

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of awards pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00213 of 1999)

BITUMEN SPRAYING SERVICES AWARD 1985

(ODN C No. 00730 of 1974)

[Print G0544 [B0007]]

Various employees

Building, metal and civil construction industries

COMMISSIONER LARKIN

SYDNEY, 17 SEPTEMBER 1999

Award simplification.

ORDER

A. Further to the *Award Simplification Decision* of the Commission issued on 23 December 1997 [Print P7500] and the decision of this Commission on 3 August 1999, [Print R7832] the above award is varied as follows:

By deleting all clauses and appendices and inserting the following:

PART 1 – APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award will be known as the Bitumen Spraying Services Award 1999.

2. ARRANGEMENT

This award is arranged as follows:

Part 1 – Application and operation of the award

1. Award title
2. Arrangement
3. Anti-discrimination
4. Definitions
5. Duration
6. Relationship to other awards
7. Area and scope
8. Award to be exhibited

Part 2 – Award flexibility

9. Enterprise flexibility
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Part 3 - Consultation and dispute resolution

11. Settlement of disputes or claims

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14. Termination of employment
15. Redundancy

Part 5 – Rates of pay and related matters

16. Classifications and wage rates
17. Mixed functions
18. Employee doing work of a lower grade
19. Supported wages system
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21. Payment of wages

Part 6 – Hours of work, shift work, breaks and overtime

22. Starting and finishing times
23. Hours of work- day workers
24. Transfers to shift work
25. Meal break – day workers
26. Overtime – day workers
27. Saturday work – day workers
28. Sunday work – day workers
29. Shift work
30. Rest break

Part 7 – Types of leave and public holidays

31. Holidays
32. Annual leave
33. Parental leave
34. Personal leave
35. Jury service

3. ANTI-DISCRIMINATION

3.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

3.2 Accordingly, in fulfilling their obligations under the dispute avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

3.3 Nothing in this clause is taken to affect:

3.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

3.3.2 junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143(1E) of the Act.

3.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

3.3.4 the exemptions in s.170CK(3) and (4) of the Act.

4. DEFINITIONS

4.1 **Union** means the Transport Workers' Union of Australia.

4.2 **Western District of Queensland** means all that part of the State of Queensland south-west of the boundary commencing at the State border at parallel 22 degrees 30 minutes of south latitude thence due east by that parallel of latitude to 147 degrees of longitude thence by that meridian of longitude due south to the twenty-fifth degree of south latitude thence due east by that parallel to 150 degrees of longitude thence due south by that meridian of longitude to the border of the State.

4.3 **Commission** means the Australian Industrial Relations Commission

5. DURATION

This award will come into operation from the beginning of the first pay period to commence on or after 2 August 1999 and will remain in force for a period of six months.

6. RELATIONSHIP TO OTHER AWARDS

- 6.1** This award will supersede the Bitumen Spraying Services Award 1985 [Print G0544 [B0007]] but no rights, obligations or liabilities incurred or accrued under that award will be effected by such supersession.
- 6.2** A party to this award will comply with the terms of the National Training Wage Award 1994 [Print N4816 [N0277]], as varied, as though bound by clause 3 of that award.

7. AREA AND SCOPE

This award will apply to all employees of Inroads Pty. Ltd. whether members of the union or not engaged in or in connection with the manufacture, placement or delivery of bituminous products and activities incidental thereto, the maintenance or construction of plant and equipment, the maintenance and propagation of clerical records, or any other activity undertaken by Inroads Pty. Ltd. within Australia.

8. AWARD TO BE EXHIBITED

A copy of this award and any variations thereto will be posted and kept posted in a prominent position in an accessible place in each work location.

PART 2 – AWARD FLEXIBILITY

9. ENTERPRISE FLEXIBILITY

(See ss.113A and 113B of the Act)

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

- 9.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace will be established.
- 9.2** For the purpose of the consultative process the employees may nominate the union or unions bound by this award to represent them.
- 9.3** Where agreement is reached an application will be made to the Commission.

10. FACILITATIVE PROVISIONS

10.1 Agreement to vary award provisions

- 10.1.1** This award contains facilitative provisions, which allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or section or sections of it. The facilitative provisions are identified in 10.2.1 and 10.2.3.

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

10.2 Facilitation by individual agreement

10.2.1 The following facilitative provisions can be utilised upon agreement between employer and an employee provided that the agreement complies with clause 10.2.2 and 10.2.3:

| Subject matter | Clause number |
|---------------------------------------|----------------------|
| Regular part-time employment | 13.4.2 |
| Training allowance | 20.9.1 |
| Payment of wages | 21.2 |
| Payment of wages | 21.6 |
| Payment of wages | 21.7 |
| Starting and finishing times | 22 |
| Telephone call-in | 26.5 |
| Shift work | 29.2.3 |
| Annual leave | 32.7 |
| Annual leave | 32.8 |
| Maternity leave | 33.3.7 |
| Adoption leave | 33.5.6 |
| Variation of period of parental leave | 33.6 |
| Unpaid carer's leave | 34.5.3 |

10.2.2 The agreement reached must be recorded in the time and wage record kept by the employer in accordance with Division 1 of Part 9A of the *Workplace Relations Regulations*.

10.2.3 If an employee is a member of a union bound by the award, the employee may be represented by the union in meeting and conferring with the employer about the implementation of the facilitative provisions.

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

10.3 Facilitation by Majority Agreement

10.3.1 The following facilitative provisions may only be utilised upon agreement between the employer and the majority of employees in the workplace or part of it. Once such an agreement has been reached the particular form of flexibility agreed upon may be utilised by agreement between the employer and an individual employee without the need for the majority to be consulted.

| Subject Matter | Clause Number |
|-----------------------------|----------------------|
| Hours of work – day workers | 23.6 |
| Meal break- day workers | 25 |
| Public holidays | 31.6 |

10.3.2 Paragraphs 10.2.2 and 10.2.3 must be complied with.

10.4 Additional Safeguard

10.4.1 An additional safeguard applies to:

| Subject Matter | Clause Number |
|------------------------------|----------------------|
| Starting and finishing times | 22 |
| Hours of work –day workers | 23.1.1 |

10.4.2 The additional safeguard requires that the unions which are party to the award and which have members employed at an enterprise covered by the award will be informed by the employer of the intention to use the facilitative provision and will be given a reasonable opportunity to participate in the negotiations regarding its use. Union involvement in this process does not mean that the consent of the union is required prior to the introduction of agreed facilitative arrangements at the enterprise.

10.5 Majority vote at the initiation of the employer

A vote of employees in the workplace, or a section or sections of it, taken in accordance with 10.2.3 to determine if there is a majority employee support for implementation of a facilitative provision, will be of no effect, unless taken with the agreement of the employer.

10.6 Dispute over facilitation

In the event that a dispute or difficulty arises over the implementation or continued operation of a facilitative provision, the matter will be handled in accordance with the dispute resolution procedure in 11 – Settlement of Disputes or Claims.

PART 3 – CONSULTATION AND DISPUTE RESOLUTION

11. SETTLEMENT OF DISPUTES OR CLAIMS

In the event of a dispute arising in the workplace, the procedure to be followed to resolve the matter will be as follows:

- 11.1** The matter will first be discussed between the employee and his/her supervisor.
- 11.2** If not settled, the matter will be discussed between the union delegate and/or an employee representative and the industrial officer or other appropriate officer of the employer concerned. The union delegate will be allowed the necessary time to interview the employee/s and the supervisor during working hours.
- 11.3** If not settled the matter will be further discussed between the State secretary of the union and/or an employee representative and the appropriate representative of the employer. The union delegate will be allowed a reasonable period of time during working hours to interview such union official.
- 11.4** If agreement has not been reached, the matter will then be discussed between a representative of the head office of the employer concerned and the appropriate Federal official of the union. The provision of this step need not apply when only one company is involved unless either that company or the union requests otherwise.
- 11.5** If the matter is still not settled, it will be submitted to a member of the Australian Industrial Relations Commission whose direction shall, subject to any appeal in accordance with the Act, be final and will be accepted by the parties.
- 11.6** Until the matter is determined, work will continue normally in accordance with this award and the contract of employment as instructed by the employer. No party will be prejudiced as to final settlement by the continuance of work in accordance with this sub-clause.

PART 4 – EMPLOYMENT RELATIONSHIP

12. CONTRACT OF EMPLOYMENT

- 12.1** 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.
- 12.2** Employees within each grade are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.
- 12.3** 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.

13. TYPES OF EMPLOYMENT

13.1 An employee, other than casual employees, will be engaged by the week and paid by the week. Any employee not specifically engaged as a casual employee will be deemed to be employed by the week.

13.2 Full-time employee means an employee engaged by the week for an average of 38 hours per week.

13.3 Casual employees

13.3.1 A **casual employee** means an employee who is engaged in relieving work or work of a casual, irregular or intermittent nature and who is engaged and paid by the hour, but does not include an employee who could properly be classified as a full-time or part-time employee.

13.3.2 Employees may be employed in any week as casual employees but will be paid per hour at the rate of one thirty-eighth of the appropriate weekly rate, plus twenty per cent additional for all ordinary hours worked.

13.3.3 A casual employee will not be entitled to any pro rata annual leave, sick leave or public holidays.

13.3.4 The time to be worked by a casual employee without payment of overtime rate will not exceed 7 hours 36 minutes on any one day Monday to Friday inclusive. Anytime worked in excess of 38 hours in a week, Monday to Friday inclusive will be paid at the appropriate penalty rate.

13.3.5 Casual employees working overtime consistent with 13.3.4 will earn the appropriate overtime penalty rate, but will only be entitled to 10 per cent additional payment for overtime hours.

13.3.6 A casual employee will be notified at the end of the day if his/her services are not required the next working day. Failing such notice a minimum of four hours ordinary time wages will be paid for the next working day.

13.4 Regular Part-time Employees

13.4.1 An employee may be engaged to work on a part-time basis involving a regular pattern of hours which will average less than 38 hours per week in any one week from Monday to Friday inclusive.

13.4.2 Before commencing part-time employment, the employee and the employer must agree:

13.4.2(a) upon the hours to be worked by the employee, the days upon which they will be worked and the commencing and finishing times for the work.

- 13.4.2(b)** upon the classification applying to the work to be performed in accordance with clause 16 – Classification and wage rates;
- 13.4.3** Except as otherwise provided in this award, a part-time employee is entitled to be paid for the hours agreed upon in accordance with 13.4.2.
- 13.4.4** The terms of this agreement may be varied by consent.
- 13.4.5** The terms of this agreement or any variation to it will be in writing and retained by the employer. A copy of the agreement and any variation to it will be provided to the employee by the employer.
- 13.4.6** The terms of this award will apply pro-rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38.
- 13.4.7** Part-time employees will not be required to work split shifts.
- 13.4.8** Part-time employees will be engaged for a minimum of four consecutive hours in any day from Monday to Friday inclusive.
- 13.4.9** A part-time employee who is required to work in excess of the hours agreed upon in accordance with 13.4.1 will be paid overtime in accordance with the relevant overtime provisions in this award.
- 13.4.10** Where the part-time employees normal paid hours fall on a holiday prescribed in clause 31 – Holidays, and work is not performed by the employee, such employee will not lose pay for the day. Where the employee works on the holiday, such employee will be paid in accordance with clause 31 - Holidays.

14. TERMINATION OF EMPLOYMENT

14.1 Notice of termination by employer

- 14.1.1** In order to terminate the employment of an employee the employer will give to the employee the following notice:

| Period of continuous service | Period of notice |
|---|-------------------------|
| 1 year or less | 1 week |
| 1 year and up to the completion of 3 years | 2 weeks |
| 3 years and up to the completion of 5 years | 3 weeks |
| 5 years and over | 4 weeks |

- 14.1.2** In addition to the notice provided in 14.1.1, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, will be entitled to an additional week’s notice.

14.1.3 Payment in lieu of the notice prescribed in 14.1.1 and if applicable 14.1.2 will be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and providing part payment in lieu thereof.

14.1.4 In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time he or she would have worked during the period of notice had his or her employment not been terminated shall be used.

14.2 Notice of termination by employee

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

14.2.2 If an employee fails to give notice the employer will have the right to withhold moneys due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

14.3 Time off during notice period

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

15. REDUNDANCY

15.1 Definition

Redundancy occurs when an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

15.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if his/her employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

15.3 Severance Pay

15.3.1 In addition to the period of notice prescribed for ordinary termination in 14.1.1, an employee whose employment is terminated for reasons of redundancy will be entitled to the following amount of severance pay in respect of a continuous period of service.

| Period of continuous service | Severance pay |
|--|----------------------|
| 1 year or less | Nil |
| 1 year and up to the completion of 2 years | 4 week's pay |
| 2 years and up to the completion of 4 years and over | 6 week's pay |
| 3 years and up to the completion of 4 years | 7 week's pay |
| 4 years and over | 8 week's pay |

15.3.2 **Week's pay** means the ordinary time rate of pay for the employee concerned.

15.3.3 Provided that the severance payments will not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

15.4 Employee leaving during notice

An employee whose employment is terminated for reasons set out in 15.1 may terminate his/her employment during the period of notice and, if so, will be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee will not be entitled to payment in lieu of notice.

15.5 Alternative employment

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

15.6 Time off during notice period

15.6.1 During the period of notice of termination given by the employer an employee will 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.

15.6.2 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 he or she will not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

15.7 Superannuation benefits

15.7.1 Subject to further order of the Commission where an employee who is terminated receives a benefit from a superannuation scheme, he or she will only receive under 15.3 the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives which is attributable to employer contributions only.

15.7.2 If this superannuation benefit is greater than the amount due under 15.3 then he or she will receive no payment under that clause.

15.8 Transmission of business

15.8.1 Where a business is before or after the date of this award, transmitted from an employer (in this subclause called **the transmitter**) to another employer (in this subclause called: **the transmittee**) and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transmittee.

15.8.1(a) the continuity of the employment of the employee will be deemed not to have been broken by reason of such transmission; and

15.8.1(b) the period of employment which the employee has had with the transmitter or any prior transmitter will be deemed to be service of the employee with the transmittee.

15.8.2 In this clause **business** includes trade, process, business or occupation and includes part 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.

15.9 Employees exempted

15.9.1 This clause will not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including wilful misconduct, malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

15.9.2 Despite the foregoing provisions trainees who are engaged for a specific period of time will once the traineeship is completed and provided that the trainees' services are retained have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of his or her traineeship and is re-engaged by the same employer within six months of such termination the period of traineeship will be counted as service in determining any future termination.

15.10 Employers exempted

This clause will not apply to employers who employ less than 15 employees. However, the Commission may vary this provision in a particular redundancy case.

15.11 Incapacity to pay

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

PART 5 – RATES OF PAY AND RELATED MATTERS

16. CLASSIFICATIONS AND WAGE RATES

16.1 Classifications

16.1.1 Road Surfacing Assistant means any employee appointed to the position of Road Surfacing Assistant but without experience in the road surfacing industry. This grade would apply to the employee's period of induction, familiarisation and general training and would include but not be limited to Traffic Control Hand; Shovel Hand; Broom Hand; Rake Hand and all other manual duties.

16.1.1(a) The employee would remain classified at this grade until all relevant proficiency testing has been completed and the designated standard has been met. On acquiring the required level of proficiency the employee would be appointed to the next classification.

16.1.2 Senior Road Surfacing Assistant means any employee who has completed the requirements of classification 1 (Road Surfacing Assistant) and in addition has undergone the training and acquired the designated level of proficiency in the following skills/duties which include but are not limited to Aggregate Spreader Operator; Sprayer Operator; Slurry Seal Operator (Grade I); Crack Sealer Operator (Grade I); Power Broom Driver and any other equipment and/or operation which may be added to this group from time to time.

16.1.2(a) On acquiring the level of designated proficiency the employee would remain in this classification unless appointed to a higher classification.

16.1.3 Road Surfacing Operator Class I means any employee who has completed the requirements for classification 2 (SNR RSA) and in addition but not limited thereto has undergone the training and acquired the designated level of proficiency in the following skills/duties of Slurry Driver; Slurry Seal Operator (Grade II); Aggregate Loader Driver; Crack Sealer Operator (Grade II); Tipper Driver inc. Float/Trailer; Roller Driver (Grade I); Profiler Operator (Grade I) and/or any other vehicle operation or equipment which may be added to this group from time to time.

16.1.4 Road Surfacing Operator (Class II) means any employee who has completed the requirements of Classification 3 (R.S.O. Class I) and has been appointed by the employer as such. An employee appointed to this classification would have undergone the training and acquired the designated level of proficiency in the skills/duties of Slurry Seal Driver and Sprayer Driver or Slurry Seal Operator and Sprayer Driver; Profiler Driver (Grade I); Profiler Operator (Grade II); Roller Driver (Grade II); Articulated Low Loader Driver; Leading hand supervisory skills and any other vehicle or equipment which may be added to this classification from time to time.

16.1.5 Senior Road Surfacing Operator means any employee who has completed the requirements of classification 4 (R.S.O. Class II) and has been appointed as such by the employer. An employee appointed to this classification would have undergone the training and acquired the designated levels of proficiency in the skills/duties of Sprayer/Slurry Seal Driver; Slurry Seal Operator (Grade II); Profiler/Driver (Grade II); Cold Recycler Driver; Training of Road Sealing employees of any classification; Leading hand supervisory skills and/or any other vehicle or equipment which may be added to this classification from time to time.

16.2 Wage Rates

16.2.1 An adult employee of a classification specified in the following table will be paid not less than the rate per week assigned to his/her classification.

| Level and relativity to trade rate | Properly Fixed Minimum Rate | Residual component | | Total award rate | |
|---|--------------------------------|-----------------------------|----------------------------|-----------------------------|----------------------------|
| | | Up to 3 years service | Over 3 years service | Up to 3 years service | Over 3 years service |
| | \$ | \$ | \$ | \$ | \$ |
| Level 1 (88%) | 420.00 | 35.20 | 41.70 | 455.20 | 461.70 |
| Level 2 (91%) | 434.30 | 33.70 | 42.70 | 468.00 | 477.00 |
| Level 3 (94%) | 448.60 | 36.40 | 51.50 | 485.00 | 500.10 |
| Level 4 (100%) | 477.20 | 36.00 | 43.90 | 513.20 | 521.10 |
| Level 5 (104%) | 496.30 | 36.20 | 106.00 | 532.50 | 602.30 |

16.2.2 The residual component in the above table represents the total of the component above the minimum rate. Individual employees entitled to a particular pay point at the time this award was made will not be paid less than that pay point. Any future increases in rates in the award will only be applied to the minimum rates component and absorbed against the residual component

16.2.3 Arbitrated safety net adjustment

The rates of pay in this award include the arbitrated safety net adjustment payable under the *April 1998 and April 1999 Safety Net Review - Wages decisions* [Prints Q1998 and R1999]. This arbitrated safety net 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 above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

16.2.4 Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

17. MIXED FUNCTIONS

17.1 Any employee engaged under this award and who in any day or shift does work involving different rates of pay will be paid the highest of such rates for the whole of his/her ordinary working hours on that day or shift.

17.2 Where on a holiday prescribed by clause 31 – Holidays, or in any overtime period an employee is required to perform work involving different rates of pay, he/she will be paid the highest of such rates for the whole of the work performed on that holiday or in that overtime period.

17.3 The provisions of this clause will not apply to the moving of vehicles in or around an employer's premises.

18. EMPLOYEE DOING WORK OF A LOWER GRADE

Should an employee be temporarily transferred for a period not exceeding one week to perform a class of work as set out in clause 16 – Classification and wage rates, carrying a lesser minimum rate of wage than that at which he/she is usually employed, he/she will not during such temporary transfer suffer any reduction of his/her usual wage.

19. SUPPORTED WAGE SYSTEM

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

19.1.1 **Supported Wage System** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in *Supported Wage System: Guidelines and Assessment Process*.

19.1.2 Accredited assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.

19.1.3 Disability Support Pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

19.1.4 Assessment instrument means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

19.2 Eligibility criteria

19.2.1 Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

19.2.2 This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

19.2.3 This clause does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the *Disability Services Act*, or if a part only has received recognition, that part.

19.3 Supported wage rates

19.3.1 Employees to whom this clause applies will be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according the following schedule:

**Assessed capacity
(19.4)**

Prescribed award rate

| | |
|------|-----|
| 10%* | 10% |
| 20% | 20% |
| 30% | 30% |
| 40% | 40% |
| 50% | 50% |
| 60% | 60% |
| 70% | 70% |
| 80% | 80% |
| 90% | 90% |

19.3.2 Provided that the minimum amount payable will be not less than \$50 per week.

19.3.3 * Where a person's assessed capacity is 10%, they will receive a high degree of assistance and support.

19.4 Assessment of capacity

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

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

19.4.2 The employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

19.5 Lodgement of assessment instrument

19.5.1 All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, will be lodged by the employer with the Registrar of the Australian Industrial Relations Commission.

19.5.2 All assessment instruments will be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it will be referred by the Registrar to the union by certified mail and will take effect unless an objection is notified to the Registrar within ten working days.

19.6 Review of assessment

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

19.7 Other terms and conditions of employment

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

19.8 Workplace adjustment

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

19.9 Trial period

- 19.9.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 19.9.2** During that trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
- 19.9.3** The amount payable to the employee during the trial period will be \$50 per week or such greater amount as is agreed from time to time between the parties (taking into account the Department of Social Security income test free area for earnings) and inserted into this award.
- 19.9.4** Work trials should include induction or training as appropriate to the job being trialled.
- 19.9.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under 19.4.

20. ALLOWANCES

20.1 Accident pay – make up of pay

- 20.1.1** The make-up payment prescribed in 20.1.2(c) will apply only in respect of an incapacity which results from an injury or an incapacity which is current during the first pay period which commences on or after 8 December, 1980 or which occurs subsequent to that pay period.
- 20.1.2** The circumstances under which an employee will qualify for accident make-up payment will be as prescribed hereunder:
- 20.1.2(a)** An employer will pay an employee accident make-up payment where the employee receives an injury for which weekly payment or compensation is payable by or on behalf of the employer pursuant to the provisions of the appropriate Acts, as amended from time to time.
 - 20.1.2(b)** **Accident make-up payment** means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate Act and the employee's appropriate award rate, or, where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
 - 20.1.2(c)** An employer will pay, or cause to be paid, accident make-up payment during the incapacity of the employee within the meaning of the said appropriate Act until such incapacity ceases or until the expiration of a period of fifty-two weeks from the date of injury, whichever event will first occur.
 - 20.1.2(d)** The liability of the employer to pay accident make-up payment in accordance with this clause will arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate Acts, and the termination of the employee's employment for any reason during the period of any incapacity will in no way affect the liability of the employer to pay accident make-up payment as provided in this clause.
 - 20.1.2(e)** In the event that the employee receives a lump sum in redemption of weekly payments under the appropriate Acts the liability of the employer to pay accident make-up payment as herein provided will cease from the date of such redemption.
 - 20.1.2(f)** An employer may at any time apply to the Australian Industrial Relations Commission for exemption from the terms of this clause on the grounds that an accident make-up payment scheme proposed and implemented by that employer contains provisions generally not less favourable to his/her employees than the provisions of this clause.

20.2 District allowances

20.2.1 In addition to the rates prescribed elsewhere in this award, an employee covered by this award shall, when he/she is employed in the Western District of Queensland as defined in 4.2 be paid a district allowance of \$1.05 per week.

20.2.2 In addition to the wages prescribed in 16.2 an employee working in Western Australia will be entitled to payment of a district allowance in accordance with the following table when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

| Town | Per week \$ |
|------------------|------------------------|
| Agnew | 15.20 |
| Argyle | 39.50 |
| Balladonia | 15.00 |
| Barrow Island | 25.70 |
| Boulder | 6.20 |
| Broome | 24.20 |
| Bullfinch | 7.20 |
| Carnarvon | 12.30 |
| Cockatoo Island | 26.60 |
| Coolgardie | 6.20 |
| Cue | 15.50 |
| Dampier | 20.90 |
| Denham | 12.30 |
| Derby | 25.10 |
| Esperance | 4.60 |
| Eucla | 16.90 |
| Exmouth | 21.70 |
| Fitzroy Crossing | 30.30 |
| Goldsworthy | 13.80 |
| Halls Creek | 34.60 |
| Kalbarri | 5.10 |
| Kalgoorlie | 6.20 |
| Kambalda | 6.20 |
| Karratha | 24.80 |
| Koolan Island | 26.60 |
| Koolyanobbing | 7.20 |
| Kununurra | 39.50 |
| Laverton | 15.40 |
| Learmonth | 21.70 |
| Leinster | 15.20 |
| Leonora | 15.40 |
| Madura | 16.00 |
| Marble Bar | 37.70 |
| Meekatharra | 13.30 |

| | |
|----------------|-------|
| Mt Magnet | 16.50 |
| Mundrabilla | 16.50 |
| Newman | 14.50 |
| Norseman | 12.90 |
| Nullagine | 37.60 |
| Onslow | 25.70 |
| Pannawonica | 19.60 |
| Paraburdoo | 19.40 |
| Port Hedland | 20.80 |
| Ravensthorpe | 8.10 |
| Roeboume | 28.50 |
| Sandstone | 15.20 |
| Shark Bay | 12.30 |
| Shay Gap | 13.80 |
| Southern Cross | 7.20 |
| Telfer | 35.00 |
| Teutonic Bore | 15.20 |
| Tom Price | 19.40 |
| Whim Creek | 24.60 |
| Wickham | 24.00 |
| Wiluna | 15.50 |
| Wittenoom | 33.40 |
| Wyndham | 37.30 |

20.2.3. Except as provided in 20.2.4, an employee who has:

20.2.3(a) a dependent will be paid double the allowance prescribed in 20.2.2;

20.2.3(b) a partial dependent will be paid the allowance prescribed in 20.2.2 plus the difference between that rate and the amount such partial dependent is receiving by way of a district or location allowance.

20.2.4 Where an employee is provided with board and lodging by his/her employer, free of charge or is provided with an allowance in lieu of board and lodging, such employee will be paid $66\frac{2}{3}$ per cent of the allowances prescribed in 20.2.2.

20.2.5 Subject to 20.2.3 of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week will receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

20.2.6 Where an employee is on annual leave or receives payment in lieu of annual leave he/she will be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

20.2.7 Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she will only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

20.2.8 For the purposes of this clause:

20.2.8(a) Dependant means:

20.2.8(a)(i) a spouse or defacto spouse; or

20.2.8(a)(ii) a child where there is no spouse or defacto spouse;

who does not receive a location allowance or who, if in receipt of a salary or wage package, receives no consideration for which the location allowance is payable pursuant to the provisions of this clause.

20.2.8(b) Partial Dependant means a **dependent** as prescribed in 20.2.8(a) who receives a location allowance which is less than the location allowance prescribed in 20.2.2 or who, if in receipt of a salary or wage package, receives less than a full consideration for which the location allowance is payable pursuant to the provisions of this clause.

20.2.9 Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of 20.2.2 will be determined by the Commission.

20.3 Travelling allowance

20.3.1 Where an employer transfers an employee from his/her usual place of employment to another place of employment he/she will reimburse to the employee all fares and expenses reasonably incurred in going to and from such place of employment.

20.3.2 Where an employee is required by his/her employer to travel as a passenger by any conveyance, he/she will, whilst so travelling, be paid at ordinary rates up to a maximum of twelve hours out of every 24 of such travelling, except on Sundays or holidays when payment will be at the rate of time and a half. Provided that when a sleeping berth is provided by the employer for all-night travel the maximum travelling time to be paid will be eight hours out of every 24.

20.3.3 Employees whose work necessitates their absence from home overnight will be paid all expenses reasonably incurred by such absence, with a minimum payment of \$35.00 per night. This allowance will not apply if the employee is provided with reasonable meals and accommodation. Provided that where an employee travels by boat or other conveyance in which the ticket includes meals and bed, the employee will not be entitled to the above allowance.

20.3.4 Where an employee is transferred temporarily to work at a place which requires daily travel which is a greater distance from the employee's home than the distance to his/her usual place of employment, the employee will be paid any additional fares and additional travelling time so incurred for a period not exceeding three months.

20.4. Transport/location allowance

- 20.4.1** Employees at depots will be paid a transport and location, allowance at the rate of \$10.10 per week. This allowance will not be taken into account for the purpose of calculation of overtime, shift allowances and other payments prescribed in this award.
- 20.4.2** An employee advised to commence and cease work at a location within a 40 kilometre radius of the depot will be paid an allowance of \$11.30 per day.
- 20.4.3** An employee will be notified the day before to report to work at the location. Outside the 40 kilometre radius, the employee shall, in addition, receive 25 cents for each additional kilometre travelled to and from the work location.

20.5 Uniform allowance

- 20.5.1** Where an employee is required to wear a special uniform while on duty, the employer will reimburse the employee for any expense incurred by the employee in acquiring and laundering such apparel. If the employer supplies and launders such items at the employer's own expense the provisions of this clause do not apply.
- 20.5.2** The employer will reimburse the employee for any expense incurred by the employee in acquiring and laundering apparel such as overalls, gloves, aprons, footwear and wet weather clothing together with any other special wearing apparel, unless it is supplied and laundered at the employer's expense.
- 20.5.3** Any clothing or other items supplied by the employer, for whatever reason will remain the property of the employer.

20.6 Gear and equipment allowance

Where an employee provides his/her own gear and equipment, the employee will be reimbursed for the cost of such gear and equipment. If the employer provides the required gear and equipment such items will remain the property of the employer. This provision will not apply where the employer provides such gear and equipment.

20.7 First aid allowance

An employee holding a current first aid qualification from St John Ambulance or a similar body, and appointed by the employer to perform first aid duties, will be paid in addition to his/her wages \$11.60 per week while so appointed.

20.8 Log book allowance

Where a weekly employee is required to purchase a log book the employee will be reimbursed for the cost of the log book by the employer.

20.9 Training allowance

- 20.9.1** Where it is agreed by the employer and an individual employee that additional training to attain a licence or further licenses is required any reasonable actual costs incurred by the employee in connection with the undertaking of that training will be reimbursed by the employer.
- 20.9.2** Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work will be reimbursed by the employer.

20.10 Licences reimbursement allowance

- 20.10.1** Where an employee, in the course of his/her duties, is required by law to obtain a special licence to operate special equipment, the licence fee will be reimbursed by the employer.
- 20.10.2** Where an employee, who does not hold a driving licence to drive a motor vehicle on a public highway, is required to hold such a licence for the performance of his/her work, the employer will reimburse the employee the cost of the first licence fee.
- 20.10.3** An employee whose classification requires the holding of a motor vehicle licence or other permit will inform the employer promptly of any changes to the licence or permit which affects their ability to undertake the work of that classification.

20.11 Shift allowances

For the ordinary hours of shift, shift workers will be paid the following percentages of the rate prescribed for their respective classifications:

- 20.11.1** Afternoon or night shift (other than shifts referred to hereunder) - 15%
- 20.11.2** Permanently working afternoon shift - 20%
- 20.11.3** Permanently working night shift - 30%
- 20.11.4** Permanently working alternative night and afternoon shifts:
- 20.11.4(a)** when on afternoon shift - 20%
- 20.11.4(b)** when on night shift - 30%
- 20.11.5** Any other shift - 10%

20.12 Meal allowance

- 20.12.1** Any employee required to work overtime for more than 1-1/2 hours immediately after his/her usual finishing time, otherwise than because of his/her own default or delay, will be paid a meal allowance of \$7.40.
- 20.12.2** After each four hours of overtime worked continuously an employee will be entitled to a subsequent meal allowance of \$7.40 in respect of the first such four hours and \$7.40 in respect of the second such four hours overtime worked. Provided that the \$7.40, in respect of the second such four hours overtime worked, will be paid if the employee continues working after the qualifying period.
- 20.12.3** A meal allowance of \$7.40 will be paid to an employee who is called in on any day/shift earlier than 1-1/2 hours before their normal commencing day or shift time and, therefore, misses a meal which under normal circumstances would have been per taken at their home. Provided that this payment will not apply in respect of changes to regular starting times for which at least seven days' notice has been given.
- 20.12.4** Any employee who is called upon to work on a holiday will be paid a meal allowance of \$7.40 where the work continues for more than 9-1/2 hours, and a subsequent meal allowance of \$7.40 after each additional four hours of continuous work in excess of eight hours, provided the employee continues working after each such qualifying period.
- 20.12.5** Allowances under this clause will not apply:
- 20.12.5(a)** when the employer provides a suitable meal as an alternative to payment of the relevant allowance; and
 - 20.12.5(b)** when an employee receives expenses covering such meals under 20.3.
- 20.12.6** A day worker, or a shift worker on other than seven day shifts, required to work on a Saturday or Sunday (not being a day on which he/she is ordinarily required to work) will after the first four hours of overtime work, provided he/she is required to work beyond the said four-hourly period, be paid \$7.40.
- 20.12.6(a)** This payment need not be made to an employee living in the same locality as his/her work place who can reasonably return home for a meal.
- 20.12.7** Despite the provisions of 20.12.3 and 20.12.4, an employee required by his/her employer to commence work on or before 5.30 a.m. on a Saturday, Sunday or a public holiday as prescribed in 31 - Holidays, will be paid a meal allowance of \$7.40.

21. PAYMENT OF WAGES

- 21.1** Any employee available, ready and willing to work for the whole week will be entitled to a full week's wage.
- 21.2** Wages will be paid weekly. By agreement between the employer and an individual employee wages may be paid fortnightly provided that the last two days' wages may be kept in hand.
- 21.3** Payment for overtime worked within the last five consecutive days of a pay period need not be made until the pay day of the following pay period. Payment for overtime worked at country depots and construction sites within the week before the pay day need not be made until the succeeding pay day.
- 21.4** Upon termination of employment wages due to an employee will be paid to him/her on the day of such termination, or forwarded by post on the next working day.
- 21.5** An employee kept waiting for his/her wages on pay day for more than a quarter of an hour after usual time for ceasing work, will be paid at overtime rates, with a minimum of half an hour.
- 21.6** An employer and an employee may agree that wages due to the employee be paid by cheque or into a bank account nominated by the employee.
- 21.7** If a shift worker fails for any reason to work a full shift cycle, he/she may make an agreement with the employer for a different method of wage payment averaging over a full shift cycle the payments normally accruing from shift work.

PART 6 - HOURS OF WORK, SHIFT WORK, BREAKS AND OVERTIME

22. STARTING AND FINISHING TIMES

The employer will fix starting and finishing times for his/her employees and such times may be varied by agreement between the employer and employees or by the employer giving one week's notice of the variation.

23. HOURS OF WORK - DAY WORKERS

- 23.1** The ordinary hours of work will be an average of 38 hours per week. The ordinary hours of work will be worked in days of 8 hours per day Monday to Friday inclusive, between the hours of 5.30 a.m. and 6.00 p.m. over 19 days of 8 hours each (152 hours) within a work cycle not exceeding twenty-eight consecutive days (four weeks).
- 23.1.1** Where special circumstances exist and a majority of employees at a location desire to work longer hours on any day they may, subject to the consent of the employer, be permitted to do so without payment of any penalty rate provided the longer hours so worked do not exceed two in any one day and the local ordinary hours in the week do not exceed forty.

23.2 Employees will, after 152 hours (19 days each of 8 hours) of ordinary time worked, be entitled to one rostered day off.

23.2.1 Rostered day off entitlements may be accumulated, the maximum allowable accumulation being ten days over a 40 week period.

23.2.1(a) When there has been a cessation of operations resulting from annual or seasonal close down, industrial action, compulsory closure as a result of a legislative direction, other circumstances beyond the control of the employer such as inclement weather, or in the event of machinery or plant breakdown, or statutory road authority restrictions, the employer may require his/her employees to take a rostered day or days off to coincide with the day or days that the operation is closed; up to a maximum of 5 days of accrued rostered days off in advance of entitlement or a combination thereof. In the absence of mutual agreement on this requirement, 48 hours notice will be given to the employee.

23.2.1(b) Where an employee takes a rostered day or days off in advance of his/her entitlement in accordance with 23.2.1 or 23.2.1(a) each rostered day in advance will be offset against future accrual at the rate of one day for each 152 hours of ordinary time worked subsequently provided that in the absence of mutual agreement 48 hours notice of the requirement to take a rostered day off is given to the employee.

23.3 The weekly wage as prescribed in 16.2 - Wage rates, will be paid for the ordinary hours worked in the subject week. Overtime and penalties will be paid, based on the appropriate overtime hours worked or penalty hours, and on the ordinary hourly rate which is the weekly wage divided by thirty eight.

23.4 When an employee is absent from duty on Annual Leave, Long Service Leave, Workers Compensation, his/her entitlement to accrue a rostered day off will cease.

23.5 Where an employee is absent from duty without authorisation (other than Annual Leave, Long Service Leave, rostered day off, public holidays, Family Leave, Workers Compensation or jury service) he/she shall, for each day absent lose average pay for each such day calculated by dividing his/her average weekly wage rate by five.

23.6 Where an employee is required to work in conjunction with a particular industry or plant or section, which is operating under arrangements for a reduced working week, the employer may arrange the days of work of the employees to be applicable to that particular industry or plant or section. Such arrangement is subject to agreement by a majority of employees.

24. TRANSFERS TO SHIFT WORK

24.1 A day worker may be transferred to shift work on 48 hours notice. If no such notice is given, the employee will be paid overtime rates for all work done outside his/her previous ordinary working hours within 48 hours of the time of notification of the change. Provided an employee is given at least ten hours off duty immediately before commencing or after ceasing shift work.

24.2 Where it is necessary to transfer a day worker to replace a shift worker who fails to report for duty or who for any reason is unable to continue his/her duties, this clause will not apply, but the position will be deemed to be covered by 29.7 – Shift work - Overtime.

25. MEAL BREAK - DAY WORKERS

25.1 An employee will be allowed an unpaid meal break each day of thirty minutes to commence at any time between the end of the third hour and the end of the fifth hour of the day's employment.

25.2 This may be varied by agreement between the employer and the employees, and subject to a majority of employees agreeing to such a variation.

26. OVERTIME - DAY WORKERS

26.1 All time of duty in excess of and/or outside of the hours prescribed in clause 23 – Hours of work – day workers, will be paid at the rate of time and a half for the first two and a half hours on any one day and double time thereafter, such double time to continue until the completion of the overtime work.

26.2 Each days overtime will stand alone and be paid for in addition to the ordinary weekly or casual wage as the case may be.

26.3 Rest period after overtime

26.3.1 When overtime is worked a minimum period of ten hours rest will be given between successive days except that eight hours will be the minimum period between successive periods of work providing there is a minimum break of at least ten hours between the work performed on both the preceding and succeeding days. If excessive time is involved in travelling to and from his/her home by an employee during his/her rest period, special considerations as to the length of the rest period will be given on an individual basis.

26.3.2 An employee, other than a casual employee, who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she had not had the above prescribed minimum period off duty between those times will be released after completion of such overtime until he/she has had the above prescribed minimum period off duty without loss of pay for ordinary working time occurring during such absence. If an employee's rest period ends within two hours of his/her normal ceasing time, he/she will not be required to report for work on that day.

26.3.3 If, on the instructions of his/her employer, such an employee resumes or continues work without having had such rest period off duty as prescribed above, he/she will be paid at double rates until he/she is released from duty for such period and he/she will then be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

26.4 Call back:-Monday to Friday inclusive

26.4.1 An employee recalled to work overtime after leaving his/her employer's business premises will be paid a minimum of four hours' work at the appropriate rate for each time he/she is so recalled. Except in the case of unforeseen circumstances, the employee will not be required to work the full four hours if the job he/she was recalled to perform is completed within a shorter period. This clause will not apply in cases where it is customary for an employee to return to his/her employer's premises to perform a specific job outside his/her ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

26.4.2 An employee who is contacted at his/her home and responds to a call-in to work involving him/her in an additional trip to and from the work place will be paid one hour at his/her ordinary time rate of pay for travelling time irrespective of the distance travelled.

26.4.3 Unless an employee already has had ten consecutive hours off duty since his/her last term of ordinary duty, an employee who responds to a recall after being contacted at home, and the response involves the employee in an additional journey, to and from the workplace, and in the case of exceptional circumstances arising during the call-back the employee if required works further, even though he/she had performed the recall job will be allowed a break of ten consecutive hours off duty before commencing the next hour of ordinary work, irrespective of the duration of the call back.

26.5 Telephone call-in

26.5.1 An employee, who on any day of the week responds to a telephone call (not being a telephone call in respect of which a payment is made under clause 26.7 – Telephoning for instructions) at the employee's home requiring a report for work earlier than the next scheduled starting time, will if his/her telephone rental is not paid by the employer, receive an allowance of \$7.60. This allowance will not apply where there is prior agreement on each occasion between the employer and the employee that such change is imminent and will be communicated by phone.

26.5.2 If notice cancelling the instruction is sent or telephoned to the employee's registered address before he/she would normally have left to commence work, the employee will be paid a minimum of two hours at their ordinary-time rate in the case of a weekday overtime cancellation, or four hours at their ordinary-time rate in the case of a week-end or holiday work cancellation.

26.5.3 An additional penalty will not be payable if the employee is not at their registered address when notice of cancellation is delivered or telephoned and they subsequently report for work.

26.5.4 A penalty will not apply under the provisions of this subclause if the employee had been advised, before leaving work on the previous working day, of the likelihood and had confirmed availability to accommodate such change. This exemption is not available for blanket application and advice to employees will include reference to the circumstances necessitating such advice.

26.6 Transport of employees

When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer will reimburse the employee for the cost of obtaining transport home, or alternatively provide the employee with a conveyance to the employee's home, or pay the employee the current wage for the time reasonably occupied in getting home.

26.7 Telephoning for instructions

26.7.1 Subject to a minimum of three hours' pay where an employee complies with a direction to telephone for instruction in connection with overtime work, the employee will be paid at their ordinary-time rate from that telephone call until either they are given further direction to telephone later for instruction or told a definite time at which to commence work or the employee is released.

26.7.2 Where it becomes necessary for an employee to make a number of telephone calls at intervals determined by an authorised supervisor, the employee is to receive a minimum of three hours payment at their ordinary time rate for each such telephone call. Provided that no payment will be made for any telephone call made within three hours of the last preceding telephone call. Provided further that when an employee commences work all payments due under this clause will cease.

26.7.3 In other circumstances, where an employee is required to make telephone calls after hours, the employee will be paid for the time involved, including any time delay awaiting telephone connections, at their ordinary-time rate.

26.8 Standing by

Where an employee is required regularly to hold himself/herself in readiness for a call-back, after ordinary hours, will until released be paid standing-by time at their ordinary-time rate from the time they are so told to hold themselves in readiness.

27. SATURDAY WORK - DAY WORKERS

For all work done on a Saturday, the rates of pay will be time and a half for the first three hours and double time thereafter. An employee required to report for work on a Saturday will be paid at least four hours at the appropriate rate for each attendance.

28. SUNDAY WORK - DAY WORKERS

28.1 For all work done on a Sunday the rates of pay will be double time. Such double time will continue until the employee is relieved from duty. An employee required to report for work on a Sunday will be paid for at least four hours at double time for each attendance.

28.2 An employee, other than a casual employee, who works on a Sunday and (except for meal breaks) immediately thereafter continues such work will, on being relieved from duty, be entitled to be absent until he/she has had the same period of rest as provided for under 26.4 – Call back: Monday to Friday, inclusive without reduction of pay for ordinary time of duty occurring during such absence.

29. SHIFT WORK

29.1 Definitions

29.1.1 **Shift work** means work extending for at least two days and performed either in daily recurrent period wholly or partly between the hours of 6.00 p.m. and 6.00 a.m. in regular rotating periods.

29.1.2 **Afternoon shift** means any shift finishing after 6.00 p.m. and at or before midnight.

29.1.3 **Night shift** means any shift finishing subsequent to midnight, and at or before 8.00 a.m.

29.1.4 **Permanently working** - An employee will be deemed to be and to have been 'permanently working' in an afternoon shift or night shift or combination of afternoon and night shifts if:

29.1.4(a) An employee who works on an afternoon or night shift or combination of such shifts without rotating or alternating with another shift or with day work, so as to give him/her at least one-third of his/her working time off that afternoon or night shift or combination of such shifts in each shift cycle; or

29.1.4(b) An employee who remains on an afternoon shift or night shift only, or a combination of afternoon and night shifts, for a longer period than four consecutive weeks; or

29.1.4(c) An employee who is specifically engaged to work on an afternoon or night shift only, or a combination of afternoon and night shifts only.

29.2 Hours

29.2.1 The ordinary hours for shift workers will not exceed 38 per week. Where necessary a maximum of up to 48 hours may be worked in any one week. In any two consecutive weeks the average hours of work will not exceed 38.

- 29.2.2** The ordinary hours of shift workers employed under this award will be worked in five days Monday to Friday inclusive. Provided that a shift commenced before, and the major portion of which is worked before, midnight Friday and extending into Saturday will be deemed to be worked within this period, from Monday to Friday.
- 29.2.3** No shift will exceed 8 hours in length. No employee will be required to work the major part of two shifts on any one day except at the regular changeover of shifts. By agreement between an employer and an employee, different limitations of ordinary hours may be made to meet domestic shift rosters.
- 29.2.4** A shift worker who is not relieved as scheduled at the end of his/her shift will continue to work at the appropriate overtime rate until relieved or otherwise authorised to finish work by the employer.
- 29.2.5** All overtime will be paid on the weekly rate of wage that the employee is being paid. Provided that the weekly rate will not be deemed to include any shift allowance prescribed in this award.

29.3 Rate when shift extends beyond midnight

Notwithstanding anything herein contained, each shift will be paid for at the rate applicable to the day on which the major portion of the shift is worked.

29.4 Crib Break

All shifts of more than four hours will include a paid crib time of more than 30 minutes, to be taken at a time convenient to the work in hand. Provided that no employee will be required to work more than 4 hours without having a crib break.

29.5 Rostered shift extending beyond midnight

- 29.5.1** In addition to the allowance prescribed in 20.11 an employee who works a rostered shift, the ordinary hours of which extend beyond midnight and finish when reasonable means of public transport are not readily available, will be paid an allowance of 80 cents for each such shift.
- 29.5.2** This allowance will be payable only in circumstances where public transport normally available during the day and evening hours is not available after midnight. The provisions of this subclause will have no application in centres where public transport does not exist.

29.6 Transfers to existing shift roster

Forty-eight hours' notice of any change of shift will be given to an employee. If the notice period is not given, overtime rates will be paid for work done outside the ordinary shift hours within 48 hours of the time an employee is notified of the change.

29.7 Overtime

For all time worked in excess of or outside the ordinary working hours prescribed by this award, shift workers will be paid:

- 29.7.1** at the rate of double time on Sundays;
- 29.7.2** at the rate prescribed in clause 31 – Holidays, on the holidays prescribed by that clause;
- 29.7.3** at the rate of time and a half for the first two and a half hours and double time thereafter on all other days except in each case when the time is worked by arrangement between the employees themselves or for the purpose of effecting the customary rotation of shifts.

29.8 Notice of inability to attend for relief duty

Where a relief employee is unable to attend for duty, he/she will, wherever practicable, give at least eight hours' notice of inability to attend.

29.9 Cancellation of overtime - shift workers

- 29.9.1** If notice cancelling overtime is sent or telephoned to the employee's registered address before the employee would normally have left to commence work, he/she will be paid a minimum of:
 - 29.9.1(a)** two hours at ordinary time rate in the case of overtime scheduled for a day on which he/she is rostered to work an ordinary shift, and
 - 29.9.1(b)** four hours at ordinary time rate in the case of overtime scheduled on a day on which he/she is not rostered to work an ordinary shift.
- 29.9.2** A shift worker who is contacted on any day of the week at their home and responds to a call-in to work involving an additional trip to and from the workplace will be paid one hour at ordinary-time rate of pay for travelling time, irrespective of the distance travelled.

29.10 Rest period before or after overtime

When overtime is necessary it will be so arranged, wherever practicable, that a shift employee has a ten hour rest period between shifts worked on successive days.

30. REST BREAK

An employee will be allowed a rest break of ten minutes during each period of at least four hours ordinary working time, and during each continuous period of at least four hours performed on Saturdays, Sundays and holidays.

PART 7 – TYPES OF LEAVE AND PUBLIC HOLIDAYS

31. HOLIDAYS

31.1 An employee will be entitled to holidays on the following days:

31.1.1 New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

31.1.2 The following days, as prescribed in the relevant States, Territories and localities:

- Australia Day,
- Anzac Day,
- Queen's Birthday and
- Eight Hours' Day or Labour Day; and

31.1.3 **New South Wales**

Easter Tuesday (except in Newcastle where Show Day will be observed) and August Bank Holiday.

31.1.4 **Victoria**

Melbourne Cup Day.

31.1.5 **South Australia**

Adelaide Cup Day, Proclamation Day and a year-end holiday as observed.

31.1.6 **Western Australia**

Foundation Day, and Perth Show Day.

31.1.7 **Queensland**

Easter Tuesday. In addition, in a district (specified from time to time by the Governor-in-council by Order-in-council of the State of Queensland published in the Queensland Government Gazette) on the day appointed under the *Holidays Act 1983* (as amended) of that State to be kept as a holiday, a holiday will be observed on the day of the annual agricultural, horticultural and/or industrial show held in the principal city or town, as specified in such Order-in-council, of such district.

31.1.8 **Tasmania**

In Southern Tasmania - Regatta Day, in Northern Tasmania - Bank Holiday.

31.2. When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 27 December.

- 31.3** When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 28 December.
- 31.4** When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof will be observed on the next Monday.
- 31.5** Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in 31.1, 31.2, 31.3, or 31.4, above, those days will constitute additional holidays.
- 31.6** An employer, with the agreement of the majority of employees, may substitute another day for any prescribed in this clause.
- 31.6.1** An employer and his/her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected employees will constitute agreement.
- 31.6.2** An agreement pursuant to 31.6.1 will be recorded in writing and be available to every affected employee.
- 31.6.3** The union which is party to this award will be informed of an agreement pursuant to 31.6.1. The union will not unreasonably refuse to accept the agreement.
- 31.6.4** If a union, pursuant to 31.6.3, refuses to accept an agreement, the parties will seek to resolve their differences to the satisfaction of the employer, the employees and the union.
- 31.6.5** If no resolution is achieved pursuant to 31.6.5, the employer may apply to the Commission for approval of the agreement reached with his/her employees. Such an application must be made fourteen or more days before the prescribed holiday. After giving the employer and union an opportunity to be heard, the Commission will determine the application.
- 31.7** An employee called upon to work on any of the holidays above will be notified the day before and, except as provided in 31.8 and 31.9 hereof, will in addition to his/her weekly wage, be paid double time for all time worked with a minimum payment as for four hours.
- 31.8** If an employee is required to work on a holiday during hours which, if that day was not a holiday, would be outside the range of ordinary working time mentioned in clause 23 – Hours of work- Day workers and clause 29 – Shift work, his/her hourly rate for such work will be triple time.
- 31.9** The rates hereinbefore prescribed in this subclause shall, in the case of all shift work, be deemed to include all shift allowances applicable to work on that day.

31.9.1 When 25 December falls on a Saturday or Sunday and a substituted day is proclaimed to be observed as the holiday work on 25 December will attract the public holiday penalty and, where the employee also works on the substituted day, no penalty will apply. This only applies to work actually performed on 25 December and the substituted day will only be observed for purposes of payment on rostered days off.

31.10 An employee notified to attend for work on a holiday which is not so worked will be paid at holiday rates for four hours. Provided that this subclause will not apply where an employee who has already been notified to attend for work is given a minimum of 24 hours' notice that he or she is not required.

31.11 Where an employee who is absent from employment on the working day before or the working day after a holiday without reasonable excuse or without the consent of the employer, he or she will not be entitled to payment for such holiday.

32. ANNUAL LEAVE

32.1 A weekly employees, after each twelve months' continuous service with an employer, will be granted four weeks' annual leave on full pay.

32.2 An employee whose services are terminated for any cause whatsoever or who leaves his/her employment will be entitled to be paid accrued pro-rata annual leave.

32.3 An employee before going on annual leave will be paid according to the highest classification or rate at which the employee was employed prior to the commencement of leave. Provided the employee has been employed at that rate for at least a period of four weeks (or twenty days) in the preceding six months of annual leave becoming due. Otherwise the employee will be paid at the rate according to the classification he/she was otherwise ordinarily employed.

32.4 An employee proceeding on a period of annual leave will be paid not less than the equivalent of the sum of the ordinary-time rate of pay for his/her classification as prescribed in 16.2 for the period plus a loading of 22½ per cent.

32.5 An employee whose services are terminated, either by the employer or the employee, after having accrued a full year's entitlement of annual leave will receive the 22½ percent annual leave loading. Pro rata leave payments for service of less than a full year will be paid only at ordinary-time rates.

32.6 Annual leave will be granted as soon as practicable after accrual but not later than six months of its becoming due.

32.7 At least four weeks' notice will be given of the commencement of annual leave. An employee and employer may agree that less than six months notice may be given in individual cases.

32.8 The annual leave will be given and taken in a continuous period, or, if the employee and the employer so agree, in two separate periods.

32.9 An employer may grant to an employee annual leave or, subject to 32.1 a part thereof, before the right to the leave has fully accrued. Where the leave, or part thereof, is so taken, a further period of annual leave will not commence to accrue until after the expiration of the twelve months in respect of which the leave or part leave was granted in advance.

32.10 Where the annual leave or part thereof has been granted to an employee before the right to the leave has accrued due, and:

32.10.1 the employee subsequently leaves or is discharged before completing the twelve months' continuous service in respect of which the leave or part leave was granted, and

32.10.2 the sum paid by the employer to the employee for the leave or part leave taken in advance exceeds the sum which the employer is required to pay to the employee under 32.1.

the employer will not be liable to make any payment to the employee and will be entitled to deduct the amount of such excess, but excluding any sums paid for any of the holidays prescribed by clause 31 – Holidays, from any remuneration payable to the employee upon termination of the employment.

32.11 Except as provided in 32.1 and 32.4 payment will not in any circumstances be made in lieu of annual leave.

32.12 The annual leave prescribed by this clause will be exclusive of any of the holidays prescribed by clause 31 - Holidays. If any such holiday falls within an employee's period of annual leave either there will be added to the period of annual leave time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday or else by agreement he/she may work such equivalent time, in which case he/she will be paid at the appropriate rate prescribed by 31.7.

32.13 Where a holiday falls as aforesaid and the employee fails, without reasonable cause (proof whereof will be upon the employee) to attend for work at his/her ordinary starting time on the working day immediately following the last day of the period of the annual leave, the employee will not be entitled to be paid for any such holiday.

33. PARENTAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees but do not apply to casual employees.

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

33.1 Definitions

- 33.1.1** For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- 33.1.2** Subject to clause 33.1.3, in this clause **spouse** includes a de facto or former spouse.
- 33.1.3** In relation to clause 33.5, **spouse** includes a de facto spouse but does not include a former spouse.

33.2 Basic entitlement

- 33.2.1** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- 33.2.2** Subject to 33.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 33.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - 33.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

33.3 Maternity leave

- 33.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 33.3.1(a)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that she is pregnant - at least ten weeks;
 - 33.3.1(b)** of the date on which the employee proposes to commence maternity leave, and the period of leave to be taken - at least 4 weeks.
- 33.3.2** When the employee gives notice under 33.3.1(a), the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

33.3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

33.3.4 Subject to 33.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

33.3.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

33.3.6 Special Maternity Leave

33.3.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such period as a registered medical practitioner certifies as necessary.

33.3.6(b) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

33.3.6(c) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

33.3.7 Where leave is granted under 33.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

33.4 Paternity leave

33.4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

33.4.1(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and

33.4.1(b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and

33.4.1(c) a statutory declaration stating:

- 33.4.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;
- 33.4.1(c)(ii)** particulars of any period of maternity leave sought or taken by his spouse; and
- 33.4.1(c)(iii)** that for the period of paternity leave he/she will not engage in any conduct inconsistent with his contract of employment.

33.4.2 The employee will not be in breach of 33.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

33.5 Adoption leave

33.5.1 The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

33.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

- 33.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
- 33.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
- 33.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

33.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

33.5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

33.5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

33.5.6 An employee seeking to adopt a child is entitled to take unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such paid leave instead.

33.6 Variation of period of parental leave

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

33.7 Parental leave and other entitlements

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

33.8 Transfer to a safe job

33.8.1 Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

33.8.2 If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave for such period as is certified necessary by a registered medical practitioner..

33.9 Returning to work after a period of parental leave

33.9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

33.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 33.8, the employee will be entitled to return to the position they held immediately before such transfer.

33.9.3 Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

33.10 Replacement employees

33.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

33.10.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

34. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees, but do not apply to casual employees.

34.1. Amount of paid personal leave

34.1.1 Paid personal leave will be available to an employee when they are absent due to:

- personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or
- bereavement on the death of an immediate family or household member (bereavement leave).

34.1.2 Personal leave of:

34.1.2(a) 8 days leave will be available in the first year of service;

34.1.2(b) 11 days leave will be available per annum in the second and subsequent years of service.

34.1.3 In any year unused personal leave accrues at the rate of the lesser of:

34.1.3(a) 8 days less the amount of sick leave and carer's leave taken from the current year's personal leave entitlement in that year; or

34.1.3(b) the balance of that year's unused personal leave.

34.1.4 Personal leave may accumulate to a maximum of 80 days.

34.2. Immediate family or household

34.2.1 The entitlement to use personal leave for the purposes of carer's or bereavement leave is subject to the person being either:

34.2.1(a) a member of the employee's immediate family; or

34.2.1(b) a member of the employee's household.

34.2.2 The term immediate family includes:

- 34.2.2(a)** spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- 34.2.2(b)** child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

34.3. Sick leave

- 34.3.1** An employee is entitled to use up to 5 days of the current year's personal leave entitlement as sick leave in the first year of service and 8 days in the second and subsequent years of service.
- 34.3.2** An employee is entitled to use accumulated personal leave for the purposes of sick leave where the current year's sick leave entitlement has been exhausted.
- 34.3.3** An employee will be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:
 - 34.3.3(a)** He/she will not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers' compensation;
 - 34.3.3(b)** Where practicable he/she will notify his/her employer prior to the commencement of his/her next period of work. He/she will within 24 hours of the commencement of such absence inform the employer of his/her inability to attend for duty and, as far as practicable, state the nature of the illness or incapacity and the estimated duration of the absence.
 - 34.3.3(c)** He/she will prove that he/she was unable on account of such illness or incapacity to attend for duty on the day or days for which sick leave is claimed.
 - 34.3.3(d)** An employee is not entitled to sick leave for more than two absences each of a single day in any one year of service without the production (if requested by his/her employer) of a certificate, from a qualified medical practitioner. Nothing in this subclause will limit the employer's rights under 33.3.3(c).

34.4. Bereavement leave

- 34.4.1** An employee is entitled to use up to 3 days personal leave as bereavement leave without loss of pay on each occasion.
- 34.4.2** Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to 3 days unpaid bereavement leave.

34.4.3 An employee will provide satisfactory evidence of the death of the employee's husband/wife, father, mother, sister, brother, child, grandparent, grandchild, step-child, or parents-in-law. For the purpose of this clause the words **wife** and **husband** will include a de facto wife or husband, and the words **father** and **mother** will include foster father or mother.

34.5. Carer's leave

34.5.1 An employee is entitled to use up to five days personal leave each year as carer's leave.

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

34.5.2(a) In normal circumstances an employee will not take carer's leave under this clause where another person has taken leave to care for the same person.

34.5.2(b) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reason for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee will notify the employer by telephone of such absence at the first opportunity on the day of absence.

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

35. JURY SERVICE

Subject to the production of satisfactory evidence, an employee required to be absent from work due to jury service will be reimbursed by his/her employer for any loss of wages to the extent of the difference between the amount he/she received for attendance on jury service and his/her ordinary-time rate of pay during such absence.

B. This order will come into force from 2 August 1999 and will remain in force for a period of six months.

BY THE COMMISSION:

COMMISSIONER

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