

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**MOTOR VEHICLE SALESPERSONS AWARD - STATE 2003**

Following the Declaration of the General Ruling for Overtime Meal Allowance (matter numbers B/2010/34 and B/2010/38), the Motor Vehicle Salespersons Award - State 2003 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 Motor Vehicle Salespersons Award - State 2003 as at 1 January 2011.

Dated 1 March 2011.

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

**MOTOR VEHICLE SALESPERSONS AWARD - STATE 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Motor Vehicle Salespersons Award - State 2003.

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### **1.3 Application of Award**

This award shall apply to Motor Vehicle Salespersons employed in the area covered by this Award, and to the exclusion of any other Award in force and operative in the same locality.

A Sales Manager as defined (in clause 1.6) shall be excluded from the provisions of this Award.

### **1.4 Area covered by Award**

This Award shall apply within the State of Queensland.

### **1.5 Operation of Award**

This Award shall take effect and have the force of the law as from 4 February 2003.

### **1.6 Definitions**

For the purposes of this Award:

- 1.6.1 The "Act" means the Industrial Relations Act 1999 as amended or replaced from time to time.
- 1.6.2 "Commission" means the Queensland Industrial Relations Commission.
- 1.6.3 "Motor Vehicle Salesperson" means any employee engaged in selling, either wholesale or retail, motor vehicles (including cars, motor cycles, and motor trucks) and road-making and earthmoving plant and equipment (including cranes, tractors, graders, scrapers, loaders, excavators, rollers, pavers, dumpers, power diggers etc.) but shall not include sales managers.
- 1.6.4 "Probationary Motor Vehicle Salesperson" means an employee who has not had six months' experience as a Motor Vehicle Salesperson in any one firm.
- 1.6.5 "Sales Manager" means an employee who is receiving \$10.00 per week or over (excluding commission) in excess of the respective rates set out in clause 5.1 and who is in charge of at least two *bona fide* Salespersons.
- 1.6.6 "Salesperson" means a "Motor Vehicle Salesperson" or " Probationary Motor Vehicle Salesperson" where applicable.
- 1.6.7 "Southern Division" means the area throughout all that part of the State of Queensland south of a line commencing at a point on the western boundary of the State of Queensland on the 25th parallel of south latitude; then due east to the 151st degree of east longitude; then north to a point 24 degrees 30 minutes south latitude; then east to the seaboard of the State of Queensland and including the islands adjacent to the coast from that point south.
- 1.6.8 "Central Division" means the area commencing at the sea coast at 24 degrees 30 minutes of south latitude, then by that parallel of latitude bearing true west to 151 degrees of each longitude; then by that degree of longitude bearing true south to 25 degrees of south latitude; then by that parallel of latitude bearing true west to the western border of the State; then by the western border of the State bearing true north to 22 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to 147 degrees of east longitude; then by that degree of longitude bearing true north to 22 degrees of south latitude; then by that parallel of latitude bearing true east to the sea-coast then by the sea-coast southerly to the point of commencement and including the islands adjacent to the coast within that area.
- 1.6.9 "Northern Division" means that portion of the State along or north of a line commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State, including all the islands north of the 21st parallel of south latitude which are within the State of Queensland.
- 1.6.10 "Mackay Division" means that portion of the State within the following boundaries: Commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that meridian of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea-coast; then by the sea-coast northerly to the point of commencement and including all islands situated between the 21st and 22nd parallels of south latitude and within the State of Queensland.
- 1.6.11 "Union" means the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees or The Australian Workers' Union of Employees, Queensland.

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

- 2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.
- 2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1 Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

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

### **3.1 Grievance and dispute settling procedure**

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

- 3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.
- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of 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 a Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.
- 3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.1.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.1.9 Any Order or Decision of the Commission (subject to the parties right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.1.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

### **3.2 Consultation**

- 3.2.1 The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries covered by this Award and to enhance the career opportunities and job security of employees in such industries.
- 3.2.2 At each enterprise, an employer, the employees and their Union commit themselves to establishing a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise. Measures raised by the employer, employees or Unions for consideration consistent with the objectives of clause 3.2.1 shall be processed through that consultative mechanism and procedures.

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

### **4.1 Contract of employment**

- 4.1.1 Employees covered by this Award shall be advised in writing of their employment category upon appointment. Employment categories are:

- (a) full-time;
- (b) part-time (as prescribed in clause 4.2); or
- (c) casual (as prescribed in clause 4.3).

#### **4.2 Part-time employment**

- 4.2.1 An employer may employ part-time employees in any classification in this Award.
- 4.2.2 A part-time employee is one who works a regular number of days, not less than two days per week.
- 4.2.3 At the time of first being employed, the employer and the part-time employee will agree in writing on a regular pattern of work specifying at least:
  - (a) which days of the week the employee will work; and
  - (b) variation must be in writing
- 4.2.4 Any agreement to vary the regular pattern of work must be made in writing before the variation occurs.
- 4.2.5 The agreement and variation to it must be retained by the employer and a copy given by the employer to the employee.
- 4.2.6 An employer is required to roster a part-time employee for consecutive hours on each day.
- 4.2.7 A part-time employee employed under the provisions of clause 4.2 must be paid for each day worked at the rate of 1/5th of the weekly rate prescribed in clause 5.1 for the class of work performed.
- 4.2.8 A part-time employee shall be entitled to payments in respect of annual leave, sick leave, long service leave, bereavement leave and public holidays as mentioned in Part 7 of this Award on a *pro rata* basis.

#### **4.3 Casual employment**

A casual employee is to be employed by the hour. The ordinary time rate for a casual employee shall be the relevant weekly rate divided by a nominal divisor of 38, plus a loading of 23%.

#### **4.4 Juniors - Proportion**

For all areas covered by this Award the number of employees under the age of 21 years ("junior") employed in any work place shall not exceed one junior to each three adults.

#### **4.5 Incidental and peripheral tasks**

- 4.5.1 An employer may direct an employee to carry out such duties as are reasonably within the limits of the employee's skill, competence and training.
- 4.5.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment (where relevant).
- 4.5.3 Any direction issued by an employer pursuant to clauses 4.5.1 and 4.5.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

#### **4.6 Anti-discrimination**

- 4.6.1 It is the intention of the parties to this Award to prevent and eliminate discrimination as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:
  - (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
  - (b) sexual harassment; and
  - (c) racial and religious vilification.
- 4.6.2 Accordingly, in fulfilling their obligations under the grievance and disputes settling procedure in clause 3.1, the

parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

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

4.6.4 Nothing in clause 4.6 is to be taken to affect:

(a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;

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

## **4.7 Termination of employment**

### *4.7.1 Statement of employment*

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

### *4.7.2 Termination by employer*

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

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

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

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

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

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

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

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

### *4.7.3 Notice of termination by employee*

The notice of termination required to be given by an employee shall be 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 4.7.2.

### *4.7.4 Time off during notice period*

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

## 4.8 Introduction of changes

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

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

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

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

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

(a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).

(b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.8.1.

(c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:

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

## 4.9 Redundancy

### 4.9.1 *Consultation before terminations*

(a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.

(b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.9.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.

(c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

### 4.9.2 *Transfer to lower paid duties*

(a) Where an employee is transferred to lower paid duties for reasons set out clause 4.9.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.7.

(b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.

(c) The amounts must be worked out on the basis of:

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

#### 4.9.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmitter) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmitter 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 transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.9.3 'business', includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

#### 4.9.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.9.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.9.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.9.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.9.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.7.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.9.1(a), shall be entitled to the following amounts of severance pay:

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

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

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

(\*In the instance where commission payments, in whole or in part, are a feature of the Award, then reference to s. 7 of the *Industrial Relations Regulations 2000* offers assistance in the method of calculation to be adopted.).

#### 4.9.7 *Superannuation benefits*

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

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

#### 4.9.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.9.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

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

#### 4.9.9 *Alternative employment*

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

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

Clause 4.9 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.9.11 *Employees exempted*

Clause 4.9 shall not apply:

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

#### 4.9.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.9 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

- (b) A 'company' shall be defined as:

- (i) a company and the entities it controls; or
  - (ii) a company and its related company or related companies; or
  - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

#### 4.9.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.9.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmitter) to another employer (transmittee), in any of the following circumstances:

- (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmitter, and any prior transmitter, to be

continuous service of the employee with the transmittee; or  
(ii) where the employee rejects an offer of employment with the transmittee:

- (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
- (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

(b) The Commission may amend clause 4.9.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.9.14 *Incapacity to pay*

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

### 4.10 Continuity of service - transfer of calling

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

## PART 5 - WAGES AND RELATED MATTERS

### 5.1 Wages

5.1.1 The minimum rate of pay for adult employees in the Southern Division, Eastern District is as follows:

Classification	Rate per Week
Salesperson	\$648.30
Probationary Salesperson	\$633.60

The minimum rate of pay for Salesperson under the age of 21 years ("junior") for all areas covered by this award who have not had six months' experience as a Motor Vehicle Salesperson shall be a weekly amount equal to the undermentioned relevant percentages of the minimum rate of pay for probationary Salesperson prescribed in clause 5.1.1:

19 years of age and under	80%
20 years of age	90%

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

The above rate of pay shall be exclusive of any expenses incurred in the discharge of the employees' services. All such expenses shall be arranged between the employer and the employee.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2010 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

5.1.2 *Divisional and District Parities* - In addition to the minimum rate of pay set out in clause 5.1.1 for the Southern Division, Eastern District, the following amounts shall be paid to adult employees to whom this Award applies, employed in the Division and Districts referred to hereunder:

	Per Week
	\$
Southern Division, Western District	1.05
Mackay Division	0.90

Northern Division, Eastern District	1.05
Northern Division, Western District	3.25

## 5.2 Commission

Payment of commission, if any, to a Salesperson may be negotiated between the Salesperson and their employer subject to the following provisions:

- 5.2.1 The basis on which commission will be paid shall be committed to writing and a copy given to the Salesperson within 21 days of the Salesperson commencing employment and such basis shall not be altered except by mutual consent or by a week's notice in writing from the employer to the Salesperson.
- 5.2.2 The employer of a Salesperson employed at the date of the coming into operation of this Award shall comply with clause 5.2.1 within 21 days of such date.
- 5.2.3 The employer shall within 21 days after the last day of each month furnish the Salesperson with all relevant particulars of vehicles delivered and commission earned by that Salesperson during the preceding month and thereupon such commission or any balance thereof shall be payable.
- 5.2.4 Commission shall be deemed to accrue upon the delivery of a vehicle to the customer.
- 5.2.5 Where a sale is effected as a result of the efforts of two or more salespersons, the commission payable in respect of such sale shall be divided between them in such proportion as they may mutually agree. In default of agreement, the employer or the Salesperson's manager, shall act as the arbitrator, subject to the right of any party to apply to the Commission for a ruling.
- 5.2.6 Where the employment of a Salesperson terminates prior to the delivery of a vehicle, for which the Salesperson would otherwise be entitled to commission, the Salesperson shall, provided the vehicle is delivered within 3 months of termination of employment be paid two-thirds of the commission the Salesperson would otherwise have received.
- 5.2.7 Where the employment of a Salesperson terminates, the commission to which the Salesperson is entitled in respect of vehicles which have already been delivered shall be paid to the Salesperson within 14 days of such termination.
- 5.2.8 Any sum payable under an agreement made pursuant to clause 5.2 shall be deemed to be payable under this Award.

## 5.3 Allowances

- 5.3.1 A Salesperson required to be on duty at a motor show, agricultural show or similar exhibition either over the evening meal period or on a holiday referred to in clause 7.7 shall be paid \$12.10 for each evening meal and \$12.10 for the midday meal on the holiday.
- 5.3.2 A Salesperson required to work at a showroom or car yard for more than 2 hours after 6.00 p.m. on any day without being notified on the previous day or earlier of being so required to work shall either be supplied with a meal by the employer or paid \$12.10 but such payment need not be made to a Salesperson living in the same locality as the Salesperson's place of employment who can reasonably return home for meals.

## 5.4 Payment of wages

- 5.4.1 The minimum rate of pay shall be paid weekly and commissions adjusted monthly except as elsewhere provided for in this Award.
- 5.4.2 Payment of wages, overtime and allowances may be made on any day in each pay cycle. Payment may be made by cash or Electronic Funds Transfers (EFT):  
  
Provided that the employer shall stipulate the completion date for each pay cycle which shall be the same day for each pay cycle.
- 5.4.3 Where an employee is paid in cash, payment for work performed during such pay cycle shall be made not later than two days after the completion of the stipulated pay cycle:  
  
Provided further that where the employer elects to pay by EFT payment to employees for work performed during such pay cycle shall be made not later than 3 days after the completion of the stipulated pay cycle.
- 5.4.4 The employer may elect to convert to a fortnightly payment system either by paying one week in advance or, at the election of an existing employee to a fortnightly pay without one week in advance. If the employee does not

so elect the first fortnightly pay thereafter shall include one week's pay in advance, with that additional week's pay able to be phased out progressively over a maximum period of five months, at the rate of one day after each completed month.

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

## 5.5 Superannuation

5.5.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees (as defined in clause 5.5.3(a)), shall be entitled to occupational superannuation benefits subject to the provisions of clause 5.5.

### 5.5.2 Contributions

#### (a) Amount

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

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

(ii) In addition to the foregoing, the employer must comply with provisions as specified in the *Superannuation Guarantee Charge Act 1992*, including the *Superannuation Guarantee (Administration) Act 1992* and Regulations hereto, effective from the 1 July 1992. Every employer shall contribute on behalf of each eligible employee at the prescribed percentage of ordinary time earnings based on the specifications of the Superannuation Guarantee Charge, as amended from time to time.

(b) *Regular Payment* - The employer shall pay such contributions monthly on behalf of each eligible employee into an 'Approved Fund' no later than the 14th day of the following calendar month.

(c) *Minimum levels of earnings* - No employer shall be required to make contributions on behalf of any employee for any period in which such employee does not fulfil the definition in clause 5.5.3(a) 'Eligible Employee'.

(d) *Proof of Contribution* - The amount of contributions paid in accordance with clause 5.5.2(a), and as a separate amount, any other personal contributions in accordance with clause 5.5.2(f), shall at the time of payment of such contributions into an approved fund, be included in pay advice notices provided by the employer to each employee.

(e) *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.

(f) *Other contributions* - Nothing in clause 5.5.2 shall preclude an employee from making personal contributions to a scheme or fund in accordance with the provisions of the trust deed of the Fund.

(g) *Cessation of contributions* - An employer shall not be required to make any further contributions on behalf of an eligible employee after the end of the day upon which the contract of employment ceases to exist.

### 5.5.3 Definitions:

(a) *Eligible employee* - Shall mean any employee who earns \$450.00 or more in any calendar month. Such employee shall only be deemed to be an eligible employee in those calendar months as defined in the *Superannuation Guarantee Charge Act 1992*, where the minimum earning requirement is met:

Provided that a part-time or casual employee under the age of 18 years shall not be deemed eligible in any week in which the employee works less than 30 hours.

(b) *Ordinary time earnings* - Shall mean 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 over-award payment. Ordinary time earnings shall not include 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.

- (c) An approved occupational superannuation scheme or fund shall at all times be a regulated and complying superannuation fund as recognised under the *Superannuation Industry (Supervisory) Act 1993 and Regulations* and any subsequent amendments thereto.
- (d) Providing there is compliance with clause 5.5.3(c), the following funds shall also be recognised by clause 5.5:
  - (i) Retail Employees Superannuation Trust (REST);
  - (ii) Sunsuper;
  - (iii) MTAA Industry Superannuation Fund;
  - (iv) Such other scheme or fund as may be agreed upon between an employer and the Union/s party to this Award and recorded in an approved industrial agreement.
  - (v) In relation to any particular employer, another Scheme or Fund to which that employer was already making superannuation contributions on behalf of the employees as at 29 September 1989 and which is approved under the *Occupational Superannuation Standards Act 1987*.

The Commission may for such reason as it sees fit in any particular case, approve a scheme or fund:

Only those established schemes or funds to which a particular employer party to this Award was actually making genuine contributions on behalf of the employees concerned as at 29 September 1989, shall be recognised under clause 5.5.3. The making of contributions subsequent to 29 September but on a retrospective basis, in respect of any period up to and including 20 February 1989, shall not under any circumstances, bring a scheme or fund within the meaning clause 5.5.3.

Provided that in the event of any dispute as to whether a scheme or fund satisfies the requirements of 5.5.3(d)(v) the onus of proof shall rest with the employer.

- (vi) 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.
- (vii) 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 of the Act.

#### 5.5.4 *Choice of fund*

- (a) Freedom of choice - Except as otherwise provided for in clause 5.5, no employer shall be required to make contributions into more than one fund at anytime:

Provided that employees, including those in existing schemes or funds covered by clause 5.5.3(d)(v) shall have the right to choose to have contributions specified in clause 5.5.2 paid into any Scheme or Fund provided for in clause 5.5.3(d) as decided by a majority of employees to whom those provisions apply.

- (b) Challenge of Fund -

- (i) An eligible employee being a member or a potential member of a fund, as well as the relevant Union, may by notification of a dispute challenge a Fund on the grounds that it does not meet the requirements of clause 5.5.
- (ii) Notwithstanding that the Commission determines that a particular Fund does not meet with requirements of this clause, the Commission may at 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 5.5 up to and including the date of that determination.
- (iii) In the event of any dispute over whether a fund complies with the requirements of the clause, the onus of proof shall rest upon the employer.
- (iv) The initial selection of a fund recognised in clause 5.5.3 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under this Award provision, when the long term performance of the initial fund is clearly disappointing.
- (v) Those employers contributing to funds other than the recognised retail industry fund - R.E.S.T., must provide proof that a democratic decision by a majority of employees to whom clause 5.5.4 applies, was

sought and recognised by that employer. Further, the employer must undertake to comply with clause 5.5.4 on the anniversary of each 3 year period following the initiation of such a fund.

(c) Exemptions -

- (i) An employer may apply to the Commission for exemption from the provisions of this clause on the grounds of:
  - (A)incapacity to pay the costs associated with its implementation; or
  - (B)special or compelling circumstances peculiar to the business
- (ii) An employer may apply to the Commission for relief from the specification of Funds listed in clause 5.5.3(d) where employees working under this Award are a distinct minority within that workforce and/or an undue multiplicity of Funds would otherwise result.

5.5.5 *Enrolment*

(a) Each employer to whom clause 5.5 applies shall:

- (i) as soon as practicable notify each employee of their entitlement to occupational superannuation;
- (ii) consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5.3(d);
- (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 the employee to become a member of the fund;
- (iv) submit all completed application forms and any other relevant material to the trustees of the fund; and
- (v) the employer, on receipt of written advice from the employee relating to any relevant change to the employee's particulars, shall transfer such change/s to the trustees of the fund.

(b) Each employee upon becoming eligible to become a member of a Fund determined in accordance with clause 5.5 shall complete and sign the necessary application forms to enable that employee to become a member of that fund.

5.5.6 *Unpaid contributions* - Subject to section 393 of the Act and to clause 5.5.4 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 5.5.2, in respect of an 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 5.5.3(d), had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.5 excepting that resort to this provision shall not limit any common law action which may be available in relation to death, disablement or similar cover existing within the features of the relevant fund.

5.5.7 *No other deductions* - No additional amounts shall be required to be paid by the employer for the establishment, administration, management or other charges in connection with the scheme or fund apart from remission of contributions on a monthly basis as specified in clause 5.5.2.

**5.6 Calculation of wages**

For the purpose only of determining payment for sick leave, bereavement leave, deduction for unauthorised absences, wage calculation on termination of employment and calculation of a casual hourly rate, the hourly rate shall be 1/38<sup>th</sup> of the weekly rate prescribed in clause 5.1.

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

**6.1 Days off**

- 6.1.1 A Salesperson shall be allowed one and one-half days free of duty per week or by mutual agreement three full days per fortnight. Provided that every Sunday shall be one of such days off.
- 6.1.2 Subject to clauses 6.1.1 and 6.2, the ordinary working time for employees covered by this Award may be worked on any or all days of the week, excluding Sunday, and may be more or less than eight hours per day or forty hours per week. Accordingly, no overtime is payable.

## **6.2 Work on days off**

6.2.1 All work done by a Salesperson on the instruction of the employer on the Salesperson's rostered day or half-day off shall be paid for at the rate of double time.

6.2.2 For the purpose of clause 6.2, double time shall mean:

- If more than half a day is worked, 2/5 of the rate prescribed by clause 5.1.
- If half a day or less is worked, 1/5 of the rates of pay prescribed by clause 5.1.

## **6.3 Meal breaks and rest pauses**

6.3.1 No Salesperson shall be required to work more than five hours without a meal break, provided that where the employer and the majority of employees agree to a practice within an establishment that six hours can be worked without a meal break being taken, such an arrangement will apply to all salespersons within that establishment.

6.3.2 The timing and duration of the meal break shall be subject to mutual agreement, provided that no meal break shall be less than 30 minutes in duration.

6.3.3 If practicable, a Salesperson is entitled to a rest pause of at least 10 minutes duration in each 4 hours of working time on a day.

6.3.4 The rest pause is part of the Salesperson's working time and if continuity of work is necessary, must be taken when it does not interfere with continuity.

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

### **7.1 Annual leave**

7.1.1 Every employee (other than a casual employee) is at the end of each year of their employment entitled to annual leave of 4 weeks.

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

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

If the employment of any employee is terminated at the expiration of a full year of employment, the employer is deemed to have given the leave to the employee from the date of the termination of the employment and must immediately pay to the employee, in addition to all other amounts due to the employee, such employee's pay, calculated in accordance with clause 7.1.3, for 4 weeks and also the employee's pay for any public holiday occurring during such period of 4 weeks.

If the employment of any employee is terminated before the expiration of a full year of employment, such employee is to be paid, in addition to all other amounts due an amount equal to 1/12th of such employee's pay for the period of employment calculated in accordance with clause 7.1.3.

#### *7.1.3 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:

- Subject to the provisions of clause 7.1.3(b), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
  - The employee's ordinary wage rate as described in clause 5.1 for the period of the annual leave (excluding weekend penalty rates);
  - A further amount calculated at the rate of 17 1/2% of the amounts referred to in clause 7.1.3(a)(i).
- Clause 7.1.3(a) shall not apply to the following:

- (i) Any period or periods of annual leave exceeding 4 weeks;
- (ii) Employers (and their employees) who are already paying (or receiving) an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

## **7.2 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.

Provided that for the purpose of clause 7.2 only, the term "full pay" is taken to mean the total of either the weekly wage prescribed in clause 5.1.1 or the normal retainer paid, whichever is the higher, and the average weekly commission calculated over the 3 completed months immediately preceding the period of leave.

## **7.3 Sick leave**

### **7.3.1 *Entitlement***

- (a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 8 days' sick leave for each completed year of their employment with their employer;
- (b) This entitlement will accrue at the rate of one day's sick leave for each 6 weeks of employment.
- (c) Sick leave may be taken for part of a day.
- (c) 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.

### **7.3.2 *Employee must give notice.***

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

### **7.3.3 *Evidence supporting a claim.***

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

### **7.3.4 *Accumulated sick leave***

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

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

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

### **7.3.5 *Workers' compensation***

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

## **7.4 Absenteeism control measures**

### **7.4.1 Sick leave is unlike annual or long service leave in that it is conditional upon an employee being ill or injured to the point of being unfit for duty.**

It is an insurance to protect the employee and the employee's family against hardship should the employee be unable to continue in the employee's normal occupation and should be only so utilised.

### **7.4.2 This procedure is designed to curtail sick leave abuse by employees who are absent from work and who are not genuinely unfit for duty and is to operate notwithstanding the provisions of clause 7.3 (Sick Leave).**

- 7.4.3 At the end of each 3 monthly period, the employer may review the sick leave records with a view to establishing a list of employees whose record of attendance gives cause of reasonable concern.
- 7.4.4 Any employee with an unsatisfactory record shall be interviewed by the employer in the presence of an organiser of the (relevant) Union or the employee's nominee, if the employee so requests. If the discussion in respect to the absences does not provide satisfactory reason for the absences then a letter of warning is to be sent to the employee and a copy to the Secretary of the Union at the discretion of the employee.
- 7.4.5 If no improvement is observed in the next period, the employee is to be again interviewed (as in clause 7.4.4 above) and if the interview results in unsatisfactory reasons being given, then a second letter of warning sent to the employee and a copy to the Secretary of the (relevant) Union, at the discretion of the employee, also indicating proof of illness or a certificate may be required for any absence.
- 7.4.6 If the above action still results in unsatisfactory attendance at work then a final warning is to be given and if this is disregarded then good grounds will have been established for termination of employment.
- 7.4.7 The above procedure does not operate to withdraw the employers' right to take termination action or other disciplinary action against any employee if that employee has been found guilty of filling out a false sick leave application form and claiming leave pay when not genuinely on sick leave. That is a matter relating to fraudulent misrepresentation which may justify instant dismissal.

## **7.5 Family leave**

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

- 7.5.1 It is to be noted that:
  - (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
  - (b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.
- 7.5.2 The Family Leave Award also provides for the terms and conditions of leave associated with:
  - (a) Maternity leave
  - (b) Parental leave
  - (c) Adoption leave
  - (d) Special Responsibility Leave for the care and support of the employee's immediate family or household.

## **7.6 Bereavement leave**

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

- 7.6.2 *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 7.6.2.
- 7.6.3 "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.
- 7.6.4 *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.

## **7.7 Public holidays**

7.7.1 Subject to clause 7.7.13, 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 at the rate of double time and a-half with a minimum of 4 hours.

### *7.7.2 Labour Day*

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

### *7.7.3 Annual show*

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

Where no notification has been issued in respect of a principal city or town, Brisbane R.N.A. Show (Peoples) Day shall be observed for the purposes of clause 7.7.3.

### *7.7.4 Full-time and part-time employees entitled to certain other proclaimed or gazetted holidays*

Full-time and part-time employees shall be entitled, without loss of pay, to an additional public holiday when such public holiday is proclaimed or gazetted by the authority of the Commonwealth or State Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the State or locality.

### *7.7.5 Double time and a-half*

For the purposes of clause 7.7, where the rate of wage is a weekly rate, 'double time and a-half' shall mean one and a-half day's wages in addition to the employee's ordinary time rate of pay or *pro rata* if there is more or less than a day.

### *7.7.6 Establishments not open for trade on holidays*

Where an establishment does not open for trade on a public holiday, and an employee (other than a casual) would have otherwise been rostered to work on such a day, any such employee shall be entitled to payment for the day based upon the employee's ordinary time earnings for the hours normally rostered to work.

### *7.7.7 Establishments open for trade on holidays*

Where an establishment opens for trade on a public holiday, employees who would normally be rostered to work may request to work the day or part thereof and shall be paid the appropriate penalty for the time so worked:

Provided that when an employee chooses not to work or is not required for work by the employer, every such employee shall be paid in accordance with 7.7.6.

### *7.7.8 Establishments open on actual holiday for which a day in place of that holiday has been appointed*

Where an establishment opens for trade on an actual public holiday in respect of which a day has been appointed under

the *Holidays Act 1983* to be kept in place of such holiday, the following shall apply:

- (a) if an employee is rostered to work on the actual public holiday and the day to be kept in place, then that employee shall elect which day is to be the employee's public holiday and receive the standard public holiday benefits on that day. The other day, subject to clause 7.7.9, shall then be a normal rostered day;
- (b) if an employee is rostered to work on the actual public holiday and is not rostered to work on the day to be kept in place, the employee shall receive the standard public holiday benefits on the actual day; and.
- (c) if an employee is rostered to work on the day to be kept in place and is not rostered to work on the actual public holiday, the employee shall receive the public holiday benefits on the day to be kept in place.

#### *7.7.9 Provisions relating to Christmas Day*

In the case of Christmas Day where a day has been appointed to be kept in place of the holiday, and the employee has elected the day in place as the public holiday, work on 25 December will attract an additional loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate and the employee will also be entitled to the benefits of the day to be kept in place of the holiday.

#### *7.7.10 Non-working day falling on a holiday*

A full-time employee, or a part-time employee working an average of 5 days per week, any of whose non-working days falls on a holiday, shall, by mutual agreement:

- (a) be paid an additional day's wages; or
- (b) have one day added to the employee's annual leave, or
- (c) be allowed another day off within twenty-eight days after the holiday falls, or during the week prior to the holiday.

A part-time employee shall be entitled to the provisions of clauses 7.7.10(a), (b) and (c) only where the employee works an alternating roster and the public holiday falls on a day of the week on which the employee works in any week of the employee's roster cycle.

#### *7.7.11 Employee regularly rostered to work Monday to Friday*

A full-time or part-time employee who is regularly rostered to work Monday to Friday shall not receive the benefit of a public holiday which falls on a Saturday or a Sunday unless a substituted day has been prescribed, in which case such an employee shall receive the benefit of the substituted day as prescribed in clause 7.7.

#### *7.7.12 Employees dismissed or stood down in December and re-employed in following January*

Any and every employee who, having been dismissed or stood down by the employee's employer during the month of December in any year, and 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 two 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 pay payable to that employee when so dismissed or stood down) for any or all of the following holidays, namely Christmas Day, Boxing Day and the 1st January (New Year's Day) occurring during the period on and from the date of the employee's dismissal or standing down to and including the date of the employee's re-employment.

#### *7.7.13 Substitution*

Notwithstanding the provisions of clause 7.7, the employer and the majority of employees concerned may agree to substitute one or more public holidays with another day or days. If such day or days is/are worked, then payment for the day or days will be at the rate of double time and a half at the employees' ordinary time rate of pay.

### **7.8 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**

A Salesperson whose duties necessitate staying away overnight from the Salesperson's usual abode, shall be reimbursed expenses reasonably incurred by the Salesperson in the course of those duties.

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

### **9.1 Commitment to training and careers**

- 9.1.1 The parties acknowledge that varying degrees of training are provided to employees in the retail motor vehicle industry, both via internal, on-the-job and through external training providers.
- 9.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.
- 9.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the retail motor vehicle industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.
- 9.1.4 The parties agree to continue discussions on issues raised by the Union relating to training.

### **9.2 Training**

- 9.2.1 The parties to this Award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. 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.
- 9.2.2 Following proper consultation in accordance with clause 3.2.2 or through the establishment of a training committee, an employer shall develop a training program consistent with:
  - (a) the current and future skill needs of the enterprise;
  - (b) the size, structure and nature of the operations of the enterprise; and
  - (c) the need to develop vocational skills relevant to the enterprise, through courses conducted by accredited educational institutions and providers.
- 9.2.3 Where it is agreed a training committee be established, that training committee should be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example:
  - (a) formulation of training programme and availability of training courses and career opportunities to employees;
  - (b) dissemination of information on the training programme and availability of training courses;

- (c) the recommending of individual employees for training and reclassification; and
- (d) monitoring and advising management and employees on the on-going effectiveness of the training.

#### 9.2.4 *Additional training*

- (a) Where it is agreed that additional training in accordance with the programme developed pursuant to clause 9.2.2 should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training may be undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

- (b) Any costs associated with standard fees for prescribed courses and prescribed textbooks, (including those textbooks which are available in the employer's technical library), legitimately incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure:

Provided that reimbursement shall also be on an annual basis subject to the presentation of reports of satisfactory progress.

- (c) Legitimate travel costs incurred by an employee for the purpose of attending off the job training, shall be reimbursed by the employer.

9.2.5 Clauses 9.2.2, 9.2.3 and 9.2.4 shall operate as interim provisions and shall be reviewed as part of the ongoing process of Award restructuring with a target completion date as agreed between the parties. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in clause 9.2.1. In this connection, the Unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking to meet the needs of an individual enterprise and/or the industry.

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

No provisions inserted in this Award relevant to this Part.

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

#### **Preamble**

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

#### **11.1 Right of entry**

##### *11.1.1 Authorised industrial officer*

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the relevant 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 relevant Union; or
  - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
  - (iii) has made a written request to the employer that the employee does not want that employee's record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

#### 11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the relevant 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 relevant Union, during non-working time.

#### 11.1.5 *Conduct*

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

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

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

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

11.2.2 *The time and wages record must also contain:*

- (a) the employee's full name and address;
- (b) the employee's date of birth;

- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

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

### **11.3 Union encouragement**

Clause 11.3 gives effect to section 110 of the *Industrial Relations Act 1999* 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 a Union.

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

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

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

#### *11.3.2 Union Delegates*

- (a) Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or 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.

#### *11.3.3 Deduction of union fees*

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

### **11.4 Posting of award**

A copy of this Award shall be displayed in each workplace in a prominent position so as to be easily read by the employees, without hindrance.

### **11.5 Present conditions**

11.5.1 All conditions of employment as at 4 February 2003 not set out in this Award shall continue.

11.5.2 The operation of this Award shall not prejudice the rate of pay of any salespersons employed as at 3 February 2003.

Dated 4 December 2002.

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

Operative Date: 4 February 2003