making of such contributions satisfies the requirements of clause 5.7 excepting that resort to this provision shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

- 5.7.8 *Record keeping* - The employer shall be required to maintain records of time worked for the purposes of establishing the employee's entitlement to occupational superannuation, and of payments made to the approved fund in similar form to time and wages records required to be kept in accordance with the Act, and shall have such records available for inspection by an Industrial Inspector or Officer of the Union, authorised pursuant to the Act.
- 5.7.9 *Exemptions* - An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.7 in the following circumstances:
  - (a) incapacity to pay the costs associated with its implementation, or
  - (b) any special or compelling circumstances peculiar to the business of the employer.

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

### **6.1 Hours of work**

- 6.1.1 Except as otherwise provided for in this Award, the ordinary hours of work for full-time hiring shall be an average of 38 per week, to be worked according to a roster covering a one, 2, 3 or 4 week period:

Provided that employees who work a 40 hour week may be paid 2 hours at overtime rates, or shall receive a rostered day off every 4 week cycle. Up to 5 rostered days off may be banked to be taken within 12 calendar months of the date on which the first rostered day off was accrued.

Rosters shall be arranged to provide employees with an average of 2 clear days off per week in each roster period.

Except as hereinafter provided, the ordinary hours of work shall be an average of 38 hours per week to be worked with a minimum of 6 hours and a maximum of 10 hours per day exclusive of meal breaks between 6.00 a.m. and 12.00 midnight each day, to be worked in accordance with a roster. Such roster shall provide for the regular rotation of shifts.

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

- 6.1.2 Subject to clause 6.1.1, the ordinary hours of work shall not exceed:

- (a) 8 hours in any shift;
- (b) 76 hours in 2 roster weeks;

(c) 114 hours in 3 roster weeks;

(d) 152 hours in 4 roster weeks.

## **6.2. Providing for normal rostered days off**

- 6.2.1 By employees working to a roster drawn up in each location providing for 19 days each of a maximum of 8 hours over a continuous 4 week period.
- 6.2.2 Each employee shall take a rostered day off in accordance with the roster, provided that where possible, days off each week shall be consecutive by arrangement between the employer and employee so as to maximise an employee's access to increased quality leisure time.
- 6.2.3 No employee shall work more than 10 days in succession without a rostered day, or rostered days off.
- 6.2.4 The rate of payment applicable to work performed on any day shall be the rate that applies to the day on which the majority of ordinary hours are worked, provided that in the case of public holidays the public holiday rate shall only apply to work performed on such public holiday.
- 6.2.5 Where such rostered day off falls on a public holiday, the following day may be taken where practicable in lieu thereof or the employee and the employer may agree to an alternative day off duty as substitution.
- 6.2.6 An employee's normal rostered day off may be changed during the currency of a roster period by agreement between the employer and such employee, or in accordance with the provisions of clause 4.1.1.
- 6.2.7 *Calculation of payment and accumulation* - Except as provided for in clause 6.1, for each of the 19 days worked as prescribed, employees shall work up to a maximum of 8 ordinary hours of work, and payment shall be for a maximum of 7 hours 36 minutes per day with accrual for entitlement for a rostered day off being made on the basis of a maximum of 24 minutes per day.
- 6.2.8 Each day of paid leave taken (not including annual leave, long service leave) and any public holiday occurring during that cycle of 4 weeks shall be regarded as a day worked for accrual purposes.
- 6.2.9 An employee who has not worked a complete 4 week cycle in order to accrue a rostered day off shall be paid a *pro rata* amount for credits accrued for each day worked in such cycle payable for the rostered day off (i.e. an amount of 24 minutes for each 8 hour day worked or 2 hours for each 40 hours worked).

For the purposes of clause 6.2.9 "worked" includes paid leave referred to above.

## **6.3 Minimum break between shifts**

The roster for all full-time and part-time employees shall provide for a minimum of 10 hours off duty between the finish of ordinary hours on one day and the commencement of the next ordinary shift for which the employee is rostered for duty. If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until the employee is released from duty for such period and the employee shall then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence:

Provided that for the purpose of clause 6.3, 8 hours shall be substituted for 10 hours:

- (a) for the purpose of changing shift rosters; or
- (b) where a shift worker does not report for duty; or
- (c) where a shift is worked by arrangement between the employees themselves.

## **6.4 Pay averaging**

Weekly employees shall be entitled to a week's wages in accordance with clause 5.3 for each week of the work cycle where a rostered day off falls, as provided for in clause 6.1.

## **6.5 Other hours by agreement**

Other methods of implementation of 38 hour week are permitted and shall be worked according to a roster as mutually agreed in writing between the employer and majority of employees in a work section or sections, having regard to the specific requirements of the business.



## **6.6 Meal breaks**

6.6.1 Where an employee is employed for more than 5 hours per day, the employee shall be entitled to a continuous meal break of 30 minutes duration provided that:

- (a) no such employee shall work for more than 5 hours without a break for a meal;
- (b) by mutual agreement employees may take their meal on the job while ensuring continuity of work, and may cease work 30 minutes before specified ceasing time of ordinary hours without loss of pay. Where an employee is required to work through a meal break as prescribed in clause 6.6.1(a), other than as prescribed in clause 6.6.1(b), the employee shall be paid at the rate of double time during the specified meal break.

6.6.2 Part-time employees and casual employees who are engaged to work for 5 or more hours a day shall be entitled to a meal break of not less than 30 minutes to be completed between 3.5 and 4.5 hours after the commencement of work.

6.6.3 Where an employee is required to work through a meal break as prescribed in clause 6.6.1, the employee shall be paid at the rate of double time during the specified meal break.

6.6.4 An employee required to work overtime for more than 2 hours without being notified on the previous day or earlier of the requirement to work shall either be supplied with a meal by the employer or paid \$12.10 meal money:

Provided that where an employee has provided a meal because of the receipt of notice to work overtime and such overtime is not worked, an amount of \$12.10 shall be paid for any meal so provided.

## **6.7 Rest pauses**

6.7.1 All employees (full-time, part-time and casual) who work a minimum of 4 consecutive ordinary hours but less than 8 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 8 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

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

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

6.7.4 Where there is agreement between the employer and the majority of employees concerned the rest pauses may be combined into one 20 minute rest pause to be taken in the first part of the ordinary working day.

## **6.8 Overtime**

6.8.1 All time worked by full-time and part-time employees outside or in excess of the ordinary hours of work prescribed by this Award or outside of an employee's rostered commencing and ceasing times, shall be deemed to be overtime and shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter:

Provided that for the purposes of computing such overtime payments each day shall be exclusive of the preceding and succeeding days except where an employee continues working overtime past midnight whereupon all such time worked subsequent to midnight shall be deemed to be work performed on the previous day:

Provided further that, in the computation of such overtime payments, any part of a quarter of an hour that is worked on any one day shall be paid for as a full quarter of an hour.

6.8.2 All overtime worked shall be authorised by the employer, and employees shall not refuse to work reasonable overtime. All time worked on an employee's day off shall be paid for at the rate of double time with a minimum payment as for 3 hours worked:

Provided that where a part-time employee usually works less than a 5 day week and where such employee is required to work on another day (other than a 6th or 7th day) such time shall not be deemed to be worked on a day off for the purpose of clause 6.8.2.

6.8.3 Preference for overtime work shall be given to full-time or part-time employees where available.

6.8.4 All overtime worked between 12 midnight and 5.00 a.m. on any day shall be paid for at double time.

6.8.5 When an employee having worked overtime finishes work at a time when the usual means of transport is not available, the employer shall provide equivalent safe alternate transport without cost to the employee.

6.8.6 An employee who works so much overtime between the termination of ordinary work on one day and the commencement of work on the next day, that the employee has not had at least 8 consecutive hours off duty between those times shall, subject to clause 6.8.6, be released after completion of such overtime until the employee has had 8 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If on the instructions of the employer such employee resumes or continues work without having had such 8 consecutive hours off duty, the employee shall be paid double rates until released from duty for such period and the employee shall be entitled to be absent until receiving 8 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Notwithstanding the provisions of clause 6.8, it is permissible for there to be an agreement in writing between the employee and the employer to take overtime time off with pay. Such time off shall be equivalent to the appropriate number of ordinary hours pay that the employee would have received for such overtime. Accumulated time must be taken within 4 weeks from the time of accrual and at a time mutually agreed between the employee and the employer:

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

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

### **7.1 Annual leave**

7.1.1 Every employee (other than a casual employee) covered by this Award shall at the end of each year of employment be entitled to annual leave, on full pay, of 152 hours. Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.6) shall be paid for by the employer in advance:

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

7.1.2 Reasonable notice of the commencement of annual leave shall be given to the employee.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of the termination of the employment and shall forthwith pay to the employee in addition to all other amounts due to the employee, their pay, calculated in accordance with clause 7.1.6, for 152 hours and also the employee's ordinary pay for any public holiday occurring during such period of 152 hours.

7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due, an amount equal to 1/12th of the employee's pay for the period of employment calculated in accordance with clause 7.1.6.

7.1.5 Part-time employees shall be entitled to *pro rata* annual leave based upon the average number of hours worked per week during the preceding 12 months.

#### **7.1.6 Payment for annual leave**

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

- (a) Shift workers - Subject to clause 7.1.6(c) the rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or holiday shifts.
- (b) Supervisory employees - Subject to clause 7.1.6(c), Supervisory employees in receipt of a higher wage shall have such wage included in the wages to be paid to employees during annual leave.
- (c) All Employees - Subject to clause 7.1.6(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
  - (i) the employee's ordinary wage rate as prescribed by the Award for the period of the annual leave (excluding shift premiums and week-end penalty rates);

- (ii) supervisory allowance or amounts of a like nature;
  - (iii) a further amount calculated at the rate of 17.5% of the amounts referred to in clause 7.1.6(d)(i) and clause 7.1.6(d)(ii).
- (d) Clause 7.1.6(c) shall not apply to the following:
- Any period or periods of annual leave exceeding:
- (i) 190 hours in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week;
  - (ii) 152 hours in any other case;
  - (iii) employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.
- (e) It shall not be lawful for the employer to give, or for any employee to receive, payment in lieu of annual leave, other than on termination of employment.

## **7.2 Sick leave**

7.2.1 Every employee, other than casuals, shall become entitled to not less than 60.8 hours sick leave for each completed year of the employee's employment with an employer.

Moreover, as respects any completed period of employment of less than one year with an employer an employee shall become entitled to 7.6 hours sick leave for each 6 weeks of such period.

Subject to clause 4.3.2 part-time employees shall be entitled to payment for sick leave for the number of ordinary hours for which they have been rostered to work on that day.

### *7.2.2 Notification and proof of sickness*

Every employee absent from work through illness on the production of a certificate from a duly qualified medical practitioner specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the employer, and subject to the employee having promptly notified the employer of the illness and of the approximate period aforesaid shall, subject as herein provided, be entitled to payment in full for all time the employee is so absent from work:

Provided that it shall not be necessary for an employee to produce such a certificate if the absence from work on account of illness does not exceed 2 days:

Provided further that where an employee has a proven record of recurring absences on sick leave the employer may inform such employee that in the event of future absences a certificate will be required from a duly qualified medical practitioner in respect of each period of sick leave taken for a period of 6 months thereafter.

### *7.2.3 Payment of sick leave*

Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

### *7.2.4 Calculation of sick leave*

(a) The continuity of employment of an employee with an employer for sick leave accumulation purposes shall be deemed to be not broken by any of the following:

- (i) Absence from work on leave granted by the employer;
- (ii) The employee having been dismissed or stood down by the employer, or the employee having terminated their employment with the employer, for any period not exceeding 3 months:

Provided that employee shall have been re-employed by that employer.

(b) The period during which the employment of the employee with the employer shall have been interrupted or determined in any of the circumstances mentioned in clause 7.2.3(a) shall not be taken into account in calculating the period of employment of the employee with the employer.

### 7.2.5 *Leave of absence - workers' compensation*

The employee shall not be entitled to be paid for any absence for any period for which the employee is entitled to workers' compensation.

## 7.3 **Bereavement leave**

### 7.3.1 *Full-time and part-time employees*

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

### 7.3.2 *Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.3.2.

### 7.3.3 "Immediate family" includes:

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

### 7.3.4 *Unpaid leave*

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

## 7.4 **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 2003 apply to and are deemed to form part of this Award.

### 7.5.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award 2003;
- (b) a copy of the Family Leave Award 2003 is required to be displayed in accordance with section 697 of the Act.

### 7.5.2 The Family Leave Award 2003 also provides for the terms and conditions of leave associated with:

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

## 7.6 **Public holidays**

### 7.6.1 All work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday will be paid for at the rate of double time and a-half with a minimum of 4 hours.

7.6.2 All employees other than casuals covered by this Award shall be entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day:

Provided that a part-time employee shall only be entitled to be paid for Labour Day where such employee is normally required to work on a Monday and, in such case, the term "full day's wage" means the number of ordinary working hours usually worked on a Monday. If any employee concerned actually works on Labour Day, such employee shall be paid a full day's wage for that day and in addition a payment for the time actually worked by him or her at one and a-half times the ordinary rate prescribed for such work with a minimum of 4 hours.

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

7.6.4 Provided that all time worked on any of the aforesaid holidays outside or in excess of the ordinary hours of work prescribed for the class of employee and to which an overtime rate is applicable under this Award shall be paid for at double the rate prescribed by clause 6.8 for the day of the week upon which such holiday falls.

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

Provided that casual employees shall be paid double time and a-half of the ordinary full-time hourly rate, with a minimum payment of 2 hours.

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

Provided that this provision shall also apply to part-time employees who would otherwise have had rostered hours of work on such days.

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

Provided that clause 7.6.7 shall have no application to part-time employees.

7.6.8 Where agreement is reached between the employer and the employee, the employee may elect to work on a public holiday and substitute an alternative day off. Payment for such work shall be at the rate of time and a-half for the time worked, and in addition the employee shall be entitled to a substitute paid day off to be taken as mutually agreed.

7.6.9 Provided that if Christmas Day, Boxing Day or New Year's Day fall on a Saturday and/or a Sunday, and alternative days are gazetted in lieu to be observed as the public holiday, the public holiday rate as prescribed in clause 7.6 shall apply to the actual days on which they fall and not on the alternative gazetted in lieu days.

7.6.10 *Employees not required to do work on a public holiday* - Payment to all employees, other than casuals, who

would normally have worked except that the day had been gazetted as a public holiday, shall be paid at the rate of ordinary hours for that day, and:

Provided further that the employee would have been ready, willing and available to work if required to do so.

## **7.7 Jury service**

- (a) An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.
- (b) Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.
- (c) Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.
- (d) If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.
- (e) "Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

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

### **8.1 Travelling, transport and fares**

Every employee shall be allowed the fare actually paid from the place of engagement to the place of employment if such employee faithfully fulfils the employee's duties for 3 months or for such less period for which the employee may be engaged. Every employee shall be allowed return fare if such employee faithfully fulfils the employee's duties for not less than 12 months, such return fare to be paid on the termination of the employee's services after such period of 12 months:

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

When instructed to travel by other means the actual fares shall be paid.

Every employee, while travelling from the place of engagement to the place of employment, shall be paid an allowance for the amount actually paid for meals taken limited to \$9.60 per meal and 3 meals per day.

### **8.2 Travelling time payment**

Where an employee is detained at work beyond normal working hours and until it is too late to travel by usual means of transport to the employee's usual place of residence, the employer shall either provide proper conveyance or provide accommodation free of charge for the night.

### **8.3 Amenities**

Employers shall provide reasonable accommodation for employees for dressing and consuming meals in accordance with relevant State Legislation.

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

### **9.1 Training program**

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

Accordingly, the parties commit themselves to:

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

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

- (a) the current future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise;
- (c) the need to develop vocational skills relevant to the enterprise and the motel industry and will be, where appropriate, provided through courses conducted by accredited educational institutions and providers.

9.1.3 A training programme developed in accordance with the above will have objectives consistent with:

- (a) developing a more highly skilled and flexible workforce;
- (b) the intention of the parties to seek accreditation of in-house training courses where practicable and formal recognition of employees successfully completing training course;
- (c) all employees having access to training and no barriers shall be placed on employees accessing such training;
- (d) training being undertaken either on or off the job:

Provided that where the training is undertaken during working hours, the employee shall not suffer any loss of pay;

- (e) employees being entitled to paid training leave to attend appropriate training programmes:

The employer shall not unreasonably withhold such paid training leave;

- (f) employees being available to undertake training where required to gain the skills to perform the wider range of duties encompassed by the new classification structure;
- (g) employees being available to undertake (where required) training to gain skills of any lower level within the employees classification and being required to perform work exercising those skills;
- (h) if in-house training is undertaken outside ordinary working hours, the employee being entitled to payment at the ordinary rate:

Provided that such training shall not be used where overtime would otherwise be worked;

- (i) any costs associated with standard fees, for prescribed courses and prescribed textbooks incurred in connection with the undertaking of training may be reimbursed by the employer upon production of evidence of expenditure:

Provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress and/or on completion of training course;

- (j) travelling costs incurred by an employee undertaking training in accordance with clause 9.1, which exceed those normally incurred in travelling to and from work being reimbursed by the employer on completion of the course.

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

### **10.1 Uniforms - aprons**

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

Provided that where an employer does not launder such uniform or clothing the employer shall pay an allowance of \$2.41 per week in lieu thereof, or 47c per day in the case of casual and part-time employees.

Where requested by the employee, the employer shall supply, free of cost to the employee, plastic aprons for all employees engaged in washing up.

For the purposes of clause 10.1, black and white attire, shoes, hose and or socks shall not be regarded as distinctive clothing or a uniform.

## **10.2 Breakages**

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

## **10.3 Tools**

All tools and other special equipment required to be used by employees in the course of their work shall be supplied and maintained by the employer. However, the employee shall be liable for any damage done to such tools and equipment wilfully or by neglect.

Where employees are required to supply their own tools, an additional payment of \$12.91 per week shall be paid to employees in maintenance classifications and shall be regarded as part of the wage of the employees concerned for all purposes.

## **10.4 Occupational health and safety**

10.4.1 When employees are injured seriously or become seriously ill at their work, the employer shall provide a means of getting them to the nearest hospital.

10.4.2 First-aid kits shall be maintained in accordance with the provisions of the *Workplace Health and Safety Act 1990* so as to be at all times readily available for the use of the employees.

10.4.3 *First-aid allowance* - Where an employee of a section holds an appropriate first-aid certificate as a first-aid attendant an additional \$10.90 per week shall be paid when the said employee is appointed by the employer to act as the first-aid attendant for 3 days or more in any working week.

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

## **Preamble**

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

## **11.1 Right of entry**

### *11.1.1 Authorised industrial officer*

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

### *11.1.2 Entry procedure*

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

### *11.1.3 Inspection of records*



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

#### 11.1.4 *Discussions with employees*

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

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

#### 11.1.5 *Conduct*

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

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

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

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

11.2.2 The time and wages record must also contain:

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

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

11.2.3 The employer must keep the record for 6 years.

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

### **11.3 Posting of award**

A true copy of this Award must be exhibited in a conspicuous and convenient place on the premises of the employer so as to be easily read by employees.

### **11.4 Union encouragement**

#### **Preamble**

Clause 11.4 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

#### *11.4.1 Documentation to be provided by employer*

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

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

#### *11.4.2 Union delegates*

- (a) 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.
- (b) The employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

Dated 1 July 2005.

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

Operative Date: 1 July 2005  
Repeal of Industrial Agreement and New Award - Hotels,  
Motels, Resorts and Accommodation Award - State  
(Excluding South-East Queensland) 2005.  
Released: 4 July 2005