

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**MOTORING SERVICES AWARD - SOUTH-EASTERN DISTRICT 2003**

Following the Declaration of the General Ruling in the 2010 State Wage Case (matter numbers B/2010/20 and B/2010/21), the Motoring Services Award - South-Eastern District 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 Motoring Services Award - South-Eastern District 2003 as at 1 September 2010.

Dated 1 November 2010.

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

**MOTORING SERVICES AWARD - SOUTH-EASTERN DISTRICT 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Motoring Services Award - South-Eastern District 2003.

**1.2 Arrangement**

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### **1.3 Application**

1.3.1 This Award applies in, or at, establishments or enterprises, or sections thereof, which operate as garages, service stations, car parks, towing services, or used vehicle yards in, or in connection with, motorised transport and/or to like establishments or services in respect of all employees, and their employers, engaged in any one or more of the following duties and/or pursuits:

Retail selling and/or dispensing from pumps of petrol, oil and other related petroleum products and/or substitutes; retail selling of driveway requisites; cleaning and/or polishing and/or greasing and/or otherwise carrying out related servicing on vehicles; changing and/or repairing inner tubes and/or tyres; changing wheels, light bulbs, wiper blades and generally attending to the maintenance of vehicles, and the employer's premises,

where no more than an elementary mechanical knowledge is required; applying anti-corrosive and other protective treatments; tow truck operators and their assistants; and car park attendants:

"Like establishments or services" includes marine service stations; used car, caravan and/or trailer yards; wrecking yards' tyre fitting depots; vehicle hiring services; and anti-corrosive and other protective treatment, steam cleaning, car washing and/or cleaning services; and all other places at which the afore-mentioned duties and pursuits may be carried out.

This Award also applies to all employees engaged in catering services attached to or associated with petrol service station roadhouses.

As to the employers named in Schedule 1 to this Award the provisions of the Award are modified in accordance with the requirements of the individual orders listed in such Schedule.

- 1.3.2 This Award will operate within that portion of the State along or east of a line commencing at the junction of the southern border with 147 degrees of east longitude; then by that meridian of longitude due north to 22 degrees of south latitude; and along or south of a line commencing at the junction of 147 degrees of east longitude with 22 degrees of south latitude; then by that parallel of latitude due east to the eastern limit of the State:

Provided that for employees covered by Schedule 2, the South-Eastern Division of Queensland will comprise the district within the following boundaries:

Commencing at Point Danger, and bounded then by the southern boundary of the State westerly to 151 degrees of east longitude; then by that degree of longitude bearing true north to 24 degrees 30 minutes of south latitude; then by that parallel of latitude bearing true east to the sea-coast; and then by the sea-coast southerly to the point of commencement; and all islands comprised in any State or Federal electorate in the South-Eastern Division of Queensland.

- 1.3.3 Notwithstanding the foregoing, this Award will not apply to the following:

- (i) Towing operations carried out by employees subject to the Road Service Patrols Award - Royal Automobile Club of Queensland 2002;
- (ii) Employees otherwise subject to the Engineering Award - State 2002; Transport, Distribution and Courier Industry Award - Southern Division 2002; Motor Drivers etc. Award - Southern Division 2002 Brisbane City Council - Bus Transport Employees' Award 2002;
- (iii) Employees who come under the terms and conditions of the Brisbane City Council - Miscellaneous Workers' Award 2002; and
- (iv) Storekeepers who operate no more than 2 or one dual petrol pump, in respect of wage rates only.

- 1.3.4 This Award does not apply to managers appointed by members of the Motor Trades Association of Queensland Union of Employers, where such exemptions are agreed between that Association and the Union.

## **1.4 Definitions**

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

1.4.2 "Commission" means the Queensland Industrial Relations Commission.

1.4.3 "Continuous Shift Work" means work where 3 shifts per day are worked continuously on 7 days of the week.

1.4.4 "Shift Work" means work where more than one shift of not less than 8 hours per day is worked.

1.4.5 "Western District" will mean that portion of the area covered by this Award west of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; then by that meridian of longitude due north to 25 degrees of south latitude; and south of a line commencing at the junction of 150 degrees of east longitude with 25 degrees of south latitude; and then by that parallel of latitude due west to the most westerly point of the area so covered.

1.4.6 "Union" means The Australian Liquor, Hospitality and Miscellaneous Workers' Union of Employees, Queensland Branch.

## **1.5 Date of operation**

This Award takes effect from 1 December 2003.

## **1.6 Parties bound**

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

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

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

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

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

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

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

appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

### **3.2 Counselling procedure**

3.2.1 A counselling and warning system is to be adopted in relation to employees' absenteeism, time-keeping, job performance and safety attitude, as follows:

- (a) When an incident or incidents warrant corrective action, the Supervisor will have a counselling session with the employee, fully explaining the corrective action required.
- (b) A repeat incident by the employee will result in a first warning being given to the employee by an appropriate representative of management. This warning will be given with either the Union delegate/organiser present or the employee's chosen representative and the details will be recorded.
- (c) A further repeat of this incident will result in a final warning being given to the employee, this warning will be given by appropriate company representatives in the presence of the witness as identified in clause 3.2.1(b).
- (d) This final warning will be recorded in writing and will be signed by the employee concerned, the company representative and the witness as identified in clause 3.2.1(b).
- (f) These warnings will be retained in the employee's file for a period of 2 years after which time they will be revoked. A further occurrence will result in the dismissal of the employee.
- (g) However, if the first incident is considered severe enough, the first warning in that instance would be regarded and recorded as a final warning.
- (h) This procedure is to operate in connection with clause 4.8 (termination of employment).

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

### **4.1 Employment categories**

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

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

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

4.2.1 Part-time employees shall be engaged for a minimum of 12 hours and a maximum of 35 hours in any one week and shall work on not more than 5 days in any one week. Part-time employees shall work a minimum of 3 hours on any one day and a maximum of 8 hours on any one day. The hours of work shall be continuous subject to clause 6.3 (Meal breaks).

4.2.2 A part-time employee shall be paid at the rate of 1/40th of the weekly rate prescribed for the class of work performed plus an all purpose loading of 10%. Such all-purpose loading shall not apply to work on Saturday, Sunday, public holidays or overtime.

4.2.3 Part-time employees who work in excess of 8 hours per day shall be entitled to be paid overtime in accordance with clause 6.4 (Overtime) for such excess hours.

4.2.4 In the case of part-time employees who receive the 10% loading prescribed in clause 4.2.2, any time worked in excess of 35 hours per week shall be classed as overtime and paid in accordance with clause 6.4 (Overtime).

4.2.5 By agreement in writing between the employer and the employee, a part-time employee may be engaged to work a specified number of hours per week. In such a case the 10 % loading prescribed in clause 4.2.2 shall not apply.

- (a) At the time of engagement the employer and the part-time employee will agree in writing the number of ordinary hours to be worked each week.
- (b) Any agreed amendment to the number of ordinary hours worked will be recorded in writing.

(c) In the case of part-time employees who do not receive the 10% loading as provided by clause 4.2.2, any time worked in excess of the ordinary daily or weekly hours prescribed by their roster, or in excess of the specified number of hours agreed in writing between the employer and the employee, shall be classed as overtime and paid in accordance with clause 6.4 (Overtime).

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

4.2.7 Where a public holiday falls on a day upon which an employee is normally employed, that employee shall be paid the appropriate rate for the number of hours normally worked on that day. An employee's regular roster will not be altered to avoid this obligation.

4.2.8 All provisions of this Award not expressly amended by clause 4.2 shall have application to part-time employees.

### **4.3 Casual employment**

4.3.1 A casual employee is an employee who is engaged by the hour and who is employed for less than 40 ordinary hours in any one week.

4.3.2 *Casual rate* - Casual employees shall be paid at the rate of 23% per hour in addition to the ordinary weekly rate divided by 40 with a minimum payment as for 2 hours work per engagement.

4.3.3 A casual employee shall be notified by the employer the previous day if the employee's services are not required for the following day and if such notice is not given a casual employee shall be entitled to a day's wages in lieu of such notice.

### **4.4 Flexibility of work**

4.4.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Award:

Provided that such duties are not designed to promote de-skilling.

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 trained in the use of such tools and equipment.

4.4.3 Any direction issued by an employer pursuant to clause 4.4.1 and 4.4.2 will be consistent with the employer's responsibilities to provide a safe and healthy working environment.

### **4.5 Mixed functions**

4.5.1 An employee who is required to perform work on any day for which a higher rate of pay is prescribed in clause 5.1 shall be paid as follows:

(a) If more than 4 hours on any day the higher rate for the whole of such day.

(b) If 4 hours or less, the higher rate for 4 hours.

### **4.6 Trainees**

Trainees are engaged under this Award, except as amended from time to time by the Order for *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

### **4.7 Anti-discrimination**

4.7.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:

(a) discrimination on the basis of sex, 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.

- 4.7.2 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.
- 4.7.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.7.4 Nothing in clause 4.7 is to be taken to affect:

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

## **4.8 Termination of employment**

### *4.8.1 Statement of employment*

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

### *4.8.2 Termination by employer*

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

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

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

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

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

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

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

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

### *4.8.3 Notice of termination by employee*

The notice of termination required to be given by an employee shall be 2 days.

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 2 days.

### *4.8.4 Time off during notice period*

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

## **4.9 Introduction of changes**

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

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

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

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

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:

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

## **4.10 Redundancy**

### *4.10.1 Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.10.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

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

### *4.10.2 Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.10.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.



- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
  - (i) the ordinary working hours to be worked by the employee; and
  - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
  - (iii) any other amounts payable under the employee's employment contract.

#### 4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
  - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.10.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

#### 4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1(a), shall be entitled to the following amounts of severance pay:

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

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

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

#### 4.10.7 *Superannuation benefits*

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

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

#### 4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

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

#### 4.10.9 *Alternative employment*

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

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

Clause 4.10 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

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

#### 4.10.12 *Employers exempted*

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

#### 4.10.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:

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

(b) The Commission may amend clause 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.10.14 *Incapacity to pay*

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

#### 4.10.15 *Employees of Queensland Government Departments and Agencies*

The provisions of clause 4.10 will not apply to employees of Queensland government departments and agencies to the extent that the provisions of the redundancy arrangements are contained in a Directive issued by the Public Service Commissioner or the Minister for Industrial Relations pursuant to s. 34 of the *Public Service Act 1996*, where the Directive provides for entitlements that are superior to clause 4.10.

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

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

### 4.12 **Junior employees**

4.12.1 The proportionate number of juniors employed in any one establishment covered by this Award will not exceed 2 juniors to one employee receiving not less than the minimum adult wage prescribed herein and on the ratio of one to one respectively thereafter:

4.12.2 Every employer will be entitled to employ one Junior.

4.12.3 No Junior under the age of 18 years will be employed after midnight or before 7 a.m.

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

### **5.1 Wages**

5.1.1 The minimum rates of wages payable to all employees will be:

Classification	Percentage of	Award Rate
	Minimum Adult Rate	
	%	\$
Years of Age		
Under 17 years of age	50	
17 and under 18 years	60	
18 and under 19 years	75	
Thereafter	100	601.70

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 *Western District allowances* - All employees in the Western District will be paid \$1.05 per week, in the case of adults, and 53c per week, in the case of juniors, in addition to the rates of wages in 5.1.1.

## **5.2 Allowances**

5.2.1 Any employee operating a steam or other mechanical unit for the purpose of cleaning and/or degreasing motor vehicles and/or applying anti-corrosive paint will be paid \$20.60 per week in addition to the wages set out above. Employees greasing and/or changing oil of motor vehicles will be paid an additional amount of 61.8c per hour when engaged on these tasks with a minimum weekly payment of \$6.20.

5.2.2 *Wet work allowance* - Any employee who is required to work in an inspection pit where there is water underfoot, to a depth exceeding 5 cm so that the feet of the employees there will become wet, will be paid an extra 47.05c per hour for the actual time worked therein, unless the employer provides the employees with gum boots.

5.2.3 *Tow truck allowance* - Employees engaged in driving tow trucks which are equipped with a crane will be paid an extra \$24.60 per week.

5.2.4 *Lavatory cleaning allowance* - All employees called upon to clean earthen closets or urinals other than by merely hosing them will be paid 44c per closet per service, in addition to all other amounts due to them:

Provided that every 3 or fraction of 3 urinals will be considered the equivalent of one closet:

Provided further that employees called upon to clean closets connected with septic tanks, or sewerage, will be paid \$7.90 per week in addition to all other amounts due to them.

5.2.5 *Operation of allowances* - The allowances prescribed by clause 5.2 will be paid irrespective of the times at which the work in question is performed, and will not be subject to any premium or penalty additions.

5.2.6 *Supervisory allowance* - An employee who is directed to supervise the work of other employees will be paid an additional rate of \$22.60 per week.

## **5.3 Wages and conditions - Petrol service station roadhouses**

Notwithstanding anything contained in clauses:

- 5.1 Wages
- 5.2 Allowances
- 6.1 Hours of work
- 6.2 Penalty rates and allowances
- 6.3 Meal breaks
- 6.4 Overtime

the wages and conditions of employees in catering services attached to or associated with petrol service station roadhouses will be, as far as they relate to the matters referred to therein, contained in Schedule 2 to this Award.

## **5.4 Occupational superannuation**

5.4.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees (as defined in clause 5.4.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.4.

Provided that clause 5.4 will not apply to employees of any Local Authority in Queensland.

### **5.4.2 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 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%.

(b) Regular payment - The employer shall pay such contributions to the credit of each eligible employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.

(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 5.4 shall preclude an employee from making contributions to a fund in accordance with the provisions of the trust deed of the fund.
- (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 in clause 5.4.

#### 5.4.3 Definitions

- (a) "Approved fund" means a fund (as defined in clause 5.4.3(c)) approved for the purposes of clause 5.4 by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.4. Such approved fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.4.2 effective from the commencement of that qualifying period.
- (c) "Fund" means a superannuation fund satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant 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.
- (d) "Ordinary time earnings" for the purposes of clause 5.4 means the actual ordinary time rate of pay the employee receives for ordinary hours of work including shift loading, skill allowances and leading hand allowances, where applicable. The term includes any over-award 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.

#### 5.4.4 For the purposes of this Award, an approved fund means:

- (a) (i) Sunsuper;
- (ii) MTAA Motor Industry Superannuation Fund;
- (iii) Retail Employees Superannuation Trust (REST);
- (iv) Coles Myer Employees Benefit Fund (CMEBF);
- (v) Taxi Super;
- (b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and as recorded in an approved Industrial Agreement.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an Award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which has already had practical application to the majority of award employees of that employer.
- (d) 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.

- (e) 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.
- (f) 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 5.4.2 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 contribution.
- (g) The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.
  - (i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
  - (ii) A person must not coerce someone else to make an agreement.
  - (iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.
  - (iv) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.2.

#### 5.4.5 *Challenge of a fund*

- (a) An eligible employee being a member or a potential member of a fund, as well as the Union, may by notification of a dispute to the Commission challenge a fund on the grounds that it does not meet the requirements of clause 5.4.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.4, 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 5.4.2 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 5.4, the onus of proof shall rest upon the employer.

#### 5.4.6 *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 5.4.4(c), (d), (e), (f) and (g) shall be determined by a majority decision of employees.
- (b) Employees who are members of an established fund covered by clause 5.4.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.4.2 paid into a fund as provided for elsewhere in clause 5.4.4 in lieu of the established fund to which clause 5.4.4(f) has application.
- (c) The initial selection of a fund recognised in clause 5.4.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.
- (d) Where this provision has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation of this provision.

#### 5.4.7 *Enrolment*

- (a) Each employer to whom clause 5.4 applies shall as soon as practicable as to both current and future eligible employees:
  - (i) Notify each employee of the employee's 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 5.4.4;

- (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 form/s provided by the employer, to enable that employee to become a member of the fund; and
  - (iv) Submit completed application form/s 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 5.4 shall:
- (i) complete and sign the necessary application form/s to enable that employee to become a member of that fund; and
  - (ii) return such form/s to the employer within 28 days of receipt of the application form/s in order to be entitled to the benefit of the contributions prescribed in clause 5.4.2.
- (c) Where an employer has complied with the requirements of clause 5.4.7(a) and an eligible employee fails to complete, sign and return the application form/s within 28 days of the receipt by the employee of that form/s, then that employer shall:
- (i) Advise the eligible employee in writing of the non-receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.4.
  - (ii) In the event that the eligible employee fails to complete, sign and return such application form/s 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 the completed and signed application form/s is received by the employer.
  - (iii) In the event that the eligible employee fails to return a completed and signed application form/s 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/s 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 5.4.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.4.7(c)(i) and 5.4.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.4.7(a)(iii) the employer shall be obliged to make contributions as from the date the employee became an eligible employee provided that the eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where the eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of clause 5.4.7(c) shall apply.

#### 5.4.8 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.4.5, 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 5.4.2 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 5.4.5, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.4 excepting that resort to clause 5.4.8 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.

#### 5.4.9 *Exemptions*

- (a) An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.4 in the following circumstances:
  - (i) Incapacity to pay the costs associated with its implementation; or
  - (ii) Any special or compelling circumstances peculiar to the business of the employer.

## **5.5 Payment of wages**

5.5.1 All wages shall be paid in the employer's time and shall be paid weekly on Thursday or Friday, as determined by the employer, but on the day being fixed it shall not be altered more than once in 3 months:

Provided that where it is mutually acceptable between the employer and the majority of employees, wages may be paid by electronic funds transfer into the bank or other financial institution of the employee's choice.

5.5.2 No employer shall hold more than 2 days wages in hand.

5.5.3 In cases of termination of employment the employee shall be paid no later than 12 noon on the day following such termination, Monday to Friday inclusive, but if an employee's services are terminated on a Saturday, payment shall be made not later than Monday at 12 noon:

Provided that, if the day for payment of wages is a bank holiday, clause 5.5 shall be deemed to have been complied with if payment is made on the next ensuing banking day.

5.5.4 Overtime rates shall be paid for all time lost through delay in receiving wages.

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

### **6.1 Hours of work**

6.1.1 Except as hereinafter provided, the ordinary working hours shall not exceed 40 per week and shall be worked on a maximum of 5 consecutive days of no more than 8 hours. Such ordinary hours shall be worked continuously, excluding meal breaks, between the hours of 7.00 a.m. and 9.00 p.m.

6.1.2 Employees who are employed in parking areas operated by retail establishments shall work their ordinary working hours in accordance with a roster which shall be the same as that which operates in respect of shop assistants at the particular establishment in pursuance of the relevant Award.

6.1.3 A copy of shift rosters, as agreed, will be kept posted in a conspicuous position in each establishment for the reference of employees.

6.1.4 *Shift workers and continuous shift workers* - The ordinary working hours of shift workers and continuous shift workers shall not exceed 80 in any fortnight or 8 in any one shift inclusive of a crib break of 20 minutes and shall be worked in accordance with a roster mutually agreed upon by the employer and the employees, or with the Union.

(a) Shifts shall be arranged from week to week so as to equally distribute the work among employees as far as practicable and no change of shift shall be made before giving the employee at least 6 days notice of such change, except that where through unforeseen circumstances a change in shift is necessary, 24 hours notice shall be given.

6.1.5 Employees shall have a break of at least 8 hours between the finishing of one shift and the commencement of another shift.

### **6.2 Penalty rates and allowances**

6.2.1 *Shift allowance* - In addition to the rates of pay prescribed by clause 5.1 (Wages) employees whilst engaged on afternoon shift and night shift, as defined will be paid an additional penalty rate as follows:

(a) Afternoon shift 12.5% (or \$9.70 whichever is greater)

(b) Night shift 15% (or \$9.70 whichever is greater)

This shift allowance will not apply to Shift Work performed on Saturday and Sunday where extra payments apply for Continuous Shift Work:

For the purposes of clause 6.2.1, an afternoon shift will be deemed to mean any shift commencing later than noon and ceasing at, or before, midnight, and a night shift will be deemed to mean any shift commencing at, or later, than midnight and ceasing at or before noon.

6.2.2 *Week-end penalty rate* - Where 3 shifts per day are worked for a period of 7 days per week, all ordinary time worked by employees, other than casuals, from midnight Friday to midnight Sunday shall be paid for at one and a-half times ordinary rates.



6.2.3 *Saturday penalty rates* - All ordinary time worked by employees other than continuous shift workers and casuals, shall be paid for at the rate of time and a-quarter for all such ordinary hours:

Provided that all ordinary time worked by casual employees in excess of 4 hours shall be paid for at the rate of time and a-quarter.

6.2.4 *Sunday penalty rates*

(a) *Provincial employees* - Except as hereinafter provided, all ordinary time worked on Sundays by employees, other than continuous shift workers and casuals, outside the Local Authority Area of the City of Brisbane shall be paid for at the rate of time and a-half with a minimum payment as for 4 hours work.

(b) *Provincial employees (casual)* - Casual employees employed outside the Local Authority Area of the City of Brisbane shall be paid for at the rate of double time for all ordinary hours worked on a Sunday.

(c) *Metropolitan employees* - All ordinary time worked on Sundays by employees, including casuals and other than continuous shift workers, within the said area of the City of Brisbane, shall be paid for at the rate of double time, with a minimum payment as for 4 hours work.

### **6.3 Meal breaks**

6.3.1 *Meal break* - All employees, other than shift workers, will be entitled to a meal break of one hour's duration to be taken between the commencement of the 4th hour and the conclusion of the 6th hour calculated from the employee's ordinary starting time each day:

Provided that where the employer and employees agree, and the Union consents in writing, not less than 30 minutes will be allowed for the midday meal break:

Provided further that where the meal period is worked, it will be deemed to be overtime and will be paid for at the rate of double time, and such double time payment will continue until such time as the employee finishes work or is allowed a half-hour meal break, for which no deduction of pay will be made.

6.3.2 *Crib break* - Shift workers will be allowed a break of not less than 20 minutes for the purpose of a crib, such time to be counted as time worked. The crib time will be commenced as near as practicable to the middle of the shift and in any event will be commenced not earlier than 3.5 hours from the commencement of the shift and not later than 4.5 hours after such commencement.

### **6.4 Overtime**

6.4.1 Except as provided elsewhere, all work performed by employees in excess or outside of the ordinary hours of work as prescribed in clause 6.1, or outside of an employee's usual fixed commencing and ceasing times, will be deemed to be overtime and will be paid for at the rate of time and a-half for the first 3 hours and double time thereafter:

Provided that where more than one shift is worked in an establishment all overtime will be paid for at the rate of double time.

6.4.2 Where an employee is required to continue working for more than one hour beyond their ordinary ceasing time, the employee will be provided with a meal at the employer's expense or paid a meal allowance of \$9.60 in lieu of the provision of such meal:

Provided that where an employee has been given notice to work overtime, and such overtime is cancelled such employee will be paid a meal allowance of \$9.60.

6.4.3 All employees, after the expiration of 4 hours overtime, will be allowed one half-hour for a meal in the employer's time, and one half-hour after the completion of every additional 4 hours' overtime worked, provided that the employee is required to continue working after such meal break.

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

6.4.5 When an employee is called upon to work overtime, every part of a quarter of an hour will be paid for as a full quarter of an hour. Nothing less than a full quarter of an hour's pay will be paid.

6.4.6 Any employees who works a 5 1/2 day week in accordance with clause 6.1 of this Award shall not be required to work on their rostered days or half-days off duty, but in the event of an employee consenting to so work, such employee shall be paid, for the time so worked, at the rates prescribed in clause 6.4.1, with a minimum payment of 4 hours at the aforesaid rates for any such work performed on a Monday.

## **6.5 Rest pauses**

- 6.5.1 *Full-time employees*- All full-time employees who work 8 hours in one day will receive a rest pause of 10 minutes duration in the 1st half and 2nd half of each day worked.
- 6.5.2 *Casual and part-time employees* - Employees who work between 4 and 6 consecutive ordinary hours, on any one day, will receive a rest pause of 10 minutes duration. Employees who work more than 6 consecutive ordinary hours (excluding meal break) on any one day will receive a rest pause of 10 minutes duration in the first half and the second half of the period worked.
- 6.5.3 Rest pauses will be taken in the employer's time.
- 6.5.4 Rest pauses will be taken at times to suit the convenience of the employer and so as not to interfere with the continuity of work where continuity is necessary.
- 6.5.5 Where there is agreement between the employer and the majority of employees, the rest pauses may be combined into one 20 minutes rest pause to be taken in the 1st or 2nd half of the working day, with the combined rest pause and the meal break being arranged in such a way that the ordinary working day is broken up into 3 approximate equal periods.

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

### **7.1 Annual leave**

- 7.1.1 Every employee (other than a casual employee) shall at the end of each year of their employment be entitled to annual leave on full pay as follows:
- (a) not less than 5 weeks if employed on Shift Work where 3 shifts per day are worked over a period of 7 days per week; and
  - (b) not less than 4 weeks in any other case.
- 7.1.2 Such annual leave is exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.5) must be paid for by the employer in advance:
- (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary wages at a rate in excess of the ordinary wages payable under clause 5.1 or Schedule 2 at that excess rate; and
  - (b) in every other case, at the ordinary time rate of pay payable under clause 5.1 or Schedule 2 to the employee concerned immediately prior to that leave.
- 7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall immediately pay to the employee, in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.5, for 4 or 5 weeks as the case may be and also their ordinary time rate of pay for any public holidays occurring during such period of 4 or 5 weeks.
- 7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due, an amount equal to 1/9th of their pay for the period of their employment in the case of a Shift Worker, and 1/12th of their pay for the period of their employment in the case of a day worker, calculated in accordance with clause 7.1.5.
- 7.1.5 *Calculation of annual leave pay*
- In respect to annual leave entitlements to which clause 7.1 applies, annual leave pay (including any proportionate payments), shall be calculated as follows:
- (a) Shift workers - Subject to clause 7.1.5(c), the rate of wage to be paid to a Shift Worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or public holiday shifts.
  - (b) Supervisory allowance etc. - Subject to clause 7.1.5(c), Supervisory allowances and amounts of a like nature otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
  - (c) All employees - Subject to the provisions of clause 7.1.5(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:

- (i) the employee's ordinary wage rate as prescribed in clause 5.1 or Schedule 2 for the period of the annual leave (excluding shift premiums and weekend penalty rates);
  - (ii) supervisory allowance prescribed in clause 5.2.6 and amounts of a like nature;
  - (iii) a further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).
- (d) Clause 7.1.5(c) does not apply to:
- (i) any period or periods of annual leave exceeding:
    - 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
    - 4 weeks in any other case; or
  - (ii) employers who are already paying an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.6 Unless the employee agrees otherwise, the employer must give the employee at least 14 days' notice of the date from which the employee's annual leave will be taken.

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

7.1.8 If the employee and the employer so agree, annual leave may be taken wholly or partly in advance before the employee has become entitled to such annual leave. Where annual leave, or any part thereof, has been taken before the right to annual leave has accrued, the right to further annual leave will not commence to accrue until after the expiration of the year of employment in respect of which such annual leave or part has been so taken.

## **7.2 Sick leave**

### *7.2.1 Entitlement*

(a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 8 days sick leave for each completed year of their employment with their employer:

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

(b) This entitlement will accrue at the rate of one day's sick leave for each 6 weeks of employment to a maximum of 8 days in any one year.

(c) Payment for sick leave will be made based on the number of hours that would have been worked if the employee were not absent on sick leave.

(d) Sick leave may be taken for part of a day.

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

### *7.2.2 Employee must give notice*

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

### *7.2.3 Evidence supporting a claim*

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

### *7.2.4 Accumulated sick leave*

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

(a) The employee is absent from work on unpaid leave granted by the employer;

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

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

#### 7.2.5 *Workers' compensation*

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

### **7.3 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 42-57 of the Act as amended from time to time.

### **7.4 Bereavement leave**

#### 7.4.1 *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.

#### 7.4.2 *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 one year immediately before the employee seeks to access an entitlement under clause 7.4.2.

#### 7.4.3 "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.

#### 7.4.4 *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.

### **7.5 Family leave**

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

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

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

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

- (a) Maternity leave
- (b) Parental leave
- (c) Adoption leave

(d) Special responsibility leave for the care and support of the employee's immediate family or household.

## **7.6 Public holidays**

7.6.1 Employees (other than casuals) shall be entitled to any of the holidays prescribed in clauses 7.6.2 and 7.6.4 without loss of ordinary time earnings where such holidays form part of their ordinary weekly hours of work, irrespective of the fact that no work is required to be performed on any such day.

7.6.2 All work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

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

### *7.6.3 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 will 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 time rate of pay prescribed for such work with a minimum of 4 hours.

### *7.6.4 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 will be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

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

For the purposes of clause 7.6 "double time and a-half" means 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.

7.6.6 All time worked on any public holiday outside the ordinary starting and ceasing times prescribed by this Award for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the Award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

7.6.7 Should any public holidays fall on an employee's day or 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.

7.6.8 Any employee who works a 5 and a-half day week in accordance with a roster as provided for in clause 6.1 shall, where such employee is rostered off duty on any of the aforementioned holidays, be paid an additional 3 hours at ordinary rates where such holiday coincides with a rostered half-day off duty, and an extra 8 hours' pay at such rates where such holiday coincides with a rostered full day off duty.

## **7.7 Jury service**

An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.

Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.

Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.

If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.

"Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

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

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

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

### **9.1 Training**

9.1.1 The parties to this Award recognise that in order to increase the efficiency and productivity of the enterprise and also the national and international competitiveness of the industries covered by this Award, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (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 use of skills acquired.

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

### **10.1 Protective clothing**

10.1.1 Where employees are required to wear a distinctive type of clothing, be it overalls or shift and trousers, one set of such clothes will be supplied annually by the employer free of cost to the employee. If employees are required to launder such clothing they will be paid an allowance of 75c per week.

10.1.2 An employee performing cleaning duties will be supplied with 2 sets of overalls, one pair of waterproof trousers and one pair of gumboots annually.

10.1.3 Employees checking basic motor vehicle oil levels - attendants will be supplied with one set of overalls annually.

### **10.2 First aid**

In all establishments a first-aid cabinet will be available for employees in cases of accident. Such first-aid cabinet will be kept and maintained in accordance with the provisions of the *Workplace Health and Safety Act 1995* relating to such first-aid cabinets.

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

### **Preamble**

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

### **11.1 Right of entry**

11.1.1 *Authorised industrial officer*

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.

- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

#### 11.1.2 *Entry procedure*

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

#### 11.1.3 *Inspection of records*

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

#### 11.1.4 *Discussions with employees*

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

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

#### 11.1.5 *Conduct*

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

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

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

- (a) the employee's Award classification;
- (b) the employer's full name;
- (c) the name of the Award under which the employee is working;

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

11.2.2 The time and wages record must also contain:

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

11.2.3 The employer must keep the record for 6 years.

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

### **11.3 Union encouragement**

Clause 11.3 gives effect to section 110 of the Act in its entirety. Consistent with section 110 a Full Bench of the Commission has issued a Statement of Policy on Union Encouragement (reported 165 QGIG 221) that encourages an employee to join and maintain financial membership of the Union.

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

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

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

#### *11.3.2 Union delegates*

Union delegates and job representatives have a role to play within a workplace. The existence of accredited Union delegates and/or job representatives is encouraged.

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

#### *11.3.3 Deduction of Union fees*

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

### **11.4 Trade union training leave**

11.4.1 A Union delegate or duly elected or appointed Union representative shall, upon written application by the Union to the employer, such application being endorsed by the Union and given to the employer at least 2 months in advance (or such lesser period as mutually agreed between the Union and employer/s), be granted up to 5 working days' leave (non-cumulative) on ordinary pay each calendar year to attend courses or seminars



conducted by the Union. The scope, content and level of such courses or seminars shall be such as to contribute to a better understanding of industrial relations within the employer's operations.

Other courses mutually agreed between a Union party to this Award and an employer, or employers, may be included under clause 11.4.

11.4.2 Any written application by the Union seeking release of a delegate or representative to attend a course shall include details of the type and content of the course to be attended as well as the dates upon which the course is proposed to be conducted.

11.4.3 For the purposes of these provisions "ordinary pay" means the ordinary time earnings paid to the employee exclusive of any allowances, penalty rates or travelling time and fares.

11.4.4 The granting of such leave shall be subject to the following conditions:

(a) The employee must have at least 12 months continuous service with the employer prior to such leave being granted and be the elected Union delegate/representative.

(b) Unless otherwise agreed the maximum number of employees of one and the same employer attending a training course or seminar each year will be as follows:

Where the employer employs between 10-50 employees	1
Where the employer employs between 51-100 employees	2
Where the employer employs over 100 employees	4

(c) Where an employer has more than one place of employment in Queensland then the maximum number of employees entitled to attend a course at the same time shall be 2. This shall not prevent an employer from agreeing to release additional employees.

(d) The granting of such leave shall be subject to the convenience of the employer so that the operations of the Enterprise will not be adversely affected.

Where an employer approaches the Union and demonstrates genuine difficulties with respect to the release of a particular Union delegate or representative at a particular time (including where the employer might have previously advised of its ability to release such Union delegate or representative) the Union will not unreasonably press its request for the release of that delegate/representative at that time. If the matter is not amicably resolved, it shall be processed in accordance with the Dispute Settlement Procedure contained in this Award.

(e) In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted by the employer to cover the absence of the employee.

(f) Leave granted to attend such training courses will not incur any additional payment or alternate time off if such course coincides with an employee's day off in a 19 day month working arrangement, or with any other concessional leave.

(g) Such paid leave will not affect other leave granted to employees under this Award.

(h) On completion of the course the employee shall, upon request, provide to the employer proof of their attendance at the course. Except in the case of sick leave or other authorised leave, non-attendance at a training course will result in the employee not being paid for such time.

## 11.5 Award to be posted

The employer must display a copy of this Award in a conspicuous place at the workplace where employees can easily read it.

### SCHEDULE 1 - Second tier Orders

Name	Case No.	Date of Order
Permanent Heads of Queensland } Government Departments )	B122/88	7. 3.88
Public Hospitals Boards		
Mater Misericordiae Hospitals }	B161/88	9. 9.88

**SCHEDULE 2 - All employees in catering services attached to or associated with petrol service station roadhouses**

**S2.1 Hours of work**

S2.1.1 The ordinary hours of work will not exceed 40 in any one week or 8 in any one day to be worked on 5 days of the week:

Provided that the 2 days off duty will, wherever practicable, be consecutive.

S2.1.2 The ordinary daily working hours will be worked between 6.00 a.m. and 12 midnight with not more than one break (excluding meal breaks) between periods of work. The spread of ordinary hours will not exceed 12.

S2.1.3 Shift Work may be performed in accordance with a roster to be drawn up by mutual agreement between the employer and the employees and approved by the Union in writing:

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

S2.1.4 No employee under the age of 18 years shall work or be permitted to work after 8 p.m. without the consent of their parents or legal guardians. Where an employee, depending on public transport, finishes work on any day after public transport services have ceased, the employer shall provide transport at their expense for such employee from the place of employment to the employee's residence or place of abode, either by taxi-cab or other form of transport acceptable to the employee.

**S2.2 Meals and meal times**

S2.2.1 Every employee will be entitled to a meal break of 30 minutes' duration per day to be taken between the 4th and 6th hour of the day's work.

S2.2.2 Shift workers will be entitled to a 30 minute paid crib break to be taken between the 4th and 6th hour of each shift.

S2.2.3 Where an employee is required to work through their meal break, they will be paid for the time so worked at the rate of double time.

S2.2.4 Any employee who is required to continue working for more than one hour beyond their ordinary ceasing time will be provided with an adequate meal by the employer or paid an amount of \$9.60 in lieu thereof:

Provided that where an employee has provided a meal because of receipt of notice to work overtime and such overtime is not worked, the employee will be paid \$9.60 for any meal so provided.

**S2.3 Overtime**

S2.3.1 Except as hereinafter provided, all time worked outside, or in excess of, the ordinary hours of work prescribed by clause S2.1.1, or outside of an employee's usual commencing and ceasing times, will be deemed to be overtime and will 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 will 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 will be deemed to be work performed on the previous day.

S2.3.2 All time worked on an employee's day off will be paid for at the rate of double time with a minimum payment as for 2 hours worked.

S2.3.3 Except where clause S2.3.1 applies, all time worked after 12 midnight and prior to 3.00 a.m. will be paid for at the rate of time and a-half, all time worked between 3.00 a.m. and 6.00 a.m. on any day will be paid for at the rate of double time.

S2.3.4 All time worked by a shift worker in excess of 40 hours per week or 8 hours per day or outside of their rostered hours of work, will be deemed to be overtime and will be paid for at the rate of double time.

**S2.4 Penalty rates etc.**

S2.4.1 *Weekend rates* - All time worked by employees within their ordinary working hours between midnight Friday and midnight Sunday will be paid for at the rate of time and a-half.

S2.4.2 *Late work rates* - All time worked by employees, other than casuals, within their ordinary working hours on Mondays to Fridays, inclusive between 8 p.m. and 12 midnight will be paid for at the rate of \$1.385 per hour extra.

S2.4.3 *Broken shifts* - Employees working broken shifts will be paid an additional 100c per day whilst so employed.

S2.4.4 *Shift Work* - In addition to the rates of pay prescribed by clause S2.5.1 employees whilst engaged on afternoon shift and night shift, as defined will be paid an additional penalty rate as follows:

- (a) Afternoon shift 12.5% (or \$9.70 whichever is greater)
- (b) Night shift 15% (or \$9.70 whichever is greater)

This shift allowance will not apply to Shift Work performed on Saturday and Sunday where extra payments apply for Continuous Shift Work:

For the purposes of clause S2.4.4, an afternoon shift will be deemed to mean any shift commencing later than noon and ceasing at, or before, midnight, and a night shift will be deemed to mean any shift commencing at, or later, than midnight and ceasing at or before noon.

S2.4.5 *Supervisory allowance* - Employees who are appointed to supervise the work of other employees will be paid an additional \$11.20 per week.

## S2.5 Wages

S2.5.1 The minimum weekly rates of pay will be as follows:

	Per Week \$
Cook	627.40
Others	604.90

S2.5.2 *Juniors*

	Percentage of minimum adult rate %
Under 17 years of age	55
17 and under 18 years of age	65
18 and under 19 years of age	75
19 and under 20 years of age	85

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

S2.5.3 *Casual Employees* - Casual employees shall be paid at the rate of 1/40th of the appropriate weekly rate of pay for the class of work they are engaged upon plus an additional 23% per hour.

## S2.6 Board and accommodation

Where, by mutual agreement, an employee is provided with meals and/or accommodation, the following deduction may be made by the employer from the wage rates prescribed herein:

Lodging - \$1.00 per week;

Board, consisting of 3 meals per day per week - \$1.20 per week.

## S2.7 Part-time employment

S2.7.1 Part-time employees shall be engaged for a minimum of 12 hours and a maximum of 35 hours in any one week and shall work on not more than 5 days in any one week. Part-time employees shall work a minimum of 3 hours on any one day and a maximum of 10 hours on any one day. The hours of work shall be continuous subject to clause S2.2.

S2.7.2 (a) A part-time employee shall be paid at the rate of 1/40th of the weekly rate prescribed for the class of work performed plus an all purpose loading of 10%. Such all-purpose loading shall not apply to work on Saturday, Sunday, public holidays or overtime.

(b) By agreement in writing between the employer and the employee, a part-time employee may be engaged to work a specified number of hours per week. In such a case the 10% loading prescribed in S2.7.2(a) above shall not apply.

S2.7.3 (a) Part-time employees who work in excess of 8 hours per day shall be entitled to be paid overtime in accordance with clause S2.3 above for such excess hours.

(b) In the case of part-time employees who receive the 10% loading prescribed by S2.7.2(a) above, any time worked in excess of 35 hours per week shall be classed as overtime and paid in accordance with clause S2.3.

(c) In the case of part-time employees who do not receive the 10% loading as provided by clause 2.7.2(b) above, any time worked in excess of the ordinary daily or weekly hours prescribed by their roster, or in excess of the specified number of hours agreed in writing between the employer and the employee, shall be classed as overtime and paid in accordance with clause S2.3.

S2.7.4 Part-time employees shall be entitled to receive *pro rata* entitlements to annual leave, public holidays (on which the employee is normally rostered to work), sick leave, bereavement leave and long service leave in accordance with the provisions contained in this Award.

S2.7.5 All provisions of this Award not expressly amended by this clause shall have application to part-time employees.

## **S2.8 Superannuation**

In addition to all other entitlements pursuant to this Award, all eligible employees will be as from 14 August 1989, be entitled to superannuation contributions paid by the employer. Such contributions will be paid into an approved fund in accordance with the following provisions:

S2.8.1 An "Approved fund" means:

(a) Beneflex;

(b) Sunsuper;

(c) MTAA Industry Superannuation Fund;

(d) Retail Traders and Shopkeepers' Association Fund;

(e) Host Plus;

(f) Metway Super;

(g) a fund to which the employer is, at 24 May 1989, contributing Superannuation payments on behalf of employees, and which complied with the requirements of the Occupational Superannuation Standards Act 1987; or

(h) (viii) any Superannuation Scheme of Fund which is approved under the Occupational Superannuation Standards Act 1987, and which has application to the majority of employees employed by the employer where the employees covered by this Award form a minority.

S2.8.2 "Eligible employee" means:

(a) a full-time employee having been employed for a period of 4 weeks;

(b) other employees having been employed during any period of 12 week provided that within that aforesaid period of employment an adult employee must average 12 hours per week or more and a junior employee an average of 20 hours a week or more;

(c) where an employee has become an eligible employee in terms of clauses S2.8.2(a) and S2.8.2(b), such employee will be deemed an eligible employee in any such pay period in which an adult employee will work more than 12 hours per week and a junior employee 20 hours per week or more; or

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

- (i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
  - (ii) A person must not coerce someone else to make an agreement.
  - (iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (time and wage records) of the Act.
  - (iv) Any dispute arising out of this process will be handled in accordance with the "Grievance and dispute settlement procedure" contained in this Award.
- (e) Ordinary time earnings for the purpose of clause S.2.8 will mean the gross ordinary pay that the employee receives for the ordinary hours of work performed in the relevant pay period and includes supervisory allowance, shift allowances as prescribed in clause 2.4.4.

#### S2.8.3 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 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%.

- (b) The employer may suspend contributions on behalf of an employee for any period when the employee is absent from work on unpaid leave provided that in relation to an eligible employee, an employer will continue to make contributions in respect of any period during which an employee is absent from work on Workers' Compensation up to a maximum of 26 weeks.

S2.8.4 *Future movements* - The amount of contribution as prescribed in S2.8.3 will be adjusted to accord with movements in the applicable rate of wages as set out in this Award with the particular classification of the employee concerned. Such contribution will be rounded off to the nearest 10c.

#### S2.8.5 General

- (a) The employer will remit the contributions to the approved Fund on a monthly basis.
- (b) Eligible employees may personally make contributions to the approved fund in addition to the employer contributions prescribed by clause S2.8.3. The employer will, at the employee's written request, make arrangement for such authorised deductions from the employee's pay to be forwarded to the administrators of the approved Fund.
- (c) No additional amount will be charged by the employer for the establishment, administration, management or any other changes in connection with the approved Fund.
- (d) Nothing in clause S2.8 will act to diminish the rights or responsibilities of the Trustees of an approved Fund as set out in accordance with the Deed of Trust and Rules thereto as amended from time to time.

Dated 13 November 2003.

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

Operative Date: 1 December 2003