

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**VAN SALESPERSONS' AWARD - SOUTHERN DIVISION 2003**

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

Dated 1 March 2011.

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

**VAN SALESPERSONS' AWARD - SOUTHERN DIVISION 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Van Salespersons' Award - Southern Division 2003.

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**1.3 Application of Award**

1.3.1 This Award shall apply to Van Salespersons employed in the area defined in clause 1.4, and to the exclusion of any other Award in force and operative in the same locality.

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

**1.4 Area of operation**

This Award shall apply within the Southern Division of the State of Queensland - that is, all that part of the State south of a line commencing at the junction of the sea coast with 22 degrees of south latitude; then by that parallel of latitude west to 147 degrees of east longitude; then by that meridian of longitude south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude west to the western border of the State.

**1.5 Date of operation**

This Award takes effect from 28 April 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.

## **1.7 Definitions**

- 1.7.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.7.2 "Commission" means the Queensland Industrial Relations Commission.
- 1.7.3 "Country Van Salesperson" means a person who performs the work of a Van Salesperson and in the course of their employment is required to be absent from their home for more than 54 consecutive hours in any one week.
- 1.7.4 "Probationary Van Salesperson" means a person who has not had 6 months' experience as a Van Salesperson.
- 1.7.5 "Trainee Van Salesperson" means a person under the age of 21 years, with no experience as a Van Salesperson who works under the supervision of a Van Salesperson, provided that a person employed as a Probationary Van Salesperson is not covered by this definition.
- 1.7.6 "Town or Local Van Salesperson" means a person who performs the work of a Van Salesperson and in the course of their employment is not required to be absent from their home for more than 54 consecutive hours in any one week.
- 1.7.7 "Van" means and include a vehicle with an enclosed body used by the Van Salesperson to carry the merchandise from which the salesperson fulfils sales, but shall not be construed to include a vehicle carrying petrol, kerosene, oil, or any oil fuel, or milk, cream, ice-cream or aerated water.
- 1.7.8 "Van Salesperson" means any employee in charge of a Van engaged in soliciting wholesale business and fulfilling sales from stocks carried on the Van, but shall not be construed to include drivers of vehicles carrying petrol, kerosene, oil, or any oil fuel, or milk, cream, ice-cream, or aerated water, or any employees already covered by any other Award.
- 1.7.9 "Union" means The National Union of Workers Industrial Union of Employees Queensland.

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

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

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

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

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

- 3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.

- 3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.
- 3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of 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 Consultation**

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

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

### **4.1 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 employee (as prescribed in clause 4.2).
  - (c) casual (as prescribed in clause 4.3).

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

- 4.2.1 A part-time employee is an employee who:
- (a) is employed for not less than 3 hours per week and for less than 32 ordinary hours per week; and
  - (b) has regular hours of work; and
  - (c) receives, on a *pro rata* basis, equivalent pay and conditions to those of full-time employees covered by this Award.

- 4.2.2 At the time of engagement, the employer and the employee will agree in writing on the number of ordinary hours per week and the days on which the work is to be performed.
- 4.2.3 The agreed number of ordinary hours per week will not be varied without the consent of the employee. Any such agreed variation to the number of weekly hours of work will be recorded in writing.
- 4.2.4 An employer is required to roster a part-time employee for a minimum of 3 consecutive hours on any day.
- 4.2.5 Where it is essential for a part-time employee to work beyond the daily approved part-time hours and where the total number of such daily hours worked is less than the ordinary full-time daily hours or not more than 32 hours per week, such additional hours shall be paid for at ordinary rates. Such additional time shall be included in calculating *pro rata* entitlements.
- 4.2.6 A part-time employee shall be paid at the same hourly rate as a full-time employee for performing duties of the same classification. A part-time employee shall also be entitled to any allowances applicable based *pro rata* on the number of hours worked in relation to the ordinary full-time hours applicable to the Award.
- 4.2.7 The public holiday provisions of clause 7.6 shall apply, provided that a part-time employee who usually works on a day of the week on which a public holiday falls, and who is not required to work on that day, shall be paid for the hours which would otherwise have been worked on that day.

### **4.3 Casual employment**

- 4.3.1 A casual employee is an employee engaged by the hour and who may leave their employer's service or be discharged at any moment without notice.
- 4.3.2 Casual employees, as defined, shall be engaged for less than 30 hours in any one week.
- 4.3.3 Each engagement of a casual employee shall be a minimum of 3 hours.
- 4.3.4 For the purpose of calculating minimum casual rates of pay the appropriate weekly rate of pay shall be divided by 38, with an addition of 23%.
- 4.3.5 No existing employee's contract of employment shall be changed to that of casual employment other than by mutual consent.

### **4.4 Incidental and peripheral tasks**

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

### **4.5 Anti-discrimination**

- 4.5.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:
- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
  - (b) sexual harassment; and
  - (c) racial and religious vilification.
- 4.5.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.5.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.5.4 Nothing in clause 4.5 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
- (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

## 4.6 Termination of employment

### 4.6.1 *Statement of employment*

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.

### 4.6.2 *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.

### 4.6.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be one week. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate for the period of notice

### 4.6.4 *Annual Leave*

Annual leave or part thereof cannot be counted as notice of termination by either party.

### 4.6.5 *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.

## 4.7 Introduction of changes

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

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

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

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects 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 4.7.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

### **4.8 Redundancy**

#### 4.8.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult 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 4.8.1(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.

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

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

#### 4.8.3 *Transmission of business*

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

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

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.8.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.8.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.8.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.8.6 *Severance pay*

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

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

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

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

#### 4.8.7 *Superannuation benefits*

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



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

#### 4.8.8 *Employee leaving during notice*

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

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

#### 4.8.9 *Alternative employment*

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

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

Clause 4.8 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

#### 4.8.11 *Employees exempted*

Clause 4.8 shall not apply:

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

#### 4.8.12 *Employers exempted*

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

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

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

(b) The Commission may amend clause 4.8.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.8.14 *Incapacity to pay*

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

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

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

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

### 5.1 **Wages**

5.1.1 The minimum weekly wage rates payable to the following classes of employees shall be as follows:

|  | Award Rate Per Week |
|--|---------------------|
|  | \$                  |
| Town or Local Van Salesperson                | 651.20              |
| Country Van Salesperson                      | 677.30              |
| Town or Local Van Salesperson (Probationary) | 638.90              |
| Country Van Salesperson (Probationary)       | 661.70              |

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

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

The minimum remuneration for a trainee Van Salesperson shall be calculated as follows:

|                       | Percentage of<br>Award Rate |
|-----------------------|-----------------------------|
|                       | %                           |
| Under 19 years of age | 65                          |
| 19 years of age       | 75                          |
| 20 years of age       | 85                          |

Provided that no Van Salesperson will be reduced in their present weekly wage as the result of the inclusion of the above remuneration for "trainee Van Salesperson".

The minimum remuneration shall be paid weekly or fortnightly, and the payment of commission shall be arranged by mutual consent between employer and employee.

5.1.2 The above remuneration shall be exclusive of any expenses incurred in the discharge of the employee's duties. All such expenses shall be arranged between the employer and the employee.

5.1.3 The employer and the employee shall mutually arrange what town shall be regarded as the employee's home town, and the employer shall not be liable for the cost of the accommodation of the employee for the time spent in such home town.

#### 5.1.4 *Employees of Pauls Industries*

A relief Van Salesperson means a person who is required to perform relieving and other duties whilst not on relief, and shall be paid a special allowance of a minimum of \$30.00 per week.

### 5.2 **Commission**

All agreements regarding the payment of commission shall be arranged by mutual agreement, stated in writing and copies shall be made available to the employees concerned upon request.

### **5.3 Superannuation**

5.3.1 *Application* - In addition to the rates of pay prescribed by this Award, eligible employees (as defined in clause 5.3.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.3.

#### 5.3.2 *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 5.3 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 5.3.

#### 5.3.3 *Definitions*

(a) "Approved fund" means a fund (as defined in clause 5.3.3(c)) approved for the purposes of clause 5.3 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 5.3. 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 5.3.2 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 5.3 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.

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

- (a) (i) L.U.C.R. Fund.
- (ii) Sunsuper.
- (iii) MTAA Industry Superannuation Fund.
- (iv) Superannuation Trust of Australia.
- (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 5.3.2 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 3.1.

#### 5.3.5 *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 5.3.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.3, 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 5.3.2 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 5.3, the onus of proof shall rest upon the employer.

#### 5.3.6 *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 5.3.4(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 5.3.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.3.2 paid into a fund as provided for elsewhere in clause 5.3.4 in lieu of the established fund to which clause 5.3.4(f) has application.

- (c) The initial selection of a fund recognised in clause 5.3.4 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.

#### 5.3.7 *Enrolment*

- (a) Each employer to whom clause 5.3 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 5.3.4;
  - (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 5.3 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 5.3.2.
- (c) Where an employer has complied with the requirements of clause 5.3.7(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 5.3.
  - (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 5.3.7(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 5.3.7(c)(i) and 5.3.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.3.7(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 5.3.7(c) shall apply.

#### 5.3.8 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.3.5, 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 5.3.2 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 5.3.5, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.3 excepting that resort to clause 5.3.8 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.

#### 5.3.9 Exemptions

- (a) An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.3 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.

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

#### **6.1 No fixed hours**

It is hereby agreed between the parties that portion of the wage rates prescribed in clause 5.1 contains a loading in lieu of provisions restricting the daily and/or weekly hours of work of Van Salespersons and in consequence no overtime applies.

#### **6.2 Week-end allowance**

A "Country Van Salesperson" required by the employer to remain away from their home on a Saturday or Sunday shall receive in addition to any other remuneration laid down by this Award, an allowance of \$10.70 for any such day.

#### **6.3 Meal allowance**

When a Van Salesperson is specifically directed to work after 6.00 p.m. on any day and has not been notified on the previous day, the person shall either be supplied with a meal by the employer or paid a meal allowance of \$12.10.

### **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 not less than 4 weeks' annual leave on full pay.

7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.6) shall be paid for by the employer in advance:

- (a) In the case of any and every employee in receipt immediately prior to that leave of ordinary wages at a rate in excess of the ordinary rate payable under clause 5.1, at that excess rate; and
- (b) In every other case, at the ordinary time rate of pay payable under clause 5.1 to the employee concerned immediately prior to that leave:

Provided that in the case of a Van Salesperson who is remunerated wholly or partly by commission or who is employed wholly or partly on a commission basis, "ordinary pay" shall be deemed to be the average weekly remuneration earned by the person during the period actually worked during the period of 12 months immediately preceding the annual leave, or as the case may be, during the period of employment.

7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of the termination of the employment and shall immediately pay to the employee, in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.6, for 4 weeks and also their ordinary time rate of pay for any public holiday occurring during such period of 4 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 1/12th of their pay for the period of their employment, calculated in accordance with clause 7.1.6.

7.1.5 Unless the employee shall otherwise agree, the employer shall give the employee at least 14 days' notice of the date from which such employee's annual leave shall be taken.

#### 7.1.6 *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) Subject to clause 7.1.6(b), 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 for the period of the annual leave (excluding weekend penalty rates); and
  - (ii) A further amount calculated at the rate of 17.5% of the amount referred to in clause 7.1.6(a)(i).
- (b) Clause 7.1.6(a) does not apply to:
  - (i) any period or periods of annual leave exceeding 4 weeks; and
  - (ii) employers who are already paying an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.7 If any annual leave shall not have been taken as it falls due from time to time by mutual arrangement, such annual leave shall be cumulative for a period not exceeding 3 years.

## 7.2 **Sick leave**

### 7.2.1 *Entitlement*

- (a) A full-time employee is entitled to 8 days' sick leave for each completed year of their employment with their employer;
- (b) This entitlement will accrue at the rate of one day's sick leave for each 6 weeks of employment.

"Day" is one-fifth of the ordinary hours the employee worked in a week averaged over each preceding 6 weeks of employment with the employer.
- (c) Payment for sick leave will be made based on the number of hours which 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 employer of the employee's absence and its expected duration.

### 7.2.3 *Evidence supporting a claim*

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence 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.

#### 7.2.6 *Absenteeism control measures*

Sick leave is unlike annual leave or long service leave in that it is conditional upon an employee being ill or injured to the point of being unfit for duty. It is an insurance to protect the employee against hardship should the employee be unable to continue in their normal occupation and should be only so utilised.

- (a) This procedure is designed to curtail sick leave abuse by employees who are absent from work and who are not genuinely unfit for duty and is to operate notwithstanding the provisions of clause 7.2.
- (b) At the end of each 3 monthly period, the employer may review the sick leave records with a view to establishing a list of employees whose record of attendance gives cause of reasonable concern.
- (c) Any employee with an unsatisfactory record shall be interviewed by the employer in the presence of an official representative of the Union, or the employee's nominee if the employee so requests. If the discussion in respect to the absences does not provide satisfactory reason for the absences, then a letter of warning is to be sent to the employee and a copy to the Union at the discretion of the employer.
- (d) If no improvement is observed in the next period, the employee is to be again interviewed (as in clause 7.2.6(c)) and if the interview results in unsatisfactory reasons being given, then a second letter of warning sent to the employee and a copy to the Union, at the discretion of the employer, also indicating proof of illness or a certificate may be required for any absence.
- (e) If the above action still results in unsatisfactory attendance at work than a final warning is to be given and if this is disregarded then good grounds will have been established for termination of employment.
- (f) The above procedure does not operate to withdraw the employer's right to take termination action or other disciplinary action against any employee if that employee has been found guilty of filling out a false sick leave application form and claiming leave pay when that person was not genuinely on sick leave. That is a matter relating to fraudulent misrepresentation that may justify "instant dismissal".

### **7.3 Bereavement leave**

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

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

#### 7.3.2 *Long-term casual employees*

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

#### 7.3.3 "Immediate family" includes:

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

#### 7.3.4 *Unpaid leave*

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



insufficient.

#### **7.4 Family leave**

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

7.4.1 It is to be noted that:

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

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

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

#### **7.5 Long service leave**

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

#### **7.6 Public holidays**

7.6.1 Subject to clause 7.6.6 all work done by any employee on:

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

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

7.6.2 *Labour Day*

All employees covered by this Award 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.

7.6.3 *Annual show*

All work done by employees in a district specified from time to time by the Minister by notification published in the *Industrial Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district 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.

7.6.4 *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.

7.6.5 *Stand down*

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

#### 7.6.6 *Substitution*

Where there is agreement between an employer and the majority of employees concerned, and subject to statutory limitations, other ordinary working days may be substituted for the public holidays specified.

### **7.7 Jury service**

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

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

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

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

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

The parties commit themselves to the development and implementation of training courses as it is regarded by them as appropriate and improving the training in cases where this is required.

It is agreed that the parties will co-operate in ensuring that appropriate training is available for all employees in the Industry and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

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

### **10.1 Dust coats and uniforms**

When an employer requires a Van Salesperson to wear a dust coat and/or uniform, such dust coat and/or uniform shall be supplied by and remain the property of the employer.

### **10.2 Protective clothing**

10.2.1 As a protection against wet weather a suitable rain jacket shall be supplied on the request of the employee free of cost.

10.2.2 The employee may elect to be supplied with a long raincoat or a waist length jacket, and if the latter is elected the item shall be made of rain resistant material, other than that used in the manufacture of what are commonly known as "plastic raincoats":

Provided that such rain jacket shall remain the property of the employer and the Van Salesperson shall be liable for the cost of the replacement of the jacket if it is lost, destroyed or damaged through negligence or otherwise depreciated through use for purposes other than those prescribed herein:

Provided further that where a rain jacket has already been supplied as a result of a former request by an employee, no further request shall be made by the employee until such time as the previous type of rain jacket is to be replaced.

### **10.3 Ventilation**

All Vans (excepting refrigerated Vans) will be supplied and fitted with a suitable fan or a suitable mechanical blower for ventilation purposes:

Provided that an employer and an employee may agree to the installation of a suitable cooling device or ventilation system.

## **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.

### **Schedule 1 - Second tier orders**

*List of employers with 2nd tier Orders which to varying degrees modify the provisions of this Award*

| Employer                    | Case No. | Date of Order |
|-----------------------------|----------|---------------|
| The Webster Biscuit Company | B510/88  | 24. 8.88      |
| Q.U.F. Industries Limited   | B90/89   | 7. 3.89       |

Dated 27 February 2003.

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

Operative Date: 28 April 2003